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Court of Appeals
Division III
State of Washington

No. 34519-0-III

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

DONNA ZINK, et ux

v.

BENTON COUNTY, et al

OPENING BRIEF OF APPELLANT DONNA ZINK

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I. INTRODUCTION

The Public Records Act (PRA) is a strict mandate of the people that all public records must be open and accessible to the public absent an explicit exemption. This case is about whether an agency can deny release of public records in order to notify third parties to seek to prevent release without an identified exemption and escape the strict mandates of the PRA.

Here, Benton County (BC) denied disclosure and production of sex offender records in response to Zink's request using third party notification without an applicable exemption or legal need. BC claims that Zink has no claim even under RCW 42.56.550 because notification under RCW 42.56.540 is optional. Allowing agencies to withhold public records using third party notification flies in the face of the strict principles of the PRA and must not be allowed or supported by our judicial system. Although BC has the option to notify under RCW 42.56.540, Zink has the option under RCW 42.56.550 to seek judicial review of their actions.

II. ASSIGNMENTS OF ERROR

A. Conclusions (COL)

3. The penalty and attorney's fee provision of the PRA, RCW 42.56.550(4), is "inapplicable to cases in which an individual rather than the agency opposes disclosure of records, and where the action was brought to prevent, rather than compel, disclosure. *Confederated Tribes of Chehalis Reservation v.*

Johnson, 135 Wn.2d 734, 757 (1998) (internal citation omitted); see also *Belo Mgmt, Servs, Inc. v. Click A Network*, 184 Wn. App 649; *Robbins, Geller, Rudman & Dowd, LLP v. State*, 179 Wn. App. 711 (2014). Because Benton County is not opposing disclosure of the records at issue, and the instant action was brought to prevent, rather than compel disclosure, Defendant Zink's cross claim against Benton County fails as a matter of law (CP 131: COL 3).

B. Order

The trial court erred in dismissing Zink's claims against BC with prejudice for failure to state a claim upon which relief could be granted (CP 131: Order).

III. ISSUES RELATED TO THE ASSIGNMENTS OF ERROR

- Does a requester have the right to request judicial review of the reasonableness of denying access to public records to notify third parties, without an identified exemption or other legal reason to do so under RCW 42.56.550?
- Does notifying third parties to prevent release of public records invalidate all other mandatory provisions of the PRA requiring identification of an exemption or other legal need for the notification?

IV. STATEMENT OF THE FACTS

C. History of Request Submitted to Benton County July 2013

On July 15, 2013, Zink made a request to Benton County (BC) "requesting "all level one sex offender registration forms and information

filed/maintained in Benton County.”” (CP 2:11-14; 16:14). On July 27, 2013, Zink clarified her request (CP 2:14-18; 16:15; 21:18).

On July 31, 2013, BC responded, providing notice that they were denying release of the requested records in order to provide notice to third parties to seek injunction (CP 2:19-26; 16:16).

On September 18, 2013, Zink made a second public record request to BC for all denial letters sent to other individuals and agencies (CP 3:1-4; 16:17; 22:11). BC claims the search produced 80,000 e-mails responsive to this request (CP 3:5-10; 16:18-19; 22:15-17).

On April 17, 2014, Zink made a third request for all e-mail associated with her request for sex offender records from July 15, 2013, through and including, April 17, 2014 (CP 3:11-15; 16:20; 22:16-17).

In response to BC’s notification letters, four John Doe cases were filed against Zink to prevent release of all Level I sex offender information (CP 3:16-18; 16:21; 22:17-1; RP (August 14, 2015) 5:22-25; 6:3-8; 11:1-7; (August 28, 2015) 28:20-25; 29:1-10). On June 27, 2017, all four causes of action resulted in permanent injunction of the requested sex offender records outlined above (CP 3:19-26; 16:22; 22:20-25). The trial court ordered an in-camera review of the 80,000 e-mails (CP 4:1-4; 16:24; 23:1-2). Zink appealed those decisions to the Court of Appeals Division III Cause #325920 and #323048 consolidated with #323020 and 323021).

Over a year after Zink’s request of April 17, 2014, and two years since her original request in July 2013, BC contacted Zink concerning her

requests (RP (July 31, 2015) 7:13-21). At that time, Zink explained to BC that she would not be available for a hearing to enjoin more records in BC until after mid-September due to other cases filed against her across the State of Washington which included briefing to the Court of Appeals (*Id.* 7:22-8:3).

Despite Zink's request to postpone any further injunctions in BC to after mid-September, on July 1, 2015 (CP 4:5-7; 16:25; 23:3-8), over a year after Zink's request of April 17, 2014, and two years since her original request in July 2013, BC notified third parties (RP (July 31, 2015) 8:3-5), without identifying specific record(s) at issue (RP (August 14, 2015) 11:20-15:10), an arguable exemption (CP 35:13-15; RP (July 31, 2015) 12:7-15) or claiming the exemption provided to them by the Benton County Superior Court on June 27, 2014 (CP 3:19-22; RP (July 31, 2015) 8:11-19; (August 14, 2015) 6:1-8). BC instructed them to seek injunction by July 17, 2015, or the records would be released (CP 35:10-12; RP (July 31, 2015) 4:17-22).

D. Judicial History

On July 16, 2015, John Doe (Doe) filed for Declaratory and Injunctive Relief against release of the records (CP 1-5) and summons (CP 6-7). A Temporary Restraining Order (TRO) was issued the next day by the Benton County Superior Court preventing the release of the requested records (CP 11-12). Zink was served notice on July 20, 2015 (RP (July 31,

2015) 5:1-3). BC did not specify what records had been identified as being responsive to Zink's requests of 2013 and 2014 (RP (July 31, 2015) 6:2-15) and did not tell Zink of the additional notification of sex offenders until one day prior to the TRO hearing (RP (July 31, 2015) 12:3-6).

On July 17, 2015, BC filed notice of appearance (CP 8-10) followed by an answer on July 30, 2015 (CP 15-19). Zink filed pro notice of appearance on July 29, 2015. On July 31, 2015, a hearing for temporary injunction was held before the Honorable Alexander C. Ekstrom (RP (July 31, 2015) 1-31). At that point in time, Zink had filed briefing (RP (July 31, 2015) 10:6-9; 11:9-17) and a notice of unavailability through September 21, 2015 (RP (July 31, 2015) 6:15-18).

