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Court of Appeals
Division III
State of Washington

NO. 33191-1-III

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

KEVIN ANDERSON,

Appellant-Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondent-Defendant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Kevin Anderson, a Washington State prisoner, filed a complaint alleging the Department of Corrections violated the Public Records Act during a February 2012 central file view, a May 2012 document review, and August 2012 central file review. Anderson waited until June 4, 2013 to file his complaint even though he received an exemption log at each review and examined all documents that were available for review. This filing caused claims related to the February 2012 central file and May 2012 document reviews to be barred by the Public Records Act one-year statute of limitations. The only timely claim challenged Anderson's August 2012 central file review where he challenged that a central file index, certified polygraph associates report, SSOSA Assessment; and chemical dependency records were withheld during this central file review. However, the central file index and chemical dependency records were not in his central file, he reviewed the polygraph report, and he could review his SSOSA Assessment by submitting a request to the medical records unit because the document was in his medical file.

During summary judgment, however, Anderson identified new claims, including claims related to criminal history "rap sheets" and medical records. Anderson's attempts to amend his complaint before and after filing his summary judgment motion confirms that these claims were

missing and outside the scope of his complaint. Anderson also submitted inadmissible documents in support of his summary judgment motion. These documents were not properly authenticated, irrelevant, and/or inadmissible hearsay.

The trial court correctly excluded the new claims raised in Anderson's summary judgment motion, including claims about his "rap sheet" and medical record. Consistent with this decision, it correctly excluded evidence that related to these new claims and excluded inadmissible hearsay.

The trial court properly ruled that Anderson's February 2012 and May 2012 claims were barred by the statute of limitations. Then, it correctly ruled that the Department did not violate the Public Records Act in August 2012 because the documents Anderson challenged in his complaint were either reviewed or not found in his central file during this central file review. Consequently, this Court should affirm all of the trial court's decisions.

II. COUNTER STATEMENTS OF THE ISSUES

1. Are claims barred under the Public Records Act one-year statute of limitations when a complaint is filed more than one year after the plaintiff reviews requested records and receives an agency's claim of exemption?

2. Are claims outside the scope of a complaint when the complaint identifies four specific documents at issue and then after unsuccessfully seeking to amend the complaint to add claims about additional different documents, the plaintiff attempts to assert the same non-pleaded claims concerning those additional documents in a summary judgment motion?

3. Are documents properly excluded under the rules of evidence when they are not properly authenticated, irrelevant to the issues in the complaint, and are inadmissible hearsay?

4. Is there a Public Records Act violation when medical records are exempt under the Public Records Act and the records were available for review if plaintiff properly submitted a request to the medical records unit?

III. STATEMENT OF THE CASE

A. Factual Background

1. An Inmate's Central File

Every incoming male inmate has a central file created at the Washington Corrections Center (WCC) upon entry into the Department of Correction's custody. CP 58, 167. The central file will follow the inmate to every Department facility where the inmate is housed. CP 58, 167. The central file contains six categories of information—Legal, Movement,

Classification, Local Use/Miscellaneous (which includes public disclosure documents), Evaluations/Reports, and Admission. CP 58, 167. An inmate's central file is not a static filing system, and documents will be added to and deleted from the central file throughout the course of an offender's incarceration. CP 58, 167, 209.

2. Central File Reviews

DOC Policy 280.510 allows inmates to submit a request to inspect their central file or health records to the facility where they are housed. CP 58, 67, 69, 167. All other public records requests are required to be submitted to the Department of Correction's Public Records Office in Olympia, Washington. CP 67, 169. An inmate can request review of his/her central file by submitting a Request for Disclosure of Records form to the local facility's Records Unit. CP 58, 67, 167. A central file review request is a request to review all documents in the physical file at the time of the request. CP 58, 67, 167. An offender will be informed to send a public records request to Department headquarters if the offender wishes to view a file or documents outside of his/her central file or medical file. CP 58, 67, 167.

Each central file review request is given a new PDU number because each request is treated as a new request for public disclosure purposes, even if an offender may have previously reviewed his offender

central file. CP 58, 168. Prior to a central file review, Records Unit staff will review the offender's entire central file to determine if any documents need to be withheld and/or redacted. CP 59, 168. Any documents being withheld or redacted are copied and maintained as part of the records request in order to keep accurate records of the documents in the offender's central file at the time of the central file review. CP 59, 168. Documents that are withheld or redacted are entered into an Agency Denial Form/Exemption Log that is given to the offender at the time of his central file review. CP 59, 168. The Agency Denial Form/Exemption Log gives information about the document redacted or withheld and provides the basis for the redaction or withholding. CP 59, 168.

