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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 34190 - 9

IN THE COURT OF APPEALS, DIVISION THREE

PALMER D. STRAND AND PATRICIA N. STRAND

APPELLANTS

V.

SPOKANE COUNTY AND SPOKANE COUNTY ASSESSOR

RESPONDENTS

REPLY BRIEF OF APPELLANT

Patricia Strand, Pro Se
pnstrand@hotmail.com
PO Box 312
Nine Mile Falls, WA 99026
(509) 467-0729
Appellant

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I. INTRODUCTION

Appellant Patricia Strand, referred to as “Pat” herein, files this reply to the *Brief of Respondents*, Spokane County and Spokane County Assessor, referred to herein as Assessor. Assessor is also used herein for Assessor’s officers and staff.

II. ASSESSOR ARGUMENTS AND REBUTTALS

The Assessor made no assignments of error (*Response* Pg. 1, ¶1). Assessor’s arguments and Pat’s rebuttals are presented herein after excerpted *Strand Appeal – Assignments of Error and Issues Pertaining to Assignments of Error – for context*.

A. Errors and Issues in the 6/18/15 Decision #1-4 (*Strand Appeal* Pgs. 1-3)

1. The Trial Court Erred in finding Pat’s request is for inspection reports for 38 parcels for the period of 2007 to 5/25/10 (CP 406, ¶3, #1).

The issues pertaining to the assignment of error:

- The aforementioned facts are present in Pat’s 6/10/10 request.
- Whether the Court can ignore the fact that Pat changed the parcel quantity and period in her subsequent requests over three years?

2. The Trial Court Erred in finding inspection reports were responded to on 6/25/10 with property record cards reflecting all information requested including “inspection reports” (CP 407 ¶6).

The issues pertaining to the assignment of error:

- Whether the assessor violated the PRA by not providing Pat with all responsive inspection records, failing to perform a search for these records and not disclosing such records existed until trial?

- Whether the assessor's claimed "inspection report" created the claimed exemption for all records the assessor created/used in inspections?
 - Whether the Court can ignore the fact that the 6/25/10 cards do not have the two specific bits of data, the "inspection report", on them?
 - Whether the assessor's claimed exemptions – "32 words/phrases" and/or "not understanding Pat's requests" – preclude PRA violations?
3. The Trial Court Erred in denying the 2/17/15 motion to reopen the record for photos with overlaid dates finding Pat's use of the assessor's website meant the photos were accessible and not hidden (CP 408 ¶2-4).
The issues pertaining to the assignment of error:
- Whether the County violated the PRA by not notifying Pat these photos were on their website and at a specific portal?
 - Whether using a website obviates RCW 42.56.520(2)
4. The Trial Court Erred in finding Pat's request is for appraisals for assessment years 08-12 dated 3/19/12 (CP 406 ¶3, #2 and CP 408 ¶8).
The issues pertaining to the assignment of error:
- The aforementioned facts are present in Pat's 3/19/12 third request.
 - Whether the Court can ignore the fact that Pat made a fourth request for appraisals with a different period that was not responded to?

a. ASSESSOR'S ARGUMENT #1

The issues involved in Strand's assignments of error numbers 1, 2, 3, and 4 arise due to an expectation that the Public Records Act ("PRA") imposes on a county assessor the requirement to create, maintain and provide property information in a format that satisfies a requestor's expectations. (*Response* Pg. 1, ¶2)

REBUTTAL

Pat cannot dictate the format and/or form of Assessor inspection records. Their format/form and existence are evidenced. That they are being silently edited and/or withheld in violation of the Public Records Act (“PRA”) is also evidenced, *Progressive Animal Welfare Society v. Univ. WA.* (“*PAWS II*”), 125 Wn.2d 243, 251, 884 P.2d 592 (1994).

