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Court of Appeals
Division III
State of Washington

NO. 33876-2-III

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

JEFFREY McKEE,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

This Public Records Act (PRA) case involves the Department of Corrections' reasonable response to prisoner Jeffrey McKee's ambiguous request for documents. The Department instructed McKee where to correctly submit his request when McKee submitted an ambiguous request to the wrong prison official, reasonably asked McKee to clarify the ambiguity in the request, and despite McKee's failure to respond and provide clarification, disclosed documents with proper redactions and a log of exemptions. When McKee filed suit, the trial court correctly dismissed the complaint because the Department's actions did not violate the PRA.

An offender's central file is one of the several types of records the Department maintains as part of an offender's official Department record. McKee first sent his public records request to the prison's records office, a unit designated to respond only to a request to review the prisoner's central file. Because McKee's request sought both an inspection of his central file, and "a review of all pertinent official records in the offender file," McKee appeared to be asking to review documents both within and outside of his central file. In accordance with Department policy, the prison records officer directed McKee to submit his public disclosure request to the Department's Public Disclosure Unit, the unit designated to

respond to requests for records outside of the central file. When McKee submitted the request to the Public Disclosure Unit, an official in that unit promptly responded by asking McKee to clarify his request for “all pertinent official records,” and by scheduling McKee for a review of his central file. During the central file review, the Department provided McKee with an exemption log noting redactions of his victims’ information and withholding of emails between Department staff and the Attorney General’s Office. McKee failed to respond to the request for clarification, and he responded to the central file review by filing this lawsuit.

The trial court properly dismissed McKee’s lawsuit for failure to state a claim under the PRA. The judge determined that because McKee’s initial request to the prison records office appeared to seek documents outside of the central file, the prison official properly followed WAC 137-08-090, and instructed McKee to submit the request to the Department’s Public Disclosure Unit. The judge determined that when McKee submitted the ambiguous request to the Public Disclosure Unit, the official in that unit properly responded by asking McKee to clarify his request and by scheduling McKee for a review of his central file. McKee abandoned his request for “all pertinent official records” when he failed to respond to the Public Disclosure Unit’s request for clarification. The trial court also

found the Department's redactions of McKee's rape victims' information was proper under the PRA. While McKee's complaint also disputed the withholding of the attorney client privilege documents, McKee abandoned this part of the claim because McKee's counsel did not present argument on the claim during the show cause hearing. Knowing the claim was not addressed, McKee then failed to seek a holding on the privilege issue and instead filed this appeal. Accordingly, the Court should affirm the dismissal of his claims for failure to show a PRA violation.

II. STATEMENT OF THE CASE

A. Statement of Facts

Washington law requires each state agency to publish rules establishing specific processes for requesting records under the PRA. RCW 42.56.040(1). The Department enacted WAC 137-08-090 to comply with the statute. This WAC requires that a prisoner wishing to review his central file or health record must submit a request to the prison's records office, but requests for all other records must be submitted directly to the Department's Public Disclosure Unit located in Tumwater, Washington. CP 28. Offenders are also provided with instructions on how to request a review of their central file as part of their orientation at the prison. CP 35. In addition to the offender central file and an offender's health records, there are various other documents which are considered to be part of the

official offender file. These include field supervision files, Work Release resident files and electronic files.¹

The Department commonly responds to tens of thousands of public records requests each year. For example, in 2013, the Public Disclosure Unit responded to 4,418 requests for records, and prison records office staff responded to an additional 10,000 requests by prisoners to review their central files and health records. CP 21. The majority of the requests included records subject to some claim of exemption, requiring redaction or withholding of the records. CP 21. The Department expended more than 36,000 hours of staff time to respond to these requests, and Department staff gathered and provided over 1,300,000 pages of records to requesters. CP 21.

