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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 32012-0-III

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

JAMES V. ADAMS,

Respondent/Cross-Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Appellant/Cross-Respondent.

BRIEF OF Respondent/Cross-Appellant

JAMES V. ADAMS
WDOC #881608
Respondent, pro se
Coyote Ridge Corrections Center
PO Box 769 / H-B-18
Connell, WA 99326-0769

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I. INTRODUCTION

The Cross-Appellant/Respondent, James V. Adams, pro se, is incarcerated by the Appellant, Department of Corrections (DOC). The Superior Court granted summary judgment in Mr. Adams' favor in a Public Records Act (PRA or the Act) action. The court found that the DOC violated the PRA when it intentionally withheld from Adams his own criminal records during his central file review, and that DOC acted in bad faith, for purposes of the newly-enacted inmate low-range penalty statute, RCW 42.56.565(1). The court then awarded a per-day penalty of \$35 for the violation. The DOC appeals the court's bad faith findings. Mr. Adams responds and cross-appeals on other grounds.

The DOC counters the lower court's finding of bad faith based on the "reasonableness" of its intentional withholding practices and where the court incorporated the trial judgments of Chester v. DOC. DOC claims that the judgments of Chester are not binding because of the formatting differences of the records. App's Opn! Br., at 24-25. More specifically, the DOC argues that the discrepancies between the fingerprint based records and the records pulled from ACCESS are so different that the DOC reasonably believed that it could withhold these records per its "agreement" with the WSP. Mr. Adams argues that the DOC's position is legally indefensible.

II. ASSIGNMENTS OF ERROR

1. The Lower Court Erred When It Ruled That The Burden Of Proof Is On Mr. Adams To Establish Bad Faith Under RCW 42.56.565.
2. The Lower Court Erred When It Did Not Provide Any Showing On The Record That It Had Considered The Inadequacy Of The DOC's Records Denial Sheet For Purpose Of Calculating Penalties Under RCW 42.56.210(3).
3. The Lower Court Erred When It Did Not Provide Any Showing On The Record That It Had Assessed The Size Of The DOC For Purpose Of Calculating Penalties Under Yousoufian (V), 168 Wn.2d 444.
4. The Lower Court Erred When It Failed To Provide Any Tenable Ruling Regarding Adams' Motion For Reconsideration Where Such Motion Presented Newly Discovered Evidence Showing That The DOC Was Acting In Contempt Of Its Final Judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether The Trial Court Erred When It Held That The Burden Of Proof Is On Inmates To Show That The DOC Acted In Bad Faith Under RCW 42.56.565?
2. Whether The Lower Court Erred When It Did Not Rule On The Record The Inadequacy Of The DOC's Records Exemption Log Sheet For Purpose Of Calculating Penalties?
3. Whether The Lower Court Erred When It Did Not Rule On The Record The Size Of The DOC For Purpose Of Calculating Penalties?

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4. Whether The Lower Court's Low-Range Penalty Provided A Sufficient Deterrence Effect On The DOC To Prevent It From Withholding Criminal Records From Inmates During Central File Reviews?

IV. STATEMENT OF THE CASE

A. Factual History

To start, prison record officials are required to keep, update and maintain central files, which include state and federal conviction and non-conviction records. See WAC 446-20-070; DOC Policy 300.380 (IV)(B); and (A-1). Central file reviews are designed to allow incarcerated

individuals a means to review their administrative and criminal records to address errors and other relative concerns. Such reviews are permitted under WAC 137-08-105(2), which states:

A client may challenge the accuracy or completeness of criminal history record information, as defined in 10.97 RCW, pertaining to the client and maintained in the department's files.

On July 14, 2011, Mr. Adams reviewed his DOC central file at the Coyote Ridge Corrections Center. CP at 487. Before his review, however, the DOC removed all of Adams' criminal conviction and non-conviction Washington State history, which included his Criminal Conviction Records (CCR packet). CP at 286 & 289. This packet contains a Defendant Case History Report (DCH file) and National Crime Information Center (NCIC) Interstate Identification Index (III) (non-fingerprint) FBI rapsheet.

On September 12, 2011, Mr. Adams administratively appealed to the DOC its decision withholding his criminal records. CP at 404. On October 7, 2011 the DOC Public Records Officer denied his appeal and upheld the withholdings, citing Code of Federal Regulations (CFR) 28 CFR § 513.20(b); 28 CFR Part 20; United States Code (USC) 28 USC § 534; Revised Code of Washington (RCW) ch. 42.56.070(1); and RCW 10.97.050. CP at 406-407.

On October 31, 2011, Mr. Adams filed his records

complaint against the DOC for withholding his criminal records. CP at 486.

On September 4, 2012 the DOC filed its motion for show cause, attaching multiple email correspondence letters between it, the WSP and the FBI. CP at 317-332; CP at 239-285. DOC refers extensively to these emails in its opening brief to this court. In reviewing these emails, it is important to consider that they were all generated after Mr. Adams filed his suit; noting this fact is crucial because agencies are required to show that their actions were in compliance with the Act at the time of the request, and not after a requestor has filed suit against the agency. ("Government agencies may not resist disclosure of public records until a suit is filed and then, by disclosing them voluntarily, avoid paying fees and penalties." West v. Thurston County (I), 144 Wn.App. 573, 581 (2008)).

Additionally, the DOC conceded that it had unlawfully withheld the two-page DCH report when it removed all of Mr. Adams' criminal records in preparation of Adams' file review. CP at 319. On the other hand, the DOC stipulated that the criminal records it obtained through A Centralized Computer Enforcement Service System (ACCESS), were exempt from disclosure. CP at 321-331.

To support this argument, the DOC essentially presented two defenses: (1) that its inter-agency agreement precluded it from disclosing criminal records to subjects of those records, and (2) that it "reasonably believed" that disclosure of criminal records to the subjects of those records would violate the terms of the "ACCESS agreement" and "28 USC § 538." (For this court's reference, 28 USC § 538 discusses the investigation of aircraft piracy by the FBI. (12/21/2012 VRP at 3); see App's Op'n Br. at 4.) In sum, the DOC argued that its withholding practices, based on the above, do not rise to the level of "bad faith." App's Op'n Br. at 12.

In 2012, the DOC released a report indicating that it conducted 1,606 central file reviews in 2011. CP at 80. This report is relevant to this case because it demonstrates the sheer volume of central file reviews the DOC conducts annually. DOC has been withholding criminal records during these reviews, both fingerprint and ACCESS based records. It is reasonable to say that the DOC has been removing criminal records from inmate central files for years, and not just in 2011. Thus the DOC's criminal record withholding practices are substantial and extensive; Mr. Chester and Mr. Adams cases are not isolated incidents, as is the case in the majority of PRA cases.

In another study released in 2012, the DOC reported that it provided the media with "33,596 pages" comprising of a complete "list of DOC offenders since 1998 and their conviction information." CP at 82. Considered in whole with the underlying facts of this case, the cause of action in Chester, and the withholdings from countless inmates, this study shows that the DOC readily provided a public media entity 33,596 pages of criminal records while subjects of those very records were denied simple inspection. There exists no court records regarding the substantial request; the DOC provided the media criminal records of inmates without contest or litigation.

B. Procedural History

On December 21, 2012, the lower court held a show cause hearing. CP at 291. At the hearing, the trial court found that (1) the WSP acknowledgment (ACCESS policy manual) did not prohibit further dissemination to subjects of those records, and (2) no regulations of dissemination, such as an agreement between the DOC and WSP or the Federal Bureau of Investigation, prohibits ACCESS record dissemination. CP at 291.

