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

No. 36030-0-III

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WASHINGTON STATE COURT OF APPEALS  
DIVISION III

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JANE DOE #1, a married person; JANE DOES #2-10;

Respondents;

vs.

WASHINGTON STATE COMMUNITY COLLEGE DISTRICT 17 and  
COMMUNITY COLLEGES OF SPOKANE; an agency of the State of  
Washington;

Respondents;

vs.

COWLES PUBLISHING COMPANY,

Appellant.

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REPLY BRIEF OF APPELLANT

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## I. INTRODUCTION

Respondents are 10 employees and public servants who work for Spokane Falls Community College. Respondents initiated a lawsuit before the superior court seeking redaction of all names and "identifiers" in the disclosure of documents related to the investigation and termination of Dr. Darren Pitcher. The superior court erred in granting the permanent injunction and the Appellant Cowles Publishing Co. ("The Spokesman Review") appealed.

The superior court's order is reviewed *de novo*. RCW 42.56.550. In order to succeed on appeal and maintain the redacted documents, the burden is on the Respondents to prove that the documents are not subject to disclosure under Washington's Public Records Act ("PRA"). In order for the injunction to be held proper and maintained, Respondents must prove the following:

1. The information is "personal information," RCW 42.56.230(3);
2. The information is in "files maintained for employees," RCW 42.56.230(3);
3. The information would "violate" the employees' "right to privacy," RCW 42.56.230(3);
4. The information is "highly offensive to a reasonable person," RCW 42.56.050;

5. The information is "not of legitimate concern to the public," RCW 42.56.050;
6. Disclosure of the information "would clearly not be in the public interest," RCW 42.56.540; and
7. Disclosure would result in "substantial and irreparable damage" to the Respondents, RCW 42.56.540.

If the Respondents fail to prove any of these facts, redaction under RCW 42.56.540 is inappropriate and the information must be disclosed. As outlined in Appellant's opening brief, Respondents failed at the superior court to prove nearly every one of these elements. In their responsive brief, Respondents continue to fall short. Respondents' appellate brief can be summarized as follows:

1. The information contains employees' names and identifiers and, therefore, it is personal information and categorically exempt under Section 230(3);
2. The information would be embarrassing; and
3. Disclosure would cause a chilling effect on future witnesses.

As a matter of law, both statutory and jurisprudential, these arguments fail. The information must be "maintained in files for employees"—it is insufficient that an email or other random document contains the employee's name. The information must be more than "embarrassing"—

"Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550(3). Disclosure of information must be "clearly not in the public interest"—A "general contention of chilling future witnesses is not enough to exempt disclosure." *Does v. King Cty.*, 192 Wn. App. 10, 28, 366 P.3d 936, 945 (2015). Both at the superior court and before this court, Respondents have not met their burden and the information must be released. Therefore, Appellants request that this Court reverse and remand with an order to disclose the unredacted documents.

## II. ARGUMENT

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.

"The PRA mandates the broad disclosure of public records." *Seiu Healthcare 775NW v. State, Dep't of Soc. & Health Servs.*, 193 Wn. App. 377, 390, 377 P.3d 214, 220 (2016) (citing *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 431, 327 P.3d 600 (2013)). And it is "a strongly worded mandate ...". *Hearst Corp. v. Hoppe*, 90 Wn.2d 123,

127, 580 P.2d 246 (1978). The strongly worded mandate is limited only by the precise, specific, and limited exemptions which [it] provides." *Lyft, Inc. v. City of Seattle*, 418 P.3d 102, 106–07 (2018) (quoting *Progressive Animal Welfare Soc. (PAWS) v. Univ. of Washington*, 125 Wn.2d 243, 258, 884 P.2d 592, 600 (1994). "[T]he PRA's disclosure provisions must be construed liberally and exemptions narrowly." *Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 191–92, 410 P.3d 1156, 1160 (2018). "The party attempting to avoid disclosure bears the burden of proving an exemption applies." *Ameriquist Mortg. Co. v. Office of Att'y Gen.*, 177 Wash.2d 467, 486-87, 300 P.3d 799 (2013).

**A. RCW 42.56.230(3) DOES NOT APPLY AS THERE IS NO EVIDENCE THAT THE FILES WERE "MAINTAINED FOR EMPLOYEES"**

The PRA mandates the "full disclosure of public records" and that mandate is "limited only by the precise, specific, and limited exemptions which [it] provides." *Lyft, Inc.*, 418 P.3d at 106–07 (2018) (quoting *PAWS*, 125 Wn.2d at 258). A court must "start with the proposition that the act establishes an affirmative duty to disclose public records unless the records fall within specific statutory exemptions." *Doe G*, 190 Wn.2d at 191–92 (internal quotations and citations omitted). It is the plaintiff's burden to establish that the exemption applies. *Ameriquist Mortg. Co.*, 177 Wn.2d at 486-87.