To respond to the thousands of records requests, the Public Disclosure Unit ideally has 17 full-time staff, including 3 administrative staff, 12 Public Disclosure Specialists, a Unit Supervisor, and a Public Records Officer/Compliance Manager. CP 20. But at the time of McKee's request, the Unit had seen a significant amount of turnover in employees. CP 22. On November 24, 2014, McKee submitted a public records request to the records office at the Coyote Ridge Correctional Center. On the request, McKee marked the box stating "I request to inspect my central file," but he also included a hand written note requesting "a review of all

¹ DOC Policy 280.500, Records Management of Official Offender Files. <http://www.doc.wa.gov/policies/default.aspx>

pertinent official records in the offender file.” CP 37-38. Because McKee’s request for “all pertinent official records” appeared to request records contained outside of his central file, the records technician instructed McKee that, under WAC 137-08-090, public records requests must be submitted through the U.S. mail to the Public Disclosure Unit. CP 29; CP 38. The records technician also provided McKee with the mailing address of the Public Disclosure Unit. CP 38. In addition, the records technician also informed McKee to send another kite if he was seeking just an offender central file review. CP 38.

On December 1, 2014 McKee submitted another records request to the prison records office. CP 40-41. Like the prior records request, McKee again marked the box stating “I request to inspect my central file,” but also again included a hand written note requesting “a review of all pertinent official records in the offender file.” CP 41. The records technician responded to this request with the same response as the November 24, 2014 request (instructing McKee to submit the request to the Public Disclosure Unit). CP 40.

McKee then submitted his request to the Public Disclosure Unit, asking for ““a review of all pertinent official records in the offender file” pursuant to DOC form 05-066 related to the 1/24/14 FRMT notice I received on or about 11/24/14 and on or about 12/1/14.” CP 110-111. The request was

assigned to Records Specialist Nagel. CP 107; CP 112. The next day, Nagel sent a response letter indicating the request had been assigned tracking number PDU-32422. CP 114. Because the language “all pertinent official records” was unclear, Nagel asked McKee to “define what is meant by pertinent official records,” and informed McKee that upon receipt of his clarification, Nagel would then proceed with his request. CP 114. Nagel received no response from McKee to his request for clarification. CP 108.

In order to provide McKee assistance, the following day Nagel took the initiative and scheduled an appointment for McKee to review his central file at the prison. CP 108. The same day, the prison records technician sent a letter to McKee, stating he would be scheduled for review of his central file in 30 business days. CP 45.

An offender central file is not a static record as documents may be removed or replaced at any time. CP 28. When an offender requests to review his central file, he is provided with a review of the documents contained in the central file at that time. CP 28. In preparation of a file review, the records technician will review the offender’s entire central file to make any necessary withholdings and/or redactions. CP 28. The technician provides the offender with an exemption log noting any documents that are withheld or redacted. CP 28.

Therefore, the records technician reviewed and prepared McKee's central file prior to the review. CP 30. On January 22, 2015, McKee was given access to his central file and provided with an exemption log identifying any documents redacted or withheld. CP 47-49. Items redacted included McKee's rape victims' information. CP 47; CP 73-85. In addition, emails between Department staff and the Attorney General's Office were withheld in their entirety. CP 47; CP 96-99. During his review, McKee never stated whether the documents produced were what he was or was not seeking. CP 30.

B. Procedural History

McKee filed a PRA Complaint alleging failure to respond to his PRA requests, failing to provide an exemption log justifying withholding of any records, improperly redacting documents responsive to his requests and silently withholding responsive records. CP 251-255. In response, the Department filed a motion to show cause, arguing McKee failed to show a PRA violation as he was provided with a central file review, failed to respond to the Department's request for clarification of "all pertinent official records," and the redactions applied to the records provided were appropriate. CP 1-114. The trial court granted the Department's motion and dismissed the complaint. The judge specifically noted that McKee failed to show a violation of the PRA and the Department was not

obligated to consider McKee's identity when redacting his victims' identifying information. CP 246-250. Because McKee's counsel failed to argue the claim about withholding of the emails between Department staff and the Attorney General's Office, McKee abandoned the issue and the trial court made no ruling regarding the issue. Subsequently, McKee never filed a motion seeking a decision on the attorney-client privilege issue. Instead, McKee filed this appeal.

III. STANDARD OF REVIEW

The Court reviews challenges to agency actions under the PRA *de novo*. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009); *Mechling v. City of Monroe*, 152 Wn. App. 830, 222 P.3d 808 (2009), *review denied*, 169 Wn.2d 1007, 236 P.3d 206 (2010). Appellate courts stand in the same position as the trial courts when the record on a show cause motion consists only of affidavits, memoranda of law, and other documentary evidence. *Mitchell v. Washington State Dep't of Corr.*, 164 Wn. App. 597, 602, 277 P.3d 670 (2011), *as amended on reconsideration in part*.

