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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**NO. 33783-9-III**

In the Court of Appeals of the State of Washington  
Division 3

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KEVIN ANDERSON, Appellant

v.

WALLA WALLA POLICE DEPARTMENT, Respondent

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**APPELLANT'S BRIEF**

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A) ASSIGNMENT OF ERROR

The trial court erred by granting respondent-defendant Walla Walla Police Department's Motion for Judicial Review of Agency Action and Dismissal or Alternative Relief and dismissing *Anderson v. Walla Walla Police Department*, Walla Walla County Superior Court Case No. 15-2-00103-6 with prejudice.

B) ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Mr. Anderson Requested Identifiable Public Records.
2. Walla Walla Had Responsive Public Records.
3. Walla Walla's Response Constituted a Denial.
4. Costs, Including Reasonable Attorney Fees, Should Be Awarded.

C) STATEMENT OF THE CASE

1. On March 26, 2014, Kevin Anderson sent request for public records by letter to the Walla Walla Police Department (hereinafter "Walla Walla") requesting "[a]ny records related to...Kevin Allen Anderson, DOB: January 27, 1974." CP 22, 25.
2. At the time Mr. Anderson made the March 26, 2014 public records request, Mr. Anderson was serving a criminal sentence in a prison operated by the Washington State Department of Corrections. CP 28.

3. On March 31, 2014, Walla Walla responded to Mr. Anderson's March 26, 2014 public records request by indicating it “ha[d] no Walla Walla Police report records on file for” Mr. Anderson. CP 25. Walla Walla further indicated, “[h]owever, a current order of protection is on file. Copies can be obtained by/through Walla Walla District Court.” CP 25.
4. On March 31, 2014, Walla Walla's employee—“police records clerk” and “custodian of records of the Walla Walla Police Department,” Dana Hood—“searched the Walla Walla's records management system” and “printed the screen showing records system activity entry for Mr. Anderson.” CP 159, 161. Walla Walla did not disclose or produce this “jacket activity” record to Mr. Anderson in response to his request. CP 25. Rather, Ms. Hood “concluded” the “jacket activity” record was not “responsive to Mr. Anderson's request.” CP 23.
5. On March 31, 2014, Ms. Hood may or may not have searched “the police department files...[for] a copy of the order of protection listed on the screen print as “05/17/2012 EXPIRES: 05/30/2014 Defendant / AHO 000000005489 ORDR PROT.” CP 23. However, both the May 17, 2012 temporary order of protection and the May 30, 2012 order of protection indicate Walla Walla

District Court ordered “the clerk of the court shall forward a copy of this order on or before the next judicial day to...[the] Walla Walla Police Department...which shall enter it into a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.” CP 60-61, 64-65, 78-79. Furthermore, Walla Walla has a searchable location containing “documentary records” that includes “court orders,” such as orders of protection. *See* CP 19-21, 23.

#### D) ARGUMENT

“Each agency...shall available for public inspection and copying all public records, unless the record falls within [a] specific exemption.” RCW 42.56.070(1). If an agency denies a person the “opportunity to inspect or copy a public record,” the agency must “show cause why it has refused to allow inspection or copying of [that] specific public record or class of records.” RCW 42.56.550(1). At that show cause hearing, the agency bears the burden of proof. *Id.* “Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo.” RCW 42.56.550(3). “The court may conduct a hearing based solely on affidavits.” *Id.*

“[W]here the record consists only of affidavits, memoranda of law, and other documentary evidence,” “the appellate court stands in the same

position of the trial court.” *Progressive Animal Welfare Soc. v. Univ. of Wash. (PAWS II)*, 125 Wn.2d 243, 252 (1994). “Under such circumstances, the reviewing court is not bound by the trial court’s findings on disputed factual issues.” *Id.* at 253.

Here, the trial court “considered” “[t]he Motion for Judicial Review of Agency Action and Dismissal or Alternative Relief; the Declaration of J Preston Frederickson; the Declaration of Hazel Olsen; [the] Declaration of Dana Hood; the Declaration of Patty Blakely; the DOC Declaration; the Plaintiff’s Response to Defendant’s Motion for Judicial Review of Agency Action and Dismissal or Alternative Relief (with declaration of counsel); and the court records herein.” CP 162. That is, no live testimony was taken by the trial court. Thus, this Court is not bound by the trial court’s findings on disputed factual issues, and should review issues of law and fact de novo.