Based on the above, the trial court ruled that Mr. Adams is entitled to review the federal portion of his criminal record pursuant to 28 CFR § 16.30 through § 16.34,

as well as the Washington State portion of his criminal record pursuant to RCW 10.97.080 and WAC 446-20-090. CP at 292. Accordingly, the trial court held that DOC violated the Public Records Act by refusing to provide Adams with the criminal records pulled from ACCESS. (12/21/2012 VRP at 4).

On June 14, 2013 the lower held the penalty/bad faith hearing. CP at 29. At the hearing, the lower court first ruled that the burden of proof for establishing agency bad faith is on inmate plaintiffs, per RCW 42.56.565(1). The trial court then applied the mitigating and aggravating factors of Yousoufian v. Office of Ron Sims (V), 168 Wn.2d 444, 467-68 (2010). Doing so, the court found, inter alia, that:

(1) the DOC's explanation for noncompliance with the Act was not reasonable;

(2) the DOC was not completely forthcoming in its initial explanation as to why it withheld Adams' criminal records, based on the unfounded agreement it claimed to have with the WSP and the FBI;

(3) the DOC's position is legally indefensible because no statute exists that prohibits dissemination of rap sheets, either state or federal, that the DOC was undaunted by this fact, and that one government agency

cannot rely upon and point to another governmental agency where that governmental agency's decision-making process is clearly in error;

(4) the DOC intentionally withheld Mr. Adams' criminal records in bad faith by not relying on any statutory exemption or basis, but simply relying upon the opinion of someone in another agency;

(5) a previous court order of the Superior Court in Chester v. DOC, already found the DOC in violation of the Act based on these grounds, and that the DOC, a department within the executive branch of government, chose to ignore decisions made by the judicial branch regarding rap sheet dissemination (twice stating that neither the DOC, the Washington State Patrol nor the FBI are privileged to ignore judicial decisions);

(6) for purposes of deterrence of future misconduct, that a substantial penalty is necessary. And under deterrence, in respect to the separation of powers issue, the court found that the executive branch of government is required to follow the decisions that are properly in the authority of the judicial branch of government; and

(7) other legal remedies exist and were available to the DOC to properly deny a record without penalty (such as injunctive relief under RCW 42.56.565(2)), but that the DOC

did not seek such equitable relief.

CP at 29-33 (parenthesis added).

In summation of the case, the trial court remarked that the DOC's withholdings were "clearly intentional and clearly in bad faith," and that the DOC did not rely upon any statutory exemption or statutory basis to deny disclosure, "but simply rel[ied] upon the opinion of someone in another agency[.]" (6/14/2013, VRP 5) (brackets added). Accordingly, the court held that the DOC withheld the records from Adams in bad faith for purposes of RCW 42.56.565. CP at 29-33.

In calculating its per-day penalty judgment, the court found that multiple categories of documents were withheld, but grouped them together as one for purposes of penalties. CP at 32-33. The Court then set a low-range per-day penalty of \$35 to run from the date of the DOC's letter denying Adams' request to review his records: July 14, 2011, to June 14, 2013--a total of 701 days--which amounts to \$24,535. With the exception of Adams' actual costs of litigation (\$387.04) and the filing fee (\$240), there were no other fees or sanctions awarded in this case. CP at 29-33.

After the penalty hearing, on June 26, 2013, Mr. Adams filed a Motion for Reconsideration, asking the trial

court to reconsider its determination that (1) the plaintiff bears the burden of establishing agency bad faith; (2) in further consideration of the DOC's size, based on its operations budget, that the penalty was not substantial enough to deter future misconduct; and (3) to consider the DOC's statutorily inadequate exemption log-- as required under Yousoufian (V)--for purposes of calculating penalties. CP at 538-553. The court denied Adams' motion without comment. CP at 495-496.

Then, just days before the September 9, 2013 hearing entering the penalty order, Mr. Adams discovered new evidence showing that the DOC was still withholding criminal records from inmates at their central file reviews--against the Chester court and the trial court's order in this case (making correct Adams' prediction that the DOC was not deterred by the court's low-range penalty. CP at 506-532). This court should also note that the DOC was once before held in contempt in Chester for its sustained withholdings of Chester's criminal records. CP at 70-72.

To expose the DOC's contempt and sustained violations against the PRA, Mr. Adams immediately filed a Motion for Reconsideration for higher penalties as sanctions. CP at 506-532. Mr. Adams attached two signed declarations

from third-party inmates and two statutorily inadequate DOC "denied record" log sheets. CP at 524-532. The court denied his motion, also without comment. CP at 497-498. This appeal follows.

V. ARGUMENT

A. Standards of Review

The DOC does not challenge the trial court's grant of show cause on the issue of whether a PRA violation occurred. App's. Br. at i-ii. The DOC assigns error only to the trial court's determination that the agency acted in bad faith, and not to any of the underlying facts on which the court based its rulings. Therefore, the scope of review should be limited to the trial court's discretion awarding a statutory penalty based on its finding of bad faith, and the assignments of error presented herein. See Francis v. DOC, 313 P.3d 457, 462 (Div. 2, 2013); see also Yousoufian (V), 168 Wn.2d at 450 (holding that when an appellant does not assign error to a trial court's factual findings the reviewing court should consider the findings verities).

Interpretations of law and grants of show cause judgment are also reviewed de novo. State v. Kintz, 169 Wn.2d 537, 535 (2010); see Beal v. City of Seattle, 150 Wn.App. 865, 872 (2009) (holding that when record consists only of affidavits, memoranda of law, and other documentary

evidence, the appellate court stands in the same position as the lower court).

Additionally, a trial court's determination of appropriate per day penalties under the PRA is reviewed under the abuse of discretion doctrine. Yousoufian (V), 168 Wn.2d at 469.

B. The Public Records Act

The Public Records Act is a strongly-worded mandate requiring broad disclosure of records. RCW 42.56.030; Burt v. DOC, 168 Wn.2d 828, 832 (2010). "The purpose of the [PRA] is to keep public officials and institutions accountable to the people." Daines v. Spokane County, 111 Wn.App. 342, 347 (2002)(brackets added). The PRA requirement of disclosure is broadly construed and its exemptions are narrowly construed to implement this purpose. RCW 42.56.030; Sargent v. Seattle Police Dep't, 314 P.3d 1093, 1098 (2013). "Agencies are required to disclose any public record upon request unless it falls within a specific, enumerated exception." Neighborhood Alliance v. Spokane County, 172 Wn.2d 702, 714 (2011); RCW 42.56.070(1). Whether an agency acted in bad faith under the PRA is a mixed question of law and fact. Francis, 313 P.3d at 462.

The newly enacted statute RCW 42.56.565(1) states:

A court shall not award penalties under RCW 42.56.550(4)... unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record. Id.; Senate Bill 5025, Laws of 2011, Ch. 300, §§ 1, 2 (omissions mine).

"The burden is on the agency to demonstrate that it complied with the Act. RCW 42.56.550(1) & (2)." WAC 44-14-08004(4); see Sargent, at 1097 (holding that "the agency claiming the exemption bears the burden of proving that the documents requested are within the scope of the claimed exemption"). Moreover, the Supreme Court held, "the burden rests with the agency claiming exemption to prove the propriety of nondisclosure to the trial court on a document-by-document basis." Sargent, at 1098. Thus, the burden of proof for establishing that an agency did not act in bad faith is on the agency. Therefore, the trial court's ruling that Mr. Adams bears the burden of proof establishing bad faith under RCW 42.56.565(1) is untenable and in error. This Court should hold the same.