RCW 42.56.230(3) permits exemption if a record contains "personal information in files maintained for employees." Respondents argue that RCW 42.56.230(3) provides an exemption by which they can redact *any* document that contains the name of *any* employee. They argue that every document that contains an employee's name is a file "maintained for employees." *Respondent's Brief*, at 9 ("A file is maintained for an employee so long as in contains 'personal information'"). Such a broad interpretation ignores the text of the exemption and the clear direction that exemptions be viewed narrowly.

As the Spokane Falls Community College ("SFCC") rightly points out, "maintained for employees" does not mean "any file relating to a particular individual." *Brief of Washington State Community College District 17*, at 9. The exemption is meant only to protect highly personal information often contained in employment and other personnel files. *Id.*

In *Tacoma Pub. Library v. Woessner*, 90 Wn. App. 205, 213, 951 P.2d 357, 361 (1998), the court examined what "maintained for employees" meant in the statute. *Id.* at 216. While the court held that documents do not need to be maintained in a folder called "personnel file," the "provision was intended to shield only that highly personal information often contained in *employment and other personnel files.*" *Id.* (quoting *Cowles Publ'g Co. v. State Patrol*, 44 Wn. App. 882, 724 P.2d

379 (1986) (*rev'd on other grounds*) (emphasis in original). Further, the court held that it is the "content of the requested record" that determined whether the file was "maintained for employees." *Id.* Under the reasoning of *Woesnner*, a file is only "maintained for an employee" if it contains "highly personal" information that is "often contained in employment and other personnel files." *Id.*

Similarly, in *Cowles Publ'g Co. v. State Patrol*, 44 Wn. App. 882, 724 P.2d 379 (1986), the Appellant sought release of all internal investigation records pertaining to citizens' complaints against police officers. The State Patrol denied the request citing the same statute, and making the same argument, as the Respondents do here. The State Patrol argued that because the file contains the names of the officers that the file relates to, it contained personal information in a file maintained for an employee—the same argument made here. The Court of Appeals rejected the argument and reversed. The court explained:

The newspapers initially challenge the trial court's conclusion that the names of the officers constituted "personal information" since the files in which their names appear relate to a particular officer. We agree with the newspapers; this exemption does not require all information be exempted merely because it relates to a particular individual. If this reasoning was taken to its logical extreme, all public records containing a reference to a particular person would qualify as personal information; the act's broad policy of disclosure mandates a broader construction.

*Id.* at 890. The State Patrol then argued that "any file relating to a particular [employee] is 'maintained' for that [employee] within the meaning of this exemption." *Id.* at 386. Again, the court rejected that argument:

The next issue is whether these files were maintained for the officers as required by this exemption. Here, the agencies assert any file relating to a particular officer is "maintained" for that officer within the meaning of this exemption. Again, the contention is overbroad. That provision was intended to shield only that highly personal information often contained in employment and other personnel files. Such information might include, but is not limited to, the particular employee's union dues, charitable contributions, deferred compensation, medical records, disabilities, employment performance evaluations, and reasons for leaving employment. Likewise, the phrase may include those sensitive records relating to health, or marital and family information necessary for calculating health plans, job benefits, and taxes.

However, the files in question here are maintained separately from files containing such personal information; we conclude the internal affairs files containing the officers' names are not maintained for the officers.

*Id.* at 891-92 (emphasis added). Here, just as in *Cowles v. State Patrol*, the Respondents argue that because their names are contained in a document, the document relates to that employee and is maintained for that employee. This argument was expressly rejected in both *Woesnner* and *Cowles v. State Patrol*. In *Woesnner*, the court ultimately held the injunction appropriate because the requestor specifically asked for pay

rates, vacation and leave hours, benefits, and union contributions of her fellow employees. The court held that this is information generally contained in employment files and, therefore, exempt. In contrast, in *Cowles v. State Patrol*, records relating to investigations and complaints of employee misconduct did *not* constitute "personal information contained in files for employees" and, therefore, were not exempt. The requests and documents at hand are nearly identical to the documents in *Cowles v. State Patrol* and should be treated the same way: not exempt. As discussed in Appellant's opening brief, this interpretation and application are consistent with the interpretation and application of similar exemptions. *See SEIU Healthcare 775NW v. State, Dep't of Soc. & Health Servs.*, 193 Wn. App. 377, 377 P.3d 214 (2016); *Lindeman v. Kelso Sch. Dist. No. 458*, 166 Wn. 2d. 196, 202, 172 P.3d. 329 (2007).