The Public Records Act clearly and emphatically prohibits silent withholding by agencies of records relevant to a public records request.... Silent withholding would allow an agency to retain a record or portion without providing the required link to a specific exemption, and without providing the required explanation of how the exemption applies to the specific record withheld. The Public Records Act does not allow silent withholding of entire documents or records, any more than it allows silent editing of documents or records. Failure to reveal that some records have been withheld in their entirety gives requesters the misleading impression that all documents relevant to the request have been disclosed. ... Moreover, without a specific identification of each individual record withheld in its entirety, the reviewing court's ability to conduct the statutorily required de novo review is vitiated.

The evidence that inspection records that are not the property record cards exist includes but is not limited to:

- Department of Revenue’s directions on minimum inspection records (EXH.# P34-#646). Assessor reveals were approved so this performance standard was met.

(RP 10line 13)

VICKI HORTON/Direct

Q. And is the Department of Revenue, are they the regulatory body over the assessors?

A. Yes, they are.

Q. Do they audit the county assessors?

A. Yes, they do.

Q. Have you been audited since you have been elected?

A. Yes, we have.

- The list of inspection dates silently edited (*PAWS II*) from records never produced or disclosed as exempt (EXH.# P8-#101).
- Assessor Horton's testimony of the inspection records they create, use and silently edit onto the property record card (*Strand Appeal* Pg. 15 last ¶).
- The property record cards¹ held forth by the Assessor as their response to Pat's request for inspection records (*Strand Appeal* Pg. 17 ¶2). These cards contradict statements that the cards are the only record of inspections; they have **nothing on them about inspections** (emphasis added). So the inspection records must be of another format/form.

¹ EXH.# D405 Pgs.: KB 3462 - 3535 or BH 2065 - 2138 (1st of 5 emails);
Id.: KB 3387 - 3461 or BH 1606 - 1679 (2nd of 5 emails);
Id.: KB 3309 - 3382 or BH 1681 - 1754 (3rd of 5 emails);
Id.: KB 3232 - 3307 or BH 1762 - 1835 (4th of 5 emails)

b. ASSESSOR'S ARGUMENT #2

Horton testified she was familiar with the property record cards provided Strand and that the cards would contain all the appraisal and inspection information maintained on a parcel by the office. (RP 103 :24 - 104:17). (Response Pg. 3 ¶2)

REBUTTAL

The property record cards¹ the Assessor produced for the first time at trial as their response to Pat's 6/10/10 request for inspection reports have **nothing on them about inspections.**

This is a false statement in **Bad Faith** (emphasis added).

c. ASSESSOR'S ARGUMENT #3

After a rather lengthy examination on the inspection/appraisal process and content of property record cards, Horton confirmed for Judge Clarke the information on the property record cards is accessible through the Assessor's website and the appraisal process. (RP 138: 15 – 141:9) (Response Pg. 8 last ¶)

REBUTTAL

RCW 42.56.520(2) providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer;

Pat was never directed to the Assessor's website (RP 501 line 13 – 502 line 7) to find "information on the property record cards" or anything else. The Assessor produced no evidence

directing Pat to the website. Pat insured all communications with the Assessor were written. The PRA is about evidence the record not the unsubstantiated testimony of the Assessor!

The only inspection information or record on the website are inspection photos silently withheld by the Assessor. Judge Price abused his discretion in not ordering all photos be produced when Pat requested to reopen the record (CP 55-72) for the photos. Inspection photos rebut claims that the property record cards are the only inspection record the Assessor has.

NOTE: EXH.# P3 shows Parcel Summary printouts of records Pat regularly accessed and used to compile “cheat sheets” – EXH.# P44 – a summary of assessed values over the years. Pat testified and submitted the “cheat sheets” into evidence – RP 345 line 12.

(RP 139 line 14)

VICKI HORTON/Redirect

BY THE COURT:

- Q. You mentioned the website. Are the property record cards accessible on the website?
- A. They are if you go into the downloads.
- Q. What are the downloads?
- A. When you go into our website, you put in the address of the parcel number of what you are looking for, or you go into downloads. You go to downloads, and in there are all of our parcel record cards. So they can go in and pick and choose which ones they want.
- Q. Is that accessible by parcel number; is that how you enter the search?
- A. It is a spreadsheet that comes out that -- you ask for downloads, and they have got four, I believe,

designated into residential, commercial, and it prints out everything.