C. The Trial Court Properly Exercised Its Discretion By Analyzing The Yousoufian Factors And The Superior Court's Decision In Chester To Find That The DOC Acted In Bad Faith

A trial court abuses its discretion only if its decision is manifestly unreasonable or based on untenable grounds. Yousoufian, 168 Wn.2d at 469. A trial court's

decision is "manifestly unreasonable if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take." Id. (internal quotes and citations omitted). Therefore, this court should not disturb the trial court's determination of bad faith unless it finds that such determination is manifestly unreasonable or is not supported by the record.

The DOC argues that the court should defer to its interpretation of reasonableness and that the trial court erred by not doing so. App's Op'n Br. at 12. However, Division One held that a "court [does] not abuse its discretion by deciding the issues presented to it rather than deferring to an agency." Wash. State Communication Access Project v. Regal Cinemas Inc., 173 Wn.App. 174, 201 (2013)(brackets added). Because "leaving interpretation of the PRA to those at whom it was aimed would be the most direct cause to its devitalization." Hearst Corp. v. Hoppe, 90 Wn.2d 123, 131 (1978).

Statutory interpretation of the PRA's bad faith requirement shows that reviewing courts are required to "look at the Act in its entirety in order to enforce the law's overall purpose." Francis, 313 P.3d at 467. In comparing the various facets of agency bad faith in cases with facts similar to those before it in Francis, the

appellate court concluded that "Washington precedent allows a broader conception of bad faith [than] in other contexts, recognizing a distinction between 'intentional misconduct' and 'bad faith[,]'" and that "gross negligence could rise to the level of bad faith." Id. at 464 (brackets and omissions mine).

In consideration of pro se prisoner litigated civil actions, the Francis court stated:

As many scholars and jurists have observed, it is notoriously difficult to prove agency intent, particularly from inside a prison cell.... [and] considerable conceptual difficulty would attend any search for the subjective state of mind of a governmental entity.

Id., at 467 (brackets added). Thus, the court recognized that for a prisoner to prove subjective bad faith that prisoner must prove intent, a subjective state of mind. Agencies do not possess a subjective state of mind. Aware of this, the Francis court emphasized that intent need not be established to support a finding of bad faith, but that bad faith could be proven by using the objective standard, through demonstration of an agency's "willful rendering of imperfect performance." Id. at 465.

The DOC's abandonment of the PRA in favor of an unfounded agreement to withhold disclosable records is a manifest of willful rendering of imperfect performance.

Even in consideration of the DOC's alternative argument, that it was relying on the instruction of an official at the WSP, no documents antecedent of Mr. Adams' suit were produced, nor was any name of the instructing official provided. By not providing this necessary piece of evidence the DOC effectively failed to support its own position. Therefore the trial court's finding that the DOC was "simply relying upon the opinion of someone in another agency," is clearly tenable in light of there being no tangible contract or record showing that the DOC was prohibited from disclosing ACCESS records to subjects. (6/14/2013, VRP 5). Accordingly, this court may "affirm the trial court on any grounds supported by the record." Francis, 313 P.3d at 467 (emphasis added).

To ensure trial courts apply the proper standard of review in PRA cases, for purposes of determining an agency's culpability and calculating penalties, our Supreme Court outlined both mitigating and aggravating factors the courts must consider. Id., 168 Wn.2d at 467-68; CP at 39 & 42-52. The Yousoufian (V) Court further disclaimed that "these factors may overlap, are offered only as guidance, may not apply equally or at all in every case, and are not an exclusive list of appropriate considerations," while cautioning that "no one factor should control." Id., at

468.

In applying the Yousoufian analysis the trial court used the correct standard of review for determining bad faith. See Sargent, at 1102; Francis, at 467-68. The evidence on record supports the trial court's determination of bad faith. CP at 29-33; CP at 91-110. All of the court's findings are logically relevant to the unreasonableness of the DOC's withholding practices. Abandonment of the PRA and claiming duty not to disclose by way of inter-agency agreement is not a demonstration of good faith to the Act. Cf. Tyler v. Grange Insur. Assoc., 3 Wn. App. 167, 173 (1970)(holding that agency failure to act in good faith is deemed bad faith; see also Farmers Insur. v. Romas, 88 Wn. App. 801, 810 (1997)(same). The court's findings of bad faith reflect the PRA's pervading mandate that trial courts administer strict enforcement of the Act. Hearst, 90 Wn.2d at 140.

Beyond the scope of the Yousoufian factors, the trial court found that the DOC was acting in contempt of the Chester court's ruling requiring the DOC to disclose the WSP and FBI criminal records it maintains in the inmate's central files. CP at 31-32. The DOC argues that it was correct to disregard the Chester court's ruling, however it failed to cite any authority supporting this position.

App's Op'n Br. at 8-11. Having failed to do so, the DOC did not demonstrate that the trial court abused its discretion or that it applied the incorrect standard of review when it considered the Chester court's final judgment. To the contrary, the trial court's application of the Chester court's rulings implies its cognizance of the DOC's sustained contempt of both the court orders requiring DOC to disclose criminal records to subjects as well as its incessant violations against the PRA. The lower court's implicit contempt finding is reviewed for abuse of discretion.

Trial courts have discretion to consider other trial court decisions for purposes of determining an element of a case. "An appellate court will uphold a trial court's contempt finding as long as a proper basis can be found." Stella Sales, Inc. v. Johnson, 97 Wn. App. 11, 20 (Div. 2, 1999). "Disobedience of a lawful order and unlawful refusal to produce a document or record constitutes contempt." Zink v. City of Mesa, 162 Wn. App. 688, 707-08 (2011); see also RCW 7.21.010(1)(b). Even a "violation of an oral order may serve as a proper basis for a contempt finding." Stella, at 20. Our Supreme Court held that the DOC is required to obey orders of the superior court for individuals similarly situated in absence of any published ruling. In re the PRP

of Smith, 139 Wn.2d 199, 210 fn. 3 (1999). The DOC is bound by the Chester court's unpublished ruling; its refusal to produce the criminal records Adams requested is in contempt of that ruling. In fact, out of necessity from the DOC's contemptuous withholding of criminal records, the Chester court found that "there is nothing in the statute prohibiting a court from making a finding of contempt in an RCW 42.56 proceeding, and ordering **sanctions**." CP at 72 (emphasis original).

Further, the Supreme Court denounced "we have repeatedly stated it offends the rule of law when agencies of the state willfully ignore the decisions of our courts." Smith, 139 Wn.2d at 210 fn. 3. Such action is a contempt of court. Id. These rulings echo the Supreme Court's long-held position that a court's order "is binding from the time the party is informed thereof." State v. Erickson, 66 Wash. 639, 641, 120 Pac. 104 (1912).

Here, the DOC was informed by the Chester court that its criminal record withholding practices were unlawful on October 28, 2011. CP at 57-60. The DOC did not attempt to disclose to Adams his records until August 23, 2012-- nearly ten months after he filed suit. CP at 345. Considering the record and precedent authority, and in the absence of any countervailing evidence or authority showing

that the court abused its discretion, this court should find that trial court's bad faith determinations are logical, reasonable, and tenable.

To be perfectly clear, this court should note that the decision in Chester did not differentiate between "fingerprint based" or "non-fingerprint" criminal records when it issued its final order; the court stated only that the "Defendent [DOC] is ordered to disclose Plaintiff's requested WSP and FBI rap sheets to him." CP at 59. (brackets & emphasis added). The lower court relied on the plain language of Chester. In doing so the lower court did not abuse its discretion by applying Chester in this case for its extended finding of bad faith. The trial court's decision to essentially equate the DOC's contempt against the Chester court as an act of bad faith under the PRA is therefore proper.