3. Anderson's 2012 Central File And Document Reviews

Anderson was housed at Airway Heights Corrections Center (AHCC) from February 2, 2011, until his transfer from the facility on February 12, 2013. CP 59, 168. While at AHCC, Anderson had two central file reviews in February and August 2012, and one document review in May 2012. CP 59, 90, 125, 150-51, 170, 173, 175. Anderson reviewed documents in his central file and received an exemption log during each central file review. *See* CP 59, 90, 125, 150-51, 170, 173, 175.

a. February 9, 2012 Central File Review

On January 6, 2012, AHCC records received a kite from Anderson requesting a central file review. CP 82, 170. Anderson received a letter identifying his request was received and it was assigned PDU #007-12. CP 84, 170. Anderson was given a tentative review date of February 16, 2012. CP 84, 170. Anderson received a kite informing him that his central file review was moved up to February 9, 2012. CP 88, 170.

On February 9, 2012, Anderson was allowed to review his central file. CP 170. The Department gave Anderson an exemption log at the time of his review. CP 90-93, 170. The exemption log identified eleven redactions of victim/witness information and two withheld documents—FBI and Washington State Patrol rap sheets—pursuant to the exemptions listed on the log. CP 90-93, 170.

b. May 31, 2012 Document Review Request

After his February 2012 central file review, Anderson sent kites to facility records staff seeking records that were not in his central file. CP 95, 101, 103, 109, 110. Anderson was informed each time that he had reviewed all documents in his central file, excluding the two criminal history “rap sheets.” CP 97, 105, 107, 112, 114, 170-72.

In March 2012, the Department’s Public Disclosure Appeals Office received an appeal from Anderson. CP 195, 197, 210. Anderson

appealed asserting that he believed the Department was wrongfully withholding documents from him, including his “rap sheets.” CP 197, 210.

The Department responded informing Anderson the “rap sheet” exemptions were proper. CP 199-200, 210. Anderson was informed the review process had changed to allow limited disclosure of certain “rap sheets” and to submit a new central file review request if he wished to review his “rap sheets.” CP 199-200, 210. Additionally, the Department informed him that the remaining documents identified in his appeal were not in his central file and Anderson needed to submit a written request to the Public Disclosure Unit for the records he was seeking to review. CP 199-200, 210.

In April 2012, the Public Disclosure Appeals Office received a second letter related to Anderson’s February 9, 2012 central file review. CP 202-03, 210. In his letter, Anderson explained that he was not looking for any particular record but would like to find documents related to his previous 1995-2002 incarceration. CP 202-03. He requested a search for his prior incarceration documents and indicated a desire to review any records that may be found. CP 202-03.

The Department honored his request to review any documents related to his prior incarceration and contacted the Department’s statewide

records unit. CP 210. Its search eventually caused the Department to find documents related to Anderson's prior incarceration stored at Washington Corrections Center (WCC). CP 210. Upon finding the previous incarceration records, the Department requested WCC staff forward these documents to AHCC. CP 210. The Department then informed AHCC records staff about the previous incarceration records and directed that Anderson be allowed to review these documents once they arrived at AHCC. CP 210-11.

Anderson was informed his previous incarceration documents were located at a different facility and were being sent to AHCC. CP 116-17, 205-06, 172, 211. Anderson would be allowed to review the new volume of records from his previous incarceration once it arrived at AHCC. CP 116-17, 205-06, 211. Anderson also was informed to submit any future public record requests for documents not in his central file to Department headquarters pursuant to Department Policy 280.510. CP 116-17, 205-06, 211.

AHCC records staff received the new set of documents on May 16, 2012. CP 172, 182. Anderson received a letter dated May 21, 2012, assigning a new public records request number to review his previous incarceration documents. CP 119, 172-73, 184. A new review number was assigned because the documents were not previously part of

Anderson's central file and because the Department attaches a new number for all new reviews. CP 173, 211-12.

Anderson reviewed his previous incarceration documents on May 31, 2012. CP 173. During this review, Anderson was given an exemption log and allowed to review all new documents received from WCC. CP 125-131, 173, 186. No documents were withheld from review and Anderson's review only pertained to the new documents sent from WCC. CP 125-131, 173, 186. He did not review any documents currently in his central file on May 31, 2012. CP 173.

c. August 14, 2012 Central File Review

On July 26, 2012, AHCC records received a new kite from Anderson stating "I would like to review my central file" and he then submitted a request to inspect his central file. CP 142, 174. The Department reviewed Anderson's central file in preparation for his central file review. CP 174. During this time, Anderson's previous incarceration documents, which had recently come to AHCC as described above, were placed into Anderson's central file. CP 174, 188. However, there were seven medical records that for medical privacy reasons could not be stored in Anderson's central file. CP 174. These records were forwarded to the facility's medical record unit on August 8, 2012, and were to be placed in Anderson's medical file. CP 174, 188.

The facility staff informed Anderson the medical documents were forwarded to his medical file and that he could request review of them through the medical records review process. CP 175. Anderson was informed of the medical records location through a notice made in the exemption log in the area titled "Records Withheld in their Entirety." CP 175. The exemption log clearly marked each removed medical document with a double asterisk (**) and explained that:

****ABOVE ORIGINAL DOCUMENTS REMOVED FROM CENTRAL FILE AND SENT TO MEDICAL ON 8/8/12. IF YOU WOULD LIKE TO REVIEW ANY OF THESE DOCUMENTS, PLEASE SEND AN INMATE KITE TO MEDICAL.**

CP 151, 175.

