

**FILED**

FEB 04 2020

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

No. 365123

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

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Joseph Thurura,  
Appellant,

vs.

Department of Corrections,  
Respondent.

---

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF SPOKANE

---

APPELLANT'S OPENING BRIEF

---

Joseph Thurura #332733  
AHCC M-A-58  
P.O. Box 2049  
Airway Heights, WA 99001

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## I. INTRODUCTION

Appellant Joseph Thurura is a prisoner at Airway Heights Corrections Center in the State of Washington. On April 5, 2018, he filed a Public Records Act (PRA) lawsuit against the Department of Corrections (DOC). This lawsuit claims that DOC violated the PRA by failing to produce documents which were requested, failed to save documents in accordance with their records retention schedule, performed an inadequate search, the Attorney General misquoted non-precedent case law, did not provide any rule or law explaining why DOC keeps records for only ninety (90) days contrary to their Records Retention Schedule, and the trial court abused its discretion.

The following arguments affirmatively proves, even by DOC's own admission that they violated the laws of the PRA in bad faith and the trial court abused its discretion.

Mr. Thurura has drafted this brief and is acting pro se. He respectfully requests that this court interpret the pleadings liberally and with great latitude. "A pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers". Haines v. Kerner, 404 U.S. 519, 520-21(1972).

## II. ASSIGNMENT OF ERROR

- 1) The trial court erred when it granted the Department of Corrections (DOC) relief in the show cause proceeding, after DOC violated the Public Records Act (PRA).
  - (a) The DOC failed to retain Public Records in accordance with their Records Retention Schedule, version 1.5 (April 2018) 2.1-2.6 Security and Control (DAN 09-07-62084).
  - (b) The DOC failed to conduct a sincere and adequate search that was objectively reasonable and calculated to uncover all relevant documents (i.e. the computer

terminal that the creator of the records used to generate the records).

- 2) The Attorney General mis-quoted the Court of Appeals unpublished opinion (Lancaster v. Washington State DOC, No. 48708-0-II) to support their case.
- 3) The Attorney General did not provide any policy, rule, and/or statute to support their argument that DOC keeps records for only ninety (90) days, contrary to DOC's Records Retention Schedule version 1.5 (April 2018), (DAN 83-06-32529 / 09-07-62084).
- 4) The trial court erred and abused its discretion when it relied on a mis-quotation of an unpublished decision to support its own decision, and relied on a false claim by the Attorney General that DOC is required to save Public Records for only ninety (90) days.

### III. HISTORY AND TIMELINE OF CASE

1) May 19, 2017: Mr. Thurura was forced into segregation ("The Hole") and was told he is under investigation for an alleged fight with another inmate in the H-Building at Airway Heights Correctional Center (AHCC).

2) June 2, 2017: At the conclusion of a major infraction hearing, Mr. Thurura was found guilty of violating Washington Administrative Code (WAC) 505 for fighting with another inmate, although there was no incident report(s) to support the guilty finding. Mr. Thurura was sanctioned 10 days loss of Good Conduct Time, 1 day segregation, and 30 days loss of privileges.

3) July 2, 2017: Mr. Thurura submitted a request to the Department of Corrections (DOC) for the disclosure of records under RCW 42.56 requesting ALL evidence submitted and/or related to the WAC 505 infraction hearing.

4) October 3, 2017: Mr. Thurura received a response to his request deemed "PRU-47939". This response included several documents, but there was no incident report(s) included.

5) October 17, 2017: Mr. Thurura sent a letter to the DOC Public Disclosure Unit inquiring why there were no incident report(s) included with the documents as a result of his public records request.

6) February 6, 2018: After DOC did another search for records, Mr. Thurura received several other important documents, along with the incident reports which were not included with the first request.

7) February 11, 2018: Realizing that DOC may be falsifying documents, Mr. Thurura submitted another Public Records request under RCW 42.56, requesting the date and time the incident reports were created (generated).

8) March 13, 2018: Mr. Thurura received a letter stating "No responsive records were found".

9) April 5, 2018: Mr. Thurura filed a Public Records Act (PRA) complaint with the Spokane County Superior Court.

10) June 18, 2018: The defendant (DOC) filed the Department's amended answer to the plaintiff's (Mr. Thurura) Public Records Act complaint, which the court granted on July 3, 2018.

11) October 12, 2018: The defendant filed a Motion to Show Cause which was heard by the court on November 9, 2018 and November 16, 2018. The court granted the defendant's motion and dismissed Mr. Thurura's PRA complaint.

12) November 4, 2018: Mr. Thurura filed a response to the Motion to Show Cause with several arguments alleging many discrepancies with the responses to formal interrogatories and other facts.

#### IV. LEGAL ARGUMENT

1) (a) On July 2, 2017, Mr. Thurura initially filed a Public Records request under the PRA (RCW 42.56). See Appendix "A". This request was made for "All evidence submitted and/or related to the WAC 505 infraction hearing".

After Mr. Thurura realized there were important documents missing from DOC's response, he wrote a letter to DOC asking where the documents were. See Appendix "B". In response to Mr. Thurura's letter, DOC conducted a second search, which produced the records requested.

On February 11, 2018, Mr. Thurura filed another Public Records request (see Appendix "C") as a follow-up to his initial request, asking for the metadata associated with the date and time the incident reports were generated.

DOC states that "there's no evidence that there is metadata associated with the dates and times that these documents were created", and "anything else like that is only maintained for about 90 days". See Appendix "H", November 9, 2018 verbatim report of proceedings motion hearing: PG. 6, lines 10-24 & Appendix "E", Plaintiff's second set of interrogatories and request for production of records: PG. 3, lines 5-24.

The DOC provided false and misleading information about the department's Record Retention Schedule version 1.5 (April 2018) 2.6 Security and Control, Disposition Authority Number (DAN 83-06-32529).

This action by DOC to knowingly provide false information in order to manipulate the court of law is not only a miscarriage of justice, but it also proves that DOC violated the PRA in bad faith.

The PRA's disclosure provision must be liberally construed and its exemptions narrowly construed (RCW 42.56.030). The burden of proof is on

the agency to establish that the refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits or disclosure in whole or in part (RCW 42.56.550(1)). Administrative inconveniences or difficulty does not excuse strict compliance with the PRA. Rental Housing Association of Puget Sound v. City of Des Moines, 165 Wn.2d 525, at 535, 538-39, 199 P.3d 393(2009).

Metadata is most clearly defined as "data above data" or hidden information about electronic documents created by software programs.

Metadata is quite simply data about data, or hidden statistical information about a document that is generated by a software program.

The electronic version of a record, including its embedded metadata, is a public record, so it could not be destroyed once a request was made. O'Neill v. City of Shoreline, 170 Wn.2d 138, 240 P.3d 1149, 2010 Wash. Lexis 870 (Wash. 2010).

The law is clear:

RCW 40.14.060; official public records shall not be destroyed unless the records are six (6) or more years old.

WAC 434-635-010; No public records other than office files and memoranda of any local government agency shall be destroyed until six (6) years old or until the six-year retention is reduced by the local records committee.

Mr. Thurura argues that when he made his initial Public Records Request on July 2, 2017 for ALL (emphasis added) evidence related to the infraction, DOC was required to save ALL (emphasis added) information, including any metadata, related to the request for six (6) years or more.

In addition, an agency can be found to violate the PRA and subject to the attorney's fees and penalty provisions if it prematurely destroys requested records after a request is made. Yacobellis v. City of Bellingham, 55Wa. App. 708, 780 P.2d 272(1989).

Here it is obvious and clear that DOC violated the PRA, lied to the court, and did so in bad faith.

(b) Mr. Thurura argues that DOC failed to conduct an adequate search for his Public Records Request because by their own admission, DOC only searched the Captain's office for records. See Appendix "F", plaintiff's first set of request for admission: PG.2, lines 7-14 & Appendix "H", verbatim report of proceedings motion hearing: PG.4, lines 1-4.

RCW 42.56.152

- (1) Public Records officers designated under 42.56.580 and records officers designated under RCW 40.14.040 must complete a training course regarding the provisions of this chapter, and also chapter 40.14 RCW for records retention.
- (2) Public Records officers must:
  - (a) Complete training no later than ninety days after assuming responsibilities as a Public Records Officer or Records Manager; and
  - (b) Complete refresher training at intervals of no more than four years as long as they maintain the designation.
- (5) Training must address particular issues related to the retention, production, and disclosure of electronic documents including updating and improving technology information services.

Public Records Officers should receive more intensive training (WAC 44-14-00005). Courts can consider lack of training as a factor in action

filed under RCW 42.56.550, the act's enforcement provision. Yousoufian, 168 Wn.2d at 494(2010).

It is Mr. Thurura's position that if a Public Records Officer cannot conduct a sincere and adequate search that was objectively reasonable and calculated to uncover all relevant documents, then it is safe to assume that DOC's Public Records Officer may not have been properly trained.

Agencies are required to make more than a perfunctory search and to follow obvious leads as they are uncovered. The search should not be limited to one or more places if there are additional sources for the information requested. At the summary judgment stage, the agency bears the burden of showing its search was adequate. To do so, the agency may rely on reasonably detailed, non-conclusory affidavits submitted in good faith. These should include the search terms and the type of search performed, and they should establish that all places likely to contain responsive materials were searched. Neighborhood Alliance of Spokane v. County of Spokane, 172 Wn.2d 702.

An agency's inadequate search for records under the PRA is comparable to a denial because records are never exempt from disclosure only from production, an adequate search is required to properly disclose responsive documents. An agency's failure to perform an adequate search precludes an adequate response, and the PRA treats a failure to properly respond as a denial. An adequate response to an initial request for records under the PRA, when records are not disclosed should explain, at least in general terms, the places searched. A response stating only that there are no other documents that would be responsive to the request is conclusory and inadequate absent an explanation of why that is or an averment that all places likely to contain responsive documents were searched or were unavailable to be searched. Deines v. Spokane County, 111 Wn.App. 342(2002).

For DOC to search only the Captain's office for records and not make a reasonable conclusion that the requested information may be on a different computer (e.g., the computer the incident reports were generated) proves that DOC performed an inadequate search. Furthermore, absent Mr. Thurura's law suit, DOC would not have conducted a second search for the documents on the computers that supposedly generated the incident reports. This action further supports Mr. Thurura's claim that DOC violated the PRA and did this in bad faith.

By DOC's own admission, they failed to inquire from the staff members who wrote the incident reports about which computers were used to generate the reports. See Appendix "F", Plaintiff's first set of request for admission: PG.3, lines 7-14.

Mr. Thurura argues that because DOC did not even ask its employees which computer terminal was used to generate the incident reports and only looked in the Captain's office, DOC violated the PRA because they limited their search to only the Captain's office and did not follow obvious leads as to where the information may be located.

The agency cannot limit its search to any one record system if there are others that are likely to turn up the information requested. Neighborhood Alliance of Spokane v. Spokane County, 172 Wn.2d 702(2011).

2) On November 9, 2018, the court held a Motion to Show Cause hearing which was made by the Defendant (DOC) and was argued by the Attorney General. During this hearing, the Attorney General misquoted Lancaster v. Washington State v. DOC, No. 48708-0-II. See Appendix "H" verbatim report of proceedings motion hearing PG. 4, line 24 - PG. 6, line 9. The Attorney General stated that as long as a second search has been conducted after a lawsuit has been filed, there is not a PRA violation.

Mr. Thurura argues that nowhere in the Lancaster decision does it state or even resemble the Attorney General's argument. See Appendix "K", Lancaster v. Washington State DOC, No. 48708-0-II.

Here the Attorney General knowingly mislead the court in order to cover up for DOC's violations of the PRA. Not only is it very disturbing that an elected official of the Washington State Government would resort to such tactics, there may even be a due process concern. Furthermore, when DOC violates the law, a State Attorney General misleads the court to cover up the violation, and the Superior Court just goes along with whatever the Attorney General states, even if it is not true; this is the very definition of a conspiracy.

Mr. Thurura asserts that it is the Court of Appeals duty to remedy these atrocious series of actions.

3) Mr. Thurura argues that because the Attorney General did not provide any policy, rule, and/or statute to support their claim that DOC is required to save documents for only ninety (90) days (See Apperdix "H"), which is contrary to their Records Retention Schedule, Mr. Thururua's due process rights were violated.

4) On November 9, 2018, a Show Cause hearing was held by Spokane County Superior Court. During this hearing, the representative for DOC (Attorney General) misquoted an unpublished opinion to support its case and stated that DOC is only required to save documents for ninety (90) days contrary to their Records Retention Schedule.

It is Mr. Thurura's position that the trial court abused its discretion when it relied on an unpublished opinion, Lancaster v. Washington State DOC, No. 48708-0-II, as authority to grant DOC's motion. "Stare decisis" is the Latin and legal term for Doctrine of Precedent. This rule means precedents not only have persuasive authority, but also must be followed when similar circumstances arise.

Not only did the trial court rely on non-precedent case law, it also accepted the Attorney General's false claim that DOC is only required to

save documents for ninety (90) days to support its decision.

This is obvious and clear that the trial court abused its discretion and openly denied Mr. Thurura his constitutional right to due process.

V. CONCLUSION

In the interests of justice, and all of the foregoing reasons, appendices, facts, and applicable statutes and case law, Mr. Thurura respectfully requests that this court grant this appeal and rule that DOC violated the PRA and did so in bad faith.