IV. ARGUMENT

A. **The Trial Court Correctly Dismissed McKee's Claims for Failing to State a PRA Violation**

McKee failed to state a PRA claim because he failed to follow proper procedure in submitting his initial kite requests, his request was ambiguous, he failed to respond to the Department's request for clarification, and the redactions and withholdings applied to the records provided during the central file review were proper.

1. **The Prison Records Officer correctly instructed McKee to submit his requests to the Public Disclosure Unit because the requests appeared to seek documents outside the Offender Central File**

RCW 42.56.040(1) requires each state agency to publish rules establishing specific methods of obtaining records under the PRA. The Department published these rules in WAC 137-08. Specific to this case, WAC 137-08-090 requires that all requests for disclosure of a public record, other than requests by offenders for inspection of their health record or central file, must be submitted in writing or via email directly to the Department's headquarters' office in Tumwater, Washington. This requirement complies with the PRA and legitimately channels public records requests to the appropriate unit within the Department. *Parmelee v. Clarke*, 148 Wn. App. 748, 755-756, 201 P.3d 1022 (2008).

The PRA requires agencies to make identifiable public records available for inspection and copying. RCW 42.56.080. An identifiable public record is “one for which the requestor has given a reasonable description enabling the government employee to locate the requested record.” *Beal v. City of Seattle*, 150 Wn. App. 865, 872, 209 P.3d 872 (2009); *see also* WAC 44-14-04002(2) (an “identifiable record” is one agency staff can “reasonably locate”). In this regard, the PRA does not require agencies to be mind readers or to produce records that have not been requested. *Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998), *review denied* 137 Wn.2d 1012, 978 P.2d 1099 (1999). To hold otherwise would put agencies in an untenable position. *Id.* Additionally, when a request uses inexact phrasing such as “all records relating to” a topic, the agency may interpret the request to be for records that directly and fairly address the topic. WAC 44-14-04002(2). While the PRA requires agencies to provide the “fullest assistance” and the “most timely possible action on requests for information,” *see* RCW 42.56.100, an agency may seek clarification of a request, and if the requestor fails to clarify the request, the agency need not respond to it. RCW 42.56.520.

If an agency denies a requestor “an opportunity to inspect or copy a public record” a requestor may proceed to court to require the agency to comply with the PRA. RCW 42.56.550(1). Under certain circumstances,

the PRA shifts the burden of proof onto the agency to justify the actions taken. *See, e.g.*, RCW 42.56.550(1) (“The burden of proof shall be on the agency 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.”). However, the statute does not alleviate a plaintiff’s burden of proof to show that there is a controversy at issue.

McKee asserts the Department failed to respond to his November 24, 2014 and December 1, 2014 requests for records. McKee is incorrect. The Department did respond to his requests, properly referring him to the Public Records Unit because his requests appeared to seek review of more than just his central file. While he checked the box indicating he was seeking a review of his central file, he then also added the additional language, “I am requesting “a review of all pertinent official records in the offender file” pursuant to the classification notice/appearance waiver DOC form 05-794 for my November FRMT meeting.” CP 38; CP 40. Therefore, DOC reasonably interpreted the requests as potentially including documents maintained outside of his central file. While the prison records technicians process direct requests for offender central file reviews, they do not process direct public disclosure requests. McKee was informed that his public disclosure

requests were to be sent directly to the Department's Public Disclosure Unit as required under WAC 137-08-090.² CP 38; CP 40. McKee was also informed that if what he was seeking was, after all, simply a request to review his central file, that he should resubmit his request to the prison records office. CP 38. McKee obliged and later submitted these requests to the Public Disclosure Unit.