This note informed Anderson these documents were not in his central file and he could review each identified document by submitting a review request to the facility's medical records unit. CP 151, 175. The facility did not withhold the medical documents from disclosure and solely used this space to inform Anderson how he could review the medical documents, if needed. CP 151, 175. After receiving this notice, Anderson did not inquire about the placement of these seven documents on the exemption log or who he needed to contact in order to review any/all of the seven identified documents. CP 151, 176.

B. Procedural Background

On June 4, 2013, Franklin County filed Anderson’s Summons and Complaint. CP 322-27. Anderson did not include a certificate of service with either document. *See* CP 322-27. Anderson’s complaint alleged the Department withheld four documents—central file index; certified polygraph associates; SSOSA Assessment; and chemical dependency records—during a January 1999, October 2001, February 2012 central file reviews, a May 2012 document review, and August 2012 central file review. CP 324-27. The Department was served after the case was filed and it filed an Answer on August 26, 2013. *See* CP 39.

Prior to retaining counsel, Anderson moved to amend his complaint on two separate occasions. CP __.¹ Both proposed amendments attempted to add Public Records Act claims related to additional documents, including criminal history “rap sheets” and documents sent to his medical file prior to his August 2012 central file review. CP __. However, the Court never ruled on either motion and his complaint was never amended. *See* CP ____.

¹ CP __ is used to reference documents identified in Respondent’s Second Supplemental Designation of Clerk’s Papers. Those are Plaintiff’s Motion for Leave to Amend, Memorandum in Support of Motion for Leave to Amend, and Proposed Amended Complaint filed on January 29, 2014 and Plaintiff’s Motion for Leave to Amend, Memorandum in Support of Motion for Leave to Amend, and Proposed Amended Complaint filed on May 5, 2014.

On June 5, 2014, counsel filed a notice of appearance for Anderson. *See* CP 40. Many weeks later, and nearly two years after filing his complaint, Anderson filed a declaration stating that he placed his summons and complaint in the facility's internal mail system on May 21, 2013. CP 320. It was uncontested the facility had a legal mail system for legal documents and Anderson did not provide a statement or submit evidence that he used the facility's legal mail system to mail his summons and complaint. *See* CP 320.

On December 5, 2014, the parties filed competing summary judgment motions. CP 27-212, 412-38. The Department's motion addressed the four documents, four central file reviews, and one document review identified in Anderson's complaint. *See* CP 27-54. Anderson's motion raised new Public Records Act claims not included in his complaint. *Compare* CP 322-27 with 412-38.

After the parties filed their summary judgment motions, Anderson moved to amend his complaint and provided a proposed first amended complaint on January 29, 2015. CP 460-69. Anderson's proposed amended complaint withdrew claims related to his 1999 and 2001 central file reviews and claims related to the central file index and certified polygraph associates documents; added new Public Records Act claims, including allegations and claims related to criminal history "rap sheets;"

and new allegations that the Department violated the Uniform Health Care Information Act. *See* CP 466-69. The trial court denied Anderson's motion to amend and did not accept the proposed amended complaint for filing. CP 442-43. It informed Anderson he was bound by his original complaint. CP 443.

Anderson did not file a response to the Department's summary judgment motion and did not attempt to address it in his reply in support of his summary judgment motion. *See* CP 13-23. The Department did respond to Anderson's summary judgment motion relying on evidence it filed with its summary judgment motion. CP 382-411.

The Department also objected to the new Public Records Act claims asserted in Anderson's summary judgment motion because they were not raised in the complaint. CP 382-85. It also objected to fourteen exhibits submitted by Anderson arguing the exhibits were irrelevant because they related to claims outside the scope of his complaint or were inadmissible hearsay evidence. CP 385-87.

At the February 13, 2015, hearing, the parties provided argument and the Department objected to the additional exhibits submitted with Anderson's reply. *See* CP 7. The trial court granted the Department's evidentiary objections, granted its summary judgment motion, denied

Anderson's summary judgment motion, and dismissed the case with prejudice. CP 6-8.

IV. STANDARD OF REVIEW

The Court reviews challenges to agency actions under the Public Records Act *de novo*. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009). If a trial court bases its decision on whether there has been a PRA violation solely upon affidavits and documents without testimony, the court of appeals engages in *de novo* review of the violations. *Ames v. City of Fircrest*, 71 Wn. App. 284, 292, 857 P.2d 1083 (1993). When a PRA case is decided on summary judgment, the appellate court stands in the same position as the trial court. *West v. Dep't of Licensing*, 182 Wn. App. 500, 505, 331 P.3d 72 (2014). Summary judgment is appropriate when—viewing the evidence in the light most favorable to the nonmoving party—there are no material issues of fact and the moving party is entitled to judgment as a matter of law. *Id.* at 505-06.