DATED this 1<sup>st</sup> day of February, 2020.

Respectfully submitted,

  
\_\_\_\_\_  
Joseph Thurura, pro se

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

Joseph Thurura, )  
Appellant, )  
 ) NO. 365123  
v. )  
 ) CERTIFICATE OF SERVICE  
Department of Corrections, )  
Respondent. )  
\_\_\_\_\_ )

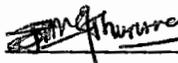
I, Joseph Thurura, swear under penalty of perjury under the laws of the State of Washington that on February 1<sup>st</sup>, 2020, I mailed, via U.S.P.S., through the prison's "Legal Mail" a copy of APPELLANT'S OPENING BRIEF to the following:

Attorney General  
1116 W. Riverside Ave. Suite 100  
Spokane, WA 99201-1106

Washington State Court of Appeals, Div. III  
N. 500 Cedar  
Spokane, WA 99201

DATED this 1<sup>st</sup> day of February, 2020.

Respectfully submitted,

  
\_\_\_\_\_  
Joseph Thurura

APPENDIX A



REQUEST FOR DISCLOSURE OF RECORDS

A public disclosure request is the request for a specific and identifiable document. Please clearly describe the actual document you require. Documents responsive to a public disclosure request will not be mailed until all applicable disclosure fees are paid.

Date of Request: JULY 02, 2017
Name: THURURA, JOSEPH WAKABUGI DOC # 332733
Address: AIRWAY HEIGHTS CORR CTR, P.O. BOX 2049, AIRWAY HEIGHTS 99001

- I request to inspect my central file.
This request has been previously submitted or is currently with the Department.

Date of Original Request:

Original Request Submitted To: (Name/Address)

- I request copies of the following public records. If requesting offender records, include offender name and DOC number.

Under the PRA, I'm requesting the following public disclosure records:
1) All evidence submitted and/or related to WAC 505 Violation against Mr Thurura, Joseph # 332733 on 06/02/2017.
2) Including but not limited to, names and badge/doc #s of witnesses, incident reports and witness statements of supervisors and inmates at Textiles, and of staff members who responded to an alleged fighting in H-building, Textiles Department at around 9:00am.

Thank you.

Requester Signature: [Signature] Date: 07/02/2017

Please submit this request to the Public Records Office at P.O. Box 41118, Olympia, WA 98504

DOC STAFF - FILL OUT BELOW
Person Receiving Request: Date:
PDC (or designated person responding to request): Date:
Response Sent: Date:
Further Response(s) Date:
Date:
Date:
Date:

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

APPENDIX B

OCTOBER 17, 2017

THURUVA, JOSEPH WAKARUGI,  
#332733 MB52u,  
AIRWAY HEIGHTS CORRECTIONS CENTER,  
P. O. BOX 2049,  
AIRWAY HEIGHTS, WA 99001.

MARA RIVERA,  
PUBLIC DISCLOSURE UNIT,  
P. O. BOX 4118,  
OLYMPIA, WA 98504

Dear Rivera,

RE: PUBLIC RECORDS REQUEST # PRU-47939.

In my initial Public Records Request, I requested to be provided with all evidence submitted and/or related to WAC 5A violation against myself, including names/badge numbers of staff members, incident reports, staff written statements among others.

Upon receiving the copies of the public records request though, I have discovered that the names of officers/staff members, their badge numbers, incident reports, and staff written statements were not provided to me.

So, could you please explain to me why I was not provided with those requests, or why they were not included in the Public Records Request that you mailed me dated October 3, 2017?  
Thank you.

Sincerely,  
~~Joseph Wakarugi~~  
Thuruva, Joseph Wakarugi.

APPENDIX C

Sent out a request for Metadata on February 11th 2018 @ 1930 hours.

DATE Feb. 11th, 2018

~~State~~ NAME = Thurnga, Joseph

Address - A.H.C.C. in full. P.O. Box

Under WAC 137-08-090, you must submit your public records request to the Department's public records officer. You may submit it by:

U.S. Mail: Public Records Officer  
Public Disclosure Unit  
Department of Corrections  
P.O. Box 41118  
Olympia, WA 98504

Email: [publicdisclosureunit@doc.wa.gov](mailto:publicdisclosureunit@doc.wa.gov)

I am requesting:

- 1) The Metadata associated with the Incident Report (IR) written by Chris Burnette (CISA), on 05/19/2017; Specifically, I want to know the date and time this Incident Report (IR) was created (generated).
- 2) The Metadata associated with the Incident Report (IR) written by G. Sauter (CISA) on 05/19/2017; Specifically, I want to know the date and time this Incident Report (IR) was created (generated).

~~Joseph Thurnga~~  
Signature

Feb. 11th, 2018  
Date

APPENDIX D

1  
2  
3 **STATE OF WASHINGTON**  
4 **SPOKANE COUNTY SUPERIOR COURT**

5 JOSEPH THURURA,

6 Plaintiff,

7 v.

8 WASHINGTON STATE DEPARTMENT  
9 OF CORRECTIONS,

10 Defendant.

NO. 18-2-01696-1

PLAINTIFF'S FIRST SET OF  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF RECORDS

**AND DEFENDANT'S OBJECTIONS  
AND ANSWERS THERETO**

11 **GENERAL OBJECTIONS**

12 The Defendant Department of Corrections neither agrees nor stipulates to the Plaintiff's  
13 definitions or procedure. These interrogatories and requests for production will be answered and  
14 supplemented in accordance with Civil Rules 26, 33, and 34. Without waiving such objections,  
15 answers are provided as set forth below.

16 **INTERROGATORY** Identify each person who took an action in your response to Thurura's  
17 Public Records Request ("PRU-51504")

18 **ANSWER:** Davis Needham (Public Records Specialist), Anne Graves (AHCC Public Records  
19 Coordinator), and Linda Aff (AHCC Senior Secretary).

20 **INTERROGATORY** For each person identified in your answer to Interrogatory No. I, identify  
21 the action(s) taken by said person.

22 **ANSWER:** Davis Needham was the Public Records Specialist assigned to process Thurura's  
23 request. Needham determined that the Airway Heights Corrections Center would be a location  
24 where the Incident Report information would reasonably be located and requested that the  
25 AHCC Public Disclosure Unit, Anne Graves, conduct a search for responsive records. Anne  
26 Graves reviewed the request and determined the Incident Reports related to an infraction issued

1 to Thurura. The request was then forwarded to the AHCC Captain's Office which would be the  
2 location where the records would likely be located. Linda Aff, AHCC Senior Secretary  
3 conducted a review for responsive records through the Captain's Office Muster archives where  
4 any of the information would have been reasonably located. That search was unable to retrieve  
5 any records which provided "metadata associated with the Incident Report (IR) written by Chris  
6 Burnette (CISA), on 05/19/207; specifically, I want to know the date and time this Incident  
7 Report (IR) was created (generated)." And "metadata associated with the Incident Report (IR)  
8 written by G Sauter (CIS2), on 05/19/207; specifically, I want to know the date and time this  
9 Incident Report (IR) was created (generated)."

10 **INTERROGATORY** How much time did you spend searching for records responsive to PRU-  
11 51504?

12 **ANSWER:** 2.5 hours.

13 **A. REQUEST FOR PRODUCTION** Produce the record(s) related to your response to  
14 PRU-51504.

15 **RESPONSE:** See documents produced at DEFS 1-13. Documents are available for inspection  
16 and review by Plaintiff's representative, by CD or Defendant will provide copies of the records  
17 requested at a rate of 10 cents per page in addition to postage costs.

18 **INTERROGATORY** Describe the policies or procedures that you followed in responding to  
19 PRU-51504.

20 **ANSWER:** DOC 280.510, RCW 42.56, and WAC 137-08.

21 **B. REQUEST FOR PRODUCTION** Produce the policies or procedures referenced in  
22 answer to Interrogatory No. 4.

23 **RESPONSE:** See documents produced at DEFS 14-21. Documents are available for inspection  
24 and review by Plaintiff's representative, by CD or Defendant will provide copies of the records  
25 requested at a rate of 10 cents per page in addition to postage costs.

1 RCW 42.56 Public Records Act and WAC 137-08 Public Records Disclosure can be accessed  
2 through the following websites:

3 <http://apps.leg.wa.gov/rcw/default.aspx?cite=42.56>

4 <http://apps.leg.wa.gov/WAC/default.aspx?cite=137-08&full=true>

5 **I. INTERROGATORY** In paragraph 4.3 of Department's answer to plaintiff's Public  
6 Records Act Complaint ("Answer"), you admit that you have the "ability to identify the date/time  
7 employees' create Incident reports"; when was the incident report written by Chris Burnette  
8 generated?

9 **ANSWER:** The Department admits that in some cases, it may be able to identify when an  
10 Incident Report was created. However, after reviewing the specific Incident Reports that are the  
11 basis for Thurura's public disclosure request, that information could not be obtained.

12 **C. REQUEST FOR PRODUCTION** Produce the record(s) that show when Chris Burnette  
13 created the incident report dated 5/19/17 which is a part of Thurura's request, PRU-51504.

14 **RESPONSE:** There are no records responsive to this request.

15 **D. REQUEST FOR PRODUCTION** Produce all Meta Data associated with Chris  
16 Burnette's 5/19/17 incident report, which shows the date and time it was created.

17 **RESPONSE:** There are no records responsive to this request.

18 **II. INTERROGATORY** When was the incident report written by G. Sauter generated?

19 **ANSWER:** This information is not available because the document was scanned and then saved.  
20 Any metadata indicating when the Incident Report was written would not be maintained in the  
21 scanned form of the record..

22 **E. REQUEST FOR PRODUCTION** Produce the record(s) that show when G. Sauter  
23 created the incident report dated 5/19/2017 which is a part of Thurura's request, PRU-51504.

24 **RESPONSE:** There are no records responsive to this request.  
25  
26

1 I, Denise Vaughan, declare the following under penalty of perjury under the laws of the  
2 State of Washington:

3 That I am a Public Records Officer for the Washington State Department of Corrections  
4 and I answered the foregoing interrogatories and requests for production of documents on behalf  
5 of Defendant Department of Corrections. I have read the ***PLAINTIFF'S FIRST SET OF***  
6 ***INTERROGATORIES AND REQUEST FOR PRODUCTION OF RECORDS AND***  
7 ***DEFENDANT'S OBJECTIONS AND ANSWERS THERETO***, know the contents thereof, and  
8 believe the same to be true and correct to the best of my information and knowledge; dated this  
9 \_\_\_\_\_ day of June, 2018.

10 *Sent without signature to avoid delay*

11 \_\_\_\_\_  
12 DENISE VAUGHAN  
13 Public Records Officer

14 THE UNDERSIGNED attorney has read the foregoing objections and responses to  
15 ***PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR***  
16 ***PRODUCTION OF RECORDS AND DEFENDANT'S OBJECTIONS AND ANSWERS***  
17 ***THERETO*** and they are in compliance with CR 26(g), dated this \_\_\_\_\_ day of June, 2018.

18 ROBERT W. FERGUSON  
19 Attorney General

20 *Sent without signature to avoid delay*

21 \_\_\_\_\_  
22 CANDIE M. DIBBLE, WSBA #42279  
23 Assistant Attorney General  
24 Corrections Division

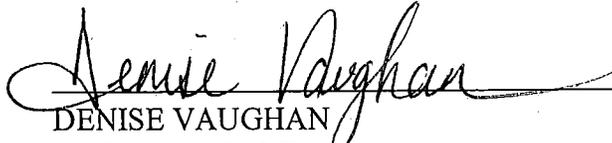
RECEIVED

JUL 05 2018

ATTORNEY GENERAL'S OFFICE  
SPOKANE

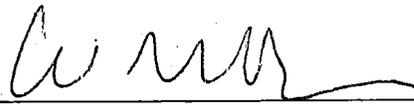
1 DENISE VAUGHAN, declare the following under penalty of perjury under the laws of the  
2 State of Washington:

3 That I am a Public Records Officer for the Washington State Department of Corrections  
4 and I answered the foregoing interrogatories and requests for production of documents on behalf  
5 of Defendant Department of Corrections. I have read the **PLAINTIFF'S FIRST SET OF**  
6 **INTERROGATORIES AND REQUEST FOR PRODUCTION OF RECORDS AND**  
7 **DEFENDANT'S OBJECTIONS AND ANSWERS THERETO**, know the contents thereof, and  
8 believe the same to be true and correct to the best of my information and knowledge; dated this  
9 29th day of June, 2018.

10  
11   
12 DENISE VAUGHAN  
13 Public Records Officer

14 THE UNDERSIGNED attorney has read the foregoing objections and responses to  
15 **PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR**  
16 **PRODUCTION OF RECORDS AND DEFENDANT'S OBJECTIONS AND ANSWERS**  
17 **THERETO** and they are in compliance with CR 26(g), dated this 9th day of July, 2018.

18 ROBERT W. FERGUSON  
19 Attorney General

20  
21   
22 CANDIE M. DIBBLE, WSBA #42279  
23 Assistant Attorney General  
24 Corrections Division  
25  
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APPENDIX B

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3 **STATE OF WASHINGTON**  
4 **SPOKANE COUNTY SUPERIOR COURT**

5 JOSEPH THURURA,

6 Plaintiff,

7 v.