Q. And how long has that existed, that particular system; has it been since you were the assessor?

A. It has been since I was the assessor; probably late 2011.

Pat never saw property record cards or spreadsheets on the website parcel summary pages she used. And, Ms. Horton's testimony about the website is contradicted by Mr. Hodgson.

(RP 233 line 18)

BYRON HODGSON/Cross

Q. You indicated in your testimony yesterday that -- if I remember correctly, and you can correct me if I'm wrong -- you indicated that there is -- a citizen could have access to the records relating to parcels of property through the assessor's website. Is that right?

A. I didn't testify to the assessor's website.

Q. I thought I heard you say it was on the website; information regarding the parcels of property are on the assessor's website. Is that correct?

A. Yes. There is information on property on the website.

Q. Are the property record cards available on the website?

A. They are not available on the website in the sense that they are in the form that -- that the information is printed out. But, much of the material is on the website.

For example, the sketch is on the website, some of the property characteristics is on the assessor's website, the assessment history is on the assessor's website. The ownership. Let's see. . .

The size of the parcel. If there is any segregations that occurred on the parcel. There is also sales information on the parcel. Excise affidavits are on the parcel. The appraiser information is on the parcel -- on the website.

- Q. Did you tell Mrs. Strand at any time that this information was on the website?
- A. Yes.
- Q. When?
- A. Multiple times.
- Q. That tells me numbers, it doesn't tell me when.
- A. Well, early on.
- Q. When is important?
- A. When might be important, but six years ago I can't remember.
- Q. You can't tell us today at the point in time that you told her the information was on the website?
- A. Mrs. Strand --
- Q. My question is simply, can you tell us, sir, the point in time you advised Ms. Strand that information about parcels of property was on the website?
- A. I can't tell you when I advised her.

d. ASSESSOR'S ARGUMENT #4

Here there is no question that Strand had access to the Assessor's property information she was requesting from the website. It is also undisputed the "property record cards" contain all the property parcel information relating to inspections and appraisals maintained by the Assessor. It is undisputed Strand has been provided property record cards in response to her requests as well as accessed the property record cards on the website. Here the issue is not whether she was provided access to the inspection and appraisal information requested. The issue was whether the Assessor was required under the PRA to create records that did not exist. The PRA contains no such requirement and the trial court's findings should be upheld. *(Response Pg. 8 last ¶)*

REBUTTAL

These arguments were rebutted in Assessor Argument #1-
#3. "Strand has been provided property records cards in
response to her requests" is irrelevant as a PRA defense if

Strand did not request the property record cards provided or did not get the specific property record cards she requested.

CONCLUSION: Errors and Issues in the 6/18/15 Decision #1-4

The *Strand Appeal* arguments and evidence are not refuted by Assessor arguments. The law, facts and evidence show the Assessor's **Bad Faith** and the abuse of discretion by the Court.

Pat requests remand for: (1) discovery of the inspection records including all inspection photos (CP 9, Table 1) and (2) then the proper determination of statutory penalties.

B. Errors and Issues in the 6/18/15 Decision #5 (*Strand Appeal* Pg. 3)

5: The Trial Court Erred in finding all appraisals requested were produced but not why or how (CP 409 ¶3-5).

The issues pertaining to the assignment of error:

- Whether the assessor's testimony of producing all appraisals precludes PRA violations for not actually producing the appraisals at trial?
- Whether the assessor's claim of an exemption, "Historic Property Record Cards", to the 3/19/12 appraisal request precludes PRA violations for 75 denied historic appraisals?
- Whether the assessor's claimed exemptions – "32 words/phrases" and/or "not understanding Pat's requests" – preclude PRA violations?