**1. Mr. Anderson Requested Identifiable Public Records.**

“Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person.” RCW 42.56.080. “[T]here is no official format for a valid PRA request [but] ‘a party seeking documents must, at a minimum, [(1)] provide notice that the request is made pursuant to the PRA and [(2)] identify the documents with reasonable clarity to allow the

agency to locate them.” *Belenski v. Jefferson County*, 187 Wn. App. 724, 740 (2015) (citing *Hangartner v. City of Seattle*, 151 Wn.2d 439, 447 (2004)).

Regarding the first requirement of a valid PRA request, “a requester [need not] specifically cite the [Public Records A]ct” so long as the requester “give[s] the agency fair notice that it had received a request for...public record[s].” *Wood v. Lowe*, 102 Wn. App. 872, 878 (2000). A request does not meet this requirement if, for example, it requests “information about public records and [not] a request for the records themselves.” *Smith v. Okanogan Cty.*, 100 Wn. App. 7, 12 (2000). Furthermore, a request does not meet this requirement if it requests records pursuant to another statute. *Wood*, 102 Wn. App. at 880-81.

Regarding the second requirement of a valid PRA request, “th[e] requirement of identification is satisfied when there is a reasonable description enabling the government employee to locate the requested records.” *Bonamy v. City of Seattle*, 92 Wn. App. 403, 410 (1998). A valid PRA request that requests “any and all documents relating to” a particular person is sufficiently detailed to allow an agency to locate responsive records. *See Wright v. State*, 176 Wn. App. 585, 593 (2013).

Here, Mr. Anderson requested “the following public records:...any records related to...Kevin Allen Anderson, DOB: January 27, 1974.” CP

25. The request specifically identified itself as a “Public Records Request.” *Id.* In other words, the request was a request for identifiable public records in that it provided the agency fair notice that it was a request for public records and had sufficient clarity to allow Walla Walla to search for responsive records.

Furthermore, Walla Walla treated Mr. Anderson's request as one for public records, and Walla Walla actually searched for responsive records. CP 22-23.

## **2. Walla Walla Had Responsive Public Records.**

Under the PRA, an agency bears “[t]he burden of proof...to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.” RCW 42.56.550(1). “Part of this burden requires an agency withholding records to '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.’” *Gronquist v. Dept. of Licensing*, 175 Wn. App. 729, 743 (2013) (citing RCW 42.56.210(3)). Furthermore, where an agency claims no responsive record exists, the agency bears the burden of demonstrating nonexistence. *See Sperr v. City of Spokane*, 123 Wn. App. 132, 137 (2004). Although the PRA is silent on the applicable standard of proof, the

standard of proof for a party bearing the burden of proof is, “[a]t the low end of the spectrum[,]...preponderance of the evidence.” *Nguyen v. Dept. of Health Med. Quality Assurance Comm'n*, 144 Wn.2d 516, 524 (2001); *see also Concerned Ratepayers Assn. v. Publ. Util. Dist. No. 1 of Clark Cty.*, 93 Wn. App. 219, 232 (1998), *rev'd on other grounds*, 138 Wn.2d 950 (1999) (applying preponderance standard in PRA case). “The preponderance of the evidence standard requires that the evidence establish the proposition at issue is more probably true than not true.” *Mohr v. Grant*, 153 Wn.2d 812, 822 (2005).

“‘Public record’ includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” RCW 42.56.010(3). “‘Writing’ means....every...means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers,...discs,..., and other documents including existing data compilations from which information may be obtained or translated.” RCW 42.56.010(4).

Here, there are two classes of records at issue.

**a) “Jacket Activity” Is a Responsive Public Record.**

Walla Walla “maintains a records management system (RMS)” that operates “like a computerized library catalogue.” CP 19. The RMS contains information “that might be used by the [Walla Walla] Police Department.” CP 19-20. When a user “search[es] for records by typing queries into search fields,” the system displays “a records index.” CP 20.

Here, Walla Walla “search[ed] for records responsive to [Mr. Anderson's] March 26, 2014 records request.” CP 23. Likely, that search consisted of “typ[ing] Mr. Anderson's name into the police department's computerized records management system.” *Id.* That search yielded a records index, or “jacket activity.” CP 23, 26.

The “jacket activity” record constitutes a “writing” under the PRA. CP 159. The “jacket activity” record was prepared, owned, used, or retained by Walla Walla. And the “jacket activity” record contains information relating to the performance of a governmental function. Therefore, the “jacket activity” record is a public record.