8 WASHINGTON STATE DEPARTMENT  
9 OF CORRECTIONS,

10 Defendant.

NO. 18-2-01696-1

PLAINTIFF'S SECOND SET OF  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF RECORDS

**AND DEFENDANT'S OBJECTIONS  
AND ANSWERS THERETO**

11 **GENERAL OBJECTIONS**

12 The Defendant Department of Corrections neither agrees nor stipulates to the Plaintiff's  
13 definitions or procedure. These interrogatories and requests for production will be answered and  
14 supplemented in accordance with Civil Rules 26, 33, and 34. Without waiving such objections,  
15 answers are provided as set forth below.

16 **INTERROGATORY No. 1.** Describe the process by which incident reports are created.

17 **ANSWER:** The employee either prepares the report on the computer or the report is handwritten.

18 **INTERROGATORY No. 2.** When did G. Sauter end her employment with D.O.C.?

19 **ANSWER:** G. Sauter's employment ended on February 2, 2018.

20 **INTERROGATORY No. 3** When did you "remove" files from G. Sauter's D.O.C. assigned  
21 computer or referenced in defendant's objections and responses to Plaintiff first set of request  
22 for admission, number XIII?

23 **ANSWER:** I did not remove files from G. Sauter's computer. G. Sauter's H: drive (aka "Home  
24 Folder") located on the file server, was copied off, burned to disc and given to G. Sauter's former  
25 supervisor, De Fernandez, per service request #SR170499.

1 **INTERROGATORY No. 4.** When did you “reimage” G. Sauter’s D.O.C. assigned computer  
2 as referenced in defendant’s objections and responses to Plaintiff’s first set of request for  
3 admission, number XIII?

4 **ANSWER:** G. Sauter was not initially notified as she had retired 3 months prior to the PDU  
5 request. There is no record that G. Sauter’s computer was re-imaged after January 30, 2017.

6 **INTERROGATORY No. 5.** When did you “redeploy” G. Sauter’s D.O.C. assigned Computer  
7 as referenced in defendant’s objections and responses to Plaintiff’s first set of request for  
8 admission, number XIII?

9 **ANSWER :** PC Z162145 was assigned to G. Sauter on January 30, 2017 and unassigned on  
10 February 2, 2018.

11 I, Kimi Tuxford, declare the following under penalty of perjury under the laws of the  
12 State of Washington:

13 That I am the IT Specialist 5 - Supervisor at AHCC for the Washington State Department  
14 of Corrections and I answered interrogatories number 4 and 5 on behalf of Defendant  
15 Department of Corrections. I have read the ***PLAINTIFF’S SECOND SET OF***  
16 ***INTERROGATORIES AND REQUEST FOR PRODUCTION OF RECORDS AND***  
17 ***DEFENDANT’S OBJECTIONS AND ANSWERS THERETO***, know the contents thereof, and  
18 believe the same to be true and correct to the best of my information and knowledge; dated this  
19 \_\_\_\_\_ day of September, 2018.

20 *Sent without signature to avoid delay*

21 \_\_\_\_\_  
22 KIMI TUXFORD  
23 IT Specialist 5 - Supervisor  
24  
25  
26

1 **INTERROGATORY No. 6.** Define “scanned” as referenced in defendant’s objections and  
2 answers to Plaintiff’s first set of interrogatories and request for production of records, in II.

3 **ANSWER:** A handwritten report would need to be digitally copied using an optical scanner into  
4 a format that can be read by a computer, usually in PDF format.

5 **INTERROGATORY No. 7.** The information Technology Department has direct and indirect  
6 access to records and information on Chris Burnette’s D.O.C. computer usage.

7 **ANSWER:** Yes, for a limited, time sensitive time frame of 90 days and only domain logs, users  
8 logon/logoff times and the equipment being used is available.

9 **A. REQUEST FOR PRODUCTION** Provide all equipment asset tag information leased or  
10 owned by D.O.C. and assigned, accessed or used by Chris Burnette beginning May 18, 2017  
11 through June 02, 2017.

12 **RESPONSE:** DOC IT keeps domain logon/logoff records for 90 days. The time range being  
13 requested is past the retention period and is no longer available. There are no records responsive  
14 to this request.

15 **INTERROGATORY No. 8.** The information Technology Department has direct and indirect  
16 access to records and information on G. Sauter’s D.O.C. computer usage.

17 **ANSWER:** Yes, for a limited, time sensitive time frame of 90 days and only domain logs, users  
18 logon/logoff times and the equipment being used is available.

19 **B. REQUEST FOR PRODUCTION** Provide all equipment asset tag information leased or  
20 owned by D.O.C. and assigned, accessed or used by G Sauter beginning May 18, 2017 through  
21 June 02, 2017.

22 **RESPONSE:** DOC IT keeps domain logon/logoff records for 90 days. The time range being  
23 requested is past the retention period and is no longer available. There are no records responsive  
24 to this request.

1 I, David Harper, declare the following under penalty of perjury under the laws of the  
2 State of Washington:

3 That I am a CSU Forensic Investigator for the Washington State Department of  
4 Corrections and I answered interrogatories 1-3, 6-8 and requests for production of documents on  
5 behalf of Defendant Department of Corrections. I have read the **PLAINTIFF'S SECOND SET**  
6 **OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF RECORDS AND**  
7 **DEFENDANT'S OBJECTIONS AND ANSWERS THERETO**, know the contents thereof, and  
8 believe the same to be true and correct to the best of my information and knowledge; dated this  
9 \_\_\_\_\_ day of September, 2018.

10 *Sent without signature to avoid delay*

11 \_\_\_\_\_  
12 DAVID HARPER  
13 CSU Forensic Investigator

14 THE UNDERSIGNED attorney has read the foregoing objections and responses to  
15 **PLAINTIFF'S SECOND SET OF INTERROGATORIES AND REQUEST FOR**  
16 **PRODUCTION OF RECORDS AND DEFENDANT'S OBJECTIONS AND ANSWERS**  
17 **THERETO** and they are in compliance with CR 26(g), dated this \_\_\_\_\_ day of September, 2018.

18 ROBERT W. FERGUSON  
19 Attorney General

20 *Sent without signature to avoid delay*

21 \_\_\_\_\_  
22 CANDIE M. DIBBLE, WSBA #42279  
23 Assistant Attorney General  
24 Corrections Division  
25  
26

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused the foregoing Plaintiff's Second Set of Interrogatories and Request for Production of Records and Defendant's Objections and Answers Thereto to be served by United States Mail, postage prepaid, at the following addresses:

JOSEPH THURURA, DOC #332733  
AIRWAY HEIGHTS CORRECTIONS CENTER M UNIT  
PO BOX 2049  
AIRWAY HEIGHTS, WA 99001-2049

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 6<sup>th</sup> day of September, 2018, at Spokane, Washington.

  
KELLI J. MCKINNEY  
Paralegal 2

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APPENDIX F

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**STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT**

JOSEPH THURURA,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT  
OF CORRECTIONS,

Defendant.

NO. 18-2-01696-1

PLAINTIFF'S FIRST SET OF  
REQUEST FOR ADMISSION

**AND DEFENDANT'S OBJECTIONS  
AND RESPONSES THERETO**

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**GENERAL OBJECTIONS**

The Defendant Department of Corrections neither agrees nor stipulates to the Plaintiff's definitions or procedure. These interrogatories and requests for production will be answered and supplemented in accordance with Civil Rules 26 and 36. Without waiving such objections, answers are provided as set forth below.

15 **I. REQUEST FOR ADMISSION** Admit you have records of Chris Burnette accessing a  
16 DOC Computer on May 19, 2017.

17 **OBJECTION:** This request is overly vague and confusing.

18 **RESPONSE:** Admit that the Infraction Report written by Chris Burnette is dated May 19, 2017.

19 **II. REQUEST FOR ADMISSION** Admit you have records of G. Sauter accessing a DOC  
20 Computer on May 19, 2017.

21 **OBJECTION:** This request is overly vague and confusing.

22 **RESPONSE:** Admit that the Infraction Report written by G. Sauter is dated May 19, 2017.

23 **III. REQUEST FOR ADMISSION** Admit there is Metadata associated with the Incident  
24 Report Chris Burnette wrote on May 19, 2017.

25 **RESPONSE:** Deny.  
26

1 **IV. REQUEST FOR ADMISSION** Admit there is Metadata associated with the Incident  
2 Report G. Sauter wrote on May 19, 2017.

3 **RESPONSE:** Deny.

4 **V. REQUEST FOR ADMISSION** Admit you did not check with the Information  
5 Technology Department regarding my Public Records Request.

6 **OBJECTION:** This request is vague and confusing.

7 **RESPONSE:** Admit that a search for the report was conducted at the Captains Office which is  
8 the reasonable location where the Incident Reports are stored.' It was determined that the  
9 Infraction Reports were not maintained as part of the Plaintiff's infraction records and the  
10 records indicating any Metadata of the reports were not located at the Captain's Office. Admit  
11 that the Information Technology Department was consulted as part of this litigation to determine  
12 whether there would be any additional Metadata records with the May 19, 2017 Incident Reports.  
13 Admit the Information Technology Department confirmed there were no such records that would  
14 be responsive to the Plaintiff's request.

15 **VI. REQUEST FOR ADMISSION** Admit the Information Technology Department possess  
16 records related to Chris Burnette's computer usage on May 19, 2017.

17 **RESPONSE:** Deny.

18 **VII. REQUEST FOR ADMISSION** Admit the Information Technology Department possess  
19 records related to G. Sauter's computer usage on May 19, 2017.

20 **RESPONSE:** Deny.

21 **VIII. REQUEST FOR ADMISSION** Admit you did not have Information Technology  
22 Department check Chris Burnett's Department assigned Computer checked for Metadata  
23 associated with the Incident Report that he wrote on May 19, 2017.

24 **RESPONSE:** Admit Chris Burnette does not have an assigned computer.  
25  
26

1 **IX. REQUEST FOR ADMISSION** Admit you did not have Information Technology  
2 Department check G. Sauter's Department assigned Computer for Metadata associated with the  
3 Incident Report that she wrote on May 19, 2017.

4 **RESPONSE:** Admit G. Sauter is no longer employed by the Department of Corrections and  
5 there would be no metadata available because any files would have been removed and her  
6 assigned computer would have been reimaged and redeployed.

7 **X. REQUEST FOR ADMISSION** Admit you did not have Chris Burnett disclose what  
8 computer that he used to write the Incident Report on May 19, 2017.

9 **RESPONSE:** Admit.

10 **XI. REQUEST FOR ADMISSION** Admit you did not have G. Sauter disclose what  
11 computer she used to write the Incident Report on May 19, 2017.

12 **RESPONSE:** Admit G. Sauter is no longer employed by the Department of Corrections and  
13 there would be no metadata available because any files would have been removed and her  
14 assigned computer would have been reimaged and redeployed.

15 **XII. REQUEST FOR ADMISSION** Admit you did not have Information Technology  
16 Department check the computer Chris Burnett used to write the Incident Report for Metadata  
17 associated with the Incident Report he wrote on May 19, 2017.

18 **OBJECTION:** This request is vague and confusing.

19 **RESPONSE:** Admit that Chris Burnett is not assigned to a specific computer and there was no  
20 record of Metadata located/associated with the Incident Report he wrote on May 19, 2017.

21 **XIII. REQUEST FOR ADMISSION** Admit you did not have Information Technology  
22 Department check the computer G. Sauter used to write the Incident Report for Metadata  
23 associated with the Incident Report she wrote on May 19, 2017.

24 **RESPONSE:** Admit G. Sauter is no longer employed by the Department of Corrections and  
25 there would be no record of metadata available because any files would have been removed and  
26

1 her assigned computer would have been reimaged and redeployed. Therefore, there would be  
2 no Metadata associated with the Incident Report she wrote on May 19, 2017.

3 **XIV. REQUEST FOR ADMISSION** Admit that DOC employees can use personal  
4 computers/devices to perform agency's work and also create (generate) Incident Reports.

5 **RESPONSE:** Deny. DOC staff should be using DOC computers to conduct work related  
6 activities.

7 **XV. REQUEST FOR ADMISSION** Admit that you did not have Information Technology  
8 Department check Chris Burnette's personal computer(s) and/or devices for Metadata associated  
9 with the Incident Report he wrote on May 19, 2017.

10 **RESPONSE:** Admit DOC would not have considered Chris Burnette's personal computer  
11 and/or devices a reasonable location where the May 19, 2017 Infraction Report would have been  
12 located.

13 **XVI. REQUEST FOR ADMISSION** Admit that you did not have Information Technology  
14 Department check G. Sauter's personal computer(s) and/or devices for Metadata associated with  
15 the Incident Report she wrote on May 19, 2017.

16 **RESPONSE:** Admit DOC would not have considered G. Sauter's personal computer and/or  
17 devices a reasonable location where the May 19, 2017 Infraction Report would have been  
18 located.

19 **XVII. REQUEST FOR ADMISSION** Admit that you did not have Chris Burnette disclose the  
20 date and time he wrote the Incident Report.

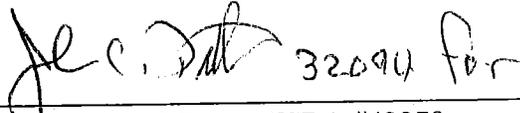
21 **RESPONSE:** Admit that there was no record of Metadata associated with the Incident Report  
22 written by Chris Burnette as that record was scanned and saved. The scanned record does not  
23 have Metadata indicating the date and time the Incident Report was written.