V. ARGUMENT

A. **Anderson's Criminal History "Rap Sheets" Claims Related To His February 2012 Central File Review Were Barred By The Public Records Act's One-Year Statute Of Limitations**

Anderson mistakenly argues his "rap sheet" claims were within the Public Records Act one-year statute of limitations. But Anderson's May 29, 2012 document review was not an installment of his February 9, 2012

central file review. Rather, the documents were not in his central file in February 2012 and that was known at that time. To make a claim based on the documents not being produced on February 9, 2012, Anderson had to file his claims prior to February 9, 2013. Because he did not, all claims from his February 2012 central file review are barred by the Public Records Act one-year statute of limitations.

The Public Records Act provides a one-year statute of limitations that is triggered by either: (1) an agency's claim of exemption or (2) the agency's last production of a record on a partial or installment basis. RCW 42.56.550(6). A request for several different documents is treated as a single request. *Greenhalgh v. Dep't of Corr.*, 170 Wn. App. 137, 149-50, 282 P.3d 1175 (2012). A claim of exemption triggers the Public Records Act one-year statute of limitations. *Id.*, at 149.

Anderson submitted a request to review his central file in January 2012. CP 82, 170. He reviewed his central file on February 9, 2012. CP 90-93, 170. During this central file review, Anderson received an exemption log identifying specific exemptions for redacted and withheld information. CP 90-93, 170. F.B.I. and Washington State Patrol "rap sheets" were withheld in their entirety. CP 90-93, 170.

Anderson argues the exemptions for his "rap sheets" were withdrawn after he challenged these exemptions during the appeal of his

February 2012 central file review thus not triggering the statute of limitations with a claim of exemption. Opening Brief, at 16. Anderson provides no authority for this proposition. *See* Opening Brief, at 16. It is also contrary to the record. Anderson challenged exemptions related to his “rap sheets”, and the exemptions were upheld. CP 197, 199-200.

However, he was informed that he could submit a new central file review request to review his “rap sheets” and a change in policy would allow for limited disclosure of these documents. CP 200. This directive to file a new central file review request does not provide Anderson the ability to option out of the Public Records Act one-year statute of limitations in RCW 42.56.550(6) because the Department’s appeal process does not affect Anderson’s ability to sue under the Public Records Act or alleviate his mandatory obligation to file his claim within one year from review of a document or from the date he is provided an exemption. *See Greenhalgh*, 170 Wn. App. at 153 (The Department’s optional appeal process has no effect on a requester’s obligation to file a claim within the one-year statute of limitations once documents are reviewed or the requester receives a claim of exemption.).

Additionally, his claim is barred because the production of his central file triggered the one-year statute of limitations. *See Bartz v. State Dep’t of Corr. Pub. Disclosure Unit*, 173 Wn. App. 522, 538, 297 P.3d

737 (2013) (“The legislature intended that the PRA’s one-year statute of limitations would apply to PRA requests completed by an agency’s single production of records.”). “A records requester’s original action claim in superior court for an alleged PRA violation is separate and distinct from any potential administrative remedy he or she may have under the Administrative Procedures Act.” *Greenhalgh*, 170 Wn. App. at 153. Thus, actions within the Department’s public records appeal process do not affect Anderson’s responsibility to file a claim within the one-year statute of limitations. *See id.* Anderson’s obligation to file his case within the mandatory one-year statute of limitations is triggered when he received the Department’s exemption log at his February 2012 central file review. *Id.* (“The [Department’s] optional administrative appeal procedure did not change the legal effect of the PRA’s mandatory statute of limitations.”).

Lastly, Anderson’s argument that his May 29, 2012 document review was an installment is meritless. A request for a central file review is a request to review all documents in the physical file at the time of the request. CP 58, 67, 167. Each central file review request is given a new identification number because each request is treated as a new request for public disclosure purposes, even if an offender may have previously reviewed his offender central file. CP 58, 168. And an inmate is required to submit a public records request to Department headquarters for

documents outside of his central file or to submit a request to medical records to review his medical file. CP 59, 67, 69, 167-68.

Documents reviewed on May 29, 2012 were documents being stored at a different prison and not in Anderson's central file. *See* CP 172-73, 182, 205-06, 210-11. Anderson made a new request to review these documents during his internal appeal of his February 9, 2012 central file review. *See* CP 202-03, 211-12. The Department determined that Anderson would be allowed to review documents that were at a different facility even though this was not the proper channel to request review of documents not found in a central file. CP 205-06, 212. This decision was made because the Department felt it was the most efficient use of everyone's time. CP 212. Consistent with Department policy *and* the fact these were new records not previously in his central file, the request for these new records was given a new public disclosure tracking number because it was considered by the Department as a new public records request. CP 119-123, 173, 212.