The Assessor presented no opposition on assignment of error

#5. The evidence is that 303 appraisals (75+228) were denied and

each page of the appraisal is a record – **Wade's Eastside Gun Shop**

v. Dept of Labor and Industries, 185 Wn.2d 270; 372 P.3d 97

(2016).

- 75 (38+36+1) appraisals were denied from 7/6/12 (EXH.# P15-#132 No. 4); the last installment date (EXH.# P21). 38 appraisals were denied for assessment year 2008 consisting of 80 pages; 36 appraisals were denied for assessment year 2009 consisting of 77 pages; one appraisal was denied for assessment year 2010 consisting of 4 pages ($80+77+4=161$). This is a total of 161 pages in the 75 denied appraisal records.
- 228 appraisals ($38^{\text{Appraisals}} \times 6^{\text{Years}}$) were denied from 4/10/13 (EXH.# P27-#524 No. 3) because the request was ignored. This is 81 pages per year for 2008-2013 ($81 \times 6^{\text{Years}} = 486$). This is a total of 486 pages in the 228 denied appraisal records.

NOTE: Record count is based on 2012 appraisal page count (EXH.# P21). Parcels 17352.9007, 17354.0104, 17354.0105 are 4-page appraisals. Parcel 27323.0108 is 1-page appraisal (38 total appraisals; $34 \times 2 = 68$; $3 \times 4 = 12$; $1 \times 1 = 1$) ($68+12+1=81$).

CONCLUSION: Errors and Issues in the 6/18/15 Decision #5

Pat requests remand for the proper determination of statutory penalties for: (1) 161 appraisal records denied from 7/6/12 and (2) 486 appraisals records denied from 4/10/13.

C. Errors and Issues in the 6/18/15 Decision #6 and

6: The Trial Court Erred in finding “a” violation of the PRA based on rosters held by the Board of Equalization (BOE) (CP 409 ¶7).

The issues pertaining to the assignment of error:

- Whether the Court can ignore Pat’s request is for **assessor’s rosters** (emphasis added)?
- Whether the Court can ignore the assessor’s trial testimony that individual assessor’s office appraisers (18 currently) keep rosters?
- Whether the assessor violated the PRA by not providing Pat with all rosters responsive to her request, failing to perform a search for these rosters and not disclosing such rosters existed until trial?
- Whether the assessor’s claimed exemptions – “32 words/phrases” and/or “not understanding Pat’s requests” – preclude PRA violations?

Errors and Issues in the 10/1/15 Order #8 (*Strand Appeal* Pgs. 3-5)

8: The Trial Court Erred in finding violations for statistics not rosters based on 9/12-9/19/14 reports production (CP 413 ¶1 – CP 414).

The issues pertaining to the assignment of error:

- Whether the Court can ignore the 2010-2012 County Statistics for Comparison Report but recognize the 9/12-9/19/14 reports?
- Whether the Court can erase the rosters PRA violation without cause?
- Whether the 9/12-9/19/14 reports are public records under the PRA or evidence of criminal acts?
- Whether the assessor’s claimed exemptions – “32 words/phrases” and/or “not understanding Pat’s requests” – preclude PRA violations for rosters and statistics?

a. ASSESSOR’S ARGUMENT #5

The issues involved in Strand's assignment of error numbers 6 and 8 relate to a court's discretion when reviewing a matter under chapter 42.56 RCW to group records and weigh evidence.

(*Response* Pg. 1 ¶3)

REBUTTAL

Judicial discretion is giving proper consideration to the law, the facts and the evidence in a case.

The LAW – PRA (*PAWS II*),

The plain terms of the Public Records Act, as well as proper review and enforcement of the statute, make it imperative that all relevant records or portions be identified with particularity. Therefore, in order to ensure compliance with the statute and to create an adequate record for a reviewing court, an agency's response to a requester must include specific means of identifying any individual records which are being withheld in their entirety. Not only does this requirement ensure compliance with the statute and provide an adequate record on review, it also dovetails with the recently enacted ethics act.