Moreover, Mr. Anderson requested “[a]ny records related to” Mr. Anderson.” CP 25. Mr. Anderson did not explicitly limit his request to police reports. His request was unambiguous. And the “jacket activity” record is clearly responsive to his request.

**b) Walla Walla Had Orders of Protection.**

Here, it is more probably true than not true that Walla Walla had the May 17, 2012 temporary order of protection, May 30, 2012 order of protection, or both in March of 2014 at the time it received Mr. Anderson's public records request.

First, both orders of protection instructed the “clerk of the court [to] forward a copy of this order on or before the next judicial day to... [the] Walla Walla Police Department.” CP 60, 64-65, 78-79. There is no evidence this was not done. To the contrary, that Walla Walla's records management system contained a reference to an order of protection concerning Mr. Anderson establishes Walla Walla was in possession of that order of protection at some point. CP 19-20 (the records management system contains “identification and retrieval information” “from” “court orders” that are “manually entered by records support clerks”).

Second, Walla Walla retains and is capable of searching its “police department files” for “documentary records” that includes “cop[ies] of...protection order[s].” CP 19-21, CP 23.

Third, although Walla Walla was not in possession of either the May 17, 2012 or May 30, 2012 orders of protection on July 24, 2015, this makes sense given that the orders had expired, the former on May 30, 2012 and the latter on May 30, 2014. CP 20-21, 26, 60, 64-65, 78-79. At

least the May 30, 2012 order of protection had not expired in March of 2014, when Mr. Anderson's request was received and responded to by Walla Walla. CP 25, 60, 64-65, 78-79. And although Walla Walla has introduced no evidence regarding its record retention policies and procedures, it is probable WWPD retains at least active orders of protection.

### **3. Walla Walla's Response Constituted a Denial.**

“Responses to requests for public records...by agencies [consist of] either (1) providing the record[s]; (2) providing an internet address and link on the agency's web site to the specific records requested...; (3) acknowledging that the agency...has received the request and providing a reasonable estimate of the time the agency...will require to respond to the request; or (4) denying the public record request.” RCW 42.56.520. The list of statutorily-authorized agency responses is exclusive. *See id.*; *see also Smith*, 100 Wn. App. at 17. All agency responses must fit into one of the four categories. *See id.*

Here, Walla Walla's only response to Mr. Anderson's public records request read as follows:

Kevin,  
We have no Walla Walla Police report records on file for you. However, a current order of protection is on file. Copies can be obtained by/through Walla Walla District Court.

D Hood #356  
Records/Support  
03-31-14.

CP 25. A plain reading of Walla Walla's response establishes Walla Walla was not "providing the record" because it indicates the record can "can be obtained by/through" another entity. *Id.*; *see also Limstrom v. Ladenburg*, 136 Wn.2d 595, 615 (1998) ("The fact that [records] are readily available from another source is not a reason [under the PRA] to deny a request for disclosure"). Furthermore, Walla Walla's response does not contain an internet address and link on Walla Walla's web site. CP 25. Moreover, Walla Walla's response does not provide any estimate of the time it will require to respond to the request. *See id.* And Walla Walla did not intend to separately respond to Mr. Anderson's request. CP 24. Therefore, although Walla Walla's response did not include the words "denial" or "refusal" or "withheld," it can only be reasonably categorized as a denial.

**4. Costs, Including Reasonable Attorney Fees, Should Be Awarded.**

"Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record...shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action." RCW 42.56.550(4). A prevailing party must also be awarded costs, including reasonable attorney fees, incurred in

bringing an appeal. *Progressive Animal Welfare Soc. v. Univ. of Wash.* (PAWS I), 114 Wn.2d 677, 690 (1990).

Here, Mr. Anderson will ultimately be determined to be the prevailing party. Thus, he is entitled to costs, including reasonable attorney fees. An affidavit of fees and expenses will be filed pursuant to RAP 18.1.

E) CONCLUSION

The trial court erred by granting Walla Walla's motion to dismiss because Walla Walla's response to Mr. Anderson's March 26, 2014 public records request constituted a denial of an opportunity to inspect or copy public records. Mr. Anderson therefore requests this Court reverse the trial court's order of dismissal and remand for further proceedings.

DATED this 23rd day of November, 2015.

  
\_\_\_\_\_  
Christopher Taylor, WSBA # 38413  
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on 23rd day of November, 2015 I mailed,  
postage prepaid, a true copy of the foregoing APPELLANT'S BRIEF to

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Christopher Taylor