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Division II  
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No. 54534-9-II

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

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ALEXANDER FLEISHMANN,  
Appellant,  
v.  
CITY OF OLYMPIA,  
Respondent.

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OPENING BRIEF OF APPELLANT ALEXANDER FLEISHMANN

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Thurston County No. 19-2-00787-34

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## I. SUMMARY OF ARGUMENT

The trial court made two mistakes in this Public Records Act case: First, the trial court ignored long-standing precedent when it ruled that a CR 68 offer was properly served when it was stuffed in a mailbox. The offer was stuffed in the box on a Friday afternoon, after Fleishmann's attorney's office had closed for the weekend; it was not mailed or personally served. Our courts have long held that this is not proper service. Since the CR 68 offer was never properly served, it had no effect. The trial court erred in not granting attorney fees and costs for work after the date of the offer based on the mistaken ruling that the CR 68 offer was properly served.

Second, the trial court erred in denying liability for the City's silent withholding of documents that were disclosed on a privilege log 333 days late.

The CR 68 offer was never properly served and therefore a nullity. The case should be remanded for a new determination of attorney's fees and costs, and so that the trial court can assess penalties for the failure to provide a timely privilege log.

## II. ASSIGNMENTS OF ERROR

### A. Assignments of error

1. The Superior Court erred by finding that a Rule 68 offer was properly served.
2. The Superior Court erred in limiting costs and fees based on the improperly served Rule 68 offer.
3. The Superior Court erred when it failed to find liability for documents that were silently withheld and eventually disclosed on a privilege log.

### B. Issues pertaining to the assignments of error

1. The CR 68 offer was placed in a mailbox after Fleishmann's attorney's office was closed for the weekend. It was never mailed or personally served. Was the CR 68 offer properly served?
2. May the Superior Court give effect to an improperly served CR 68 offer?
3. Where attorney fees and costs are denied based on an improperly served CR 68 offer, should the case be remanded for a new hearing on fees and costs?

4. Did the Superior Court err by not finding the City in violation of the PRA when it took 333 days to disclose documents in a privilege log?

5. May an agency silently modify a PRA request for “all documents” to exclude emails?

6. Should the case be remanded to determine the proper penalty for the delay in providing the privilege log?

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

On February 9, 2018, Olympia Police wrongly seized Fleischmann’s vehicle. The City eventually admitted liability and compensated Fleishmann, but, before it did, Fleishmann sought information about the seizure. He made an initial request under the Public Records Act to the City of Olympia on February 23, 2018, and he renewed that request on June 29, 2018. CP 98, 106.

#### **A. The Public Records Act Request and Response**

On February 23, 2018, Fleishmann requested:

All documents that relate to police incident 18-0-836, including but not limited to, incident reports, supplemental reports, CAD logs, video/audio/photographic, affidavits of probable cause, warrant applications, warrants, returns of warrants, tow/impound authorizations, inventories, property receipts, internal

memoranda, or any other item that in any way relates to the foregoing incident number.

CP 98; CP 919-20; RP 8/23 at 34. Olympia failed to provide responsive documents and videos in a timely manner. The improper withholding led to this litigation, which proceeded to a hearing on the merits, a penalty hearing, and a hearing on fees and costs.

On the merits, the court found partly in favor of Fleishmann and partly in favor of the City. As is relevant here, the court found for the City on the privilege log/silent withholding claim. The trial court also found for Fleishmann, determining that 11 videos were not produced until 229 days after the request was made, and that the improper withholding of the videos merited a penalty. RP 8/23 at 37-38.

**B. Privilege log**

Fleishmann challenged a delay of 333 days in providing a privilege log. CP 71. The court ruled against Fleishmann without explaining its reasoning.

Fleishman's initial request was on February 23, 2018, and the City responded on February 26, but did not provide a privilege log. CP 83, 98. The request was renewed on June 29, 2018. CP 83, 106. Eventually, a privilege log was produced in May 2019. CP 177-181. The privilege log

showed 8 emails that predated the June request, but were not disclosed until the privilege log was served on May 28, 2019, a delay of 333 days after the June 2018 request. CP 180 (lines 38-41) and CP 181 (lines 43-47). In this appeal, Fleishmann does not challenge the privilege designation, only the delay in producing the log.