Although McKee argues the prison records office should have immediately provided him a review of his central file, he also asserts the documents he was seeking were not contained in his central file. McKee claims they were part of an electronic file and were "silently withheld"

² McKee is fully aware of how to file proper public disclosure requests and with litigating PRA claims. To date, McKee has filed at least 27 PRA actions against various state agencies. See *McKee v. Madison, et al.*, Mason County No. 07-2-00180-1; *McKee v. Thrush, et al.*, Thurston County No. 07-2-01788-4; *McKee v. DOC, et al.*, Thurston County No. 07-2-02252-7; *McKee v. Madison, et al.*, Thurston County No. 08-2-00338-5; *McKee v. DOC, et al.*, Thurston County No. 08-2-00386-5; *McKee v. DOC, et al.*, Thurston County No. 08-2-00527-2; *McKee v. DOC, et al.*, Thurston County No. 08-2-00528-1; *McKee v. DOC, et al.*, Grays Harbor County No. 08-2-00443-7; *McKee v. DOC, et al.*, Thurston County No. 08-2-00529-9; *McKee v. DOC, et al.*, Thurston County No. 08-2-00387-3; *McKee v. DOC, et al.*, Grays Harbor County No. 08-2-00442-9; *McKee v. DOC*, Thurston County No. 09-2-02875-1; *McKee v. DOC*, Thurston County No. 10-2-01366-8; *McKee v. DOC, et al.*, Spokane County No. 10-2-05025-1; *McKee v. DOC*, Franklin County No. 11-2-50489-4; *McKee v. DOC*, Spokane County No. 11-2-02020-1; *McKee v. DOC*, Franklin County No. 11-2-50899-7; *McKee v. DOC*, Franklin County No. 12-2-50391-8; *McKee v. DOC*, Mason County No. 12-2-00103-4; *McKee v. DOC*, Franklin County No. 13-2-50047-0; *McKee v. DOC*, Franklin County No. 13-2-50046-1; *McKee v. DOC*, Franklin County No. 13-2-50300-2; *McKee v. Scilley*, Franklin County No. 13-2-50726-1; *McKee v. Westerfield, et al.*, Franklin County No. 13-2-50915-9; *McKee v. Connell Police Department, et al.*, Franklin County No. 14-2-50863-1; *McKee v. King County, DOC*, Snohomish County No. 14-2-06814-8; *McKee v. City of Renton, Renton Police Department*, King County No. 14-2-24420-7SEA; *McKee v. DOC*, Franklin County No. 15-2-50044-1; *McKee v. DOC*, Franklin County No. 15-2-50013-1; *McKee v. Office of Governor, Jay Inslee*, Franklin County No. 15-2-50014-0; *McKee v. Office of Governor, Jay Inslee*, Thurston County No. 15-2-00560-7; *McKee v. DOC*, Franklin County No. 15-2-50374-2.

from him. McKee cannot have it both ways. If he was only seeking a review of the documents contained in his offender central file, then sending the request to the prison records office would have been sufficient. CP 28. But since McKee also requested documents outside of the central file, including any which may be maintained in his electronic file, McKee was required to submit his request directly to the Department's Public Disclosure Unit. WAC 137-08-090. *Parmelee*, 148 Wn. App. at 755-756. The prison records technician properly instructed McKee to comply with the WAC and submit his request to the Public Records Unit.

Despite McKee's contention, the records he requested were not identifiable records for the purposes of scheduling a central file review. As noted by the records technician's first response, she believed McKee was seeking a document which was not located in his central file. CP 38. McKee was then provided with information on how to obtain that record by submitting a public disclosure request with the Public Disclosure Unit. CP 28. McKee was also informed that if he was seeking more than this specific document, he could re-rite for a central file review. CP 38. McKee then submitted a duplicative request which again asked for more than just a central file review. CP 41. Again, because his request was reasonably interpreted to include records outside of his central file, the

records technician provided him with direction on filing a proper public disclosure request with the Department's Public Disclosure Unit. CP 40.

The records technician properly directed McKee to comply with WAC 137-08-090 and submit his request to the Department's Public Disclosure Unit when it appeared his request sought records outside of the central file. As such, McKee has failed to show a PRA violation, and the Court should affirm the dismissal of his claim.

2. McKee abandoned his request to the Public Records Unit when he failed to respond to the Department's letter seeking clarification

McKee subsequently submitted his request to the Department's Public Disclosure Unit. CP 110-111. The day after receipt of the request, Nagel sent a response letter indicating the request had been assigned tracking number PDU-32422 and asking McKee for clarification of what he meant by the phrase "pertinent official records." CP 114. McKee was informed that upon receipt of his clarification, Nagel would then proceed with his request. CP 114. However, Nagel received no response. CP 108.

McKee asserts there was no need for clarification because his request was clear. However, while it appeared McKee may have wanted a central file review, the additional language requesting "all pertinent records" from the "offender file" was unclear, which is why Nagel sought clarification. CP 108.