At the hearing, the trial court stated that since a different judge was unable to hear the case and he had just been assigned that afternoon, he was not comfortable making a decision on that day (RP (July 31, 2015) 4:1-12; 14:24-16-5; 17:7-10). Zink requested the hearing for temporary injunction be continued to after September 21, 2015, or rescheduled to the following Monday morning (*Id.* 14:22-16:5; 19:7-22; 21:3-10; 27:18-28:6; 29:13-17). Despite the fact that Zink agreed to postpone until after September 21, 2015, both BC (*Id.* 22:13-24:16) and Doe objected to postponing the preliminary injunction hearing (*Id.* 21:11-22:11). BC argued that the hearing had to be held within two weeks so they could

have resolution.¹ The court set the preliminary hearing for August 14, 2015 (*Id.* 28:18-29:17).

On August 6, 2015, Zink filed an answer and cross claim against BC under RCW 42.56.550(1)(2)(4) for unreasonable delay and denial in production of public records (CP 20-33). Zink's cross claims against BC alleged violations of the PRA and requested judicial review of reasonableness of BC's delay and denials in responding to requests for public records under RCW 42.56.550 (CP 26:24-25). Zink alleged, among other things, that BC violated the Public Records Act (PRA) when they denied release of the requested records in order to notify third parties without an identified exemption or other **legal need** to notify (RCW 42.56.520)(CP 28:18-25) and failed to provide exemption logs or identify the records being withheld; silently withholding records (CP 29:3-30:22; RP (July 31, 2015) 9:12-17; 10:19-11:2). Zink claimed that BC's actions amounted to harassment (CP 30:19-22; RP (July 31, 2015) 9:2-12; 10:1-6).

On August 12, 2015, BC filed an answer to Does motion for preliminary injunction (CP 34-45). In their response, BC stated the County

¹ The original request was made in July 2013, two years prior to this action being filed. The April 17, 2014, request was made over a year prior to BC notifying 70 additional sex offenders of Zink's request (RP (July 31, 2015) 12:16-24).

did not believe the requested e-mail was exempt (CP 35:13-14) and argued the requested e-mail was not exempt (CP 36:12; 37:5-42:17).

On August 26, 2015, BC motioned the court to dismiss Zink's cross claim under Civil Rule (CR 12(b)(6)) (CP 46-59). BC argued that Zink failed to state a claim upon which relief can be granted based on the fact that Zink's claims were legally insufficient (CP 50:8-15). BC argued that because Zink's claims included requests made on multiple occasions, CR 13(g) prohibits a crossclaim on anything other than the subject matter of the original action and therefore only the April 17, 2014, request for e-mail was at issue (CP 50:16-25 RP (September 25, 2015) 3:4:7; 7:14-24).

Next, BC argued that, under the decision in *Hobbs v. State*, 183 Wn. App. 935, 335 P.3d 1004 (2014), they had not taken final action and Zink could not file suit against them until such time as final action had been taken (CP 51:4-11). BC claimed that since a third party was preventing the release of records when they were more than willing to release, absent the injunction, Zink's claims are premature and fail to state a claim upon which relief can be granted (CP 51:12-21; RP (September 25, 2015)5:24-7:5).

Finally, BC argued that, even if final action had occurred, the PRA does not allow for penalties and attorney fees against an agency for providing third party notification, citing to *Confederate Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 757, 958 P.2d 260 (1998); *Belo Mgmt. Servs, Inc. v. Click A Network*, 184 Wn. App. 649; and *Robbins*,

Geller, Rudman & Dowd, LLP v. State, 179 Wn. App. 711 (2014) (CP 51:23-53:5; PR (September 25, 2015) 4:8-5:23).

BC's request to dismiss for failure to state a claim did not address the issue of lack of exemption logs or identification of records being withheld (CP 28:21-19; CP 30:1-6), release of Zink's information under RCW 42.56.240(8) (CP 22-25), refusal to produce records in the format requested (CP 30:13-15) or excessive charges to reproduce public records (CP 30:15-19).

Zink responded that the notice of July 1, 2015, did not specify which record request they were notifying third parties about and all requests are interrelated (CP 60:23-24; 62:4-63:23; RP (September 25, 2015) 9:16-10:5; 15:21-16:8). Zink argued that BC took action indicating that the records would not be released when they denied access and notified third parties and therefore under RCW 42.56.550, Zink has a right to request judicial review of BC's reasonableness in notifying third parties under RCW 42.56.550 (CP 64:2-65:16; RP (September 25, 2015) 14:25-15:12). Zink argued that prior to notification, BC threatened to notify third parties and asked if Zink would like to withdraw her request so her contact information would not be released (CP 65:17-66:5). Zink argued BC took action when they denied release of the records to notify third parties (CP 66:5-68:3). Zink argued that with regard to the decision in *Confederate Tribes* the agency was required by law to notify third parties of the request and had an identified need. While in this case, BC did not identify an

exemption or any legal need to notify and their actions were unreasonable (CP 68:4-24; RP (September 25, 2015) 11:21-14:23).

On August 14, 2015, a hearing was held on preliminary injunction and sealing of court records (RP (August 14, 2015) 1-41). Zink did not attend the hearing (*Id.* 3:12-4:4; 17:4-11). The hearing for preliminary injunction was postponed until August 28, 2015 for other reasons (*Id.* 17:17-18:21). The motion to seal was granted (*Id.* 18:22-24:19).

On August 28, 2015, the hearing on preliminary injunction was heard (RP (August 28, 2015) 25-41). Zink did not attend the hearing but did submit written objections through briefing (*Id.* 27:5-22). The Court determined:

THE COURT: All right. Well, thank you both. You know, this case presents the exact same issues as all of the prior cases, and I've seen nothing in any developments across the state, either at the Superior Court level or in the Court of Appeals level, which would cause me to change my feelings as to how the matter should come out.

So, I am prepared to grant the motion for a preliminary injunction in favor of the plaintiff.

RP (August 28, 2015) 29:1-9). After further discussion on how John Doe's required declaration was to be submitted (*Id.* 29:18-31:13) and discussion on whether all records would be enjoined or merely John Does (*Id.* 31:14-36:1-39:11) the trial court signed an order for preliminary injunction (*Id.* 39:13-24).