The LAW, FACTS and EVIDENCE show judicial abuse of discretion (*Strand Appeal* Pgs. 27-34; C. Facts Regarding . . .). The 9/13/12 requests were ignored. They did not exist for the Assessor (RP 246 line 1 – 247 line 6).

At trial Jan/2015 the Assessor explained their “32 Words and Phrases” defense (*Strand Appeal* Pgs. 13-14) that was in place from 4/30/12-Jan/2015. This explains why the 9/13/12 requests were ignored. The assessor’s stated priority was to produce records containing “32 Words and Phrases”. Judge Clarke ignored the fact that this defense subverts the PRA and is **Bad Faith.**

At trial Assessor Horton disclosed for the first time that her individual appraisers access BEATS to create and maintain rosters annually to process their appeals. **The BEATS system contains the Assessor's data** (emphasis added) and the Assessor inputs data, accesses data and manipulates data on BEATS constantly. All appeal rosters whether prepared by the Assessor's appraisers or BOE staff are of the same data (CP 139 – 141 line 14 and CP 306 number 7). After Ms. Horton disclosed appraisers' rosters existed Ms. Horton and Mr. Hodgson testified the Assessor does not create or maintain rosters or statistics because they have no control over the BEATS (CP 327 #20-22) – false statements – **Bad Faith**.

At trial the Assessor put into evidence two emails dated 9/12-9/19/14 and nine attached rosters including statistics on them – rosters apparently created between 2010-2012 (RP 478 line 16 – 480). Mr. Hodgson stated the rosters were created by the BOE but in their possession; he did not say these rosters had anything to do with Pat's request for rosters and statistics.

On 6/18/15 Judge Clarke ruled for one PRA violation due to rosters – despite the testimony of lots of rosters existing, despite the silent withholding (*PAWS II*) of these lots of rosters, despite

defense witness testimony that the Assessor did not create or maintain rosters and despite no rosters being in evidence.

On 6/29/15 (CP 127 line 15 – 135)– post-trial – the 9/12-9/19/14 rosters became the Assessor’s response to Pat’s request for rosters and statistics. And Judge Clarke’s 6/18/15 decision had its clock stopped on the running penalty from 9/13/12 to 9/12-9/19/14.

On 7/24/15 Pat presented evidence that the Assessor made false statements at trial about the 9/12-9/19/14 rosters because they were created on 9/12-9/19/14 and they were not created by the BOE. These rosters cannot satisfy Pat’s request because they did not exist when the request was made. Pat asserted **criminal charges** against the Assessor (CP 243-249) and **Bad Faith** to Judge Clarke.

On 8/24/15 Pat submitted into evidence the 2010-2012 County Statistics for Comparison Reports prepared by Mr. Hodgson from BEATS. These reports are 100% responsive to Pat’s request for Assessor statistics for performance before the Boards of Equalization and WA. Tax Appeals. These reports prove more false statements by Ms. Horton and Mr. Hodgson

because of their denials of creating and maintaining such reports and having no control over BEATS – **Bad Faith**.

On 10/23/15 Mr. Hodgson submitted evidence that he created the 9/12-9/19/14 rosters; he did it using the Assessor's control over BEATS; he did it as a courtesy to Pat who was suing the Assessor and; he did not disclose this courtesy until confronted with Pat's evidence of false statements and false reports – **Bad Faith**.

Records created by the Assessor as a **courtesy** (emphasis added) for a person suing the Assessor cannot be public records – RCW 42.56.010(2).