The DOC also argues that its intentional withholdings were reasonable based on its reliance on the PRA, however a "good faith reliance on an [PRA] exemption will not exonerate an agency from the imposition of a penalty where the agency has erroneously withheld a public record." Amren v. City of Kalama, 131 Wn.2d 25, 36 (1997)(brackets added). The DOC's "good faith" or "reasonableness" defense argument has already been expressly rejected with respect to whether

a penalty should be imposed. Id., at 25; and Yousoufian (V), 168 Wn.2d at 460. Therefore, this court should reject the DOC's "reasonableness" argument as to whether a penalty should have been imposed in this case.

Of course, the DOC's limited, narrow and incorrect reliance on the Act does not exonerate it from paying penalties for violating it either. "[T]here is no requirement that the agency act unreasonably for an award to be imposed." Amren, at 37. Thus, the trial court's discretion to award penalties is not contingent on whether the offending agency provided an argument that was not "far fetched." App's Op'n Br. at 13.

In cases where an agency does not act in good faith, as in the instant case, a trial court abuses its discretion in denying an award of penalties. Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 751 (2007). The trial court was correct in assessing penalties in this case since the DOC has failed to provide any legally defensive ground for its withholding practices and contempt of the Chester court rulings. And given the plain language of RCW 10.97.050; RCW 10.97.080; RCW 42.56.070(1); WAC 44-14-06002(1); WAC 446-20-070; WAC 446-20-090(1); WAC 44-20-270; 28 CFR §' 16.30 - 16.34; 28 CFR § 513.11(a)(2) sub. sec. (i); and 28 CFR § 20.34 (Appendix to Part 20), it is clear that once the

criminal records were transferred to Adams' central file, the above statutes all became the predominant and controlling authority for subsequent dissemination.

The DOC's self-created ad hoc circumvention to the PRA is not a tenable ground on which to deny discloseable criminal records, nor is such ground good cause for appealing a superior court's ruling finding bad faith. Indeed, "[p]romises cannot override the requirements of the disclosure law." Hearst, 90 Wn.2d at 137; infra, at 23 (WAC 44-14-06002(1)). Thus, the DOC's narrow construing that the WSP agreement "limited" its ability to disseminate criminal records is legally indefensible. See WAC 44-14-06002(1); RCW 10.97.050; and RCW 10.97.080.

The DOC alternatively argues that it was intentionally withholding criminal records under the language of the ACCESS User Acknowledgment (App's Op'n Br. at 2-6), as opposed to "simply relying upon the opinion of someone in another agency," as founded by the lower court (6/14/2013 VRP 5); however no such technical clause appears in the User Acknowledgment. CP 291-292. And six weeks after Adams filed suit, it appears Dibble had discovered this fact as well. To address this missing clause issue, Dibble needed to provide another explanation for DOC's withholding. So, counsel sent an email to the WSP, asking:

Can I get some guidance from either of you regarding

the position of WSP and the FBI should DOC release copies of the rap sheets in this case and also what their position is if DOC releases them in the future in response to public records requests? CP at 246.

It is quite peculiar that Dibble raises the User Agreement argument before this court because in an email inquiry dated August 9, 2012, to Heather Anderson of the WSP, Dibble disclosed that "RCW 42.56 does not have an exemption for contractual obligations such as what we have here." CP at 279. The responses Dibble desired were those that would evidence a specific instruction outside the scope of the ACCESS User manual. Regardless, any agreement between the WSP and the DOC--oral or contractual--cannot be a lawful or reasonable limiting factor for denying a subject disclosure of their criminal records. Hearst, 90 Wn.2d at 137.

Assuming, arguendo, that there did exist a formal agreement between the agencies, the WAC rules explicitly mandate that an agency can not rely on, create, or adhere to another agency's interpretation of an administrative policy or inter-agency agreement that would circumvent any statutory requirement under the PRA. WAC 44-14-06002(1) states:

An agency cannot define the scope of a statutory exemption through rule making or policy. An agency agreement or promise not to disclose a record cannot make a disclosable record exempt from disclosure. RCW 42.56.070(1). An agency contract regarding disclosure

of records should recite that the act controls.

Not only did the WAC rules explicitly prohibit the very defense the DOC raises, the lower court was well within its discretion finding bad faith where the DOC clearly violated WAC 44-14-06002(1). Finding that DOC violated a clearly articulated WAC regulation is a tenable ground to find bad faith. And since the DOC failed to provide any authority showing that it was some how exempt from WAC 44-14-06002(1), the trial court's bad faith finding should not be disturbed in this appeal.

The DOC next provides a very constricted and hypertechnical legal interpretation of 28 CFR § 16.31 as a reason explaining why DOC withheld Adams' FBI rap sheets. App's Br. at 25-26. First, the record does not indicate that the DOC actually relied on 28 CFR § 16.31 at the time of Adams' administrative appeal to the DOC. The Department originally articulated 28 CFR § 16.31 in its Motion for Show Cause. CP at 404. Regardless, the State Supreme Court held that "[r]elevant federal regulations do not prohibit production of [] documents or preempt the PRA." Resident Action Council v. Seattle Housing Authority, 117 Wn.2d 417, 440 (2013)(brackets added).

Second, when interpreting the PRA courts must refuse to enter into hypertechnical interpretations of provisions

to withhold records. See Spokane Research & Defense Fund v. City of Spokane (IV), 152 Wn.2d 89, 105 (2005). The lower court was therefore correct when it refused to give deference to the DOC's hypertechnical interpretation of 28 CFR § 16.31. In the instance that 28 CFR § 16.31 was a determinative factor in this case, the DOC would then need to overcome the authority of 28 CFR § 513.11(2) which states, "[a]n inmate may request a copy of his or her FBI identification record from institution staff." Additionally, subsection (i) of 28 CFR § 513.11 (2) states "[i]f the requested FBI identification record is in the inmate's institution file, staff shall provide the inmate with a copy."

Similarly, US Dep't. of Justice v. Reporters Committee For Freedom of Press, 489 US 749, (1988) held that:

[a]s a matter of Department policy, the FBI has made two exceptions to its general practice of prohibiting unofficial access to rap sheets. First, it allows the subject of a rap sheet to obtain a copy, see 28 CFR § 16.30-16.34. (internal citation omitted).

Id., at 752. Based on the US Supreme Court's decision in Freedom Press, our Supreme Court's decision in Resident Action Council, and the plain language of 28 CFR § 513.11(2) and 28 CFR § 513.11(2)(i), it is clear that the DOC's reliance on 28 CFR § 16.31 is legally indefensible. 28 CFR § 16.31 is contingent on 28 CFR § 513.11(2), which means that it does not limit the DOC's ability to allow inspection of

the FBI rap sheets to the subjects of those records. Further, 28 CFR § 16.31 does not overcome the PRA's provisions mandating disclosure of federal criminal history record information. See RCW 10.97.080 and RCW 10.97.050(1) and (2) ("criminal records may be disseminated without restriction.").

In sum, the issue here is not how the DOC obtains criminal records, their disclosability based on where they were obtained, or even the hypertechnical and narrow interpretation of 28 CFR § 16.31. The issue here is whether the DOC acted in bad faith against the Act when it refused to disclose Adams' criminal records once it placed them into his central file. Given the extensive statutory and caselaw authority on the subject, and the DOC's untenable reasoning (the format of the criminal records, source of retrieval, and the interpretation of 28 CFR § 16.31 in a vacuum), it is clear that the DOC did not act in good faith when it withheld Adams' FBI rap sheets. This case is not one of first impression. And since the DOC provides no authority to overcome or legally debate the precedent on this matter, the court need not consider DOC's unsupported arguments. See West v. Thurston County (II), 168 Wn. App. 162, 187 (Div. 2, 2012).