Here, just as in *Cowles*, *SEIU* and *Lindeman*, it is insufficient for Respondents to prove that the documents contain personal information. Respondents must prove both (1) the documents contain "personal information"; and (2) the information is contained in "files maintained for the employees." RCW 42.56.230(3). A plain review of the *in camera* documents shows clearly that most, if not all of the documents are not "files maintained for employees."

SFCC disclosed three batches of documents: (1) Emails; (2) Investigation Report and Exhibits; and (3) Working Documents. The Emails are accurately self-described. The files contain nearly 400 pages of email correspondence between employees of SFCC. They are maintained in email programs and email servers. They are not maintained in employment files and using them in an investigation that may or may not result in discipline is insufficient to turn them into an exempt file. *See Lindeman*, 162 Wn.2d at 203.

Similarly, the "Investigation File and Exhibits" contains more than 300 pages of documents and includes an investigation report, emails, written statements, instant messenger transcripts, administrative procedures, SFCC policies, and other information. A review of these documents will show that none of them, except perhaps the loan and financial documents of Dr. Pitcher himself, are files "maintained for employees." These documents do not contain that "highly personal" information that is generally kept in "personnel files." Therefore, it is not a file maintained for an employee. It is more similar to the investigation files sought in *Cowles Publ'g Co. v. State Patrol*, 44 Wn. App. at 882, which was held to be non-exempt.

Finally, the "Working Documents" contains more than 600 pages of "interview notes," "complaints," "investigation guidelines," "emails,"

"interview timelines," and instant messenger messages. None of these documents are maintained in the personnel files of the Respondents nor do they contain "highly personal" information that is generally kept in "personnel files." The documents contain only the names of the employees and not any "highly personal" information that the exemption was designed to protect.

RCW 42.56.230(3) only permits the exemption or redaction of documents if (1) the document contains "personal information"; and (2) the documents are maintained in files "maintain for employees." *Id.* The purpose of the exemption is "to shield only that highly personal information often contained in employment and other personnel files." *Woessner*, 90 Wn. App. 205, 217, 951 P.2d 357, 363 (1998) (citing *Cowles*, 44 Wn. App. at 891, 724 P.2d 379).

There is no evidence that these documents are in files "maintained for employees," such as personnel files, and, therefore, the exemption does not apply.

**B. DISCLOSURE WOULD NOT VIOLATE RESPONDENTS' "RIGHT TO PRIVACY."**

RCW 42.56.230(3) only permits exemption if disclosure would "violate their right to privacy." RCW 42.56.050 states: "A person's 'right to privacy,' 'right of privacy,' 'privacy,' or 'personal privacy,' as these terms

are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person; and (2) is not of legitimate concern to the public." The statute requires courts to "take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550. "Under this provision, the use of a test that balances the individual's privacy interest against the interest of the public in disclosure is not permitted." *Dawson v. Daly*, 120 Wn.2d 782, 795, 845 P.2d 995, 1003 (1993). If the information is not highly offensive or is of *any* public concern, then the documents must be disclosed. Therefore, in order for the exemption in RCW 42.56.230(3) to apply, Respondents must prove that (1) disclosure would be highly offensive; and (2) the subject is not of legitimate public concern. *Id.* Respondents fail to prove either.

Respondents argue that disclosure would violate their right to privacy. Respondents, however, do not discuss what is historically been considered "highly offensive" information or whether the information sought has any public interest. A party asserting a privacy-based PRA exemption must prove that disclosure is both "highly offensive to a reasonable person" and "not of legitimate concern to the public." *Does v.*

*King Cty.*, 192 Wn. App. 10, 26, 366 P.3d 936, 944 (2015); RCW 42.56.050. The Supreme Court has made it clear, "the PRA will not protect everything that an individual would prefer to keep private." *Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d 896, 904–05, 346 P.3d 737 (2015). "The PRA's 'right to privacy' is narrower [and] [i]ndividuals have a privacy right under the PRA only in the types of 'private' facts fairly comparable to those shown in" Restatement (Second) of Torts § 652(D) (1977). *Does*, 192 Wn. App. at 26 (citing *Predisik*, 182 Wn.2d at 905). The pertinent Restatement is as follows:

Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget.