On 10/1/15 Judge Clarke's order found one PRA violation for statistics based on the 9/12-9/19/14 rosters because he disallowed as evidence the 2010-2012 County Statistics for Comparison Reports. He just flipped the one roster violation to one statistics violation. His decision and order ignored the law, the facts, the evidence and are abuse of judicial discretion.

b. ASSESSOR'S ARGUMENT #6

Horton also explained the office does not have rosters on appeals as rooster information is compiled by the Board of Equalization ("BOE") and accessible through the BOE BEATS computer system. (RP 104: 18 - 105: 17). Nor does the office have statistical data on appeals, as such data is also compiled by

the BOE and maintained and accessible through the BEATS system. (RP 105:18 - 105:24). (Response Pg. 3 ¶2)

REBUTTAL

Assessor Horton's testimony of individual appraisers creating, maintaining and keeping rosters of their appeal caseloads and the annual County Statistics for Comparison Reports under Mr. Hodgson's name refutes the above argument.

CONCLUSION: Errors and Issues in the 6/18/15 and 10/1/15 Decision and Order #6 and #8

In a PRA case, the appellate court, like the trial court, reviews the agency's actions de novo – RCW 42.56.550(3). As regards Ms. Horton's and Mr. Hodgson's false statements of no rosters and statistics the evidence and their own testimony prove the false statements. The 9/12-9/19/14 reports existence prove false reporting. Pat is using these facts to evidence the Assessor's **Bad Faith** in the determination of statutory penalties.

Pat requests remand for: (1) discovery for the 2010-2012 individual appraisers' rosters, (2) the trial court has the 2010-2012 County Statistics for Comparison Reports proving PRA violations for statistics. These reports have never been produced by the Assessor. (3) The proper determination of statutory penalties.

D. Errors and Issues in the 10/1/15 Order #7 (*Strand Appeal* Pgs. 4-5)

7: The Trial Court Erred in denying post-trial discovery (CP 433).

The issues pertaining to the assignment of error:

- Whether post-trial discovery is appropriate after Pat proved post-trial the assessor created three reports from 9/12-9/19/14 that they presented to the Court as: (1) in the assessor's possession but created by the BOE in their normal course of business from 2010-2012 and (2) satisfying Pat's 9/13/12 requests for rosters and statistics?
- Whether post-trial discovery is appropriate after Pat found the assessor's 2010-2012 County Statistics for Comparison Report² post-trial; reports the assessor denied existed at trial?
- Whether post-trial discovery is appropriate after Pat found inspection photos that satisfied her 6/10/10 request on the assessor's website in Oct/2015 that were not on the website in Feb/2015?
- Whether the PRA was violated in denying the County Statistics for Comparison Report existed, failing to disclose and produce it?
- Whether post-trial discovery was appropriate because of so many proven acts of **Bad Faith** by the assessor before and after the trial?

ASSESSOR'S ARGUMENT #7

The issues involved in Strand's assignment of error number 7 involves a trial courts discretion to limit discovery.

(*Response* Pg. 1, ¶4)

REBUTTAL

The Assessor's silent withholding of records (*PAWS II*) is the practice that overcomes limiting discovery. The Assessor's subverting the PRA with the "32 words/phrases production of stuff" from 4/30/12-Jan/2015 is the practice and production that

overcomes limiting discovery. The Assessor's false statements and false reporting are the criminal acts that overcomes limiting discovery. The Assessor's pernicious **Bad Faith** is the practice that overcomes limiting discovery.

CONCLUSION: Errors and Issues in the 10/1/15 Order #7

In a PRA case, the appellate court reviews the agency's actions de novo – RCW 42.56.550(3).

E. Errors and Issues in the 1/26/16 Decision #9 (*Strand Appeal* Pgs. 5-6)

9: The Trial Court Erred in denying reconsideration finding the evidence immaterial and discoverable before trial (CP 417 ¶1-5).

The issue pertaining to the assignment of error:

- Whether the Court can ignore the burden in PRA cases is on the assessor – not Pat – to disclose, search and prove compliance?