On September 25, 2015, a hearing was held on BC's motion to dismiss (RP (September 25, 2015) 3-23). BC argued that their agency has been notifying third parties for decades and this is the first time someone had filed an injunction to prevent release (*Id.* 17:17-24). BC argued that they do not control their records and must notify third parties (*Id.* 18:4-11). Based on the arguments presented by both parties, the trial court determined that there was no interplay between RCW 42.56.520 and .540 (*Id.* 20:1-8). The trial court determined that RCW 42.56.540 is consistent with the public policy to protect privacy if an agency is unwilling to do so. The trial court found that citizens named in the records should be given that opportunity (*Id.* 20:9-18). The trial court determined that an agency need not show good faith or believe the records are exempt in order to notify third parties (*Id.* 20:19-21). The trial court found that RCW 42.56.540 was designed to allow a person to protect their own privacy by bringing their own lawsuits if an agency does not believe they can assert an exemption in good faith (*Id.* 21:20:22-21:2).

The court rejected BC's argument that the notification of third parties was not an action triggering a right to bring a claim under the PRA (*Id.* 21:17-19). Rather, the court found that Zink has no claim since there was no action under RCW 42.56.540 when an agency is exercising its option to notify affected parties. Further, the trial court found that Zink's cross-claim did arise out of the same operative facts and it would be too narrow of an interpretation to limit her claim to just the April 17th request since all

the requests are so intertwined; striking section 1 and 2 of the proposed conclusions of law (*Id.* 22:23-23:9).

On June 17, 2016, Zink timely filed this appeal, after all other issues concerning enjoining sex offender registration records had been resolved by the Supreme Court in *Doe v. WSP*, 185 Wn.2d 363, 374 P.3d 63 (2016). BC did not file an appeal of any of the trial courts findings, conclusions and order. The only issues in this cause of action concern whether Zink has right to request review of BC's actions under RCW 42.56.550 and to seek penalties for violations of the PRA.

V. ARGUMENT

A. Standard of Review

1. Standard of Review of a Trial Court's Decision Is De Novo

A trial court's dismissal of a cause of action under CR 12(b)(6) is a question of law and review is de novo. *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, ¶5, 233 P.3d 861 (2010). RCW 42.56.550(3) clearly mandates judicial review of agency actions under RCW 42.56.030 through 42.56.520 is de novo. *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, ¶7, 327 P.3d 600 (2013). Therefore, the trial court's dismissal of Zinks request for judicial review of BC's actions in denying release of the records under CR 12(b)(6) is de novo.

2. Criteria Needed to Dismiss a Cause of Action Pursuant to CR 12(b)(6)

A plaintiff does not fail to state a claim upon which relief can be granted if it is possible that facts could be established to support the allegations in the complaint. *Halvorson v. Dahl*, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978); *Christensen v. Swedish Hosp.*, 59 Wn.2d 545, 548, 368 P.2d 897 (1962).

Under a CR 12(b)(6) motion, Plaintiff's factual allegations are assumed to be true. *Bowman v. John Doe*, 104 Wn.2d 181, 183, 704 P.2d 140 (1985). An action may only be dismissed under CR 12(b)(6) if the defendant can prove "beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to the requested relief." *Bowman v. John Doe*, 104 Wn.2d 181, 183, 704 P.2d 140 (1985) (quoting *Orwick v. Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984); *Corrigal v. Ball & Dodd Funeral Home, Inc.*, 89 Wn.2d 959, 961, 577 P.2d 580 (1978). *Stangland v. Brock*, 109 Wn.2d 675, 677, 747 P.2d 464 (1987).

B. Judicial Interpretation of Statutes Includes Determining Legislative Intent Based on All Provisions Contained in an Act

A Court's purpose in interpreting a statute is to determine and enforce our "Legislature's Intent" (*City of Spokane v. Spokane County*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006)). In construing a statute, the Courts are

instructed to be vigilant that a statute is construed so as to carry out its purpose as determined by our Legislature. *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 498, 909 P.2d 1294 (1996). Legislative intent is primarily revealed by the statutory language. *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997).

Courts are to “look first to the plain meaning of the statutory language, and [] interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous” *Rivard v. State*, 168 Wn.2d 775, ¶18, 231 P.3d 186 (2010). The plain meaning controls if it is unambiguous. *Nissen v. Pierce County*, 183 Wn.2d 863, ¶27, 357 P.3d 45 (2015). If the Legislature omits language, whether intentionally or accidentally, courts “will not read into the statute the language that it believes was omitted.” (*State v. Moses*, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002) citing to *Jenkins v. Bellingham Mun. Court*, 95 Wn.2d 574, 579, 627 P.2d 1316 (1981)).

Our Courts are required to look at the PRA in its entirety. *Ockerman v. King County Dep't of Developmental & Env'tl. Servs.*, 102 Wn. App. 212, 217, 6 P.3d 1214 (2000). All provisions of an act must be considered and construed together (with all language used) and harmonized in relation to each provision of the act to assure proper construction of each provision. *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 459, 869 P.2d 56 (1994). “An interpretation that produces “absurd consequences” must be rejected, since such results would belie legislative

intent. *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185 (1983).” *Troxell v. Rainier Pub. Sch. Dist.*, 154 Wn.2d 345, ¶7, 111 P.3d 1173 (2005).

In this case, the trial court has read RCW 42.56.540 in isolation to allow agencies to withhold public records while they notify third parties regardless of any other provisions of the PRA. The trial court determined that the word “optional” in RCW 42.56.540 outweighs the word “need” in RCW 42.56.520 as well as the strict mandates that an agency only deny release of records based on an identified exemption under RCW 42.56.050, 070(1), .210(3) and .520. This is an absurd reading of RCW 42.56.540 when read with other provisions of the PRA including, but not limited to, the wording in RCW 42.56.520 and cannot be harmonized with the entire act; rendering entire provisions under the PRA superfluous. The trial court’s decision and order dismissing Zink’s request for review under RCW 42.56.550 is erroneous and must be reversed and remanded for proper application of the PRA this case.