In another argument, the DOC asserts that, based on the

recent Supreme Court's ruling in Sargent--regarding the former RCW 10.97.080--that it acted reasonably when it completely withheld Adams' non-conviction records. This is argument fails for several reasons. First, former RCW 10.97.080 (2010) states that:

[n]o person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. Id.

Applying RCW 10.97.080 to this case, Adams could not personally retain a physical copy of the federal index rap sheet records, sure, but Mr. Adams did not seek to retain a copy of his non-conviction records, he simply wanted to view them at his central file. Former RCW 10.97.080 did not prohibit Adams from viewing or the DOC from showing the non-conviction records at his central file review. The DOC's argument construes former RCW 10.97.080 to the point that a simple inspection of the record would amount to a substantial violation of the PRA. This is a misinterpretation of the statute and such interpretation produces absurd results. This argument^{also} goes against the very pillars of the PRA: "[t]he 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 to know." RCW 42.56.030; Sargent, 314 P.3d at 1097. Therefore, the DOC's reliance on former RCW

10.97.080 fails; Mr. Adams is entitled to review his non-conviction data without restriction.

In its final argument, the DOC asserts the holding in Chester should not be used as a basis to support a bad faith finding in this case for the full amount of time of the withholding, as the Chester decision was not rendered until approximately four months after Adams reviewed his central file. This argument fails for several reasons.

First, the lower court found the DOC's withholdings were intentional and unlawful. Such finding is sufficient to support a finding of bad faith absent consideration of Chester. Second, the DOC's argument inherently asks this court to hold that for those 127 days it was acting in good faith because the Chester court had not made its bad faith ruling. However, the Chester court ruled that the DOC was acting in bad faith at the time Chester made his request to view his criminal records, which occurred well before Adams was denied viewing his records (July 14, 2011). CP at 486-490.

Third, equitable exceptions cannot be made in PRA cases when determining the actual amount of days the records were withheld from a requestor. See RCW 42.56.550(4) and Spokane Research & Defense Fund, 155 Wn.2d at 102; Yousoufian, 168 Wn.2d at 437-38. Thus the lower court could not have reduced the number of days the records were withheld. The actual amount

of days a record is withheld is a question of fact. Id. The DOC does not dispute that actual amount of days set for penalties. Thus, such calculation of days is verity. Id., at 450. And because a bad faith finding is not the contingent factor in assessing the actual amount of days the court may consider for its penalty determination, the court did not abuse its discretion in its award to Mr. Adams.

D. The Burden of Proof For Purposes Of Determining Bad Faith Is On The Agency Withholding The Records

The burden of proof in all instances under the PRA is on the offending agency. RCW 42.56.550(1). This statute states:

The burden of proof shall be on the agency to establish that refusal to permit public inspection any copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records. Id.

Our Supreme Court likewise held: "[d]isclosure is therefore mandated unless the agency can demonstrate proper application of a statutory exemption to the specific requested information; the agency bears the burden of proof." Sargent, 314 P.3d at 1097. Likewise, WAC 44-14-08004(4) states that "[t]he burden is on the agency to demonstrate that it complied with the act. RCW 42.56.550(1) & (2)."

Interpreting harmoniously the plain language of RCW 42.56.550, et seq., and the newly enacted RCW 42.56.565(1),

it is clear that the burden of proof in establishing that an agency did not act in bad faith remains on the agency. Review of the legislative session minutes for RCW 42.56.565 shows that the legislature did not intend for courts to shift the burden of persuasion for showing bad faith onto prison litigators. At most, prison PRA litigators should obtain discovery and prepare arguments countering an agency's assertion that its actions are absent bad faith. Such reasoning fits well within the four corners of RCW 42.56.565 and RCW 42.56.550, whereas the trial court's ruling to the contrary does not.

In the instance this court finds that the plain language of RCW 42.56.565 does not require an agency to demonstrate it acted without bad faith, this court should find that the bad faith requirement is an obligation of the trial courts. Again, RCW 42.56.565(1) states that "[a] court shall not award penalties under RCW 42.56.550(4)... unless the court finds that the agency acted in bad faith..." (omissions mine; for full text see supra at 14). Had the legislature expressly intended to make this radical shift of burden onto prisoners, it is likely that it would have worded RCW 42.56.565(1) to read "a court shall not award penalties under RCW 42.56.550(4) unless the prisoner can demonstrate that the agency acted in bad faith..." Such language would support the trial court's ruling.

In Francis, the court pointed out that the "PRA does not include a definition of 'bad faith' and we know of no court that has yet interpreted the meaning of the bad faith requirement in context of penalty awards based on PRA requests by incarcerated persons." Id., at 463. Requiring prisoner litigators to prove a not yet fully defined or explicitly mandated statutory element for a PRA action not only detracts from the Act, it is likely to produce absurd consequences. Bad faith findings are predominantly determined on a case-by-case basis, wherein the decision is based on the case's record as a whole and, in PRA cases, by using the applicable Yousoufian (V) factors. Id., at 464. Thus, there is no actual threshold requirement or bright line for establishing bad faith, it must be extracted from the record as a whole using the predicates of Yousoufian. This necessarily includes whether the agency knew it had the records and its reasons for non-disclosure. Id., at 464-465.

In addition, RCW 42.56.565 did not wipe clean the slate of caselaw dicta that has come to define the various types of burdens placed on agencies. RCW 42.56.565 effectuates a minor change to the Act that necessarily affords agencies being sued by prisoners an opportunity to avoid penalties in the instance where a violation is present due to an unpredictable, extrinsic circumstance (such as a natural

disaster or corrupted computer file), an inadvertent withholding that was immediately disclosed before suit was filed or money damages were incurred, or in an instance where the record was somehow misplaced, destroyed, or lost--but not as a result of improper training, negligent handling, or intentional destruction. These interpretations coincide with all the applicable provisions and intentions of the PRA, as well as PRA caselaw precedent. See Yousoufian, at 464.

The trial court's ruling on the bad faith burden directly contradicts RCW 42.56.550, misconstrues RCW 42.56.565, and is in complete disregard to the long-time, consistently-held, and well-defined dicta holding that agencies are required to prove they are acting in strict compliance to the Act. See Amren, 131 Wn.2d at 33; Hearst, 90 Wn.2d at 130. The trial court has therefore abused its discretion in redefining RCW 42.56.565 and thereby shifting the burden of proof for establishing agency bad faith onto Mr. Adams.

When interpreting the fundamental elements of a statute, "the court may not add language to a clear statute, even if it believes the legislature intended something else but failed to express it adequately." State v. Chester, 133 Wn.2d 15, 21 (1997). Appellate courts are required to:

consider the statute's plain meaning by looking at the text of the provision at issue, as well as the context of the statute in which the provision is found, related

provisions, and the statutory scheme as a whole. Francis, at 467 (internal citations omitted). While Francis was analyzing the issue of whether a court must find "intentional bad faith," under RCW 42.56.565, it found the plain language of the statute to be an inadequate explanation of duty, the latter being the case herein. To address the issue, the Francis court was forced to look elsewhere to ascertain the legislative intent. Id. Here, the plethora of caselaw and related statutes under the PRA funnel all substantial burdens of proof on the agency. And since agency accountability and culpability are at the forefront of every PRA case, the very nature of filing a PRA suit suggests that the agency acted in bad faith by denying disclosure. The agency therefore must show that their withholdings are lawful in every instance.