ASSESSOR'S ARGUMENT #8

Strand's assigned error number 9 relates to the court's denial of her Motion for Reconsideration. The County filed a Response in opposition. (CP 350-362). The trial court considered the dictates of CR59 in its decision to deny Strand's Motion for Reconsideration and committed no error. (*Response* Pg. 10 ¶2)

REBUTTAL

Pat's reconsideration (CP 251-253) cited CR 59(a)(4) and (7)

- (4) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

CR 59(a)(4) is about post-trial discovery of: (1) the false reporting and false statements by Ms. Horton and Mr. Hodgson about the 9/12-9/19/14 rosters inserted into evidence as without purpose but then presented as material evidence post-trial to change a decision. These acts discredited all defense testimony about the existence of Assessor records, (2) 2010-2012 County Statistics for Comparison Reports and (3) new inspection photos on the website.

CR 59(a)(7) is as stated in each and every Rebuttals and the Conclusion in *Strand Appeal* and *Strand Reply*. The law, the facts and the evidence support Judge Clarke's decisions and orders abused his discretion.

CONCLUSION: Errors and Issues in the 1/26/16 Decision #9

Pat requests de novo review of the Assessor's actions – RCW 42.56.550(3).

F. **The Trial Court Erred** in denying attorney fees and costs for failure to submit any documentation (CP 417 ¶6 - CP 418 ¶1) **#10** (*Strand Appeal* Pg. 6)

The issue pertaining to the assignment of error:

- Whether the Court in requesting proposals for fees and costs twice and receiving Pat's proposals twice

while Pat and the Defense were continuing legal arguments and filings acted improperly in denying Pat's fees and costs when she prevailed in this case when bills were ultimately submitted to the Court?

ASSESSOR'S ARGUMENT #9

The issues in assignment of error number 10 involve a court's discretion under the PRA to not accept a plaintiff's requested amount for attorney fees and costs without documentation after the requestor refused to file documentation as directed by the court? *(Response Pg. 1 ¶5)*

REBUTTAL

RCW 42.56.550(4) of the PRA provides:

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

Pat was late in submitting her bills for attorney fees and costs. But they were submitted to the Court. The Court could have amended judgment when the bills were submitted (CP 383-390) in the amount \$44,473.86. The Court did not do this!

CONCLUSION: The Trial Court Erred in denying attorney fees and costs for failure to submit any documentation (CP 417 ¶6 - CP 418 ¶1) #10

Pat requests award of fees and costs for prevailing in case 14-2-01079-1 in the amount of \$44,473.86.

G. **The Trial Court Erred** in finding one violation of the Public Records Act (PRA) – statistics, 738 days, \$10/day (CP 418 ¶2-7) **#11** (*Strand Appeal* Pg. 6)

The issues pertaining to the assignment of error:

- Whether the Court can ignore the proven PRA violations for multiple – inspection records, appraisals, rosters and statistics?
- Whether the Court can ignore Pat’s arguments for aggravating factors in the first of the two requested penalty filings in setting a \$10 penalty and finding no **Bad Faith**?

ASSESSOR’S ARGUMENT #10

The issues in assignment of error number 11 relate to the level of deference a court must give a plaintiff’s proposed grouping of penalties and arguments on aggravating circumstances in a PRA case? (*Response* Pg. 1 ¶6)

REBUTTAL

Pat made **14** requests. RCW 42.56.550(4) infers judicial discretion to the **record(s)** (emphasis added) not the request(s).

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the **right to receive a response to a public record request** within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. **In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.** (emphasis added)

Judge Clarke ignored Pat’s **14 requests** (9+2+1+1) abusing his discretion. The requests:

- **Nine** inspection requests (CP 9) 6/10/10, 6/13/10, 4/24/11, 4/26/11, 5/14/11, 3/19/12, 4/20/12, 9/13/12, 4/10/13;
- **Two** appraisal requests (CP 18) 3/19/12 and 4/10/13;
- **One** roster request (CP 21 Table 6) 9/13/12;
- **One** statistics request (emphasis added).

Pat's requests contain request for multiple years of records.