C. Legislative Intent Does Not Allow Agencies to Withhold Records Without an Exemption Under RCW 42.56.540

The strongly worded PRA was enacted by our Legislature, at the behest of the public (*Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, ¶17, 261 P.3d 119 (2011)), in order to assure an open and transparent government that reflects the belief that the public should have full access to information concerning the working of the government (*Amren v. City of Kalama*, 131 Wn.2d 25, 31, 929 P.2d

389 (1997)). The purpose of the PDA² is to ensure the sovereignty of the people and the accountability of the government agencies that serve them (*Newman v. King County*, 133 Wn.2d 565, 570, 947 P.2d 712 (1997)). Allowing agencies to notify third parties without a claim of exemption flies in the face of the carefully crafted Legislative mandates and provisions requiring full disclosure of records being withheld by that agency and prompt production absent an applicable exemption identified by that agency.

Under the strict requirements of the PRA, release of public records must be liberally construed and its exemptions narrowly construed to promote public policy and to assure that the public interest will be fully protected. RCW 42.56.030. [A]gencies having public records are required to rely only upon statutory exemptions or prohibitions **for refusal to provide public records** (RCW 42.56.050)(emphasis added). Other PRA provision require the agency to identify all records being withheld as well as justify the claimed exemption (RCW 42.56.070(1), .210(3) and .520). BC did none of these things. Instead they notified third parties and then argued the records were not exempt.

MR. LUKSON: The reason why counties and agencies give notice is because we're not the czar of the Public Records Act. Our interpretation of whether something may be exempt, someone else may have a different interpretation. This case is a

² Now referred to as the PRA.

perfect example of that. The County did not believe the records at issue were exempt. We notified the individuals under the statute that permits us to do that. Even if Ms. Zink is accurate, which I don't think she is, but even if she is accurate to say that it's necessary to give notice, I can't think of a case that's more necessary than this one given that there's clear ambiguity in the statute. The County, I think, has a good faith position that these records are not exempt.

(RP (September 25, 2015) 18:4-17). BC is the czar of the public records maintained in their agency and cannot push their responsibilities under the PRA off onto a third party to escape the consequences of their actions.

D. RCW 42.56.540 Is Not a Stand-Alone Statutes and Must Be Read Together With All Other PRA Provisions

RCW 42.56.540 is but one provision under the PRA setting forth requirements for enjoining exempt public records. RCW 42.56.540 is not a stand-alone exemption and BC's claim of protection from other mandatory provision of the PRA, including judicial review and assessment of penalties, is erroneous and absurd. BC cannot claim they have the "option" to notify, regardless of exemption status, under RCW 42.56.540 or that their "option" to notify outweighs all other PRA provisions when that "option" is controlled by other provision of the PRA mandating an exemption be identified (RCW 42.56.050, .070(1), .210(3) and .520). Especially as our Supreme Court has determined that agencies are to be held responsible for withholding records pursuant to RCW 42.56.540.

In sum, we hold that the plain language of RCW 42.56.540 allows agencies to seek judicial determination regarding the validity of a public record. **We emphasize that the agency remains subject to per diem penalties for each day that it has improperly denied access to a public record.**

Soter v. Cowles Publ'g Co., 162 Wn.2d 716, ¶¶64-65, 174 P.3d 60 (2007)(emphasis added). It is absurd to interpret Legislative intent to allow requestors to hold agencies accountable for initiating an injunction under RCW 42.56.540, but not liable for using their “option” to notify third parties to initiate an injunction without a reasonable “need” to do so as mandated in RCW 42.56.520 and identification of an applicable exemption (RCW 42.56.050, .070(1), .210(3) and .520).

The Washington Administrative Code (WAC) clearly and unambiguously address this specific issue and instructs Washington State agencies to have an arguable exemption prior to notifying third parties.

Before sending a notice, **an agency should have a reasonable belief that the record is arguably exempt**. Notices to affected third parties when the records could not reasonably be considered exempt might have the effect of unreasonably delaying the requestor's access to a disclosable record.

WAC 44-14-04003(11) (emphasis added). The trial court's decision and order dismissing Zink's claims is an absurd reading of the strict mandates for full broad disclosure absent an identified exemption as discussed above as well as well-established case law allowing requestors to hold agencies

accountable for all wrongful denials in disclosure and production RCW 42.56.550.

E. RCW 42.56.520 and 42.56.540 Are Harmonized and Work Together To Prevent Abuse of Third Party Notification

Reading RCW 42.56.520 to require a “need” to notify in order to use the “option” to notify harmonizes the provisions of RCW 42.56.520 and 42.56.540 and does not render any word or portion of their language superfluous.

Additional time required to respond to a request may be based upon the **need ... to notify third persons** or agencies affected by the request” ... Denials of requests must be accompanied by a written statement of the specific reasons therefor.

RCW 42.56.520 (emphasis added).

An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested.

RCW 42.56.540 (emphasis added). Reading the intent of the Legislature in this fashion not only gives meaning to both the words “option” and

“need,” it also harmonizes all provisions requiring statutory exemption and exemption log (RCW 42.56.050,³ .070(1),⁴ .210(3),⁵ and .520⁶).

BC has no arguable need to notify third parties and their actions unreasonably delayed disclosure and production of nonexempt records for years and caused needless and expensive litigation. Zink has a statutory right to request judicial review of those actions and assessment of penalties for violations under RCW 42.56.550.

F. Zink Has A Claim Under RCW 42.56.550

Under a strict interpretation of the strongly worded mandates of the PRA Zink has right to request judicial review of BC’s actions under the provisions of RCW 42.56.550(1) and .550(2) and to seek penalties for wrongful withholding under RCW 42.56.550(4). The trial court did not identify a provision in the PRA signifying that an agency can avoid all

³ [A]gencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records. Further, to avoid unnecessary confusion, "privacy" as used in RCW 42.17.255 is intended to have the same meaning as the definition given that word by the Supreme Court in "Hearst v. Hoppe," 90 Wn.2d 123, 135 (1978)." [1987 c 403 § 1.] RCW 42.56.050.

⁴ To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing. RCW 42.56.070(1).

⁵ Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. RCW 42.56.210(3).

⁶ Denials of requests must be accompanied by a written statement of the specific reasons therefor. RCW 42.56.520.

other mandatory provisions of the PRA, including an award of costs, fees and penalties for unreasonable delay and denial, simply by notifying third parties under RCW 42.56.540 to prevent release of records.

Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. 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.

RCW 42.56.550(1)(emphasis added). BC denied release of the records to Zink when they notified third parties and instructed them to seek injunction.

Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

RCW 42.56.550(2). BC unreasonably delayed release of the requested records for years under the guise of notification of third parties when they had no reasonable reason to notify third parties and only did so to prevent release.

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.

RCW 42.56.550(4). BC was correct that the requested records were not exempt and the trial court's decision to enjoin the records was overturned in *Doe v. WSP*, 185 Wn.2d 363, ¶5, 374 P.3d 63 (2016). Zink has a right to request review of BC's actions in notifying third parties to deny release of nonexempt public records and hold BC accountable for those actions.

We emphasize that the agency remains subject to per diem penalties for each day that it has improperly denied access to a public record.

Soter v. Cowles Publ'g Co., 162 Wn.2d 716, ¶¶64-65, 174 P.3d 60 (2007)(emphasis added). The same directive applies to agencies who use third party notification as a means to deny production of nonexempt public records through third party injunction without just cause.

The trial court's determination that Zink had no right under RCW 42.56.550 to question an agency's actions through judicial review when the agency did nothing more than assert their option to notify third parties, giving them opportunity to protect their own privacy interests under RCW 42.56.540 when the agency was unwilling to do so, is illogical. It is the

agency who controls production of public records created and maintained by that agency for the public. While citizens do have a right to protect their privacy, the records maintained by public agencies are public records and not private in nature. Therefore, the agency is required to identify a privacy issue in order to deny release.

The provisions of this chapter dealing with the right to privacy in certain public records **do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions** from the public's right to inspect, examine, or copy public records.

...

The intent of this legislation is to make clear that: (1) Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and (2) **agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records.** Further, to avoid unnecessary confusion, "privacy" as used in RCW 42.17.255 is intended to have the same meaning as the definition given that word by the Supreme Court in "Hearst v. Hoppe," 90 Wn.2d 123, 135 (1978)." [1987 c 403 § 1.]

RCW 42.56.050 (Intent –1987 c 403)(emphasis added). Clearly, there is no privacy in public records that attaches to citizens allowing them to automatically enjoin records if the agency does not claim a privacy exemption. To interpret RCW 42.56.540 to not allow an agency to escape judicial review under RCW 42.56.550 simply because they notified third

parties, renders the words and provision of the strongly worded PRA superfluous and requires words to be added that are simply not there; producing an absurd and stained interpretation of clear and unambiguous statutes. The trial court's decision is error and must be reversed.

G. The Intent of Notification Without Exemption is to Force a Requester to Withdraw Their Request or Be Subject to Costly Litigation

The evidence shows that BC was acting in bad faith. There can be no reasonable explanation for BC's actions except to deny the release of the records by forcing Zink to participate in litigation or withdraw the request. BC's actions caused harm to Zink through needless litigation (RP (July 31, 2015) 10:3-6; 12:1-13:9; (August 28, 2015) 13:15-14:24) and harassment by sex offenders notified of her request in violation of RCW 42.56.240(8).

At the point in time Zink filed cross claim against BC, the records were being withheld through third party notification and permanent injunction ordered by the Honorable Bruce Spanner in four other cases stemming from Zink's initial request of July 15, 2013 (CP 2:19-26; 16:16; 3:1-22; 16:17-22;4:1-7; 16:24-25). There was no "need" for BC to refuse to claim the "court provided" exemption or initiate further litigation by notifying additional sex offenders. BC's intent was to forced Zink into a fifth cause of action to defend her right to access nonexempt records and cause hardship through continuous litigation. This is evidenced by the following exchange where Zink requests more time to prepare for this fifth

cause of action due to her schedule and BC strenuously objects for no apparent reason since the records had been withheld by BC for at least a year or two and/or were otherwise enjoined by the trial court.

MS. ZINK: Okay. Then I would ask the Court that we set summary judgment a couple of weeks after September 21st. That way we can get all of our briefings or set it that week, the week of the 21st.

THE COURT: And again, I want to explain to the parties, Judge Spanner has made rulings regarding these matters and I'm going to work with court administration and see whether he would be available for a hearing on the merits. He has the most institutional knowledge regarding this. Mr. Lukson?

MR. LUKSON: Your Honor. Judge Spanner -- just to clarify, this is a new action that Judge Spanner has where he's familiar with these arguments?

THE COURT: Yes, and I understand that well, but my recollection was and I may have just seen some of this material on e-motion at one point, that there were attachments from a prior ruling by Judge Spanner. Am I incorrect?

MS. ZINK: No. That's why I'm questioning whether he's even got a case because his client may be covered under Spanner's order.

THE COURT: And what I'm going to do is try and get you folks to a hearing on the merits for that and --

MS. ZINK: Could we set summary judgment then the Friday after?

THE COURT: As to -- well, I'm not -- what I'm going to is, the parties need to work with court administration as to the setting of those hearings. What I'm going to do upon your

request is, I'm going to indicate that, based on the manner in which the file came to me, and the voluminous -- voluminous is the wrong word -- substantial filings of the parties, and the Court's inability to make a ruling on the merits, on this matter, on this day, I find good cause to continue the order for the sole purpose of allowing the parties to have a determination on the merits. And if, Ms. Zink, I understand that you're asking that, that order expire on the 21st of September, I will do that. All right? And Mr. Whaley can present that order. I will hear from Mr. Lukson as to his suggestions as to additions to that. And then I will hear from Ms. Zink as to any objections that she has. And then also Mr. Whaley is wringing his hands, so I will hear from him as well.

MR. WHALEY: Yeah. Your Honor, I just want to -- I guess we're going to have to clarify a little bit about what that order looks like because I want to be clear. I'm of the position that we should probably have it in 14 days because we're required to. The situation I don't want to get put in is, well, if the parties agree that it can go longer, it can go longer, and Ms. Zink agrees that it can go until September 21st, and then a week from now or two weeks from now, when she claims she's unavailable, she starts filing motions. That's not the point of this. Let's just get to the hearing if that's what's going to happen. So I guess I'd like some clarification as to what is going to go on with that.

THE COURT: Give me just a second. All right. Mr. Whaley, my reading of the rule is that the final clause extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. To give meaning to that language would imply that Ms. Zink has the ability to accede for the purposes of the order only to a longer period.

MR. ZINK: Isn't that party Benton County?

MR. LUKSON: Yeah, Your Honor. My position would be the order is enjoining us from releasing records so that we would need to agree to that.