Thus, the one-year statute of limitation was triggered after Anderson received the Department's claims of exemption at his February 2012 central file review and he had to file any claims related to this review by February 9, 2013. Documents reviewed on May 29, 2012 involved a new request because the documents were not in his central file when he

requested to review it in January 2012. Accordingly, Anderson's "rap sheet" claims were barred by the Public Records Act one-year statute of limitations once he reviewed his central file and received the Department's exemption log on February 9, 2012. The trial court should be affirmed.

B. Anderson's "Rap Sheet" And Medical Records Claims Were Outside The Scope Of His Complaint

Anderson's summary judgment motion asserted the Department wrongfully withheld "rap sheets," medical records, and other documents not identified in his complaint. The trial court, however, found that his summary judgment motion raised new claims not found in his complaint and rejected those claims. Anderson argues that this was error and asks this Court to address those new claims. Opening Brief, at 10-12. But the trial court fairly and properly construed the Complaint and rejected Anderson's attempt to smuggle new claims into the case.

Anderson's summary judgment motion only asserted claims related to one document, the SSOSA Assessment dated October 10, 1994, that is identified in his complaint. *Compare* CP 419-425 *with* CP 324-27. Despite this obvious incongruity between his complaint and motion, Anderson argues claims related to "rap sheets," medical records, and other documents not at issue on appeal could be inferred through general assertions in his complaint. *See* Opening Brief, at 10-12. This was not

sufficient notice to the defendant, whose summary judgment focused on the claims raised by the Complaint. Anderson's attempt to amend his complaint during the course of litigation, including after receiving the Department's summary judgment motion, also confirms that the trial court properly determined his "rap sheet" and medical record claims were outside the scope of his complaint.

A complaint provides notice to the court and the opponent of the claim asserted. *Champagne v. Thurston Cnty.*, 163 Wn.2d 69, 85, 178 P.3d 936 (2008); *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn. App. 18, 23-24, 974 P.2d 847 (1999). Although inexpert pleading is permitted, insufficient pleading is not. *Dewey*, 95 Wn. App. at 23 (citing *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P.2d 425 (1986)). "A pleading is insufficient when it does not give the opposing party fair notice of what the claim is and the ground upon which it rests." *Id.* (citations omitted).

"The complaint must at least identify the legal theories upon which the plaintiff is seeking recovery, or must contain allegations which raise a fair inference that evidence on certain legal theories will be presented at trial." *Todd v. Heart Inst. of Spokane*, 116 Wn. App. 1034 (2003). It is not an open-ended invitation to add claims on summary judgment that would have required the opposing party to "guess against which claims they will have to defend." *Kirby v. City of Tacoma*, 124 Wn. App. 454,

470, 98 P.3d 827 (2004). Thus, a party can object to new claims not found in a complaint. *See* CR 15(b). “A party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along.” *See Dewey*, 95 Wn. App. at 26.

Anderson’s summary judgment motion improperly raised new claims for documents not identified in his complaint. Anderson’s complaint alleged the Department improperly withheld four documents—(1) central file index; (2) certified polygraph associates; (3) SSOSA Assessment; and (4) chemical dependency records—during his January 1999, October 2001, February 2012, and August 2012 central file reviews and a May 2012 document review. CP 324-27.

Anderson’s summary judgment motion mentioned only one of these four documents, the SSOSA Assessment dated October 10, 1994, and made no arguments about the other documents. CP 423. But it raised claims about several new documents, including criminal history “rap sheets” and medical records sent to his medical file prior to his August

2012 central file review; a claim about these documents appears nowhere in his Complaint.² CP 420-25.

Admitting that the Complaint has no express notice of such claims, Anderson argues that his complaint provided notice of his Public Records Act claims that occurred during his February 2012, and August 2012 central file reviews and a May 2012 document review. Opening Brief, at 11. From this, he argues that he is allowed to assert claims against *any* documents from these dates—even documents that were not identified in his Complaint. Opening Brief, at 11. Anderson’s theory does not describe a notice pleading; it describes ambush.

Anderson also argues his discovery requests provided sufficient notice of his claims and the Department should have engaged in discovery gathering evidence of these claims. Opening Brief, at 11-12. However, Anderson’s *Complaint*, not his discovery requests, provides the Department with notice of claims to be litigated. *See* CR 8(a). Moreover, the Public Records Act requires Anderson to identify the specific records at issue. *See* RCW 42.56.500(1), (2). Then, the Department must explain

² Anderson’s summary judgment motion asserted new claims related to nine new documents: (1) Washington State Patrol criminal history “rap sheet;” (2) F.B.I. criminal history “rap sheet;” (3) Notice of Violation, dated January 4, 2005; (4) Northwest Treatment Associates document dated September 24, 2002; (5) Northwest Treatment Associates document dated October 26, 2002; (6) Northwest Treatment Associates document dated January 29, 2004; (7) Northwest Treatment Associates document dated January 9, 2005; (8) Sex Offender Psychological Report by Gene Stroobants dated March 15, 1999; and (9) Sex Offender Psychological Report by Gene Stroobants dated October 24, 2002. CP 420-25.

its actions related to the challenged documents. *See* RCW 42.56.500(1), (2).