**C. Penalties**

Argument during the penalty hearing focused on the videos.

Fleishmann emphasized that there “was no reasonable explanation” for the delay in producing the records. If Fleishmann had not persisted, he did not “think we ever would have gotten the videos.” RP 11/22 at 11.

The City argued that it had a well-drilled public records response system, a “model for compliance with the Public Records Act.” RP 11/22 at 17. The “records people are highly trained.” RP 11/22 at 17. Indeed, “there is a great deal of attention and time and money being spent at the City of Olympia training people.” RP 11/22 at 17. The City’s defense was that the model system failed because a police officer did not enter the videos into the system. RP 11/22 at 16-17.

The Court grouped 11 videos as one set for penalty purposes. RP 11/22 at 24. The court further found that the records were wrongly withheld for 224 days. RP 11/22 at 24.

The Superior Court imposed a fine of \$25 per day for the 11 videos (taken as a group), for the 224 days that the videos were withheld. RP 11/22 at 34. Fleishmann does not appeal the penalty imposed for wrongly withholding the videos.

**D. Rule 68 offer and hearing on attorney's fees and costs**

On February 28, 2019, all counsel agreed to electronic service of documents "except for Rule 68." RP 2/14 at 19; CP 931.

The City claimed that it served a CR 68 Offer of Judgment on Fleishmann's attorney on a Friday, June 7, 2019. The Superior Court found that the offer was effective, based on the following facts.

The City was informed that electronic service of the CR 68 Offer was not effective. RP 2/14 at 19. The City's agent then "went out to Mr. Milliken's attorney's office and observed what is indicated or reflected in the photographs, which . . . show a gated driveway, locked gated driveway . . ." RP 2/14 at 20. And "immediately adjacent to the gate was what appeared to be like an oil drum . . . And perched atop that drum was a mailbox." RP 2/14 at 20. And the agent "left that offer of judgment in the mailbox." RP 2/14 at 20.

The City claimed that it left the Offer in a "conspicuous place," 2/14 at 10, and the Superior Court agreed that the mailbox was "a

conspicuous place.” RP 2/14 at 21. Perhaps, the court speculated, the City “was concerned about the possibility of that document being lost or subject to the wind or the weather conditions or someone else taking it . . .” if, for instance, the agent had used “a clothespin or some sort of a—some sort of a mechanism to attach it to the gate.” RP 2/14 at 21-22. So, “the responsible act or procedure was to leave it in the mailbox. That’s what mailboxes are for.” RP 2/14 at 22. The court then found that “the offer of judgment was properly served upon Mr. Milliken.” RP 2/14 at 22.

The court went on to limit attorney’s fees to the period up to the offer. RP 2/14 at 22.

**E. Orders and notice of appeal**

On August 23, 2019, the Superior Court entered an Order on the Merits, determining that there was a violation of the PRA. CP 455-457. On January 24, 2020, the Superior Court entered findings of fact and conclusions of law regarding penalties. CP 918-924. On February 14, 2020, the Superior Court entered an order determining attorney fees and costs. CP 1173-1177. This appeal was timely filed on February 20, 2020. CP 1178-1194.

#### IV. ARGUMENT

The City failed to properly serve the Rule 68 Offer. Since the offer was nullity, the Superior Court erred in limiting fees and penalties based on a Rule 68 offer that was never served.

The Superior Court also erred in denying liability for silent withholding by the long-delayed production of a privilege log.

The case should be remanded for a new hearing on penalties and a new determination of fees and costs.

**A. The Rule 68 Offer was a nullity and the Superior Court erred in ruling that the Rule 68 Offer was properly served**

The City attempted to transmit the Rule 68 Offer by leaving it in the mailbox of Fleishmann's attorney's closed office. RP 2/14 at 20. The offer was never mailed or personally served. Since service by stuffing a document into a mailbox at a closed office is not proper service, the Superior Court erred in limiting the attorney fee award based on the Rule 68 offer.