RESTATEMENT (SECOND) OF TORTS § 652(D) (as quoted in *Does*, 192 Wn. App. at 26). According to the Supreme Court's ruling in *Predisik*, the Court of Appeals in *Does v. King Cty.*, and the Restatement (Second of Torts), the information only qualifies as private if the conduct rises to the level of personal sexual relations, familial disputes, or humiliating illness.

As previously discussed in the opening brief, it is critical to separate the Jane Does into categories based on their alleged involvement in the issues at hand. First, Jane Does #2 – 8, and 10 assert only that their right to privacy is being infringed upon because they "also witnessed Dr. Pitcher's inappropriate sexual behavior and gave information and interviews to Defendant College during its investigation." *Brief of Respondent Jane Does*, at 12. That's it. Jane Does #2-8 and #10, argue that, because they were *witnesses* to other persons alleged misconduct, which occurred in a public place and at a public agency, identifying their names would invade their privacy. Such an argument would result in every state employee's name being withheld anytime they discussed the conduct of another person. This is an unreasonable reading of the privacy provision and would result in troves of documents being withheld from public view. While it is understandable that Jane Does #2-8 and #10 would not want their names associated with Dr. Pitcher for embarrassment reasons, as the statute clearly lays out, embarrassment is insufficient. The statute requires courts to "take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550 (emphasis added). The Supreme Court has made it clear, "the PRA will not protect everything that an

individual would prefer to keep private." *Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d 896, 904–05, 346 P.3d 737 (2015). Jane Does #2-8 and #10, were only witnesses to alleged misconduct and the information does not, in any way, relate to private matters in their own lives. Therefore, disclosure would not infringe on their right to privacy, despite the fact that they would prefer to not be named.

Jane Doe #9 allegedly received "instant messenger messages of a sexual nature from Dr. Pitcher." Again, Jane Doe #9 does not assert that she engaged in any inappropriate conduct or that she has anything to be "highly offended" by. In fact, the documents provided by SFCC show that both Jane Doe #9 and Dr. Pitcher agree that they did not engage in sexual activity together. The documents related to Jane Doe #9, and the factual circumstances do not rise to the level of "private" matters as outlined in the Restatement.

Jane Doe #1 is the *only* Respondent whose conduct rises to the level of privacy contemplated by the PRA. By her own admission, she engaged in consensual sexual activity with Dr. Pitcher. Appellants concede that, if this were the only point of inquiry, Jane Doe #1 would qualify for the exemption. However, as previously discussed, she cannot prove that RCW 42.56.230(3) is applicable as the documents are not contained in a file "maintained for employees". Further, as discussed in

detail below, she cannot show that there is no legitimate public interest or that disclosure would *clearly* not be in the public interest, as required.

**C. THE DISCLOSURE OF THE DOCUMENTS IS OF LEGITIMATE PUBLIC CONCERN**

Disclosure of public records violates a person's right to privacy only if the documents are "not of legitimate concern to the public." RCW 42.56.050. "Under this provision, the use of a test that balances the individual's privacy interest against the interest of the public in disclosure is not permitted." *Dawson v. Daly*, 120 Wn.2d 782, 795, 845 P.2d 995, 1003 (1993). If there is *any* legitimate public interest, the PRA requires disclosure. The PRA further requires courts to "take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550. Even if the information is highly offensive, if there is *any* public concern, then the documents must be disclosed.

Respondents improperly attempt to shift the burden of proving public concern to the Appellant. *Brief of Respondents Jane Does*, at 13 ("Appellant fails to state what the public interest is in knowing the names and identifiers..."). The citizens of Washington "do not yield their sovereignty to the agencies that serve them." RCW 42.56.030. It is the

right of the citizens to "remain[] informed so that they may maintain control over the instruments that they have created." *Id.* "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." *Id.* "Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section." RCW 42.56.550(3).

It is the policy of the statute and the courts that disclosure is in the public interest and public records are of public concern, even if they are embarrassing, unless proven to the contrary. It is the Respondent's burden to prove that the information is *not* of public concern. However, as stated in Appellant's opening brief, and restated below, the information is clearly of interest to the public.

