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Court of Appeals
Division III
State of Washington
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NO. 362337

IN THE COURT OF APPEALS, DIVISION THREE

PALMER D. STRAND AND PATRICIA N. STRAND

Appellant

v.

Council 2-Washington State Council of County and City Employees, AFSCME, AFL-CIO and Local 1553 – Council 2 - Washington State Council of County and City Employees, AFSCME, AFL-CIO

Respondents

REPLY BRIEF OF APPELLANT

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Appellant

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Statutes

RCW 42.56 (Public Records Act) 1, 3-6

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I. BACKGROUND

In December 2016 Patricia Strand ("Pat") requested all records on the jobs of the appraisers in the Spokane County Assessor's ("Assessor") office[1] under the Public Records Act ("PRA") RCW 42.56 *et seq*. (CP 90-91) Pat is a taxpayer in Spokane County. She is concerned with the jobs appraisers perform. The request started with the Assessor but their nonresponsiveness caused requests to be made to the Spokane County – Auditor, Commission and Human Resources. The records produced to these requests included job descriptions, payroll records (CP 101-102), timesheets (CP 98-100), Memorandum of Understanding, contracts, etc. (emphasis added) These agencies did not provide **all** records. (emphasis added) **Instead the records provided highlighted records that were missing**. (emphasis added)

The appraisers' timesheets and payroll records indicated Supplemental Agreements (CP 50) for Alternative Work Hours or Shifts (CP 49) were missing. The absence of Supplemental Agreements that authorized appraisers to work Alternative Work Hours or Shifts proved the Assessor and Council 2 - Washington State Council of County and City Employees, AFSCME, AFL-CIO and Local 1553 - Council 2 -

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[1] Public employees are contracted to work for Spokane County under public employee union contracts. Pat's record request is for what she labeled "employment agreements"

Washington State Council of County and City Employees, AFSCME, AFL-CIO ("Council 2") have violated Collective Bargaining Agreements ("CBA" - CP 39-50) since 2012 based on appraisers' work hours:

A. Appraisers counted lunch and rest breaks as work hours in violation of CBAs without proper authorizations for the period 2012 through 2016.

B. Appraisers worked more than 7.5 hours (overtime) in a work day in violation of CBAs without proper authorizations for the period 2012 through 2016.

C. Proper authorizations (Supplemental Agreements) for items A and B are negotiated and signed by the Assessor and Council 2 that must precede violations of Regular Hours of work (CP 49). The Spokane County – Assessor, Auditor, Human Resources and Commission – produced no authorizations on appraisers' lunch breaks, rest breaks and overtime for the period 2012 through 2016.

Pat's next step in conducting a reasonable inquiry into the factual and legal basis for the missing Supplemental Agreements was to request them and records supporting them from Council 2. **Supplemental Agreements on appraisers work hours and shifts and the supporting records are public records created by the Assessor in performance of**

Spokane County jobs. (emphasis added) Council 2 has two appraisers as their Union Representatives, Ms. Vasquez and Ms. McMillan.[2] Council 2 responded to the request alleging they are not subject to the PRA.

Pat initiated Case 182002278 to have the court determine if Council 2 is subject to the PRA. Pat alleges Council 2 obtained the records supporting the contractually mandated Supplemental Agreements through Appraisers Vasquez and McMillan. Pat alleges Council 2's possession of these records supports Council 2 knowingly violating CBAs. Pat alleges the only reason Council 2 would have these records while not initiating Supplemental Agreements is to unlawfully influence the operations of the Assessor's office. Telford factor No. 2 is a non-governmental entity having a government function. Pat alleges it is in the public's interest to know this is occurring.

The PRA states that courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest (RCW 42.56.550(3)).

RCW 42.56.030 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. This chapter shall be liberally

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[2] Brief of Appellant footnotes page 3 and page 8

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

II. REPLY ISSUES

1. Was It An Abuse of Judicial Discretion For The Trial Court to Dismiss Case 182002278 Without a Review Based On Council 2 Saying They Were Not Subject To The PRA?

Council 2 presented a new argument by alleging *Caldecott v. Superior Court*, 243 Cal. App. 4th 212, 196 Cal. Rptr. 3d 223 (2015) is **precedent for the specific records Pat requested as the basis for the Case being irrelevant, immaterial and not dispositive in determining** whether Council 2 is subject to the PRA.[3] (emphasis added) Council 2's citation for these records being irrelevant, immaterial and not dispositive is misleading because the citation is incomplete. The citation in its entirety,

"the motive of the particular requester in seeking public records is irrelevant, and the CPRA does not differentiate among those who seek access to them. Moreover, the purpose for which the requested records are to be used is likewise irrelevant. `**The question instead is whether disclosure serves a public purpose.'** (emphasis added)

Caldecott posits a PRA determination should be based on whether Council 2's possession of appraisers' employment records serves a public purpose! This is Pat's argument for the PRA applying to Council 2!