McKee now contends that at the time of the requests he was only seeking review, not copies, of any specific documents contained in the central file. McKee argues he could only establish what the “pertinent records” were after he reviewed the central file. However, even after his central file review, McKee failed to contact Nagel and clarify his request. Without a response to the request for clarification, the Department had no obligation to search for additional documents related to McKee’s request for a review of “‘pertinent records in the offender file’ pursuant to DOC form 05-066.” RCW 42.56.520. Accordingly, McKee fails to establish a PRA violation in regards to Nagel’s response to his December 28, 2014 request, and the Court should affirm the dismissal of his claim.

3. McKee fails to establish “silent withholding” of records responsive to his request for “pertinent records”

McKee next argues the Department withheld records responsive to his request because it did not provide him with the documents contained in his offender electronic file for review. The Washington Supreme Court has noted “silent withholding” occurs when an agency “retains a record or portion without providing the required link to a specific exemption, and without providing the required explanation of how the exemption applied to the specific record withheld.” *Progressive Animal Welfare Soc. v. University of Washington*, 125 Wn.2d 243, 270, 884 P.2d 592 (1994).

Thus, when an agency chooses to withhold a record from a requestor, the requestor must be given notice of the exemption under which the agency believes the records are exempt from production. In *Progressive*, the requestor sought a grant proposal. The *Progressive* court noted a clear withholding had occurred with a failure to identify the records in the exemption log as the agency only included 23 pages of the grant proposal when it was clear the record had included at least 55 pages. *Id.* at 269. A similar purposeful withholding was deemed to be “silent withholding” when an agency provided responsive records to a requestor and noted in its cover letter that it was refusing to provide hundreds of pages of records without identifying them in an exemption log. *Rental Housing Ass’n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 538, 199 P.3d 393 (2009), *reversed and remanded on other grounds*, 165 Wn.2d 525, 199 P.3d 393 (2009). “Silent withholding” can also occur when an agency redacts information and fails to provide a statutory basis for the redactions. *Gronquist v. Washington State Dept. of Licensing*, 175 Wn. App. 729, 736, 309 P.3d 538 (2013). In each of the cases where the Court found an agency to be silently withholding records, it was clear the agency deemed the records responsive to the requests and yet failed to provide the requestor with proper identification or any explanation for the withholding.

The facts here do not amount to “silent withholding” because the Department did not purposefully deny or refuse McKee from reviewing documents contained outside of his central file. McKee notes the Department’s definition of official offender files contains various sources of records including the central file and any electronic files. While the offender classification hearing notice permits an offender’s review of the records considered in his classification hearing, it requires that request be made to the Public Disclosure Unit, not the prison records office. CP 119.

McKee’s initial requests were sent to the facility records office and were ambiguous as to whether he was requesting a central file review or review of documents in other files. CP 37-41. His additional request to the Department’s Public Disclosure Unit was also unclear. CP 108. Therefore, Nagel sent McKee a request for clarification to see if he was seeking something other than an offender central file review. CP 114.

Rather than withholding documents without explanation in response to a clear request for records, the Department here sought to clarify just what documents were being requested. When McKee failed to explain what records he was requesting, the Department had no obligation to guess and provide records. RCW 42.56.520. Thus, McKee cannot now complain that he did not receive the records he requested, since his request was unclear and he refused to clarify it.

In addition, there were no additional records from his central file which were redacted or withheld and McKee made no mention that he was seeking additional records other than what was provided in the offender central file review. CP 30. As such, McKee fails to show the Department silently withheld responsive records to his request and the Court should affirm the dismissal of his claims.

4. Redactions of McKee's rape victims' information from McKee's Offender Central File review were appropriate under RCW 42.56.240

McKee asserts the redaction of his victims' identifying information was not appropriate because they related to his victims and the information was contained in records that could be public. While the PRA is a strongly worded mandate for broad disclosure of public records, agencies are not required to produce records that fall within certain specific exemptions. *O'Connor v. Dep't of Social and Health Services*, 143 Wn.2d 895, 905, 25 P.3d 426 (2001); *Prison Legal News, Inc. v. Dep't of Corrections*, 154 Wn.2d 628, 635, 115 P.3d 316 (2005); RCW 42.56.070(1). Exemptions are construed narrowly and the agency bears the burden of proving that a specific exemption applies. *Prison Legal News*, 154 Wn.2d at 636. Here, the Department properly exempted victim information pursuant to RCW 42.56.240(2).