Spokane Falls Community College has, according to its website, over 7,000 students and 300 teaching faculty, with a total of nearly 500 staff members. CP 79. The average age of the student body is 22 years old. *Id.* SFCC also advertises itself as a participant in Washington's Running Start program, which allows high-school students—minors—to attend classes. *Id.*

The citizens of Washington have a sovereign right to obtain information related to the management, conduct, and actions of public agencies. The documents requested by The Spokesman-Review are necessary for the citizens of Washington to maintain oversight over SFCC *and its faculty*.

Furthermore, each of these Does works for SFCC. Each of them alleges to have observed or experienced harassment by the College's top ranked official. Each of them continues to work for the College and is entrusted with certain responsibilities by the people of this State. How each of them responded—whether they followed policy or not, whether they reported or not—is a matter of public concern. While it may be "embarrassing" for their names to be disclosed, their role as a public servant and the importance of the allegations involved, make their identities and conduct a matter of public concern.

Further, as discussed at length in the opening brief, there is information to suggest that SFCC and its employees (including, possibly, some of the Jane Does), engaged in wrongful and / or unethical conduct, which compromised the integrity of the institution and its ability to serve its students. However, the heavy redactions make the documents unintelligible. The citizens have a right to review the public records and make a determination as to whether the public agency acted appropriately.

Critically, "the use of a test that balances the individual's privacy interest against the interest of the public in disclosure is not permitted." *Dawson*, 120 Wn.2d at 782. If there is any legitimate public interest in the documents, it does not matter how embarrassing or invasive the document are, they must be disclosed in their entirety and in their unredacted form.

\* \* \*

Respondents argued before the Superior Court that they were entitled to redactions of the "identifying information" under RCW 42.56.230(3). The Superior Court erroneously agreed. In order to qualify for exemption, Respondents must prove (1) the documents contain personal information and the files are "maintained for employees"; (2) that disclosure would violate their right to privacy; and (3) disclosure is of no legitimate public concern. Respondents fail to prove any one element, much less all three as is required for the exemption to apply. The exemption does not apply and they are not entitled to redaction.

**D. RESPONDENTS HAVE NOT PROVEN THAT THEY ARE ENTITLED TO INJUNCTION UNDER RCW 42.56.540**

RCW 42.56.540 is a procedural statute granting the right to seek an injunction against disclosure, but only if the documents in question fall within a specific exemption found elsewhere in the act. *Yakima v. Yakima Herald-Republic*, 170 Wn.2d 775, 246 P.3d 768 (2011). "[A] party

seeking a TRO or preliminary injunction to prevent the disclosure of certain records must show . . . that the disclosure would clearly not be in the public interest and would substantially and irreparably damage any person or vital government functions." *Seiu Healthcare 775NW*, 193 Wn. App. at 393 (emphasis added).

As discussed above, SFCC is responsible for the care and education of over 7,000 students, many of whom are minor high school students. Dr. Pitcher's conduct is itself a public concern. So is SFCC's response to the conduct. SFCC's conduct and the conduct of its faculty is of legitimate and significant concern to the public. Appellant reiterates that it is the Respondents' burden to prove that disclosure is clearly not in the public interest. However, Appellant has independently shown that the documents are of public concern.

Respondents offer one, and only one justification for why disclosure is not in the public interest. Respondents argue only that they "would not have given information or would not have agreed to be interviewed had they known their names would be made public." This is also the only justification the Superior Court identified in its oral ruling and is error. "The Supreme Court . . . has made clear that '[a] general contention of chilling future witnesses is not enough to exempt disclosure.'" *Does v. King Cty.*, 192 Wn. App. 10, 28, 366 P.3d 936, 945

(2015) (citing *Sargent v. Seattle Police Dep't*, 179 Wn.2d 376, 395, 314 P.3d 1093 (2013)). Respondents do not refute, and cannot refute, this clearly established case law.

It is the Respondents' burden to show that disclosure is clearly not in the public interest. The only justification that they have offered is the categorical "chilling effect" and that is the justification that the Superior Court accepted and relied upon. The error is that "[a] general contention of chilling future witnesses is not enough to exempt disclosure." *Does v. King Cty.*, 192 Wn. App. 10, 28, 366 P.3d 936, 945 (2015) (citing *Sargent v. Seattle Police Dep't*, 179 Wn.2d 376, 395, 314 P.3d 1093 (2013)).