Judge Clarke ignored the multiple years of records requested abusing his discretion. The years:

- Inspection record years (CP 10 Table 2) from 6/10/10-7/12/10 - 3 years, 7/13/10-4/9/13 - 4 years, 4/10/13-present – 5 years.
- Appraisal record years (CP 18 Table 3) 3/19/12-4/9/13 – 5 years, 4/10/13-present – 6 years.
- Rosters and statistics 3 years each from 9/13/12-present.

Prevailing law, WAC 44-14-08004(7), on the penalty award is *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 436, 98

P.3d 463 (2004) that states a penalty indexed by documents,

Amren , 131 Wn.2d at 37 . Thus, even if an agency acts in total good faith but is still noncompliant, **a penalty of at least \$5 per day, per document is required.** RCW 42.17.340 (4). If we accept the conclusion that a diligent agency that barely violates the PDA with minimal consequences is still subject to a fine of at least \$5, one cannot justifiably impose the same minimal penalty against a negligent agency, much less an agency that is

grossly negligent, or worse yet, intentionally violative of the PDA's requirements to substantial harm. (emphasis added)

Judge Clarke abused his discretion by ignoring the

Assessor's intentional violations of the PRA and **Bad Faith**:

- the "32 words/phrases" practice to avoid producing records Pat requested and subverting the PRA,
- the silent withholding of inspection records and silent editing (EXH.# P8-#101 and property record cards),
- the ignoring of the second appraisal request,
- the ignoring of the rosters and statistics requests and
- making false reports (9/12-9/19/14 rosters) and false statements throughout the trial.

Wade's Eastside Gun Shop v. Dept of Labor and Industries,

185 Wn.2d 270; 372 P.3d 97 (2016).

Supreme Court: Holding that the trial court did not erroneously calculate the penalty for the improper withholding of records on a per page basis, that the department could not rely on a categorical exemption for investigative records to deny production of the requested records, that the department did not demonstrate that any of the records at issue were exempt from production, and that the trial court did not err in making its penalty calculations, the court affirms the order to produce and the judgment for attorney fees, costs, and penalties.

CONCLUSION: The Trial Court Erred in finding one violation of the Public Records Act (PRA) – statistics, 738 days, \$10/day (CP 418 ¶2-7) #11

Pat requests a penalty award of \$50/day (CP 266 - 275 line18) for each record denied since 10/16/15. Pat first requested a \$20/day penalty on 8/24/15 (CP 176 line 21 – 190 line 16). The evidence of the Assessor's acts of **Bad Faith** were only thoroughly evidenced after the \$20/day request!

H. The Assessor asserts Pat's appeal pursuant to RAP 5.2 is untimely and should be dismissed.

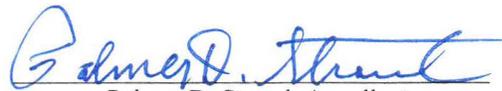
ASSESSOR'S ARGUMENT #11

Pursuant to RAP 5.2, Strand's appeal of the trial court's June 18, 2015 Memorandum Decision is untimely and dismissal of assigned errors is appropriate. (*Response* Pg. 7 last sentence)

REBUTTAL

The Assessor presents no evidence that Pat's appeal violates RAP 5.2.

RESPECTFULLY SUBMITTED this 3rd of October, 2016.


Palmer D. Strand, Appellant


Patricia N. Strand, Appellant

CERTIFICATE OF SERVICE

I certify that on October 3, 2016 I served a true correct copy of this

Reply Brief of Appellant to:

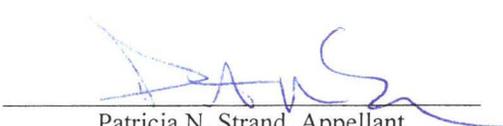
FOR: Spokane County Assessor
and Spokane County
Civil Division of the Prosecutor's Office
Prosecutor Catt
1115 W. Broadway Avenue
Spokane, WA 99260-0010

BY: Hand Delivery

FOR: Division III Court of Appeals
500 N Cedar St
Spokane, WA 99201

BY: Hand Delivery

DATED this 3rd of October 2016


Patricia N. Strand, Appellant