For purposes of interpreting and applying RCW 42.56.565(1) in prisoner PRA cases, this court should hold that (1) the lower court's interpretation of RCW 42.56.565 is untenable; (2) the bad faith requirement is an obligation of the courts; (3) the alleged offending agency is still required to show that it acted in strict compliance with the Act; and (4) that incarcerated plaintiffs are not statutorily required to establish agency bad faith.

E. Trial Courts Are Required To Consider On The Record The Size Of The Agency For Purposes Of Calculating Per Diem Penalties Under The PRA

The State Supreme Court ruled that "[t]he trial court abuse[s] its discretion by failing to consider all of the Yousoufian 2010 factors in its assignment of a penalty." Sargent, 314 P.3d at 1102. (emphasis and brackets added). In this case, the trial court abused its discretion when it failed to consider the size of the DOC while it was articulating penalties under its Yousoufian (V) analysis. Id.; CP at 29-33. Abuse of discretion is the standard of review for this claim. Sargent, at 1103.

The ninth aggravating factor in Yousoufian V requires trial courts to consider a "penalty amount necessary to deter future misconduct by the agency considering the size of the agency and the facts of the case." Id., 168 Wn.2d at 467-68. Considering the above, the most appropriate manner in which to determine an agency's size, for purposes of imposing penalties, is by considering the agency's operational budget. Yousoufian, 168 Wn.2d at 467. This logic^{is} sound when applied to the DOC in the instant case. According to the 2013 Washington State Yearbook, the DOC's 2011-2013 biennial operations budget is \$1,623,445,082.00. Id. at 132. This budget is so substantial that it requires a more comprehensible, reduced fiscal figure in order to ascertain the probable effect of the lower court's penalty. To find such figure, a simple model of mathematical expression may be

used.

To begin this expression, one must take the coefficient--the original award amount (\$24,535) and divide it by the principle--DOC's operations budget (\$1,623,445,082)--to derive the functional equivalent percentage between the two figures: $24,535 \div 1.623 \text{ billion} = 0.00001$ percent. To down scale, one would then use the quotient (0.00001 percent) and multiply it to a lesser principle to obtain the new derivative or product.

For example, if DOC's operations' budget was reduced to \$50,000 a year, to find the functional equivalent of award one would simply multiply the quotient (0.00001 percent) by the new principle (\$50,000) to obtain the product amount: $0.00001 \text{ (percent)} \times \$50,000 = \$0.05$. Therefore, if DOC's budget was only \$50,000 in this case, the functional equivalent penalty award would amount to only \$0.05. A reasonable person would say that a \$0.05 penalty against even the most poverty-stricken individual would not deter him or her from acting one way or another.

To ensure the necessary strict, future compliance of the Act, Mr. Adams proposes a one-for-all penalty of \$210,300. This figure is derived by taking the three categories of records withheld (3), at a rate of \$100 per day (per category of record), for 701 days (time period records were withheld). Thus: $3 \text{ record sets} \times \$100 \times 701 \text{ days} =$

\$210,300. Even at this rate, the penalty is only 0.0004 percent of DOC's biennial operations budget. Though small, this penalty should once and for all deter the DOC from violating the Act in the future while also preventing countless more PRA suits, prevent future contempt of court proceedings--all without detrimentally affecting any prison operation. Considering its billion dollar-plus budget, that there was no attorney fees, reasonable or statutory, hefty discovery costs, nor sanctions in this case, the countless violations to the PRA, and the DOC's contempt of court rulings ordering disclosure, the proposed figure is an equitable setoff to a case litigated by counsel. Such award is permitted under both the PRA and trial court's discretion.

The trial court's penalty does not account for the size of DOC in any way. As a consequence, its final judgment is absent a necessary tenable ground for establishing proper penalty assessment, from which this court can properly review. Sargent, at 1102; see State v. Hampton, 107 Wn.2d 403, 728 P.2d 1049 (1986)(stating that "because the trial court did not provide any reasons for its decision, we cannot say it based its decision on tenable grounds.").

The appropriate remedy for acquiring this missing mandatory ruling is remand to the trial court for determination of the agency's size for higher penalties.

Sergant, 313 P.3d at 1103; see also Zink, 162 Wn. App. at 705-06; Yousoufian, 168 Wn.2d at 467.

F. Trial Courts Are Required To Consider On The Record Any Claim Of An Inadequate Exemption Log For Purposes Of Calculating Per Diem Penalties

The trial court abused its discretion by failing to address the DOC's inadequate exemption log for purposes of calculating penalties. "[C]ourts abuse their discretion if they fail to consider all of the Yousoufian factors in assigning penalties." Sergant, 314 P.3d at 1102-03; see Hampton, 107 Wn.2d at 409.

RCW 42.56.210(3) states:

Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. Id.

Additionally, RCW 42.56.210(4) states that "[a]n agency must describe why each withheld record or redacted portion of a record is exempt from disclosure." See also WAC 44-14-06002(1)(same); and WAC 44-14-08004 (4)(b)(ii) (describing methods of providing "brief explanation" of withholdings). In summation of its decision in Rental Housing Ass'n v. City of Des Moines, the State Supreme Court ruled:

The plain terms of the Public Records Act, as well as proper review and enforcement of the statute, make it imperative that all relevant records or portions be identified with particularity. Therefore, in order to ensure compliance with the statute and to create an

adequate record for a reviewing court, an agency's response to a requestor must include specific means of identifying any individual records which are being withheld in their entirety. Not only does this requirement ensure compliance with the statute and provide record on review, it also dovetails with the recently enacted ethics act.

Id., 165 Wn.2d at 538. Thus, trial courts should conduct straight-forward analysis in ascertaining whether an agency lawfully withheld a record based on the agency's exemption log. Here, the DOC was not clear in its exemption--a violation in and of itself. And yet this violation effectively provided the DOC copious latitude to argue multiple theories of its case on show cause, at the penalty phase, and in this appeal. Agencies in PRA cases should not be permitted to change their theory of withholding under a single cause, as is the case here.

Mitigating factor three under Yousoufian states that "the agency's good faith, honest, timely, and strict compliance with all PRA procedural requirements and exceptions" may justify a decrease in the penalty. Id. 168 Wn.2d at 467. Conversely, an agency's failure to explain its claimed exemption is relevant to the agency's "lack of strict compliance... with all the PRA procedural requirements," and may aggravate the penalty for wrongfully withholding of public records. Id. (emphasis added, omissions mine).

At the penalty hearing, the trial court ruled that mitigating factor three under Yousoufian is:

something separate and apart from [DOC's] substantive decision. Mr. Adams argued that this factor went toward the substantive decision, and he is incorrect. Again, I don't see anything in this record that suggests anything but a compliance with the procedural requirements. (6/13/2014, VRP at 3)(brackets added).

The court's ruling that the DOC acted in compliance with all procedural requirements is untenable. In Citizens for Fair Share v. DOC, the appellate court concluded that the DOC violated the Act when it did not properly cite its exemptions or explain how the exemption applied to the records withheld. Id., 117 Wn. App. 411, 431, (2003); see Zink, 162 Wn. App. at 337-44 (holding that trial court failed to enter findings of fact "as to whether the city fulfilled the mandates of the [PRA] with respect to the specific violations [plaintiff] alleged," including wrongful review limitations, and wrongful exemption claims. Id. (brackets added). Likewise, in Hearat, the Supreme Court ruled that deficient statutory citation for denying records is substantial enough to warrant increased penalties because agencies are required to act in "strict compliance" with all the PRA's provisions. Id., 90 Wn.2d at 123; see Prog. Anim. Wel. Soc'y v. Univ. of Wash. PAWS (II), 125 Wn.2d 243, 270-71 (1994) (characterizing failure to provide an explanation as "silent withholding").