24 **XVIII. REQUEST FOR ADMISSION** Admit that you did not have G. Sauter disclose the date  
25 and time she wrote the Incident Report.  
26

1 **RESPONSE:** Admit that there was no record of Metadata associated with the Incident Report  
2 written by G. Sauter as that record was scanned and saved. The scanned record does not have  
3 the Metadata indicating the date and time the Incident Report was written.

4 THE UNDERSIGNED attorney has read the foregoing objections and responses to  
5 **PLAINTIFF'S FIRST SET OF REQUEST FOR ADMISSION AND DEFENDANT'S**  
6 **OBJECTIONS AND RESPONSES THERETO** and they are in compliance with CR 26(g),  
7 dated this 14<sup>th</sup> day of August, 2018.

8 ROBERT W. FERGUSON  
9 Attorney General

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12 CANDIE M. DIBBLE, WSBA #42279  
13 Assistant Attorney General  
14 Corrections Division  
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APPENDIX C

1 STATE OF WASHINGTON  
2 SPOKANE COUNTY SUPERIOR COURT

3 JOSEPH THURURA,

4 Plaintiff,

5 v.

6 WASHINGTON STATE DEPARTMENT  
7 OF CORRECTIONS,

8 Defendant.

NO. 18-2-01696-1

PLAINTIFF'S SECOND SET OF  
REQUEST FOR ADMISSION

AND DEFENDANT'S OBJECTIONS  
AND RESPONSES THERETO

9 GENERAL OBJECTIONS

10 The Defendant Department of Corrections neither agrees nor stipulates to the Plaintiff's  
11 definitions or procedure. These interrogatories and requests for production will be answered and  
12 supplemented in accordance with Civil Rules 26 and 36. Without waiving such objections,  
13 answers are provided as set forth below.

14 1. **REQUEST FOR ADMISSION** Admit that the incident report that Chris Burnette wrote  
15 dated 05/19/2017, is not handwritten.

16 **RESPONSE:** Admit.

17 2. **REQUEST FOR ADMISSION** Admit that the incident report that G. Sauter wrote  
18 dated 05/19/2017, is not handwritten.

19 **RESPONSE:** Admit.

20 3. **REQUEST FOR ADMISSION** Admit that you did not have Information Technology  
21 Department check the computer located in H-115 for Metadata associated with the incident  
22 report that Chris Burnette wrote dated 05/19/2017.

23 **RESPONSE:** Admit that metadata related to the date/time the incident report was created would  
24 not be maintained on the computer located in H-115.

1 4. **REQUEST FOR ADMISSION** Admit that you did not have Information Technology  
2 Department check the computer located in M H-114 for Metadata associated with the incident  
3 report that G. Sauter wrote dated 05/19/2017.

4 **RESPONSE:** Admit that metadata related to the date/time the incident report was created would  
5 not be maintained on the computer located in H-114.

6 5. **REQUEST FOR ADMISSION** Admit that a computer is necessary to scan a document.

7 **OBJECTION:** This request is vague and confusing.

8 **RESPONSE:** Deny. A scanner is necessary for scanning a document.

9 6. **REQUEST FOR ADMISSION** Admit that when a documents is "scanned", it creates  
10 Metadata.

11 **RESPONSE:** Admit that the metadata created when a document is scanned is metadata related  
12 to the date the document was scanned. It would not be metadata showing the date or time the  
13 actual scanned document was created or generated.

14 7. **REQUEST FOR ADMISSION** Admit that "PDF" is Metadata.

15 **RESPONSE:** Deny. PDF refers to a type of document format and stands for "Portable  
16 Document Format."

17 THE UNDERSIGNED attorney has read the foregoing objections and responses to  
18 ***PLAINTIFF'S SECOND SET OF REQUEST FOR ADMISSION AND DEFENDANT'S***  
19 ***OBJECTIONS AND RESPONSES THERETO*** and they are in compliance with CR 26(g),  
20 dated this 15<sup>th</sup> day of October, 2018.

21 ROBERT W. FERGUSON  
22 Attorney General

23 

24 \_\_\_\_\_  
25 CANDIE M. DIBBLE, WSBA #42279  
26 Assistant Attorney General  
Corrections Division

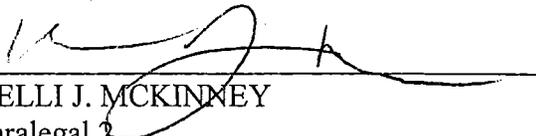
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused the foregoing Plaintiff's Second Set of Request for Admission and Defendant's Objections and Responses Thereto to be served by United States Mail, postage prepaid, at the following addresses:

JOSEPH THURURA, DOC #332733  
AIRWAY HEIGHTS CORRECTIONS CENTER M UNIT  
PO BOX 2049  
AIRWAY HEIGHTS, WA 99001-2049

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 15<sup>th</sup> day of October, 2018, at Spokane, Washington.

  
KELLI J. MCKINNEY  
Paralegal 2

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APPENDIX II

1                                    IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2                                    IN AND FOR THE COUNTY OF SPOKANE

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5 JOSEPH THURURA,                                    )  
6                                    Plaintiff,                                    ) SPOKANE COUNTY SUPERIOR COURT  
7                                    ) No. 18-2-01696-1  
8 v.                                    )  
9                                    ) COURT OF APPEALS  
10 DEPARTMENT OF CORRECTIONS, ) No. 365123  
11                                    Defendant.                                    )

12 \_\_\_\_\_  
13                                    VERBATIM REPORT OF PROCEEDINGS  
14                                    MOTION HEARING  
15 \_\_\_\_\_

16 BEFORE:     Judge Pro Tem Steven Grovdahl

17 DATE(S):     November 9, 2018

18  **COPY**

19 APPEARANCES:

20 FOR THE PLAINTIFF:                                    JOSEPH THURURA  
21 (BY PHONE)                                    Pro Se  
22                                    Airway Heights Corrections Center  
23                                    11919 West Sprague Avenue  
24                                    Airway Heights, WA 99001

25 FOR THE DEFENDANT:                                    OFFICE OF THE ATTORNEY GENERAL  
BY: Candie M. Dibble  
                                  Assistant Attorney General  
1116 West Riverside Avenue  
Spokane, Washington 99201

26                                    Deborah G. Peck, CCR No. 2229  
27                                    Official Court Reporter  
28                                    1116 W. Broadway, Department No. 12  
29                                    Spokane, Washington 99260

1 VERBATIM REPORT OF PROCEEDINGS

2 November 9, 2018

3 THE COURT: This is Cause No. 18-2-01696-1. Joseph  
4 Thurura is the plaintiff. The defendant is Department of  
5 Corrections. Mr. Thurura is present telephonically. Candie  
6 Dibble is the Assistant Attorney General that's been assigned  
7 to this case. This is the Department's motion to show cause  
8 as to why the plaintiff's claim should now be dismissed.

9 Before we begin, Mr. Thurura?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: I need to explain to you that Judge  
12 Triplet, who was assigned to hear this case, passed on. And I  
13 am acting as a Judge Pro Tem. As a Judge Pro Tem I'm required  
14 to get the agreement of the parties to act as a Judge in this  
15 matter. So the first thing I need to ask you is whether  
16 you're willing to have me, I am a Judge but not an elected  
17 Judge, to proceed --

18 THE DEFENDANT: Okay.

19 THE COURT: -- proceed with this matter. Do you have  
20 any objection to that?

21 THE DEFENDANT: I do not, as long as you're qualified.

22 THE COURT: Yes. I am a member of the Bar. I'm a  
23 retired judicial officer. I served on the bench about 20  
24 years.

25 THE DEFENDANT: Okay.

1 THE COURT: So I would hope I'm qualified to hear this  
2 matter.

3 THE DEFENDANT: Again, as long as you're qualified,  
4 that's okay with me.

5 THE COURT: Okay. So we'll indicate that this matter  
6 can proceed then. And this is the State's motion or the  
7 Department of Corrections' motion. So I'll hear from Ms.  
8 Dibble first.

9 Ms. Dibble?

10 MS. DIBBLE: Yes, Your Honor.

11 THE COURT: And I have read your briefs and your  
12 submissions to the Court.

13 MS. DIBBLE: Yes. Your Honor, the Department is  
14 asking under this show cause motion for Mr. Thurura's PRA  
15 claim to be dismissed against the Department. He specifically  
16 asked for metadata related to when two specific incident  
17 reports were, he said, created or generated by two staff  
18 members that were working at the Airway Heights Correction  
19 Center.

20 In response to our show cause motion, Mr. Thurura  
21 basically only makes the argument that -- not necessarily that  
22 the metadata exists. His sole argument is he believes that  
23 the Department didn't search in the reasonable locations to  
24 make a determination whether metadata exists.

25 Our first position is we looked in all reasonable

1 locations, and that reasonable location would have been in the  
2 Captain's office where these records would have been  
3 maintained in the ordinary course of business through the  
4 Department of Corrections.

5 Our second position is that after the litigation, we  
6 had our IT folks and also staff members physically go back,  
7 look at all these areas that he cites to in his brief. And  
8 those -- that metadata does not exist because the date and  
9 time that these documents would have been created is not the  
10 same metadata that would have been associated with the  
11 documents that exist now, which were later printed out,  
12 signed, and saved as scanned versions. So the scanned  
13 versions are not the dates that the documents themselves --

14 THE COURT: So you're talking about a PDF now?

15 MS. DIBBLE: Correct. They would not have been the  
16 same dates that the documents would have been created or  
17 generated when either one of these staff members went into  
18 their computers, physically typed the information into the  
19 document, and would have been printed out, scanned, and signed  
20 later. Those are two completely different sets of  
21 information. And in his brief he doesn't make that assertion  
22 that that -- that those -- that metadata information that he  
23 was seeking is part of that PDF information.

24 And I think it's important for the Court to know that  
25 recently, as a matter of fact I think on October 23rd, 2018,

1 Division II issued an unpublished decision in Lancaster versus  
2 Department of Corrections. And in that case, the cause number  
3 is 48708-0-2, the court of appeals basically reversed and  
4 remanded a decision out of Thurston County Superior Court that  
5 found a PRA violation and issued penalties against the  
6 Department in that decision.

7 And in that particular case, in the Lancaster  
8 decision, in that case the Department had admitted that after  
9 the lawsuit was filed, they went back and looked in kind of  
10 these additional areas that they capitulated to should have  
11 been reasonable locations in the first place. That's not our  
12 position here.

13 But in the Lancaster case, the Department admitted  
14 there were some additional reasonable areas that we should  
15 have searched. We did not look in those particular locations.  
16 We went back and looked in those particular locations. None  
17 of the documents he's seeking for exist; therefore, there's no  
18 violation.

19 The Thurston County Superior Court in the Lancaster  
20 case went ahead and found a violation because the court  
21 believed that since the Department didn't look in a reasonable  
22 location, there was a penalty. Just on October 23rd the Court  
23 of Appeals in Division II said no, that's wrong, and they  
24 reversed and remanded that decision because their  
25 interpretation of 42.56 means that you have to actually deny

1 the requester public records. And if, even after doing a  
2 subsequent search of an area that should have been reasonably  
3 searched in the first place there are no records to be denied,  
4 you don't have a claim under the Public Records Act.

5 So Division II reversed and remanded that decision  
6 back to Thurston County to say, look, there are no -- there's  
7 no PRA violation. You need to now issue a decision that  
8 doesn't find that there's PRA violation related to kind of  
9 this subsequent search.

10 So the Department's position here is, one, that it did  
11 actually search in the reasonable locations where this  
12 information would have been stored; and two, if the Court  
13 finds that these additional areas that Mr. Thurura is arguing  
14 in his brief were reasonable locations that they should have  
15 searched, there's no evidence that there is metadata  
16 associated with the dates and times that these documents were  
17 created.

18 Our IT folks went back and did a search. They even  
19 indicated, and we've indicated to Mr. Thurura through  
20 discovery requests, that any information that's related to the  
21 times that someone logs on to a computer or anything else like  
22 that is only maintained for about 90 days. Mr. Thurura's  
23 request was well beyond those 90 days. That information just  
24 wouldn't exist. And --

25 THE COURT: So is that pursuant to a retention policy

1 that -- I mean, do you know what I'm asking?

2 MS. DIBBLE: Sure. I think it's part of the computer  
3 database programming. And the Department would take the  
4 position, you know, one of Mr. Thurura's arguments, I think  
5 his last one, is that under the retention policy we have an  
6 obligation to hold certain items for six years.

7 We are holding the records for six years. Metadata  
8 associated with that would not be, in essence, the record, it  
9 would be transitory information. That's not relevant to the  
10 keeping of business, to the running of the government. The  
11 actual document here was -- is retained and maintained for the  
12 period that it's supposed to be, according to the retention  
13 schedule. That metadata of when someone may have logged on to  
14 the computer and started actually typing out the form --

15 THE COURT: I guess that's my question.

16 MS. DIBBLE: Yeah.

17 THE COURT: You have a retention schedule. Who  
18 creates or makes a judgment about the retention schedule?

19 MS. DIBBLE: The Secretary of State has a specific  
20 retention schedule that the Department of Corrections follows.

21 THE COURT: Okay. Thank you.

22 MS. DIBBLE: So, Your Honor, we're asking for Mr.  
23 Thurura's case to be -- his PRA case to be dismissed. We're  
24 also asking, because we've gone through several sets of  
25 discovery with him, I've had correspondence with him

1 explaining the Department's position, the fact that the IT  
2 folks went back and searched and, you know, have tried to  
3 remedy this case short of having to come to the court, and,  
4 you know, he seems to be doubling down on his position. And  
5 so we're asking, too, that the Court find under RCW 4.24.430  
6 that his claim is frivolous.