The Court should affirm that the Department can rely on his Complaint where he only identifies four documents as being wrongfully withheld. The Department is not required to speculate that additional documents may be raised later and Anderson cannot add claims about additional documents in his summary judgment motion when he failed to allege them in his complaint.

Anderson did not amend his complaint and does not assign error to the denial of his motion to amend. *See* Opening Brief, at 1-4. This left him with claims related to the four identified documents in his complaint. *See* CP 442-43. The trial court was correct in not considering Anderson's "rap sheets" and medical record claims and that decision should be affirmed.

C. Exhibits Attached To Opposing Counsel's Declaration Were Inadmissible Evidence And Properly Excluded

Anderson argues the trial court erred in finding many of his documents were inadmissible and excluded them from consideration. Opening Brief, at 12. The trial court rejected many exhibits attached to Anderson's attorney's declaration because they were not authenticated,

were irrelevant to claims in Anderson's complaint, and the remaining documents were inadmissible hearsay. CP 7, 385-87.

Documents submitted as evidence supporting or opposing summary judgment must be admissible. *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 141, 331 P.3d 40 (2014); *Dunlap v. Wayne*, 105 Wn.2d 529, 535, 716 P.2d 842 (1986). An attorney cannot authenticate documents of which he has no personal knowledge. *See Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 745-47, 87 P.3d 774 (2004) (attorney's affidavit cannot authenticate document about which attorney has no personal knowledge; document is therefore inadmissible for purposes of summary judgment); *Burmeister v. State Farm Ins. Co.*, 92 Wn. App. 359, 365, 966 P.2d 921 (1998) (on summary judgment motion court should consider only admissible evidence, and authentication is "condition precedent to admissibility" (citing ER 901(a)). Documents produced in summary judgment can be submitted for purposes of summary judgment. *Int'l Ultimate, Inc.*, 122 Wn. App. at 747-48. However, the documents can still be deemed as inadmissible hearsay. *Id.*, at 747; *SentinelC3, Inc.*, 181 Wn.2d at 141.

The trial court correctly determined Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, and 26 were inadmissible because they were irrelevant to the claims in Anderson's Complaint. CP 7.

Exhibits 6, 7, 8, 12, 13, 14, 15, 16, and 19 were documents related to Anderson's "rap sheet" claims. CP 223-233, 240-277, 348-55. Exhibits 9, 10, 11, and 26 were related to documents that do not appear to be at issue on appeal and Exhibits 20, 21, 22, 23, and 24 were related to medical records moved to Anderson's medical file. CP 234-39, 357-80. As previously argued, the trial court properly excluded Anderson's "rap sheet" and medical document claims from consideration because they were not found in his Complaint. Therefore, the trial court properly excluded these documents under ER 401, 402, 403.

Lastly, the trial court correctly determined Exhibits 2 and 3 were inadmissible hearsay. These documents were hearsay because they were e-mails between Department employees discussing the location and forwarding of Anderson's previous incarceration documents found at WCC. CP 218-220. The Department has provided testimonial evidence explaining the context of this communication from the parties communicating in the e-mails. CP 172, 210-11. Anderson argues the documents were provided in discovery and therefore are admissible. Opening brief, at 14. However, he fails to cite to any exception in the hearsay rules allowing admission of these e-mails. Opening Brief, at 14. The courts are clear that documents submitted in summary judgment can be excluded as inadmissible hearsay. *See Int'l Ultimate, Inc.* 122 Wn.

App. at 747; *SentinelC3, Inc.*, 181 Wn.2d at 141. These documents are clearly hearsay and contain additional hearsay within them. *See* CP 218-220. Therefore, the trial court correctly excluded these documents under ER 801(c); ER 802. Even if they were admissible, it is not evidence of a public records violation because the documents do not support Anderson's contention that his May 2012 review of documents from his previous incarceration located outside his central file in another prison was an installment that did not trigger the Public Records Act one-year statute of limitations.

D. Anderson Did Not Show He Placed His Summons And Complaint In The Prison's Legal Mail System And He Was Not Entitled To The Filing Rule Under General Rule 3.1

Attempting to circumvent the Public Records Act one-year bar of Anderson's "rap sheet" claim, Anderson argues that his placement of his summons and complaint in the facility's mail system on May 21, 2013 was sufficient to deem the complaint filed under General Rule 3.1 on this date. Then, Anderson can escape the Public Records Act one-year statute of limitations if he shows the May 31, 2012 document review was an "installment" of the February 2012 central file review allowing him to assert his "rap sheet" claims. As shown above, the underlying reasoning for this tenuous argument already fails because the May 31, 2012

document review was not an installment and was a review of previous incarceration documents that were not in his central file.

Nevertheless, Anderson failed to show he placed his complaint in the facility's *legal mail system* as required by General Rule 3.1. Therefore, the trial court properly found the filing date was June 4, 2013. His February 2012 central file review and May 2012 document review were barred by the Public Records Act one-year statute of limitations.