THE COURT: Yes, and again, this is what happens when you come on to the bench cold. So Mr. Lukson, your position with respect to that?

REBUTTAL ARGUMENT FOR THE COUNTY BY MR. LUKSON

MR. LUKSON: So my position is that the County wants resolution to this matter. My preference would be to have the hearing within two weeks. I think Ms. Zink has an obligation to file a motion for continuance, and show good cause, and back it up with specific dates and a declaration showing that she can't come to the court any date within the next seven weeks. I don't think we have that evidence yet. It's not sufficient to simply put in a notice of unavailability when you've been sued for seven weeks.

So that would be the County's position. We want resolution on the matter. We'd like it sooner. In the alternative, if Your Honor is inclined to grant the relief requested by Plaintiff, if Ms. Zink doesn't have an objection with the TRO being extended until September 21st, that would be fine. I just want the order to clarify that the records are permanently enjoined until further order of the Court and then direct Mr. Whaley to set up a preliminary injunction hearing for, say, you know, some date no later than September 21st, or 28, or whatever. And then we can have a hearing for preliminary injunction, which is supposed to be the next step on the merits and then, of course, subsequent to that, a permanent injunction hearing.

THE COURT: But you can see that, if Ms. Zink files a declaration indicating the other matters that she has pending in other courts, that, that would constitute good cause regarding her availability?

MR. LUKSON: I would say, if she can show that, for every date in the next seven weeks that she's unavailable, then that would be good cause.

THE COURT: Would you concede further that, because it's not just days in court but rather the preparations necessary for that, that some period of hearings would substantiate what she has told me?

MR. LUKSON: Right. No, I agree, Your Honor. And I don't want to be difficult, but I just want to make sure that, just for the record, the County wants to give these records out as soon as possible. Part of the problem I have is that we don't know the identity of the Plaintiff. There's 70-some sex offenders identified on this record. We have an obligation to give this record to Ms. Zink as soon as possible. We don't have a declaration from the Plaintiff. Once I have that declaration, I can release everything else to Ms. Zink. So the longer we wait, the more Plaintiffs that can come forward in the next seven weeks.

There's all sorts of stuff that can happen. You know, I understand that Ms. Zink has numerous lawsuits. Lots of attorneys in private practice have lots of schedules to juggle also and things like that. So as I'm sympathetic to that, you know, the reality of the situation is that, if we wait another seven weeks, we're very likely to end up with more lawsuits, with more sex offenders. The sooner we get a preliminary injunction and the sooner that Mr. Whaley identifies his client in a sealed declaration, the sooner Ms. Zink gets her record.

(RP (July 31, 2015) 24:16). Despite Zink's request for more time to prepare, and a lack of urgency, the parties opposing release, including BC, refused to accommodate her needs for no justifiable reason; especially in light of the fact that a TRO was in place preventing release of the records.

MR. WHALEY: I think, at least once, I should say on the record, Your Honor, because I know you're not completely familiar with the file, we went and got a temporary restraining order because Benton County had threatened to release the records on the day that we filed for the temporary restraining order, with the expectation that Ms. Zink has made representations that any information she got was going to be posted on the internet and that our clients was going to suffer unrepairable harm as a result of that. That is the underlying basis of why we sought that. I at least felt like I needed to tell the Court what was happening.

THE COURT: And I'm aware that, that is the position of your client.

MR. WHALEY: And I don't want to lose sight of this, Your Honor. The entire reason we asked for a temporary order with the expectation that there would be a hearing within 14 days is so that my client could get in front of someone to hear the case on the merits and talk about the motion to seal, to do the things, and hit the elements and factors that Ms. Zink is talking about. And I have no problem doing that within 14 days, but if we need to get farther along the line to accommodate her schedule, I understand where the Court is at and she's entitled to that under the rule, as you just read.

THE COURT: And what I've heard her say is that she believes that she can vindicate her position through filing and would waive appearance argument.

MS. ZINK: Right, but I am still going to need some time because, Your Honor, I have done nothing but work on this for two years non-stop and I am not joking. I can barely keep my gardens going, my laundry done, and I don't even work. So I need some time. I have another case, the City of Mesa case, that I have to complete that was put on hold for two years. So although I would like -- I can do it without oral argument on some of it. I need time to do other things, to get these things done, and Mr. Lukson here knew that at the time that he contacted these guys, which is why he did that.

THE COURT: Okay. And let's circle back to how much time you believe you need.

MS. ZINK: I would like until September 21st.

COURT'S RULING

THE COURT: All right. Again, trying to balance the interest of the parties, here's what I propose to do at this time. I propose to reissue only for 14 days at this time, but Ms. Zink has the opportunity to file a declaration indicating the other obligations that she has in aid of a further extension, again, because I want to hue to the original time frame based on what I have in front of me right now, but I want to give Ms. Zink the opportunity to put before the Court a record of the other obligations and time commitments that she has.

MR. LUKSON: And Your Honor, just for the record, I just got passed a note that says it looks like there's time available on August 14th at 2:30 p.m. with court administration to have this special set so that we won't run in to the same problem that we ran into today. So if we want to do an order to show cause before that time, it sounds like that --

THE COURT: Understanding that Ms. Zink, as I understand it, objects to the procedure in the first instance --

MS. ZINK: Right. They don't have any statutory right to do any of this, but if he's going to schedule it for October 14th, I'm not understanding what the problem is. They've already got the record sealed. They've already filed their motion without affidavits. All of this has been done and I'm not getting it.

THE COURT: Okay. And I think August is what I heard.

MR. LUKSON: August 14th. That puts it within 14 days.

MS. ZINK: I'm not going to be here. I'm sorry, Your Honor, but I did put in my notice of unavailability. I sat here and I explained to the Court on the record why I'm not available and I'm simply just -- like I said, the other cases, that's all I've done and I'm just not there.

(RP (July 31, 2015) 26:15-29:17). In refusing to claim the exemption given them by the trial court on June 27, 2014, and initiating a fifth action, over a year after Zink's request of April 17, 2014, BC was acting in the worst bad faith. Zink has the right under RCW 42.56.550 to request judicial review of BC's actions in responding to her requests and to request BC be held accountable for those actions under RCW 42.56.550(4) and application of the Yousoufian Factors.