7 THE COURT: And would you happen to have a copy of the  
8 Lancaster case?

9 MS. DIBBLE: I do.

10 THE COURT: Would you hand that up?

11 MS. DIBBLE: It's highlighted.

12 THE COURT: Okay.

13 MS. DIBBLE: May I approach?

14 THE COURT: Yes, you may.

15 Mr. Thurura?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: What would you like to tell me?

18 THE DEFENDANT: First of all, I want you to know I  
19 thank you for taking this time.

20 Well, last month on the 24th I sent a motion for  
21 extension of time. So before I say anything, I would like to  
22 know the status of that motion, Your Honor, please.

23 THE COURT: Motion for extension of time. I don't --

24 MS. DIBBLE: Your Honor, I don't believe he sent a  
25 copy to the Court. When we checked the docket, it wasn't

1 noted. And it didn't appear to be received by the Court.

2 THE COURT: I'm looking at the complete court file and  
3 I do not see a request to extend time. When was that sent,  
4 sir?

5 THE DEFENDANT: On the 24th, that's when I mailed it  
6 out.

7 THE COURT: 24th of October?

8 THE DEFENDANT: Last month.

9 THE COURT: It's not in the court file. It should  
10 have been in the court file well before now. Who did you send  
11 it to?

12 THE DEFENDANT: I sent one to the court and the other  
13 one to the attorney general.

14 THE COURT: Are we that far behind or --

15 THE CLERK: We are not.

16 THE COURT: All I can say, sir, is that it's not in  
17 the court file. So we're not -- you know, I reviewed the file  
18 before, I mean, last night, and that was not in the file is  
19 all I can say. I don't -- you know, unless it's noted I can't  
20 really entertain your motion because it's not a part of the  
21 court record right now.

22 THE DEFENDANT: And whose fault would that be? Being  
23 that I sent it out on time. It's been over two weeks since I  
24 did that. What would you say or who would you say made the  
25 mistake of not filing it?

1 THE COURT: That's complete speculation. I don't know  
2 who's responsible. I mean, it could have been misplaced by  
3 the clerk. It could be the mail didn't get through. I mean,  
4 I have no idea. It's hard for me to even say.

5 THE DEFENDANT: All right. I will try and look up and  
6 see what's going on.

7 Again, in my motion I've also requested a time  
8 extension in the motion that I filed in response to the  
9 Department's motion to show cause. For the moment, I'm going  
10 through a grievance pertaining to legal material that we're  
11 allowed to have or possess, containing individuals who are  
12 presently incarcerated. It's making it difficult for me to  
13 litigate my issue. So I would like to ask for an extension  
14 for 60 days so that I can be able to have this resolved and  
15 also be able to research, do a full research of all the  
16 arguments that defendants are making.

17 THE COURT: Ms. Dibble also referred to a brief, and  
18 the brief is not in the file either. Was that sent at the  
19 same time as your request for --

20 THE DEFENDANT: I did send both of them out at the  
21 same time, maybe a few minutes apart.

22 THE COURT: None of it has made its way into the court  
23 file.

24 THE DEFENDANT: It's interesting that the attorney  
25 general got a copy but the courts do not.

1 THE COURT: It is interesting. And I don't know what  
2 happened. I have no idea.

3 THE DEFENDANT: I'm requesting on record for time  
4 extension so I can do a thorough research and also address my  
5 grievance remedy concerning the new policy about legal  
6 materials and stuff like that.

7 MS. DIBBLE: Your Honor, if I could weigh in.

8 THE COURT: Yes, Ms. Dibble.

9 MS. DIBBLE: We did receive his motion for an  
10 extension of time a couple of weeks ago, which we kept  
11 checking the court docket to see if he had actually filed one  
12 with the court. It never showed up on the court's docket, it  
13 was never noted. I did get a copy of that motion. I also  
14 received his response to our show cause motion on November  
15 6th. So they were not mailed out the same day or even  
16 remotely close to the same day.

17 He's asking for an extension. And the basis for his  
18 extension is he's arguing that he should be able to retain  
19 case law regarding other inmates in his personal possession in  
20 his cell. He has access and adequate access. He actually has  
21 access to Lexus Nexus through the prison law library. He can  
22 access those same cases through the prison law library, write  
23 them down, cite to them in his brief. He actually in his  
24 response to the show cause motion cites to case law in here.

25 What he's arguing about, what he's claiming his

1 grievance is about is his ability to have those printed out  
2 and take them back to his cell with him. And for obvious  
3 penological reasons, the Department doesn't want inmates to  
4 possess case law involving other inmates. So there's a  
5 clear-cut policy against that.

6 It's not that he can't get the information that's  
7 contained in that litigation, he can. It's just he's got to  
8 keep the actual cases on the Lexus Nexus computer and in the  
9 law library. But he has adequate access and he has had  
10 adequate access to litigate this claim.

11 His claim is several months old, Your Honor. And the  
12 PRA is meant to be a speedy process. We've gone -- and I've  
13 tried to be patient with him and answer all of his discovery  
14 requests. To drag this thing on any longer is just, at this  
15 point it's wasting resources.

16 If the Court is inclined to go ahead and grant him a  
17 continuance in order to receive his copy of the show cause  
18 motion, we would ask that the Court go ahead and issue a  
19 decision without any additional oral argument. And it's clear  
20 that 42.56 permits that.

21 THE COURT: Well, first of all, I guess I'm inclined  
22 to grant the request for a continuance because I have not  
23 received his response, I have not reviewed it. So I do think  
24 it's appropriate for that reason alone to set this matter out.  
25 But I'm not going to grant a two-month continuance to resolve

1 this other issue.

2           The reason I would be continuing this is so the Court  
3 would have a complete understanding of what his position is.  
4 And at this point I really don't because it has not been in  
5 the file. And so I'm inclined to agree on a one- or two-week  
6 continuance and then hear Mr. Thurura out at that point. But  
7 I do think for due process reasons it's important for me to be  
8 fully informed about what his position is, because right now I  
9 frankly don't. So that's what I'm inclined to do.

10           Do we have --

11           THE CLERK: There is no indication that we received  
12 anything in the clerk's office from him in any log.

13           THE COURT: Do we have spots available in the next  
14 week or two on Friday for civil motions?

15           Do you have any scheduling conflicts for the next two  
16 weeks?

17           MS. DIBBLE: I won't make any so that we can have this  
18 case heard, Your Honor.

19           THE CLERK: Two weeks, Your Honor?

20           THE COURT: Well, one or two weeks.

21           THE CLERK: Okay.

22           MS. DIBBLE: And, Your Honor, what I can do is I can  
23 file what I've received from him.

24           THE COURT: That would be great.

25           MS. DIBBLE: That way the Court has --

1 THE COURT: So, sir, that's what I'm going to do. Ms.  
2 Dibble is going to provide her copies of the materials that  
3 she received from you. They will be filed in the court file,  
4 and those are the ones that I will review. Okay?

5 THE DEFENDANT: I appreciate that. And I would like  
6 Ms. Dibble to send me the case that she just cited about  
7 Thurston County because I would like to see what the position  
8 is on that.

9 MS. DIBBLE: Yeah. I can do that, Your Honor. I will  
10 do that.

11 THE COURT: Okay. So what we're waiting for right  
12 now, sir, is that we want to confirm with the court  
13 administrator's office if we have time available in the next  
14 two weeks to hear this. So if you would be patient with us,  
15 we'll be right with you.

16 THE DEFENDANT: Thank you, Your Honor.

17 THE CLERK: The 16th is a good day.

18 THE COURT: Pardon me?

19 THE CLERK: The 16th is a good day.

20 THE COURT: Okay. The 16th of November, are you  
21 available then, sir?

22 THE DEFENDANT: I believe I will be available.

23 THE COURT: Okay. What time?

24 THE CLERK: Mary, do you have a time?

25 THE DEFENDANT: During the day I'm free.

1 THE COURT: I'm sorry, during what hours, mornings?

2 THE DEFENDANT: Well, eight through five.

3 THE COURT: Okay. We're going to come up with a time  
4 here, but it will be on the 16th of November.

5 THE CLERK: Eleven o'clock, Your Honor.

6 THE COURT: What time?

7 THE CLERK: Eleven.

8 THE COURT: Eleven. Eleven o'clock on December 16th.

9 THE DEFENDANT: December?

10 MS. DIBBLE: November.

11 THE COURT: November, I'm sorry. In two weeks. No,  
12 one week. One week.

13 THE DEFENDANT: That's not two weeks.

14 THE COURT: Right. Just one week. November 16th.

15 THE DEFENDANT: Okay.

16 THE COURT: Okay? I will sign an order of continuance  
17 to that effect.

18 And I would ask counsel if you wouldn't mind providing  
19 him a copy of it as well.

20 MS. DIBBLE: Sure. Okay.

21 THE COURT: And unless you have any other questions,  
22 sir, I will enter the order indicating that you took part  
23 telephonically.

24 WITNESS: All right.

25 THE COURT: Okay?

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THE DEFENDANT: I'm glad you took your time. Thank  
you.

THE COURT: Thank you. Bye-bye.

THE DEFENDANT: Bye.

(END OF PROCEEDINGS.)

C E R T I F I C A T E

I, DEBORAH G. PECK, do hereby certify:

That I am an Official Court Reporter for the Spokane County Superior Court, sitting in Department No.12, at Spokane, Washington;

That the foregoing proceedings were taken at the place as shown on the cover page hereto on November 9, 2018;

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me to the best of my ability or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings, and have no financial interest in the outcome of said proceedings.

DATED this 17th day of July, 2019.

 **COPY**

DEBORAH G. PECK, CCR No. 2229  
Official Court Reporter  
Spokane County, Washington

APPENDIX I

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**STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT**

JOSEPH THURURA,	NO. 18-2-01696-1
Plaintiff,	DEPARTMENT'S MOTION TO SHOW CAUSE
v.	
WASHINGTON STATE DEPARTMENT OF CORRECTIONS,	
Defendant.	

The Defendant, WASHINGTON STATE DEPARTMENT OF CORRECTIONS, respectfully moves the Court for an order determining whether there has been a violation of the Public Records Act (PRA) pursuant to RCW 42.56.550.

**I. RELEVANT FACTS/STATEMENT OF THE CASE**

**A. The Department of Corrections Public Disclosure Unit**

The Department's Public Records Unit is a centralized unit located at the Department of Corrections' Headquarters in Tumwater, Washington. The unit is currently comprised of 22 full-time staff: 4 Administrative staff, 12 Public Records Specialists, 1 Management Analyst, 4 Program Specialists, and the Governance Director.

The Department receives thousands of records requests each year. These requests include public records requests, offender health records requests, chemical dependency requests, central file review requests, and offender health record file review requests. In 2017, the Department received a total of 11,776 public records requests. Of these requests, 5,347 were general public



1 records requests and 4,803 of these were assigned to the Public Records Unit. The number of  
2 public records requests the Department receives has increased in volume and complexity over  
3 time, with the most dramatic increase being in the number of general public records requests.  
4 Individual public records requests can greatly vary in scope and volume; some may simply ask  
5 for a policy, while some may ask for several broad categories of records located throughout the  
6 agency and require an extensive search and review process. In 2017, the Department of  
7 Corrections staff reported 36,347 hours spent processing public records requests.

8 All Public Records Specialists in the unit attend various formal trainings related to the  
9 Public Records Act and processing public records requests. Trainings provided by the Department  
10 have included Public Disclosure Email Vault Training, Public Records Act – Offender Records,  
11 Public Records Updates, and Public Records Officers Celebrating Open Government. This does not  
12 include the informal on-the-job training and instruction that unit employees receive on a daily basis.

13 When the Department receives a public records request, the delegated Public Records  
14 Unit staff member will respond, within five business days, to the requester in writing by  
15 either: 1) making the requested records available; 2) acknowledging receipt of the request  
16 and providing a reasonable estimate of the time needed to respond; 3) seeking clarification  
17 of the request; or 4) denying the request.

18 Often, additional time is needed for the Department to respond fully to a request. This  
19 is caused by factors such as: a need to clarify the request; the time it takes to locate and  
20 assemble the requested documents; the requirement to notify persons affected by the request;  
21 and the need to determine whether any of the responsive records or information contained in  
22 the responsive records, are exempt from disclosure and require redaction. Whenever  
23 possible, the Department prefers to provide the requested records within five business days;  
24 however, the ability to do this depends on the ease of finding the records, the workload and  
25 schedule of the assigned unit Specialist, notification requirements, and the need to review  
26 records for redactions. The assigned Specialist determines the time needed for a complete

1 response based on the size and scope of the request, as well as his or her additional workload,  
2 and any other scheduling issues. Exhibit 1, Declaration of Denise Vaughan, ¶¶4-8.

3 **B. Thurura's Public Records Act Request**

4 Incident reports are used to document inmate behavior. Staff may access incident report  
5 forms online and fill out various information on the form. Staff then print out the form and add  
6 their signature. Then the signed form will likely be scanned and emailed to the Shift Lieutenant  
7 and Shift Sergeant along with any other relevant staff pertaining to the incident. Exhibit 2,  
8 Declaration of Janet Nelson, ¶3.