Although Mr. Adams' original arguments were primarily

articulated against the DOC's substantive decision to withhold his rap sheets, he did provide for review the DOC's inadequate exemption log. CP at 286 & 289. Adams also raised the exemption log issue in his complaint and throughout the summary judgment proceedings. CP 45-46, 104, 314-315, 487-88, and CP 548-550. On its face the DOC's log is clearly inadequate under RCW 42.56.210(3); CP 286 & 289. The DOC did not explain how the withheld records were connected to the cited exemption statutes, which is required in all cases where a record is being exempted from disclosure. Id. An exemption "log should include the type of information that would enable a records requestor to make a threshold determination of whether the agency properly claimed the privilege." Rental Housing Ass'n, 165 Wn.2d at 538-39; see also Sanders v. State, 169 Wn.2d 827, 846, 240 P.3d 120 (2010) (holding that failure to adequately indicate valid exemption defeats the very purpose of the PRA).

Based on the above, the trial court should have considered the DOC's inadequate exemption logs for its initial determination of calculating penalties, and the logs of Mr. Beasely and Mr. Gronquist for higher penalties as sanctions. And because DOC's logs are statutorily inadequate, and without ruling of such legality, the only remedy is remand to the trial court for assessment of higher penalties.

G. Prevailing Party on Appeal is Entitled to Costs

In accordance with RCW 42.56.550(4); RAP 18.1(b); RAP 14.3(b); and In re the PRP of Bailey, 162 Wn. App. 215 (Div. 3, 2011), if prevailing party, Mr. Adams is entitled to all costs reasonably incurred as a result of litigating this appeal.

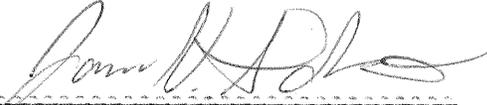
VI. CONCLUSION

For the reasons stated and facts presented herein, Mr. Adams respectfully asks this court to hold that (1) based on the record as a whole, the DOC acted in bad faith against the PRA; (2) the DOC's "reasonableness" arguments, in the context of this case as a whole, are legally indefensible under the PRA; (3) the burden of proof for establishing agency bad faith under RCW 42.56.565 is not on incarcerated petitioners, agencies are still required to establish "strict compliance" with the Act, and that the new statute is an obligation of the trial courts; (4) trial courts are required to consider on the record both an agency's size and the adequacy of its exemption log for proper determination of penalties under the PRA; and (5) that Mr. Adams, as a prevailing party on appeal, is entitled to all costs reasonably incurred in litigating this appeal.

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RESPECTFULLY SUBMITTED this 31st day of March 2014.



JAMES V. ADAMS, Cross-Appellant
WDOC No. 881608
Coyote Ridge Corrections Center
PO Box 769 / H-B-18
Connell, WA 99326-0769
Ph. (509) 543-5800

CERTIFICATE OF SERVICE

I, JAMES V. ADAMS, HEREBY CERTIFY that I deposited the foregoing document(s) on the responsive party and/or their respective counsel of record as follows: Motion to File Amended Reply Brief Pages
(Amended) Reply Brief of Respondent Pages

by processing said documents, or a copy thereof, in the internal prison Legal Mail system of the Coyote Ridge Corrections Center, postage prepaid, delivered via US Mail, addressed to the following:

CANDIE M. DIBBLE,
Assistant Attorney General
Attorney General's Office
Corrections Division
1116 W. Riverside Avenue
Spokane, WA 99201-1194

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED AND SUBMITTED this 31 day of March, 2014, in the City of Connell, State of Washington.


James V. Adams, DOC #881608
Respondent pro se
Coyote Ridge Corrections Center
PO Box 769 / I-A-14
Connell, WA 99326-0769
Ph. (509) 543-5800

CERTIFICATE OF SERVICE
No. 320120-III

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 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>Records Process</p>	Custodian of Records	SECTION Central File Composition & Maintenance
	 Carrie Fleming, Statewide Correctional Records Manager	REVISION DATE 07/18/2012
		PAGE NUMBER 1 of 6
TITLE CENTRAL FILE INDEX		

Narrative: Central files will be established and maintained for all incarcerated offenders. All documents filed in the central files will be uniformly organized and maintained as identified in each section of the central file index.

Originals to be sent back to family

Birth Certificate – scan a copy, mail back original
 Marriage Certificate – scan a copy, mail back original

Section 1 – Legal

All documents shall be filed in the order specified below, from top to bottom

- Identification Envelope (social security card) placed on top of section 1
- DD-214 Veterans Form
- Death Incident Report**
- Autopsy Report**
- Death Certificate**
- DOC 13-045 Offender Death Report
- DOC 13-354 Release of Body
- Capello Stewart Blue Flag**
- Sentence Information Screen (Keep all versions, always filed on top of section when incarcerated)
- Original Order of Release and/or Transfer to Community Custody
- Order of Parole and Conditions
- Order of Reinstatement of Parole
- Standard Conditions, Requirements and Instructions
- Law Enforcement Notification Release Teletype
- Registration of Sex Offenders
- Court Special Closure
- DOC 02-243 Notice to Offender
- Earned Time not earned
- Earned Early Release Credits

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Section 1 – Legal (continued)

All documents shall be filed in the order specified below, from top to bottom

Record of Earned Early Release
 Final Discharge
 Certification and Order of Discharge
 Conditional Release from Supervision
 DOC 06-070 Mandatory Savings Account Exemption
 Letters to ISRB
 Official ISRB Documentation (Decisions and Reasons)
 Final Disposition Report
 Place all ISRB and ETNE Action above this page
 Fingerprint Card
 Admission Photo
 SSOSA Disposition Hearing Report
 DOSA Disposition Hearing Report
 Order of Reinstatement of Parole
 Order of Parole Revocation and Return to State Custody
 Order of Parole Suspension and Return to State Custody
 Insanity Acquittal
 Orders Terminating Sentence
 Orders Modifying Sentence
 Appeal Notice
 Mandates
 Restitution Order
 Problem Judgment and Sentence Letter (to be filed on top of specific J&S)
 Warrant of Commitment
 Judgment and Sentence
 County Jail Certification
 DOSA Agreement
 WEC/WEP Agreement Form
 WEC/WEP Refusal Form
 Firearms Notice
 Hazcom Quiz

**These documents shall be on top of the section regardless of offender status

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Section 2 – Movement

**All documents shall be filed in chronological order, most recent on top
Below is an alphabetized list of documents maintained in this section**

Approved Furlough Orders
 Cancellation of Arrest, Suspension, Detention
 Cancellation of Detainer
 Central File Audit Checklist
 Court Orders for Transport
 Detainers/Warrants
 Escape Information
 Exemplification Form and Cover Letter (pertaining to escapes)
 Extraordinary Medical Placement
 Interstate Agreement on Detainers Forms 1 thru 10
 Letter of Acknowledgement for Detainer and/or Request for Notification
 Motion and Order to Transport
 Notice of Deportation
 Order for Arrest, Suspension, Detention
 Order of classification Move
 Report of Alien Person Institutionalized
 Requests for Notification—Offender status
 Teletype communications with other law enforcement agencies
 Teletypes for Transfers, Escorted Leave, Trips, and Furloughs
 Transfer Orders – Original
 Transport Receipts
 WACIC/NCIC checks
 Waiver of Extradition
 Work/Training Release Standard Rules