This issue is reviewed de novo. Where "the record both at trial and on appeal consists entirely of written and graphic material," and conflicting testimony and credibility determinations are not at issue, the appellate court reviews the trial court de novo. *Progressive Animal Welfare*

*Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994) (internal citation omitted).

**1. The Rule 68 Offer and fee-shifting in PRA cases**

The PRA has a fee-shifting provision, allowing a court to award the prevailing plaintiff attorney’s fees and costs. RCW 42.56.550(4). Rule 68 offers apply to PRA cases. *Rufin v. City of Seattle*, 199 Wn. App. 348, 362, 398 P.3d 1237 (2017).

Rule 68 “details precisely how and when offers are to be made and accepted . . .” *Dussault v. Seattle Pub. Sch.*, 69 Wn. App. 728, 733, 850 P.2d 581 (1993). Rule 68 provides that “a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party . . .” CR 68. If “within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted,” either party may enter the judgment. CR 68. If “the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.” CR 68.

Here, the CR 68 offer was for \$5,601.00. CP 1132-1133. The Superior Court awarded \$1.00 less than that, \$5,600, and the Superior Court thus cut off attorney fees and costs from the date of the (defective) service. RP 2/14 at 22. Since much of the work in the case happened after

that date, including all the hearings, the ruling on the CR Offer was significant.

**2. Service of Rule 68 offers is governed by CR 5**

Rule 68 does not have a separate provision regarding service. In this case, there was no electronic service agreement for Rule 68 offers. RP 2/14 at 19. That means that CR 5 provides the proper method of service. CR 5 provides for service by

- “delivering a copy . . . to the party’s attorney” or
- “mailing it” to the party’s attorney

CR 5.

Delivery, in turn, means:

- “handing it to the attorney or to the party”
- “leaving it at the party’s or the attorney’s office with a clerk or other person in charge thereof”
- “or, if there is no one in charge, leaving it in a conspicuous place therein;”
- “or, if the [attorney’s] office is closed . . . leaving it at the person’s dwelling house . . . with some person of suitable age . . .”

CR 5(b)(1).

**3. Delivery by leaving in a conspicuous place does not apply to service of documents at the closed office of an attorney**

The City did not use any of the permitted means of service. The CR 68 Offer was not left at an office with a clerk or person in charge; it was stuffed in a mailbox. Since “the office [was] closed,” RP 2/14 at 20, Rule 5 provides the lone alternative: the offer had to be left “at the person’s dwelling house . . . with some person of suitable age.” CR5(b)(1). The CR 68 Offer was not left with any person at all. RP 2/14 at 20-21. The City left the Offer in a mailbox, but did not mail it; it was simply dropped in the box, without postage. The person was “instructed to leave the Offer of Judgment at a conspicuous place by the entrance to the office . . .” CP 1147.

The City admitted below that the office was closed: “the driveway leading to Mr. Millikan’s office was chained shut.” CP 1108; 1147. That made the “dirt road extending to Mr. Millikan’s office . . . impassible and there was a sign warning that security cameras were in use.” CP 1108. Instead of mailing or the personal service required when an attorney’s office is closed, the City argued that the document was left “in a conspicuous place.” CP 1108.

But the cases make clear that this “was no service at all.” *Rohr v. Baker*, 53 Wn.2d 6, 7, 329 P.2d 848 (1958). In *Rohr*, “there being no one present to receive” the papers, they “were pushed through a mail slot in [the] door.” *Id.* Construing the then-current version of RCW 4.28.240, which is virtually identical to the current CR 5, our Supreme Court found the service was not effective. *Id.*

*Rohr* construes the plain meaning of the language regarding service and holds that simply placing a document in a mailbox is not proper service: it is not personal service and it is not mailing. The option of “leaving in a conspicuous place” does not apply to a closed office. *Rohr* controls and requires that the case be remanded for a proper determination of fees and costs.

Rule 5 is interpreted according to its plain language. *O’Neill v. Jacobs*, 77 Wn. App. 366, 369, 890 P.2d 1092 (1995). Construing Rule 5’s plain language, this Court has found that a faxed offer is void because, like stuffing a document in a mailbox, it is not specified in Rule 5. *Inman v. Netteland*, 95 Wn. App. 83, 89, 974 P.2d 365 (1999).