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[3] Brief of Respondents page 29

D. Is it in the public interest to have Council 2 disclose their possession of public records on appraisers Alternative Work Hours and Shifts?

E. Is it in the public interest to know Items A through D have existed since 2012?

F. Is it in the public interest for Council 2 to possess employment records showing appraisers working Alternative Work Hours and Shifts and not use them to initiate a Supplemental Agreement contractually mandated for Alternative Work Hours and Shifts?

G. Is it in the public interest to know Items A through E cost more taxpayer dollars but do not produce any County benefit.[4]

Caldecott also addresses Council 2's rights to privacy,

We first "`determine whether disclosure of the information would "compromise substantial privacy interests; if privacy interests in given

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[4] Pat's interest in appraisers performance is documented in:

1) Case 182042822 *Strand v. State of Washington Board of Tax Appeals; Spokane County and Spokane County Assessor Petition for judicial Review For Official Misconduct et al.*
2) 365387-III; Case 18203091 *Strand v. Spokane County and Spokane County Assessor* (PRA violations)
3) 355977-III; Case 172014383 *Strand v. State of WA. Board of Tax Appeals Petition for Judicial Review of State of WA. BTA Failure of Duty, et al.* ("BTA")
4) 347222-III; Case 162010797 *Strand v. Spokane County and Spokane County Assessor* (PRA violations)
5) 341909-III; Case 142010791 *Strand v. Spokane County and Spokane County Assessor* (PRA violations)
6) Case 132001238 *Strand v. Spokane County and Spokane County Assessor* (PRA violations)
7) Case 122011103 *Strand v. Spokane County Assessor Petition for Review Docket No. 10-258* (BTA)

information are de minimis disclosure would not amount to a `clearly unwarranted invasion of personal privacy,' , . . . We then decide "`whether the potential harm to privacy interests from disclosure outweighs the public interest in disclosure.' . . . In considering these factors we look at "`"the extent to which disclosure of the requested item of information will shed light on the public agency's performance of its duty."

What privacy interest does Council lose by disclosing their possession of employment records – which are public records? The privacy interest they lose is their violation of CBAs.

2. Is Case 182002278 Frivolous?

West v. Wash. Ass'n of County Officials, 162 Wn. App. 120, 252 P.3d 406 (2011) reviewed the issue of the PRA and sanctions for a frivolous lawsuit as an issue of judicial discretion requiring weighing (1) baseless filings and (2) filings made for an improper purpose. A filing is "baseless" when it is "(a) not well grounded in fact, or (b) not warranted by (i) existing law or (ii) a good faith argument for the alteration of existing law."

A trial court may not impose CR 11 sanctions for a baseless filing "unless it also finds that the attorney who signed and filed the [pleading, motion or legal memorandum] failed to conduct a *reasonable inquiry* into the factual and legal basis of the claims." . . . We review a sanction order under the abuse of discretion standard, asking whether it was manifestly unreasonable or based on untenable grounds.

The Trial Court made no findings about Pat's filings. The Trial Court made no findings as to the records that are Pat's factual and legal basis for Case 182002278. Council 2 alleges in *Caldecott* that the records

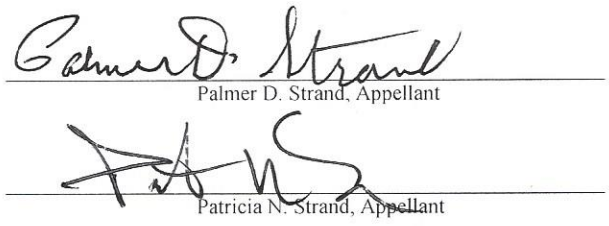
are irrelevant, immaterial and not dispositive. Council 2 does not allege they are not product of a reasonable inquiry. Council 2 never alleged any impropriety in Pat's purpose in the Case.

The only issue Council 2 and the Trial Court present as the basis of dismissal and a frivolous action is Council 2 as the Defendant!

III. CONCLUSION

Council 2 never addresses the appraisers' employment records at issue. Council 2 never addresses that these records are public. Council 2's argument is that they are a Union! As the Union representing appraisers why do they not protect appraisers from unreasonable work hours!

RESPECTFULLY SUBMITTED this14th day of February, 2019.



Palmer D. Strand, Appellant

Patricia N. Strand, Appellant

CERTIFICATE OF SERVICE

I certify that on February 14, 2019, I served a true and correct copy of Appellant's Palmer D. and Patricia N. Strand's, Reply Brief of Appellant to:

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