Section 3 – Classification

**All documents shall be filed in chronological order, most recent on top
Below is an alphabetized list of documents maintained in this section**

Administrative Segregation Minutes
 Appeals Responses
 Case Management Classification Assessment Instrument
 Classification Referrals
 Disciplinary Reports
 DOSA – Notice of Violations
 Electronic Incident Reports
 Hearings Reports
 IMS Action Request

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Section 3 – Classification (continued)

Infractions
 LSI-R Assessment Form
 MI2 Capacity E-Form
 Offender Cessation Order
 Offender Correspondence/Responses (Life Threatening)
 Order Transferring to State Total/Partial Confinement
 Positive UA Result forms and attachments
 Prohibited Contact Review Form* (VS 5 Scan & Toss)
 Risk Management Identification Notification
 Risk Management Identification Worksheet
 Stipulated Agreement Form
 Violation Reports

Section 4 – Local Use/Miscellaneous

All documents shall be filed in chronological order, most recent on top
Below is an alphabetized list of documents maintained in this section

Authorization to Release Information* (SD 14 Scan & Toss)
 Extended Family Visit Forms
 Firearms Crime Enforcement – Title 18 United States Code* (SD 34 Scan & Toss)
 Local Use Documents only (to be purged upon transfer/archiving)
 Marriage Certificate copies – (VS 8 Scan & Toss copy)
 Offender Correspondence/Responses (General)
 Offender Kites (major sentencing questions, detainers, disclosure, jail time credits)* (CO 2
 Scan & Toss)
 Program and Education Certificates
 Promissory Notes
 Public Disclosure Documents
 Spanish Translation Form

Section 5 – Evaluations/Reports

All documents shall be filed in chronological order, most recent on top
Below is an alphabetized list of documents maintained in this section

Agreement to Return/Waiver of Extradition
 Application for Compact Services
 Community Protection Unit Review
 Drug/Alcohol Assessments

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Section 5 – Evaluations/Reports (continued)

End of Sentence Review
 ESR Bulletin
 ESR/CPU Referral Form
 High-Needs B Assessment (13-409)
 Learning Disability Form
 Mutual Agreement Plan
 Notice of Information Practices* (SD 8 Scan & Toss)
 Orange Psychological Sensitivity Form
 Out of State Investigation
 PLHCP Information and Response
 Pre-Parole Investigation
 Psychological/Psychiatric Reports
 Revises BETA Examination and Test
 Rights Statement
 Sexual deviancy Evaluations
 Specials from Division of Community Corrections
 Supervisor Work Evaluations
 Treatment Program Correspondence
 Victim Wrap Around Decision Form
 Youthful Offender Health Care consent

Section 6 – Admission

All documents shall be filed in chronological order, most recent on top
Below is an alphabetized list of documents maintained in this section

Criminal Conviction Record (CCR)
 Criminal History Summary (always on top of section)
 Photographs (other than admission)
 Armed Forces Information
 Defendant's Pleas of Guilty* (LG 31 Scan & Toss - if stand alone. If part of J&S, don't toss)
 Defense/Prosecuting Attorney Statements * (LG 33 Scan & Toss)
 ESR Packet
 Finding of Fact
 Information* (LG 34 Scan & Toss)
 Intake Questionnaires
 Juvenile File Material
 Pre-sentence Investigation Report* (LG 30 Scan & Toss)
 Transfer Inquiry* (SD 17 Scan & Toss)
 Veterans Administration Information
 Victim Impact Statement
 Vocational Questionnaires
 WAC Receipt

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*Scan & Toss as you receive and verify these documents.
If the Central File already contains these documents, they cannot be pulled out of the Central File.

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Dibble, Candie (ATG)

From: Dibble, Candie (ATG)
Sent: Thursday, August 09, 2012 2:06 PM
To: Williams, Shelley (ATG); 'Heather.Anderson@wsp.wa.gov'
Subject: RE: DOC Central File - WASIS and III
Attachments: FBI-WSP-RapSheets-Withheld.pdf

Here you go, I am interested in the information started at pg. 15. Let me know when you are available on Monday.

Candie M. Dibble
Assistant Attorney General
Corrections Division
1116 Riverside Avenue
Spokane, WA 99201
(509) 456-3123

From: Williams, Shelley (ATG)
Sent: Thursday, August 09, 2012 1:55 PM
To: Dibble, Candie (ATG); 'Heather.Anderson@wsp.wa.gov'
Subject: RE: DOC Central File - WASIS and III

Hi Candie:

If you have time, let's discuss on Monday (I'm swamped today and am out tomorrow). If possible, can you send me a sample document that lists the information at issue? In general, 28 CFR § 20.21(b) limits dissemination of FBI criminal history record information.

Thanks,
Shelley

Shelley Williams
Assistant Attorney General
Criminal Justice Division
(206) 389-3807 (phone)
(206) 587-5088 (fax)

Opinions contained in this e-mail are those of the author only and are not to be construed as an official opinion of the Attorney General. This e-mail may constitute a PRIVILEGED ATTORNEY-CLIENT COMMUNICATION or ATTORNEY WORK PRODUCT or STATEMENTS PREPARED IN ANTICIPATION OF LITIGATION which should not be forwarded, copied, or otherwise distributed without consulting the author.

From: Dibble, Candie (ATG)
Sent: Thursday, August 09, 2012 1:19 PM
To: 'Heather.Anderson@wsp.wa.gov'
Cc: Williams, Shelley (ATG)
Subject: RE: DOC Central File - WASIS and III

At various times during an offender's incarceration, the offender is up for a classification review. During the review, the DOC counselor runs an ACCESS report to use in their review to assist in their determination as to whether the offender should change custody levels.

Specifically one of the ACCESS reports I am looking at on a case includes information from NLETS that has TX and FL conviction data. As well as the FBI and WSP reports. This information is maintained in the offender's central file.

The DOC has had a flood of PRA litigation in regards to our withholding of the ACCESS reports from the offenders when they request to view their offender central file. What I need to do for the Court is explain why RCW 10.97.080 only applies to the WSP information and whether there is another statutory exemption for the other reports contained in the ACCESS printout (NLETS, FBI, etc.).

While I understand that the ACCESS agreement indicates this information is to be used for the administration of criminal justice that does not appear to coincide with RCW 10.97.080 which allows the subject the ability to view his records maintained by the agency. Further, RCW 42.56 does not have an exemption for contractual obligations such as what we have here.

It may be best to refer me to the AAG who handles PRA litigation for the WSP?

Candie M. Dibble
Assistant Attorney General
Corrections Division
1116 Riverside Avenue
Spokane, WA 99201
(509) 456-3123

From: Heather.Anderson@wsp.wa.gov [mailto:Heather.Anderson@wsp.wa.gov]
Sent: Thursday, August 09, 2012 11:49 AM
To: Dibble, Candie (ATG)
Cc: Williams, Shelley (ATG)
Subject: RE: DOC Central File - WASIS and III

All of the information obtained via ACCESS is used in the administration of criminal justice. I am not certain what would be in the file from NLETS specifically. NLETS is another switch for out of state data to pass. What are you referring to?

Heather Anderson
Section Manager
Washington State Patrol
ACCESS and Collision Records
(360) 534-2103

From: Dibble, Candie (ATG) [mailto:CandieD@ATG.WA.GOV]
Sent: Thursday, August 09, 2012 10:59 AM
To: Anderson, Heather (WSP)
Cc: Williams, Shelley (ATG)
Subject: RE: DOC Central File - WASIS and III
Importance: High

Heather:

Does this encompass only the out of state information (obtained from the ACCCESS report) from the FBI or NLETS as well?