BC's notification of third parties was unreasonable under RCW 42.56.550(2) given the fact that they had no applicable exemption and, at all times, claimed and argued the records were not if fact exempt. BC was free to release all nonexempt records at any time and refused to do so; choosing instead to contact third parties to initiated litigation and prevent release of nonexempt records. Zink's complaint was brought due to an

unreasonable delay in release and denial of public records. The trial court erred in dismissing Zink's claims.

Looking at the facts in the light most favorable to Zink, under RCW 42.56.550, Zink has a right to request judicial review of the reasonableness of BC's actions and have penalties assessed using the Yousoufian Factors for each day Zink was denied access to the requested records. The trial court's order dismissing Zink's cause for failure to state a claim under CR 12(b)(6) must be reversed and the issue remanded back to the trial court for proper determination under RCW 42.56.550.

A. Notification of Third Parties Does Not Trump the Strict Mandates of the PRA For Full Disclosure

Allowing an agency to notify third parties of a request without a need to notify forces requestors to either: 1) participate in costly litigation in order to access nonexempt records; 2) allow nonexempt records to be enjoined; or 3) withdraw the request. This is not the intention of the people in enacting the strongly worded mandates of the PRA to require full access to public records.

This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.

RCW 42.56.030. In this case, Zink refused to withdraw her request. The trial court's orders enjoining the records effectively prevented release of the records to all subsequent requestors; creating a judicial exemption for

nonexempt records in conflict with the strict requirements of the PRA. Agencies must not be allowed to abuse RCW 42.56.540 and prevent release of nonexempt records using third party notification.

B. The Legal Question of Prevailing Party is Whether the Records Should Be Released Upon Request
C. Appellant Court Decision Concerning RCW 42.56.540

The trial court found that Zink’s claims under RCW 42.56.550 were “inapplicable to cases in which an individual-rather than the agency opposes disclosure of records, where the action was brought to prevent, rather than compel disclosure; citing to *Confederate Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 757, 958 P.2d 260 (1998); *Belo Mgmt. Servs, Inc. v. Click A Network*, 184 Wn. App. 649, 343 P.3d 370 (2014) ; and *Robbins, Geller, Rudman & Dowd, LLP v. State*, 179 Wn. App. 711, 328 P.3d 905 (2014) (CP 131:3-10). While this may be true in the case where an agency has a legal obligation to notify third parties this is an erroneous interpretation when there is no need to notify.

Under the strict mandates of RCW 42.56.550 the legal question of whether a requester has a claim and a right to request judicial review is based on whether the records were to be released upon request.

The PRA requires timely disclosure of public records. Yousoufian 2004, 152 Wn.2d at 424-25 (citing former RCW 42.17.340(4)). **The merits of a PRA claim are determined based on the circumstances existing at the time of the request.** Spokane Research & Def. Fund v. City of Spokane,

155 Wn.2d 89, 101, 117 P.3d 1117 (2005). **Prevailing party status under the PRA is not conditioned on causing disclosure of the requested records.** Id. at 103. **“Rather, the ‘prevailing’ relates to the legal question of whether the records should have been disclosed on request.”** Id.

Zink v. City of Mesa, 162 Wn. App. 688, ¶91, 256 P.3d 384 (2011).

Without an identified exemption, BC was required to release the records at the time of Zink’s request and their actions preventing release are a violation of the PRA; reviewable under RCW 42.56.550.

The circumstances in *Confederate Tribes* is not analogous to the circumstances in this cause of action. In that case, the “Tribes” had all entered into a compact with the State of Washington (*Id.* 741).

Each of the compacts involved here includes a paragraph identical or similar to the following: Access to Records.

Agents of the State Gaming Agency shall have equal authority with the Tribal Gaming Agency to review and copy, during all operating hours, all Class III gaming records maintained by the Tribal gaming operation. Provided, that any copy thereof and any information derived therefrom, shall be deemed strictly confidential, and proprietary financial information of the Tribe.

The State Gaming Agency shall notify the Tribe of any requests for disclosure of such information and shall not disclose until the Tribe has had a reasonable opportunity to challenge the request. Provided, this public disclosure prohibition shall not apply to evidence used in any proceeding authorized by this Compact.

(*Id.* 750-51)(emphasis added). The Gambling Commission notified each tribe having a compact with the State of the request (*Id.* 742) as required by RCW 42.17.330/42.56.540⁷ which specifically mandates that:

An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, **this option does not exist where the agency is required by law to provide such notice.**

(*Id.*)(emphasis added). The Court recognizing that the Gambling Commission had a duty in law to notify under RCW 42.56.540 stating:

Here, the Gambling Commission had the right and, under the compacts at that time, **arguably, had the obligation to provide notice to the Tribes that information had been requested by Mr. Johnson.** Implicit in the statutory right to seek an injunction to prevent disclosure is a realistic opportunity to apply. to the trial court for such an order. Any delay on the part of the Gambling Commission in turning over the records to Mr. Johnson was based on a recognition of this right and, under the circumstances presented here, was reasonable.

(*Id.* 757-58)(emphasis added). The Supreme Court concluded that because the Gambling commission was required to notify, the provisions of RCW 42.56.550 do not authorize an award of attorney fees since the action was between two private parties and not against the agency (*Id.* 757-58).

⁷ RCW 42.17.330 was recodified as RCW 42.56.540 pursuant to 2005 c 274 § 103, effective July 1, 2006. The wording remained the same (see below) and Zink uses RCW 42.56.540 since it is the statute Does filed suit under.

In *Robbins, Geller, Rudman & Dowd, LLP v. State*, 179 Wn. App. 711, 328 P.3d 905 (2014), although the requester filed cross claim against the state for wrongful withholding of public records, presumably under RCW 42.56.550, the Court again found that the AGO had a legal obligation to notify third parties.

[T]he AGO published a request for qualifications and quotations (RFQQ). The RFQQ warned firms that their responses were subject to disclosure under the PRA. The RFQQ informed firms that they could designate portions of their responses as “proprietary” information and that the AGO would notify firms if an agency received a public records request for any of the designated proprietary information and allow such firms an opportunity to obtain a court order enjoining disclosure.

Robbins, Geller, Rudman & Dowd, LLP v. State, 179 Wn. App. 711, ¶2, 328 P.3d 905 (2014)(emphasis added). As in *Confederate Tribes*, the *Robbins* Court found the agency has a specific legal need to notify third parties.