Building on these cases, this Court held that faxing a Rule 68 offer is not effective. *Wallace v. Kuehner*, 111 Wn. App. 809, 824, 46 P.3d 823 (2002). Whether the ineffective service is by fax or by stuffing into a

mailbox, the same analysis applies; since the plain language of CR 5 does not permit stuffing a document into a mailbox, the offer here was not effective because it was not properly served.

The service here was not mailing. Mail consists of items “properly addressed, stamped with postage, and deposited for delivery in the postal system.” Black’s Law Dictionary (11th ed. 2019)(accessed via Westlaw). Mail can also be defined as an “official system for delivery of such items; the postal system.” *Id.* Under the plain meaning of the term “mail,” service here was not mailed. *See also Magnuson v. Video Yesteryear*, 85 F.3d 1424, 1430 (9th Cir. 1996) (holding that private delivery services such as Federal Express are not “mail” for the purposes of service).

A plain language application of the rules is especially important where, as here, the service of the documents triggers a time limit. Thus the service of a request for a trial de novo after arbitration, the subject of *Inman* and *O’Neill*, must be strictly construed because doing otherwise would “in essence be extending the time within which to request a trial de novo.” *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 812, 947 P.2d 721 (1997). The *Nevers* court also rejected substantial compliance as a defense for failing to properly serve a motion that triggers a time limit. *Id.* at 814-15. The same analysis applies here. Since there is a ten-day limit to accepting

the offer, CR 68 offers served in random ways, such as stuffing the offer in a mailbox, raise questions: was service made on the day it was stuffed in the box? Do we assume that service on a closed office occurs on the day it is stuffed into a box on top of an oil drum? Do the rules on timing and mailing apply to placing documents outside a lawyer's closed office? CR5(b)(2)A("... service shall be deemed complete upon the third day following the day upon which they are placed in the mail ..."). If a plaintiff attempted to accept an offer by stuffing a document in a box outside the gate of defense attorney's office, what would be the date of acceptance?

Here, the argument over service led to Fleishmann's attorney being deposed while the City pursued its substantial compliance argument. That is exactly the kind of tertiary litigation rules are designed to prevent. This Court should follow the plain language of the statute and binding authority and find the improperly served Rule 68 offer was a nullity.

**4. Federal authority and the plain language of CR 5 also show that the Rule 68 Offer was not properly served and therefore a nullity**

The Washington authority decides the issue here, but it is useful to look at the federal authority, which is based on identical words and has come to the same conclusions as Washington courts. Washington courts

may look at the federal authority on Rule 68 to fill holes in Washington law. *Hodge v. Dev. Servs. of Am.*, 65 Wn. App. 576, 580, 828 P.2d 1175 (1992) (construing CR 68 by looking at federal law). Washington cases are consistent with cases from around the country construing a similar requirement in Federal Rule of Civil Procedure 5: service may be made by leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there . . .” Fed. R. Civ. P. 5(b)(2)(B)(i)-(ii).

Construing this language, courts have found that “slipping a copy of the motion . . . under the door of the law office of the defendants’ counsel, after hours, when no one was there” is “not proper service.” *Sinett, Inc. v. Blairex Labs., Inc.*, 909 F.2d 253, 253-54 (7th Cir. 1990). *See also Ortiz-Moss v. N.Y.C. DOT*, 623 F. Supp. 2d 404, 408 (S.D.N.Y. 2008) (because the office was closed when Plaintiff’s counsel attempted to serve Plaintiff’s acceptance, service by mail or at the dwelling or abode of Defendants’ counsel was required); *Davis v. Elec. Arts Inc.*, No. 10-cv-03328-RS (DMR), 2017 U.S. Dist. Lexis 147621, at \*3, 2017 WL 8948082

(N.D. Cal. Sep. 12, 2017)(unpublished)(citing *Sinett* and finding service by pushing a document under the door of a closed lawyer's office is not proper).

Against this overwhelming, on-point authority, the City argued below that the “salient and controlling portion” of CR 5(b)(1) is “if there is no one in charge,” at an attorney’s office, the document may be left “in a conspicuous place.” CP 1111-1112. That argument is not just contrary to binding authority, it goes against the plain language of Rule 5 and canons of statutory interpretation.