Anderson's status as an inmate affords him an accommodation for service under General Rule 3.1. General Rule 3.1 provides that an inmate who is confined in an institution is deemed to have filed a document in any proceeding on the date on which the inmate deposits the document in the institution's internal mail system. GR 3.1(a). But "[i]f an institution has a system designed for legal mail, the inmate *must use that system* to receive the benefit of this rule. GR 3.1(c) (emphasis added). The rule further provides that an inmate may show timely filing or mailing by submitting a declaration or notarized affidavit to prove compliance. GR 3.1(c).

Division I analyzed this rule in *In re Quinn*, 154 Wn. App. 816, 226 P.3d 208 (2010). General Rule 3.1(c) mandates that an inmate use the prison mail system to receive the benefit of the rule. *In re Quinn*, 154 Wn. App. at 834. However, the court determined the plain language of the rule

does not require an inmate to file a declaration contemporaneously with the document being submitted for filing. *Id.* Instead, “it provides that such a declaration *may* be used to establish timely filing. *Id.* (citing *N.W. Ecosystem Alliance v. Forest Practices Bd.*, 149 Wn.2d 67, 76, 66 P.3d 614 (2003) (explaining that the use of the term “may” in a statute does not require an action but, rather, permits an action)).

Thus, a declaration concerning the date of mailing is not the exclusive proof for a date of filing pursuant to GR 3.1. *Id.*, at 834-35. A Court’s date stamp could be sufficient proof of a filing date. *Id.*, at 835. However, it acknowledges the “inclusion of a declaration as to the date of mailing with a petition for relief might help to resolve issues concerning timeliness,” but it determined “GR 3.1 does not require such a contemporaneous filing.” *Id.*

Here, Anderson’s summons and complaint were filed on June 4, 2013. CP 322-27. He did not file a declaration of service with his Summons and Complaint. *See* CP 322-27. Instead, Anderson filed a fifteen month post hoc declaration with the Court on September 24, 2014. CP 320. But in this declaration, Anderson states only that he placed a complaint and summons in the internal mail system at CRCC on May 21, 2013. CP 320. He makes no claim about the legal mail system.

Anderson filed another declaration with his summary judgment motion asserting he paid postage when placing his complaint in the facility's internal mail system. *See* CP 281, 319. However, Anderson again does not indicate that he placed these documents in the facility's *legal* mail system. *See* CP 281, 320. Anderson's failure to declare that he placed it in the facility's internal legal mail system does not demonstrate compliance with General Rule 3.1(c).

Given that Anderson failed to use the facility's legal mail system, he cannot receive the benefit of General Rule 3.1. *See* GR 3.1(a). Instead, the court's filing date stamp is the only evidence of when a document was filed. *See In re Quinn*, 154 Wn. App. at 835. The Court's date stamp clearly indicates Anderson's case was filed on June 4, 2013. *See* CP 322-27. Under these circumstances, the trial court correctly determined his case was filed on June 4, 2013 barring claims from more than a year before this date.

E. The Department Did Not Violate The Public Records Act When It Sent Plaintiff's Medical Records To His Medical File Prior To His August 14, 2012 Central File Review

Anderson argues seven medical records sent to his medical file prior to his August 14, 2012 central file review were wrongfully withheld. Opening Brief, at 20. The Court need not reach this issue if it concludes that these records were outside the scope of his Complaint. But if it does,

Anderson failed to show the Department violated the Public Records Act. Medical records are exempt from disclosure under the Public Records Act. *See* RCW 42.56.360(2). Moreover, the records were not withheld. Instead, Anderson was informed that he needed to request review of medical records through the medical records unit, as required by Department policy.

1. Review Of Medical Records Is Not Governed by The Public Records Act

The Public Records Act provides that an agency need not produce public records for inspection or copying if another statute “exempts or prohibits disclosure of specific information or records.” RCW 42.56.070(1). Washington courts have interpreted this general provision to mean that when a statute other than the Public Records Act provides a mechanism for the release of public records, the other statute is the exclusive means of obtaining such records and it does not apply to requests for such records. *Wright v. DSHS*, 179 Wn.2d 1021, 176 Wn. App. 585, 309 P.3d 662 (2013) (RCW 13.50 provides the exclusive means of obtaining juvenile justice and case records and the Public Records Act does not apply to requests for such records.). *Dependency of K.B.*, 150 Wn. App. 912, 210 P.3d 330 (2009) (same); *Deer v. DSHS*, 122 Wn. App. 84, 93 P.3d 195 (2004) (same).

The Legislature intended RCW 70.02 to be the exclusive means of inspection and copying of patient's health care records. RCW 42.56.360(2) states, "Chapter 70.02 RCW applies to public inspection and copying of health care information of patients." In light of this unambiguous statute, any action for inspection and copying of medical records is governed by RCW 70.02 and must be initiated only under that chapter. Any interpretation of RCW 42.56.360(2) as not excluding a request for patient medical records from the provisions of the PRA would render RCW 42.56.360(2) superfluous. *See State v. McGrew*, 156 Wn. App. 546, 560-61, 234 P.3d 268 (2010) (citing *State v. Wanrow*, 88 Wn.2d 221, 228, 559 P.2d 548 (1977)) ("The legislature is presumed to not engage in unnecessary or meaningless acts and statutes must be interpreted so no part is rendered superfluous or insignificant.").