In *Belo*, while the agency did not prove they had a legal need to notify third parties, no cross claim was filed against the agency by the requestor (¶3-8), and that Court determined a party is not entitled to fees and costs when the action is between a third party and a requestor. This is the same as the decision in *Doe v. WSP* where no cross claim was filed by the requestor.

Although Zink prevailed in the sense that RCW 4.24.550 is not an “other statute” under the PRA, she did not prevail against an agency. Both the WSP and WASPC took the position that the records were subject to disclosure. Therefore, **Zink did not “prevail against an agency”** but rather prevailed against a private party seeking to enjoin disclosure.

Doe v. WSP, 185 Wn.2d 363, ¶39, 374 P.3d 63 (2016). Here Zink has filed cross claims specifically requesting judicial review of BC’s actions under RCW 42.56.550. Unlike the circumstance in *Confederate Tribes and Robins*, BC has not identified any statutory or other legal need to notify third parties and their notification was erroneous and only meant to delay and deny release of the requested records.

BC was not required to notify third parties, had no reasonable belief that the requested records were arguably exempt and only notified third parties to cause litigation and prevent release to Zink believing they escaped the need for an exemption log or any consequences of prolonged nondisclosure and nonproduction of nonexempt public records.

D. Zink’s Information Is Protected

BC was acting in bad faith when they provided all Level I sex offenders with Zink’s confidential information. Under RCW 42.56.240(8) Zink’s request was confidential because it requested information submitted to a statewide unified sex offender notification and registration program (RCW 36.28A.040(6)). Specifically, Zink’s name, residential address and e-mail address are not to be released.

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and email address

RCW 42.56.240(8). RCW 42.56.240(8) specifically prohibits BC from disclosing Zink's name and e-mail address. Most likely due to the fact that it leads to harassment of the requestor (RP (March 27, 2015) 13:4-6).

E. Zink is Entitled to An Award of Penalties For PRA Violations Under RCW 42.56.550(4)

Our Supreme Courts have repeatedly stated that per diem penalties are mandatory; not optional.

Per Diem Penalties. We take this opportunity to clarify our holdings with regard to per diem penalties. **The Court of Appeals implied that the agency can be spared per diem penalties if it initiates an action in superior court.** *Soter*, 131 Wn. App. at 907. That reasoning does not coincide with our holding that **once a court determines that a requester was entitled to inspect public records, the trial court is required to impose a penalty within the statutory range for each day records were withheld.** *Koenig v. City of Des Moines*, 158 Wn.2d 173, 189, 142 P.3d 162 (2006). The trial court may not reduce the penalty period, even if the requester could have filed suit against the agency sooner than it did. *Yousoufian*, 152 Wn.2d at 438. As amici explain, the advantage to going to court is that the agency can obtain quick judicial review, curbing, but not eliminating, the accumulation of the per diem penalties.

Soter v. Cowles Publ'g Co., 162 Wn.2d 716, ¶63, 174 P.3d 60 (2007). Our Supreme Court clarified that under RCW 42.56.540 an agency is to be

assess mandatory per diem penalties under RCW 42.56.550(4) for violations of the PRA.

In sum, we hold that the plain language of RCW 42.56.540 allows agencies to seek judicial determination regarding the validity of a public record. **We emphasize that the agency remains subject to per diem penalties for each day that it has improperly denied access to a public record.**

Id. ¶65. The trial court's decision to dismiss and not to award penalties, costs and fees is error and must be reversed and remanded to determine the appropriate legal remedy for BC's egregious actions in notifying third parties to prevent the release of nonexempt public records through costly litigation.

VI. COSTS

The Zink's request this Court to award them fees and costs under RAP 14. Pursuant to RAP 14.1 the appellate court which accepts review and makes final determination (RAP 14.1(b)) decides costs in all cases (RAP 14.1(a)). As the substantially prevailing party in this cause of action, the Zinks respectfully request this Court to award them fees and costs for this appeal. See *Mount Adams Sch. Dist. v. Cook*, 150 Wn.2d 716, 727, 81 P.3d 111 (2003).

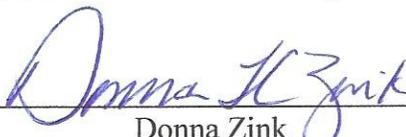
VII. PUBLICATION

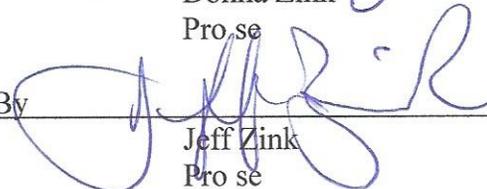
The Zink's respectfully request the court to publish its decision on this matter as the issues addressed herein are all of great public importance. Whether an agency can escape the strict mandates of our Legislature requiring disclosure and production through notification of third parties to initiate injunction is of paramount importance as it affects access to public records. The end result being nondisclosure of nonexempt public records. A scenario not before contemplated by the Courts and not contemplated by our Legislature.

VIII. CONCLUSION

For all of the reasons stated herein Zink respectfully requests this Court to reverse the findings, conclusions and orders of the trial court and remand for proper application of the strict requirements of the PRA under RCW 42.56.550.

RESPECTFULLY SUBMITTED this 21st day of March, 2017.

By  _____
Donna Zink
Pro se

By  _____
Jeff Zink
Pro se

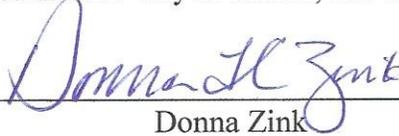
IX. CERTIFICATION OF SERVICE

I declare that on the 21st day of March, 2017, I sent a true and correct copy of appellant's "*Opening Brief of Appellants Donna and Jeff Zink*" via e-mail service to the following addresses:

- RYAN LUKSON
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Dated this 21st day of March, 2017.

By



Donna Zink

Pro se

DONNA ZINK
March 21, 2017 - 8:29 AM
Transmittal Letter

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Case Name: Zink v. Benton County

Court of Appeals Case Number: 34519-0

Party Respresented: Zink

Is This a Personal Restraint Petition? Yes No

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Comments:

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to Ryan.Lukson@co.benton.wa.us, Clarissa.Fraley@co.benton.wa.us, rich@tzmlaw.com, dlczink@outlook.com, and jeffzink@outlook.com.

Sender Name: Donna Zink - Email: dlczink@outlook.com