The City’s reading ignores the crucial requirements of where and how to serve documents when a lawyer’s office is closed. Two points here show the City’s argument is wrong. First, the City ignores that the statute requires that a conspicuous place be inside a lawyer’s office. Service may be made by “leaving it at the party’s or the attorney’s office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein . . .” CR(5)(b). Of course, “therein” means “inside” the office. Black’s Law Dict. (11th ed., accessed through Westlaw) (defining “therein” as “In that place . . .” or “Inside or within that thing; inside or within those things <there were 3 school buses with 108 children therein>”). A mailbox outside the gate leading to a driveway

that leads to a lawyer's office is not "a conspicuous place therein;" as the record makes clear, the document was not left in the lawyer's office, but outside the gate to the driveway to the office.

When a document cannot be left in a conspicuous place "therein," that is "if the office is closed," CR 5 specifies a different course of action: personal service on a person at the lawyer's home. CR 5(b)(1)("... leaving it at the person's dwelling house . . . with some person . . .").

The way the City reads CR 5, the phrase "if the office is closed or the person to be served has no office" would be superfluous, and the goal of statutory interpretation is "to give effect to all language, so as to render no portion meaningless or superfluous." *State v. Ervin*, 169 Wn.2d 815, 823, 239 P.3d 354 (2010) (internal citations and punctuation omitted). There would be no need for the section on what to do if the office is closed, or for the word "therein," if delivery could be made by leaving it outside the closed office.

The City will likely argue that there was substantial compliance. That argument was rejected in *Nevers*. 133 Wn.2d at 814-15 (holding that substantial compliance with CR 59(b)/MAR 7.1 is not sufficient because, unlike RAP 18.8, the underlying rules do not allow extensions in the interests of justice). There would be no point to the cases determining that

that an incorrectly served Rule 68 Offer is a nullity unless service mattered. Randomly leaving a CR 68 offer somewhere near the closed office runs contrary to “the policy favoring fair settlements under CR 68 [which] is promoted by certainty and the elimination of unintended results.” *Brader v. Minute Muffler*, 81 Wn. App. 532, 536, 914 P.2d 1220 (1996). There can be no certainty when the rules are cast aside. CR 68 “details precisely how and when offers are to be made and accepted . . .” *Dussault*, 69 Wn. App. at 733. The 10-day limit on Rule 68 offers is critical to the functioning of the rule, and the City’s “close enough/substantial compliance” argument does not apply where deadlines matter.

Plain language and case law mean the Rule 68 offer here was void because it was never properly served. The case should be remanded for a new hearing on fees and costs without consideration of the improperly served Rule 68 offer.

**B. The Superior Court erred in denying liability for a delay of 333 days in disclosing documents on a privilege log**

Failing to produce a privilege log is silent withholding, and silent withholding violates the PRA. The privilege log here was not timely produced.

This Court reviews summary judgment decisions de novo and performs the same inquiry as the trial court. *Lakey v. Puget Sound Energy*, 176 Wn.2d 909, 922 (2013). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The appeal is timely because the notice of appeal was filed within 30 days of a determination of damages. CR 54(b); *Bowing v. Board of Trustees of Green River Community College*, 85 Wn.2d 300, 302, 534 P.2d 1365 (1975) (“plaintiff’s claim in this case was not fully adjudicated until the amount of damages had been determined . . .”).

**1. The request and delayed response**

As described above, Fleishmann requested documents on February 23, 2018 and refreshed that request on June 29, 2018. CP 98, 106. The privilege log was not produced until May 28, 2019. CP 177-181. The log lists eight documents the predated the June 2018 PRA request. CP 180 (lines 38-41) and CP 181 (lines 43-47). The result was a delay in disclosure of 333 days, but the Superior Court did not find the City liable.

**2. Case law requires production of documents or a privilege log**

Records are either “disclosed” or “not disclosed.” A record is disclosed if its existence is revealed to the requester in response to a PRA request, regardless of whether it is produced. *Sanders v. State*, 169 Wn.2d 827, 836, 240 P.3d 120 (2010).