9 In some cases, the incident report may be used as evidence for an inmate infraction. In  
10 those cases, the incident report is submitted with the infraction packet for the Hearings Officer's  
11 consideration. Infraction records are maintained in the Captain's Office until they have met their  
12 applicable retention period. It is not the responsibility of staff to retain additional infraction  
13 documents or reports that they may have submitted as part of the infraction. Exhibit 2, ¶4.

14 On May 19, 2017, two Airway Heights Corrections Center employees, Geraldine Sauter  
15 and Chris Burnette, drafted incident reports in response to an event that indicated Plaintiff,  
16 Joseph Thurura, DOC #332733, had been fighting with another inmate. Both staff members  
17 printed the reports; signed the reports, scanned the signed reports and emailed the scanned copies  
18 to necessary staff. However, the incident reports were not submitted as part of the infraction  
19 packet. Exhibit 2, ¶5.

20 Then nine month later, on February 16, 2018, the Public Records Unit received a PRA  
21 request from Thurura. Thurura specifically requested "1) The metadata associated with the  
22 Incident Report (IR) written by Chris Burnette (CISA), on 05/19/2017; specifically, I want to  
23 know the date and time this incident report (IR) was created (generated)" and "(2) The metadata  
24 associated with the Incident Report (IR) written by G. Sauter (CIS2), on 5/19/2017; specifically,  
25 I want to know the date and time this incident report (IR) was created (generated)." The request  
26 was assigned tracking number PRU-51504. Exhibit 1, Attachment A.

1 The Public Disclosure Unit requested Airway Heights Corrections Center review its  
2 records for the metadata associated with the Incident Reports written by Chris Burnette and  
3 Geraldine Sauter on May 19, 2017. Because the reports related to an infraction, the Captain's  
4 Office was requested to perform a search of its records. The Captain's Office noted it did not  
5 have any responsive records containing metadata information. Exhibit 2, ¶6; Exhibit 1,  
6 Attachment A. Thurura was notified that there were no records responsive to his request.  
7 Exhibit 1, Attachment A.

8 After Thurura filed his lawsuit, a subsequent search was conducted and identified the  
9 scanned copies of the incident reports on Chris Burnett's work computer drive in PDF format.  
10 The PDF documents are the scanned copies of the forms that were printed out and signed by  
11 Burnette and Sauter. The only metadata available relates to the time and date the incident reports  
12 were scanned. The metadata does not include the date or time the incident reports were actually  
13 created or generated. Exhibit 2, Attachment A, ¶7; Exhibit 3, Declaration of David Harper, ¶5.

14 In addition, only limited information is maintained on a user's computer usage for 90  
15 days. For that short period, only domain logs, users logon/logoff times and the equipment being  
16 used is accessible. Information on when specific documents were created/generated would not  
17 be maintained. Exhibit 3, ¶6.

## 18 II. ISSUES

- 19 1. Whether Thurura's Complaint should be dismissed for failure to show a  
20 violation of the Public Records Act?
- 21 2. Whether Thurura's lawsuit is frivolous?

## 22 III. ARGUMENT

### 23 A. Standard for Show Cause Motion

24 The purpose of the PRA is to ensure the speedy disclosure of public records. *Spokane*  
25 *Research & Defense Fund v. City of Spokane (Spokane Research III)*, 121 Wn. App. 584, 591,  
26 89 P.3d 319 (2004), *rev'd on other grounds*, 155 Wn.2d 89, 117 P.3d 1117 (2005). The statute

1 must respond within five business days by (1) providing the records, (2) denying the request, or  
2 (3) providing a reasonable estimate of the time within which to respond to the request.  
3 RCW 42.56.520. The PRA provides a cause of action for two types of violations: (1) when an  
4 agency wrongfully denies an opportunity to inspect or copy a public record, or (2) when an  
5 agency has not made a reasonable estimate of the time required to respond to the request.  
6 RCW 42.56.550(1), (2).

7 **1. The Department cannot produce records it does not have.**

8 Thurura contends the Department violated the PRA by failing to provide him with the  
9 metadata from the incident reports written on May 19, 2017 specifically “the date and time this  
10 incident report (IR) was created (generated).” Exhibit 1, Attachment A. However, the  
11 Department cannot produce a record that does not exist at the time of Thurura’s request.

12 An agency has “no duty to create or produce a record that is nonexistent.” *Sperr v. City*  
13 *of Spokane*, 123 Wn. App. 132, 136–37, 96 P.3d 1012 (2004) (citing *Smith v. Okanogan County*,  
14 100 Wn. App. 7, 13–14, 994 P.2d 857 (2000)). Therefore, a requestor has no cause of action  
15 under the PRA when the public record he seeks does not exist. *Sperr*, 23 Wn. App. at 137; *see*  
16 *also Building Industry Ass’n of Washington v. McCarthy*, 152 Wn. App. 720, 218 P.3d 196 (2009)  
17 (holding a requestor did not have a viable action under the PRA for emails which were already  
18 destroyed at the time of the request); *Kleven v. City of Des Moines*, 111 Wn. App. 284, 294, 44  
19 P.3d 887 (2002) (no violation of the public disclosure act because the agency had “made  
20 available all that it could find”); *Smith*, 100 Wn. App. at 22 (when county had nothing to disclose,  
21 its failure to do so was proper).

22 Following normal protocol, the incident reports were filled out, printed, signed and then  
23 scanned and emailed to the Shift Lieutenant and Shift Sergeant along with any other relevant  
24 staff pertaining to the incident. Exhibit 2, ¶3. There was no reason to maintain or save the incident  
25 reports in their original form. Therefore, the only saved copies of the reports were pdf copies  
26 which had metadata of when the reports were scanned. The metadata does not include the date

1 sets forth the procedure to achieve this. Upon the motion of any person having been denied an  
2 opportunity to inspect or copy a public record, the superior court may require the agency to show  
3 cause why it has refused to allow inspection or copying of a specific public record or class of  
4 records. RCW 42.56.550(1). “[S]how cause hearings are the usual method of resolving litigation  
5 under [the PRA].” *Wood v. Thurston County*, 117 Wn. App. 22, 27, 68 P.3d 1084 (2003). The  
6 burden of proof is on the agency to establish that the refusal is in accordance with a statute that  
7 exempts or prohibits disclosure. RCW 42.56.550(1).

8 RCW 42.56.550 expressly permits a show cause hearing to determine issues and the  
9 Court “may completely resolve PRA claims in the show cause proceeding.” *West v. Gregoire*,  
10 184 Wn. App. 164, 336 P.3d 110, 114 (2014). This includes the threshold issue of whether there  
11 is a PRA violation, and if so, whether the Defendant’s actions amounted to bad faith under  
12 RCW 42.56.565. Such determinations clearly fall under the purposes of a show cause hearing in  
13 a PRA matter. *West*, 336 P.3d at 114. Further, a Court is permitted to resolve issues in a PRA  
14 matter without oral argument as “nothing in that act requires either a hearing with oral argument  
15 or a trial.” *O’Neill v. City of Shoreline*, 145 Wn. App. 913, 938-939, 187 P.3d 822 (2008)  
16 affirmed in part and reversed on other grounds by *O’Neill v. City of Shoreline*, 170 Wn. 2d 138,  
17 240 P.3d 1149 (2010). There is no authority to support the contention that a requestor has a  
18 constitutional right to a hearing with oral argument in a PRA matter. *O’Neill*, 145 Wn. App. at  
19 939.

20 **B. Thurura Has Failed to Show A Violation of the Public Records Act**

21 “The [PRA] is a strongly worded mandate for broad disclosure of public records.” *Hearst*  
22 *Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). The PRA requires every government  
23 agency to disclose any public record upon request, unless an enumerated exemption applies.  
24 *Sanders v. State*, 169 Wn.2d 827, 836, 240 P.3d 120 (2010); RCW 42.56.070(1). The act requires  
25 agencies to provide the “fullest assistance” and the “most-timely possible action on requests for  
26 information.” RCW 42.56.100. The government agency receiving a request for public records

1 or time the incident reports were actually created or generated. Exhibit 2, ¶7; Exhibit 3, ¶5. In  
2 addition, the metadata showing “the date and time this incident report (IR) was created  
3 (generated)” could not be obtained directly from the user’s computer. Only limited information  
4 is maintained on a user’s computer usage for 90 days. For that short period, only domain logs,  
5 users logon/logoff times and the equipment being used is accessible. Information on when  
6 specific documents were created/generated would not be maintained. Exhibit 3, ¶6.

7 Despite any contentions Thurura may make, there is no evidence the metadata indicating  
8 the date and time incident reports were created or generated exist. Because the Department is  
9 not required to produce records that do not exist, Thurura failed to state a PRA violation and his  
10 claim should be dismissed.

11 **C. Thurura’s Claim is Frivolous**

12 As noted above, Thurura’s claim in this matter is patently frivolous, and if for no other  
13 reason, should be dismissed on that basis. This is also a basis upon which the Court can award  
14 the Department costs and attorney’s fees. A lawsuit is “frivolous,” so as to entitle a party to  
15 attorney fees for defending against the lawsuit, if, when considering the action in its entirety, it  
16 cannot be supported by any rational argument based in fact or law. *Curhan v. Chelan County*,  
17 156 Wn. App. 30, 230 P.3d 1083 (2010).

18 More importantly, if an inmate plaintiff’s action is found to be frivolous, it will constitute  
19 a “strike” for purposes of RCW 4.24.430. “If a person serving a criminal sentence in a federal,  
20 state, local, or privately operated correctional facility...the court shall deny [a] request for waiver  
21 of the court filing fees if the person has, on three or more occasions ... brought an action or  
22 appeal that was dismissed by a state or federal court on grounds that it was frivolous or  
23 malicious.” RCW 4.24.430.

24 Through both correspondence from Department counsel and certified discovery  
25 responses, Thurura has had information for five months noting that the Department has no  
26 metadata information for “the date and time this incident report (IR) was created (generated).”

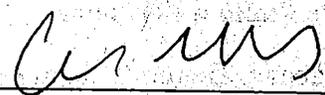
1 Exhibit 4, Declaration of Candie M. Dibble. Despite this knowledge, Thurura continues to  
2 litigate a claim which has absolutely no merit. Thurura has wasted the resources and time of both  
3 this Court and the Department. Accordingly, the Court should find Thurura's PRA claim is  
4 frivolous.

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Department respectfully requests the Court find it did not  
7 violate the Public Records Act.

8 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of October, 2018.

9 ROBERT W. FERGUSON  
10 Attorney General

11  
12   
13 CANDIE M. DIBBLE, WSBA #42279  
14 Assistant Attorney General  
15 Corrections Division  
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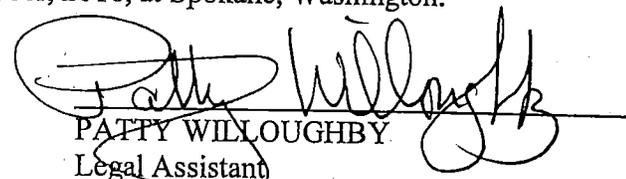
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I served all parties, or their counsel of record, a true and correct copy of this document by United States Mail, postage prepaid, at the following addresses:

JOSEPH THURURA, DOC #332733  
AIRWAY HEIGHTS CORRECTIONS CENTER  
PO BOX 2049 M UNIT  
AIRWAY HEIGHTS WA 99001-2049

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 12th day of October, 2018, at Spokane, Washington.

  
PATTY WILLOUGHBY  
Legal Assistant

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STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT

JOSEPH THURURA,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT  
OF CORRECTIONS,

Defendant.

NO. 18-2-01696-1

DECLARATION OF DENISE  
VAUGHAN

I, DENISE VAUGHAN, make the following declaration:

1. I am over the age of eighteen years, and a citizen of the United States. I have knowledge of the facts herein and am competent to testify.

2. I am currently the Information Governance Director for the Washington Department of Corrections, a position I have held since July 1, 2018. In this role, I oversee the Department's management of agency records and information. Prior to beginning this position, I served as the Department's Public Records Officer for approximately ten years, with a one-year break from December 2014 through January 2016, during which time I served as a Public Disclosure Unit Lead for the Washington Department of Social and Health Services.

1           3.     In both my previous and current Department of Corrections positions, my duties  
2 have included statewide oversight of the Department's public records program, including policy,  
3 process, and procedure. This includes development of statewide policy and rules; determination  
4 of how best to manage complex records requests; interpretation and application of RCWs,  
5 WACs, and case law; advising public records staff statewide regarding changes or  
6 implementation in public records law or DOC policy and procedure; and tracking statewide  
7 public records statistics and trends.

8           4.     In both my previous and current Department of Corrections positions, I have  
9 supervised the Department's Public Records Unit. The unit is a centralized unit located at the  
10 Department of Corrections' Headquarters in Tumwater, Washington. The unit is currently  
11 comprised of 22 full-time staff: 4 Administrative staff, 12 Public Records Specialists, 1  
12 Management Analyst, 4 Program Specialists, and me. In my position, I have access to all Public  
13 Records Unit records kept in the ordinary course of business.

14           5.     The Department receives thousands of records requests each year. These requests  
15 include public records requests, offender health records requests, chemical dependency requests,  
16 central file review requests, and offender health record file review requests. In 2017, the  
17 Department received a total of 11,776 public records requests. Of these requests, 5,347 were  
18 general public records requests and 4,803 of these were assigned to the Public Records Unit. The  
19 number of public records requests the Department receives has increased in volume and  
20 complexity over time, with the most dramatic increase being in the number of general public  
21 records requests. Individual public records requests can greatly vary in scope and volume; some  
22 may simply ask for a policy, while some may ask for several broad categories of records located  
23 throughout the agency and require an extensive search and review process. In 2017, the  
24 Department of Corrections staff reported 36,347 hours spent processing public records requests.