RCW 42.56.240(2) exempts the identity of crime victims if such “disclosure would endanger any person’s life, physical safety, or property.” McKee argues that because many of these records are public and he already knows the identity of his victims, RCW 42.56.240(2) does not apply. However, this distinction is unsupported by the language in the exemption itself, is inconsistent with the principles of the PRA, and would create an untenable scheme for the Department that would require it to evaluate the subjective knowledge of a requester and would not address the security concerns faced by the Department.

The PRA strictly prohibits an agency from distinguishing among requestors. RCW 42.56.080. If the Court were to adopt McKee’s position, the Department would be left in an untenable position of determining the exemption applies to information only if the requester did not already know the information. This requires the Department to unreasonably speculate about the subjective knowledge of an individual requester.

This leads to the second issue with McKee’s argument, which runs afoul of the purpose of the victim protection exemption itself. Considering the perpetrator’s identity and then permitting access to these types of records because they would be the “perpetrator’s” own records would make the exemption void as victims would have no protection of their identity information. In fact, McKee’s interpretation would lead to the

perverse result of victim identities being disclosed to those from whom they would fear for their safety the most. As noted from the records in this matter, McKee's victims were threatened and raped at gunpoint. CP 76-77. Regardless of whether the information may have been included in a public document, the inherent violent nature of the crime supports the Department's redaction of the victims' information not only from McKee but from any other requestor seeking the information as such disclosure could endanger the victims' life or physical safety. As such, the Court should affirm the dismissal of his claim.

5. McKee abandoned any claim regarding the withholding of emails between the Department and the Attorney General's Office

During the show cause motion hearing, McKee's counsel failed to make any arguments regarding his claim of improper withholding of the attorney-client emails. Therefore, the trial court's final order did not reflect any ruling on the matter. CP 246-250. Despite having ample time to obtain a ruling after the oral argument, at no point did McKee seek to have the trial court address this claim. Instead, McKee filed this appeal.

McKee was required to address all claims he wanted to pursue against the Department in the show cause hearing. "Requiring a PRA claimant to address all PRA claims during show cause proceedings in order to avoid abandonment promotes the orderly administration of PRA

requests and is consistent with the purposes of the PRA. To hold otherwise would allow PRA claimants to assert their claims in a piecemeal fashion, which would delay the ultimate resolution of disputes involving PRA requests and result in judicial efficiency.” *West v. Gregoire*, 184 Wn. App 164, 172, 336 P.3d 110 (2014).

The attorney-client emails involve four pages of records reflecting discussions between Department staff and the Attorney General’s Office. CP 96-99. While McKee’s counsel provided short briefing on the claim, he failed to provide any oral argument on the issue which led to the trial court’s failure to rule on the matter. CP 246-250. The trial court would have been the proper forum to make a determination on the issue as it would have had the ability to conduct an in-camera review of the records and preserve the contents of those records for appeal. As noted in McKee’s own briefing, this Court does not have adequate information to make a determination on the merits of the withholding which is why he is seeking for the Court to remand this issue for a hearing in the trial court.

Although there was ample time to move the court to rule on the issue, McKee never made the request. Instead he filed this appeal. Because McKee failed to argue the issue and failed to motion the trial court enter an order addressing his claim on the withheld attorney-client emails, the Court should deem this issue abandoned.

V. CONCLUSION

For the reasons stated above, the Court should affirm the trial court's judgment dismissing McKee's claims.

RESPECTFULLY SUBMITTED this 22nd day of January, 2016.

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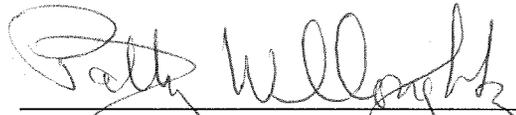
CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record, a true and correct copy of the Brief of Respondent by US Mail Postage Prepaid to the following addresses:

JEFFREY R. McKEE, DOC #882819
AIRWAY HEIGHTS CORRECTIONS CENTER
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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.

DATED this 22nd day of January, 2016, at Spokane, Washington.



PATTY WILLOUGHBY
Legal Assistant III