Agencies are not relieved of their duties to respond to requests for public records because an exemption applies. RCW 42.56.210; *Rental Hous. Ass’n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009).

There are eight documents on the privilege log that were created before the June 2018 request, but were not disclosed on a privilege log until May 28, 2019, a delay of 333 days. This Court should hold that the delay was unreasonable and remand for a determination of a penalty for the silent withholding.

In the Superior Court, the City said that Fleishmann failed to show that the documents—emails—were responsive to his request. CP 400. That is because, on the City’s theory, it “reasonably understood” Fleishmann’s request not to include emails. CP 400. The City further claimed that Fleishmann had to request in camera review of the emails to make any claim about them. CP 400-402.

Fleishmann’s request sought “all documents” “that in any way relate[ed] to” police incident 18-0-836. CP 98, 107. Given that broad request, the City is wrong that that Fleishmann bears the burden of showing that documents produced on a privilege log are responsive to the request. The “burden is on the agency to establish that nondisclosure is in accordance with one of these PRA exemptions. RCW 42.56.550(1).” *Sargent v. Seattle Police Dep’t*, 179 Wn.2d 376, 395, 314 P.3d 1093 (2013).

The PRA defines a “document” as a writing containing information relating to the conduct of government and an “email, text, social media posting and database are therefore also ‘writings’” subject to the PRA. WAC 44-14-03001(1); RCW 42.56.010(4) (defining writing in the PRA as including “every other means of recording any form of communication”).

In defending itself below, the City argued that the request was “reasonably understood” by the City not to include emails, so the City “did not look for emails.” CP 400. But the City cannot have it both ways: it claims it has a “model” PRA response system with “highly trained” employees. RP 11/22 at 17. A model system does not silently modify requests to exclude the main form of modern communication. Excluding email from a search in 2018 required clarifying with the requestor that they

did not wish to have such documents. An “agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 720, 261 P.3d 119 (2011). An “adequate response to the initial PRA request where records are not disclosed should explain, at least in general terms, the places searched.” *Id.* 172 Wn.2d at 722. An adequate response “should establish that all places likely to contain responsive materials were searched.” *Id.*, 172 Wn.2d at 721. The City here failed to inform Fleishmann that it was not searching for emails, and such a response is inadequate.

The privilege log that uncovered the documents was created in response to a CR 34 Request for Production asking the City to “Produce each document responsive to PRR # W015176-020419.” CP 336. That was a later request requesting communications. In response to the CR 34 request, the City referred Fleishmann to documents previously produced and then stated that “Additional responsive records are protected by the attorney-client and/or attorney work product privilege. Reference the Privilege Log for Withheld Records, Document Nos. 38 and 39.” CP 336.

Since emails are plainly covered by the PRA, WAC 44-14-03001(1); RCW 42.56.010(4), the City bears the burden of explaining how

and why the emails were not disclosed in response to the broad request for “documents” in June 2018. *See, e.g., Neighborhood Alliance*, 172 Wn.2d at 727 (requiring emails to be produced in response to a PRA request).

The facts are undisputed. The City admits it did not produce the privilege log for 333 days, and it admits it silently limited its response to exclude emails. That silent withholding, or inadequate search, violated the PRA. Fleishmann is entitled to summary judgment on the delay in providing a privilege log.

**C. Fleishmann is entitled to fees and costs on appeal**

When this Court remands for a new determination of penalties and fees and costs, it should specify that attorney’s fees and costs for the appeal shall also be awarded by the Superior Court.

**CONCLUSION**

The Rule 68 offer was a nullity, and the case should be remanded for a new determination of fees and costs. The Court should rule as a matter of law that delay in providing a privilege log violated the PRA, and remand to the Superior Court to award penalties for the silent withholding of documents on the privilege log.

**Respectfully submitted July 13, 2020.**

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**CERTIFICATE OF SERVICE**

This Opening Brief was served on all parties by electronic service through the Appellate Portal on July 13, 2020, and by US Mail to Law, Lyman, 3674 R.W. Johnson Rd. Tumwater, WA 98512.

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