25           6.     All Public Records Specialists in the unit attend various formal trainings related to  
26 the Public Records Act and processing public records requests. Trainings provided by the

1 Department have included Public Disclosure Email Vault Training, Public Records Act – Offender  
2 Records, Public Records Updates, and Public Records Officers Celebrating Open Government. This  
3 does not include the informal on-the-job training and instruction that PRU employees receive on a  
4 daily basis.

5 7. When the Department receives a public records request, the delegated Public  
6 Records Unit staff member will respond, within five business days, to the requester in writing  
7 by either: 1) making the requested records available; 2) acknowledging receipt of the request  
8 and providing a reasonable estimate of the time needed to respond; 3) seeking clarification  
9 of the request; or 4) denying the request.

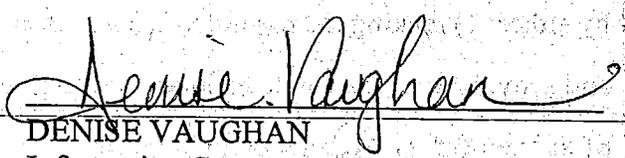
10 8. Often, additional time is needed for the Department to respond fully to a  
11 request. This is caused by factors such as: a need to clarify the request; the time it takes to  
12 locate and assemble the requested documents; the requirement to notify persons affected by  
13 the request; and the need to determine whether any of the responsive records or information  
14 contained in the responsive records, are exempt from disclosure and require redaction.  
15 Whenever possible, the Department prefers to provide the requested records within five  
16 business days; however, the ability to do this depends on the ease of finding the records, the  
17 workload and schedule of the assigned unit Specialist, notification requirements, and the  
18 need to review records for redactions. The assigned Specialist determines the time needed  
19 for a complete response based on the size and scope of the request, as well as his or her  
20 additional workload, and any other scheduling issues.

21 9. On February 16, 2018, the Public Record Unit received a request for public  
22 disclosure from the Plaintiff, Joseph Thurura, DOC #332733. Thurura specifically requested  
23 “1) The metadata associated with the Incident Report (IR) written by Chris Burnette (CISA),  
24 on 05/19/2017; specifically, I want to know the date and time this incident report (IR) was  
25 created (generated)” and “(2) The metadata associated with the Incident Report (IR) written by  
26 G. Sauter (CIS2), on 5/19/2017; specifically, I want to know the date and time this incident report

1 (IR) was created (generated)." The request was assigned tracking number PRU-51504.  
2 Attachment A is a true and correct copy of the correspondence between Thurura and the  
3 Public Disclosure Unit for PRU-51504.

4 I declare under the penalty of perjury that the foregoing is true and correct to the best of  
5 my knowledge.

6 SIGNED this 27<sup>th</sup> day of September, 2018, at Tumwater, Washington.

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9 DENISE VAUGHAN  
10 Information Governance Director  
11 Department of Corrections  
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**ATTACHMENT A**

# Requestor Correspondence

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(including payment)

PDU- 51504

March 13, 2018

Joseph Thurura, DOC # 332733  
Airway Heights Corrections Center  
M / MA58U  
P.O. Box 2049  
Airway Heights, WA 99001

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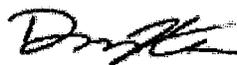
Dear Mr. Thurura:

This is a follow up to the last correspondence sent to you on February 26, 2018 regarding **PRU-51504**.

A search has been conducted and no records were found responsive to your request.

PRU-51504 is now considered closed, however, if you have any further questions regarding this request, you can contact me at the below address, or via email; [daneedham@doc1.wa.gov](mailto:daneedham@doc1.wa.gov).

Sincerely,



Davis Needham, Public Records Specialist  
Public Records Unit  
Department of Corrections PO Box 41118  
Olympia WA 98504-1118

dn: PRU-51504 Thurura

February 26, 2018

Joseph Thurura, DOC # 332733  
Airway Heights Corrections Center  
M / MA58U  
P.O. Box 2049  
Airway Heights, WA 99001

Dear Mr. Thurura:

---

I acknowledge receipt of your public records request dated February 11, 2018 and received in our office on February 16, 2018. This request has been assigned tracking number **PRU-51504**. Please reference this number in all future communications regarding this request.

You write to request the following record(s):

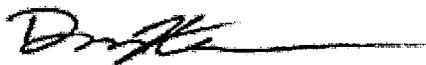
1. The metadata associated with the Incident Report (IR) written by Chris Burnette, on May 19, 2017 – I interpret that the IR you are seeking is regarding yourself, Joeseeph Thurura, DOC # 332733
2. The metadata associated with the IR written by G. Sauter, on May 19, 2017 – In interpret that the IR you are seeking is regarding yourself, Joeseeph Thurura, DOC # 332733

You specified that you are seeking records which show the date and time at which each of the above IRs was generated.

If my interpretation of your request is incorrect, notify me at the address below or via email; [daneedham@doc1.wa.gov](mailto:daneedham@doc1.wa.gov); otherwise, I will proceed accordingly.

Department staff are currently identifying and gathering records, if any, responsive to your request. I will respond further as to the status of your request *within* seventeen (17) business days, *on or before* March 21, 2018. If you have any questions in the interim, please contact me at the address below, or via email.

Sincerely,



Davis Needham, Public Records Specialist  
Public Records Unit  
Department of Corrections  
PO Box 41118  
Olympia WA 98504-1118

dn: PRU-51504 Thurura



# REQUEST FOR DISCLOSURE OF RECORDS

A public disclosure request is the request for a specific and identifiable document. Please clearly describe the actual document you require. Documents responsive to a public disclosure request will not be mailed until all applicable disclosure fees are paid.

Date of Request: FEBRUARY 11TH, 2018

Name: THURERA, JOSEPH D.O.C. #332133

Address: ARWAY HEIGHTS CORR. CTR P.O. Box 2049, ARWAY HEIGHTS, WA. 99001

- I request to inspect my central file.
- This request has been previously submitted or is currently with the Department.

Date of Original Request: \_\_\_\_\_

Original Request Submitted To: (Name/Address) \_\_\_\_\_

- I request copies of the following public records. If requesting offender records, include offender name and DOC number.

I am requesting:

1) The Metadata associated with the Incident Report (IR) written by Chris Burnette (CISA), on 05/19/2017; Specifically, I want to know the date and time this Incident Report (IR) was created (generated).

2) The Metadata associated with the Incident Report (IR) written by G. Sauter (CISA), on 05/19/2017; Specifically, I want to know the date and time this Incident Report (IR) was created (generated).

Joseph Thurera  
Requester Signature

FEBRUARY 11TH, 2018  
Date

### DOC STAFF FILL OUT BELOW

Person Receiving Request: \_\_\_\_\_ Date: \_\_\_\_\_

PDC (or designate person responding to request): \_\_\_\_\_ Date: \_\_\_\_\_

Response Sent: \_\_\_\_\_

Further Response(s) \_\_\_\_\_

RECEIVED

FEB 16 2018

Public Disclosure Unit

Date: \_\_\_\_\_

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

HURRA, JOSEPH

332733 M-A-58-U,  
NRWAY HEIGHTS CORR CTR,  
P. O. Box 2049,  
NRWAY HEIGHTS, WA 99001.

SPokane WA 990

TO PRR 2018 FRI 1

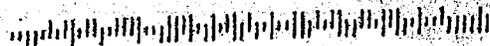


To

PUBLIC RECORDS OFFICER,  
PUBLIC DISCLOSURE UNIT,  
DEPARTMENT OF CORRECTIONS,  
P. O. Box 4118,  
OLYMPIA, WA 98504.

THIS WAS MAILED BY AN INCARCERATED  
INDIVIDUAL CONFINED AT A  
WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS FACILITY. ITS CONTENTS  
MAY BE UNCENSORED.

98504-



# Staff Correspondence

PDU- 51504

**From:** PUBLIC RECORDS UNIT  
**To:** Needham, Davis A. (DOC)  
**Subject:** Collect Feedback has completed on 18-51504.  
**Date:** Monday, March 05, 2018 1:02:04 PM

---

**Collect Feedback** has completed on 18-51504.

Collect Feedback on 18-51504 has successfully completed. All participants have completed their tasks.

Collect Feedback started by Needham, Davis A. (DOC) on 2/26/2018 8:49 AM

Comment: Routing Slip: Please contact me as soon as possible if I should direct my request for records to others within DOC or if you encounter any problems or issues that may prevent you from meeting the deadline. Please gather the following records: The Incident report written by Chris Burnette on 5/19/2017 in regard to Joseph Thurura, DOC # 332733,

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The incident report written by G. Sauter on 5/19/2017, regarding Joseph Thurura, DOC # 332733.

he has requested the metadata for this record, so I will need an unaltered electronic version if available, if unavailable, please provide any records which show the date and time at which this IR was produced. Thank you for your help.

Completed by Wright, Elizabeth D. (DOC) on 3/5/2018 1:02 PM

Comment: 03/05/2018 - AHCC has completed this task with no responsive documents.

---

[View the workflow history.](#)

**From:** DOC AHCC PDU  
**To:** Needham, Davis A. (DOC)  
**Subject:** 18-51504 - AHCC Completed Task  
**Date:** Monday, March 05, 2018 1:01:43 PM  
**Attachments:** RE Task 18-51504 Due by March 6 2018.msg

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Hi Davis,

AHCC has completed this task with no responsive documents. Total staff hours is 1.5.

Have a wonderful day ☺

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**From:** PUBLIC RECORDS UNIT [mailto:DOC-NoReply@doc1.wa.gov]  
**Sent:** Monday, February 26, 2018 8:50 AM  
**To:** DOC DL AHCC PDU <DOCDLAHCCPDU@DOC1.WA.GOV>  
**Subject:** Tasks - Please review 18-51504

---

Task assigned by Needham, Davis A. (DOC) on 2/26/2018.

Due by 3/9/2018

Collect Feedback started by Needham, Davis A. (DOC) on 2/26/2018 8:49 AM  
Comment: Routing Slip: Please contact me as soon as possible if I should direct my request for records to others within DOC or if you encounter any problems or issues that may prevent you from meeting the deadline. Please gather the following records: The Incident report written by Chris Burnette on 5/19/2017 in regard to Joseph Thurura, DOC # 332733,

The incident report written by G. Sauter on 5/19/2017, regarding Joseph Thurura, DOC # 332733.

he has requested the metadata for this record, so I will need an unaltered electronic version if available, if unavailable, please provide any records which show the date and time at which this IR was produced. Thank you for your help.

---

To complete this task:

1. Review [18-51504](#).
2. Perform the specific activities required for this task.
3. Use the **Open this task** button to mark the task as completed. (If you cannot update this task, you might not have access to it.)

**From:** PUBLIC RECORDS UNIT  
**To:** [Needham, Davis A. \(DOC\)](#)  
**Subject:** Collect Feedback started on 18-51504.  
**Date:** Monday, February 26, 2018 8:49:56 AM

---

***Collect Feedback*** has started on [18-51504](#).

Participants are DOC DL AHCC PDU  
Due by 3/9/2018 12:00:00 AM

Each person will receive a task to review and provide feedback on [18-51504](#). The tasks will be assigned one at a time for participants shown above.

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[View the status of this workflow.](#)

**From:** PUBLIC RECORDS UNIT  
**To:** [Needham, Davis A. \(DOC\)](#)  
**Cc:** [McMahon, Anna "Anya" \(DOC\)](#)  
**Subject:** Task assigned to Needham, Davis A. (DOC) on 2/16/2018 is overdue.  
**Date:** Friday, February 23, 2018 2:00:02 PM

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Task assigned to i:0#.w|doc1\daneedham on 2/16/2018 is overdue.

Due by 2/23/2018

Collect Feedback started by McMahon, Anna (DOC) on 2/16/2018 1:58 PM

Comment: Assignment Slip: This PDR has been assigned to you and you are responsible for completing the initial response within 5 days.

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To complete this task:

1. Review [18-51504](#).
2. Perform the specific activities required for this task.
3. Use the **Open this task** button to mark the task as completed. (If you cannot update this task, you might not have access to it.)

**From:** PUBLIC RECORDS UNIT  
**To:** [Needham, Davis A. \(DOC\)](#)  
**Subject:** Tasks - Please review 18-51504  
**Date:** Friday, February 16, 2018 1:59:02 PM

---

Task assigned by McMahon, Anna (DOC) on 2/16/2018.

Due by 2/23/2018

Collect Feedback started by McMahon, Anna (DOC) on 2/16/2018 1:58 PM

Comment: Assignment Slip: This PDR has been assigned to you and you are responsible for completing the initial response within 5 days.

---

To complete this task:

1. Review [18-51504](#).
2. Perform the specific activities required for this task.
3. Use the **Open this task** button to mark the task as completed. (If you cannot update this task, you might not have access to it.)