**E. RESPONDENTS FAIL TO PROVIDE ANY EVIDENCE THAT THEY WOULD SUFFER SUBSTANTIAL OR IRREPARABLE HARM.**

Finally, "if one of the PRA's exemptions applies, a court can enjoin the release of a public record only if disclosure 'would clearly not be in the public interest and would substantially and irreparably damage any person, or vital governmental functions.'" *Lyft, Inc. v. City of Seattle*, 418 P.3d 102, 113 (Wash. 2018) (internal quotations omitted). "The injunction standard requires a showing on both elements." *Id.* "In a proceeding brought under this injunction statute, the party seeking to prevent disclosure has the burden of proof." *Id.* (quoting *Spokane Police Guild v. Washington State Liquor Control Bd.*, 112 Wn.2d 30, 35 (1989)).

Therefore, it is the Respondents' burden to show that disclosure would cause substantial and irreparably damage. *Soter v. Cowles Pub. Co.*, 162 Wn.2d 716, 756–57, 174 P.3d 60, 81 (2007).

Respondents have offered no admissible or substantive evidence to show that they would be substantially and irreparably harmed by the disclosure. Each of the Respondents, conveniently, say the exact same thing: that they would be "embarrassed" and that they are "fearful of retaliation." Both of these reasons fail as a matter of law.

First, as a matter of black-letter statute, "embarrassment" is legally insufficient to prevent disclosure. RCW 42.56.550(3) states: "Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." Respondents must prove that the information is "highly offensive," and that disclosure is clearly not a legitimate, or in the, public interest. Embarrassment is insufficient.

Second, Respondents offer no evidence of their unfounded and unsubstantiated assertion that they fear retaliation. Mere allegations and conclusory statements are insufficient. A petitioner for a PRA injunction must provide a "truly persuasive reason as to why disclosure would harm" the petitioner. *Ameriquest Mortgage Co. v. Office of Attorney Gen. of*

*Washington*, 177 Wn.2d 467, 492, 300 P.3d 799, 811 (2013) ("Ameriquest has failed to demonstrate how an exemption applies or how it or a vital government function would be substantially and irreparably damaged."). Respondents have offered no real evidence except their conclusory allegations and unfounded assertions that any harm would come to them, except perhaps, embarrassment, which is insufficient as a matter of law.

#### **F. ATTORNEY'S FEES ARE INAPPROPRIATE IN THIS CASE**

Finally, Respondents ask for attorneys' fees pursuant to RAP 18.1. Respondents are not entitled to attorneys fees as a matter of law. RAP 18.1 states:

If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

(emphasis added). RAP 18.1 requires "more than a bald request for attorney fees." *Hurley v. Port Blakely Tree Farms L.P.*, 182 Wn. App. 753, 774, 332 P.3d 469, 480 (2014); *Richards v. City of Pullman*, 134 Wash.App. 876, 884, 142 P.3d 1121 (2006). "Argument and citation to authority are required under the rule to advise us of the appropriate grounds for an award of attorney fees as costs." *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 710, 952 P.2d 590, 599 (1998).

Attorneys' fees are only appropriate if the "applicable law grants to a party the right to recover attorney fees." RAP 18.1. A bald request for fees is inappropriate as a matter of law. In order to recover fees, Respondents must point to the provision in the PRA which grants them fees. There is none. If anything, the PRA tends to grant fees to the requestor of records and not those who seeks to hide the records. *See* RCW 42.56.550. Respondents have failed to identify upon what legal authority they are entitled to attorneys fees and, therefore, they cannot be granted fees.

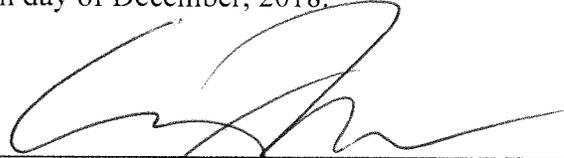
## **V. CONCLUSION**

The Public Records Act is a strong mandate for public disclosure of records. In order for a petitioner to succeed in obtaining injunctive relief, they must prove that (1) an exemption applies (2) that disclosure is clearly not in the public interest; and (3) disclosure would result in substantial and irreparable harm to the Petitioner. Respondents failed to meet each of these elements before the Superior Court and it was error for the Superior Court to grant the injunction.

It may be unfortunate, or even regrettable, to disclose information such as that which the Respondents seek to keep private. However, under the strong mandate of the PRA, that is exactly what the law requires. Appellant respectfully requests the reversal of the order of the Superior

Court and an order that the documents be disclosed in their unredacted form.

DATED this 7th day of December, 2018.

A handwritten signature in black ink, appearing to be 'DK', written over a horizontal line.

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**PROOF OF SERVICE**

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the 7<sup>th</sup> day of December, 2018, the foregoing Reply Brief of Appellant was delivered to the following persons in the manner indicated:

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