The Department provides inmates the ability to review their medical file *separate* from a review of their central file. CP 67. Policy 280.510 informs inmates their requests to review medical records will be handled pursuant the Department's policy governing offender health records. CP 67. Under Policy 640.020, inmates are advised they "may request, in writing, to examine or obtain a copy of all or part of their health records per RCW 70.02.080." CP 409. Anderson is aware of the separate process for reviewing medical records based on the assertion in

his complaint that he reviewed his medical file on three separate occasions. *See* CP 326.

Anderson does not contest the documents sent to his medical file were medical records. *See* Opening Brief, at 20. Instead, he simply alleges that he should have been allowed to review them through the central file review process. Opening Brief, at 20. However, medical records are reviewed through a different process because they are not subject to disclosure under the Public Records Act. *See* RCW 42.56.360(2); RCW 70.02.080. Therefore, the trial court correctly determined the Department did not violate the Public Records Act during Anderson's August 14, 2012 central file review.

2. The Department Did Not Withhold Medical Records From Anderson When It Sent Documents To His Medical File And Informed Him He Could Review Them Through The Department's Medical Record Review Process

Anderson argues the Department improperly asserted exemptions to withhold medical records sent to his medical file. Opening Brief, at 20. He mischaracterizes the record. The documents were not withheld from Anderson; the Department simply told him that he needed to send a request to the medical records unit to review them.

After his May 2012 document review, new documents were stored in Anderson's central file. Anderson then requested to review his central

file again in July 2012. CP 142, 146. When preparing his file for review, the facility determined there were seven medical records that needed to be in Anderson's medical file pursuant to Department policy. CP 174. These medical records were sent to the facility's medical records unit to be placed in Anderson's medical file. CP 174, 188. This occurred before his August central file review and, as a result, they were not part of his central file during the August 14, 2012 review. CP 174-75, 188, 401.

But to ensure Anderson knew where he could locate these records, the Department identified the medical documents on the August 2012 exemption log with a double asterisk (**) and a note that stated

****ABOVE ORIGINAL DOCUMENTS REMOVED FROM CENTRAL FILE AND SENT TO MEDICAL ON 8/8/12. IF YOU WOULD LIKE TO REVIEW ANY OF THESE DOCUMENTS, PLEASE SEND AN INMATE KITE TO MEDICAL.****

CP 151, 175.

This notice was provided as a courtesy based on the facility's history with Anderson and the fact he reviewed these documents through a separate process in May 2012. CP 175. It was not an assertion of an exemption because it explains that he was not prohibited from viewing the records and he merely needed to request them through the medical records process. *See* CP 175-76, 401. This fulfills the Public Records Act

because it provides assistance on how to review these records. *See* CP 175-76, 401.

Thus the record does not support Anderson's assertion that the records were withheld from him. The Department's actions were consistent with the Department's practice to keep medical records separate from records in an inmate's central file. CP 401. Seven medical records were determined to be in the wrong file and they were sent to the medical records unit where there is appropriately trained personnel to handle and discuss medical records. CP 175, 401. He could have reviewed them by simply submitting a medical records review request pursuant to Department policy. CP 401-02. Therefore, the trial court was correct when it determined there were no public records violations during Anderson's August 2012 central file review.

F. The Trial Court Did Not Reach The Merits Of Anderson's Bad Faith Argument

Anderson argues this Court should find the Department acted in bad faith during the aforementioned central file and document reviews and impose penalties against the Department under the Public Records Act. Opening Brief, at 21-33. The Court need not reach the issue because the trial court properly found no public records act violation occurred. Consequently, the trial court never reached the merits of Anderson's bad

faith and penalty arguments. *See* CP 7. The proper course would be for the Court to remand this case back to the trial court on this issue should the Court determine that the trial court erred in its ruling.

VI. CONCLUSION

The trial court correctly determined the Department did not violate the Public Records Act because Anderson's February and May 2012 central file reviews were barred by the statute of limitations and Anderson had the opportunity to review all documents identified on his August 2012 exemption log if he just followed the proper Department procedures. Moreover, Anderson's "rap sheet" and medical record claims were outside the scope of his Complaint and the trial court properly excluded all evidence attached to Anderson's summary judgment motion. Therefore, the Department respectfully requests that the trial court's order be affirmed.

RESPECTFULLY SUBMITTED this 17th day of July, 2015.

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CERTIFICATE OF SERVICE

I certify that on the date below I caused to be served a copy of the foregoing document on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by _____

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

EXECUTED this 17th day of July, 2015, at Olympia, Washington.

s/ Katrina Toal
KATRINA TOAL
Legal Assistant