# Originals

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PDU- 51504 No responsive records found

# SharePoint

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# Versions saved for 18-51504

Delete All Versions

No. ↓	Modified	Modified By
3.0	3/13/2018 3:00 PM	<input type="checkbox"/> Needham, Davis A. (DOC)
	Current Month's Hours 0.25	
	PDC Hours 1.50	
	Total Staff Hours 2.5	
	PD Actions	
	2/26/18 Routed to AHCC for the incident reports. Searched electronic docs for incident reports and found none responsive	
	3/5/18 WF completed AHCC - no records	
	3/13/18 Final letter sent - no records, request closed - 1.5 hrs	
	Status	3 Closed
2.0	2/26/2018 9:13 AM	<input type="checkbox"/> Needham, Davis A. (DOC)
	Next Due Date	3/21/2018
	Initial Response Sent	2/26/2018
	Date of Last Action	2/26/2018
	Current Month's Hours	0.50
	PDS Hours	0.25
	Total Staff Hours	0.75
	Requested Items	
	You write to request the following record(s):	
	<ol style="list-style-type: none"> <li>1. The metadata associated with the Incident Report (IR) written by Chris Bumette, on May 19, 2017 – I interpret that the IR you are seeking is regarding yourself, Joseph Thurura, DOC # 332733</li> <li>2. The metadata as...</li> </ol>	
	PD Actions	
	2/26/18 Routed to AHCC for the incident reports. Searched electronic docs for incident reports and found none responsive	
	Status	1 Open/In-Progress
	Description of Records Produced Other (Please Specify Below)	
	Other (Description)	metadata
1.0	2/16/2018 1:58 PM	<input type="checkbox"/> McMahon, Anna 'Anyia' (DOC)
	PD LOG #	18-51504
	Date of Receipt	2/16/2018
	Assigned To	<input type="checkbox"/> Needham, Davis A. (DOC)
	Location	In Unit
	Last Name	Thurura
	First Name	Joseph
	Summary	Metadata regarding the creation and generation of an incident reports written by Chris Bumette and G. Sauter on 5/19/2017
	DOC #	332733
	Requestor Type	Offender
	Authorization	No
	Next Due Date	2/26/2018
	Initial Response Due Date	2/26/2018
	Total Staff Hours	0
	Mailing format	Photocopy
	To Do Status	Initial
	(more...)	

Frye, Suzann (DOC)  

PD LOG # 18-51504  
 Date of Receipt 2/16/2018  
 Assigned To  Needham,, Davis A. (DOC)  
 Location In Unit  
 Last Name Thurura  
 First Name Joseph  
 Summary Metadata regarding the creation and generation of an incident reports written by Christ Burnette and G. Sauter on 5/19/2017

Firm/Business Name

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DOC # 332733  
 Requestor Type Offender  
 Authorization No  
 Next Due Date 3/21/2018  
 Initial Response Due Date 2/26/2018  
 Initial Response Sent 2/26/2018  
 Date of Last Action 2/26/2018  
 Current Month's Hours 0.25  
 PDS Hours 0.25  
 PDC Hours 1.50  
 Total Staff Hours 2.5  
 # of Pages Made Avail.  
 Payment Amount  
 # of Pages Provided  
 Payment Receipt Date  
 Mailing format Photocopy  
 Requested Items You write to request the following record(s):

1. The metadata associated with the Incident Report (IR) written by Chris Burnette, on May 19, 2017 - I interpret that the IR you are seeking is regarding yourself, Joeseeph Thurura, DOC # 332733
2. The metadata associated with the IR written by G. Sauter, on May 19, 2017 - In interpret that the IR you are seeking is regarding yourself, Joeseeph Thurura, DOC # 332733

You specified that you are seeking records which show the date and time at which each of the above IRs was generated.

To Do Status

Initial

To Do Date

PD Actions

2/26/18 Routed to AHCC for the incident reports. Searched electronic docs for incident reports and found none responsive

3/5/18 WF completed AHCC - no records

3/13/18 Final letter sent - no records, request closed - 1.5 hrs

Were Records Scanned?

Total Pages Scanned

Was Clarification Sought?

Claim of Exemption

Description of Records Redacted/Withheld

General Comments

Status

3 Closed

Follow

Full Name

Joseph Thurura

Litigation Hold

No

Month

2018-2

Ranking

2

Barcode#

Destruction Date Due

Date of Destruction

Archived

WaTech Resubmission

No

Description of Records Produced

Other (Please Specify Below)

Other (Description)

metadata

Attachments

PRU-51504.pdf

Version: 3.0

Created at 2/16/2018 1:58 PM by [ ] McMahon,, Anna 'Anyia' (DOC)

Last modified at 3/13/2018 3:00 PM by [ ] Needham,, Davls A. (DOC)

Close



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**EXHIBIT 2**

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STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT

JOSEPH THURURA,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT  
OF CORRECTIONS,

Defendant.

NO. 18-2-01696-1

DECLARATION OF JANET NELSON

I, JANET NELSON, make the following declaration:

1. I have knowledge of the facts herein, am over eighteen years of age, and am competent to testify to such facts. I am not a party to this lawsuit.

2. I am presently employed by the Washington Department of Corrections as an Administrative Assistant 4 at the Airway Heights Corrections Center in Airway Heights, Washington and serve as the Legal Liaison Officer for the prison. My duties as the Legal Liaison Officer include assist with facilitating discovery and other aspects of litigation when prison staff

1 members or the Department is a party to a lawsuit. I am familiar with operating procedures and  
2 policies. Further, in my position as the Legal Liaison Officer, I have access to records kept by  
3 the facility in the ordinary course of business.

4 3. Incident reports are used to document inmate behavior. Staff may access incident  
5 report forms online and fill out various information on the form. Staff then print out the form  
6 and add their signature. Then the signed form will likely be scanned and emailed to the Shift  
7 Lieutenant and Shift Sergeant along with any other relevant staff pertaining to the incident.

8 4. In some cases, the incident report may be used as evidence for an inmate  
9 infraction. In those cases, the incident report is submitted with the infraction packet for the  
10 Hearings Officer's consideration. Infraction records are maintained in the Captain's Office until  
11 they have met their applicable retention period. It is not the responsibility of staff to retain  
12 additional infraction documents or reports that they may have submitted as part of the infraction.

13 5. On May 19, 2017, two Airway Heights Corrections Center employees, Geraldine  
14 Sauter and Chris Burnette, drafted incident reports in response to an event that indicated Joseph  
15 Thurura, DOC #332733, had been fighting with another inmate. Both staff members printed the  
16 reports, signed the reports, scanned the signed reports and emailed the scanned copies to  
17 necessary staff. However, the incident reports were not submitted as part of the infraction packet.

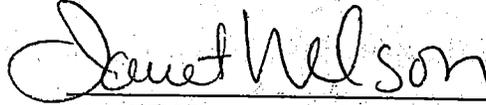
18 6. On February 26, 2018, the Public Disclosure Unit requested the prison review its  
19 records for the metadata associated with the Incident Reports written by Chris Burnette and  
20 Geraldine Sauter on May 19, 2017. Because the reports related to an infraction, the Captain's  
21 Office was requested to perform a search of its records. The Captain's Office noted it did not  
22 have any responsive records containing metadata information.

23 7. After Thurura filed his lawsuit, a subsequent search was conducted and identified  
24 the scanned copies of the incident reports on Chris Burnett's work computer drive in PDF format.  
25 The PDF documents are the scanned copies of the forms that were printed out and signed by  
26 Burnette and Sauter. The only metadata available relates to the time and date the incident reports

1 were scanned. The metadata does not include the date or time the incident reports were actually  
2 created or generated. Attachment A is a true and correct copy of the incident reports.

3 I declare under the penalty of perjury under the laws of the United States of America  
4 that the foregoing is true and correct to the best of my knowledge.

5 EXECUTED this 9<sup>th</sup> day of October, 2018, at Airway Heights, Washington.

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7 JANET NELSON  
8 Legal Liaison Officer

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**ATTACHMENT A**

**From:** Burnette, Robert C. "Chris" (DOC)  
**To:** Nelson, Janet A. (DOC)  
**Cc:** Arnett, Barbara L. (DOC); Fernandez, Deganawida (DOC)  
**Subject:** FW: Lang 862769 & Thurura 332733 Textiles Incident 5/19/2017  
**Date:** Wednesday, May 02, 2018 2:12:33 PM  
**Attachments:** [copier@doc1.wa.gov\\_20170519\\_115856.pdf](#)  
**Importance:** High

---

Please find attached Incident Report(s) 5/19/17

-----Original Message-----

**From:** Sauter, Geraldine G. (DOC)  
**Sent:** Friday, May 19, 2017 12:11 PM  
**To:** DOC DL AHCC SHIFT LIEUT <DOCDLAHCCSHIFTLIEUT@DOC1.WA.GOV>; Arnett, Barbara L. (DOC) <blarnett@DOC1.WA.GOV>; Howell, Kevin R. (DOC) <krhowell@DOC1.WA.GOV>; Lind, Robert S. (DOC) <RSLind@DOC1.WA.GOV>  
**Cc:** Fernandez, Deganawida (DOC) <dfernandez@DOC1.WA.GOV>; Burnette, Robert C. 'Chris' (DOC) <rcburnette@DOC1.WA.GOV>; Babcock, Timothy K. (DOC) <tkbabcock@DOC1.WA.GOV>; Stokes, Reuben E. (DOC) <restokes@DOC1.WA.GOV>; Lawrence, Ernest 'Ray' (DOC) <erlawrence@DOC1.WA.GOV>; Marckini, John L. (DOC) <jlmarckini@DOC1.WA.GOV>; Garcia, Dana L. (DOC) <dlgarcia@DOC1.WA.GOV>; May, Terry G. (DOC) <tgmay@DOC1.WA.GOV>  
**Subject:** Lang 862769 & Thurura 332733 Textiles incident 5/19/2017  
**Importance:** High

-----Original Message-----

**From:** [copier@doc1.wa.gov](mailto:copier@doc1.wa.gov) [<mailto:copier@doc1.wa.gov>] On Behalf Of [copier@doc1.wa.gov](mailto:copier@doc1.wa.gov)  
**Sent:** Friday, May 19, 2017 9:59 AM  
**To:** Sauter, Geraldine G. (DOC) <ggsauter@DOC1.WA.GOV>  
**Subject:** Scanned image from MX-M283N

**Reply to:** [copier@doc1.wa.gov](mailto:copier@doc1.wa.gov) <[copier@doc1.wa.gov](mailto:copier@doc1.wa.gov)> Device Name: CI Ind Sewing Device Model: MX-M283N  
Location: Not Set

File Format: PDF MMR(G4)  
Resolution: 200dpi x 200dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader(R) or Adobe(R)Reader(R) of Adobe Systems Incorporated to view the document.

Adobe(R)Reader(R) can be downloaded from the following URL:

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# INCIDENT REPORT

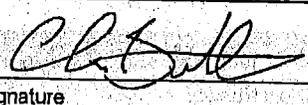
Confidential

Date/Time of Incident 5/19/17 Approximately 10:45hrs	Offenders Involved: Thurura, Joseph Lang, Travis Ines, Jeffrey Perry, Ian	DOC Number 332733 862769 307314 882884	Living Unit SMU SMU L T
Location AHCC CI Textiles	Witnesses Involved: n/a		
Use of Force Incident? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Description of Incident: Infomational	Employees/Contract Staff/Volunteers Involved:		

**DETAILS:** Who was involved, what took place, how did it happen, description of any injuries, damage, use of force, etc. Attach additional sheet, if necessary.

On 5/19/17, at approximately 10:45hrs I heard "banging, rustling" noises in the hallway area outside of my office H-115. The hallway wall is the South wall of the incarcerated worker restroom. At this time I left my office and walked over to the water station/tool crib area a few feet away from the incarcerated worker restroom. I observed Joseph Thurura 332733 exit the restroom. He appeared "somewhat winded, agitated and disheveled". He picked up a bottle of water and walked into the sewing area of the shop. He was walking around without purpose while drinking the water continuously. At this time Jeffrey Ines 307314 exited the worker restroom, walked toward the sewing line area in the shop and spoke with Thurura in the aisle close to the QC department. Ian Perry 882884 and Travis Lang 862769 were visible in the sink/main area of the restroom. Perry exited the restroom at this time while Lang remained. Now I walked to CIS2 Sauter's office H-114 and told her "something" might have occurred in the worker restroom. Thurura was retrieving a garment cart to return it to the Bindery. I told him to come to the office where I asked him if everything was alright and "what happened?" He still appeared somewhat winded and disheveled as he stated to Sauter and myself " I'm not saying anything" CIS2 Sauter immediately called priority traffic to report a fight in the Textiles department.

Immediate Action Taken: Priority traffic called. Custody staff response.

 Signature	5/19/17 Date	CISA Title	Chris Burnette Name (Please Print)
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**TO BE COMPLETED BY SUPERINTENDENT/DESIGNEE**

Date/Time Received	Incident Number	
Investigation Assigned To	By	Date

Comments:



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**EXHIBIT 3**

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STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT

JOSEPH THURURA,

NO. 18-2-01696-1

Plaintiff,

DECLARATION OF DAVID HARPER

v.

WASHINGTON STATE DEPARTMENT  
OF CORRECTIONS,

Defendant.

I, DAVID HARPER, make the following declaration:

1. I have knowledge of the facts herein, am over eighteen years of age, and am competent to testify to such facts. I am not a party to this lawsuit.

2. I am currently the Chief Digital Forensics Investigator in the Information Technology Cyber Security Unit for the Department of Corrections ("DOC"). I have been with DOC since September 28, 1998. I have my bachelor's degree in information technology from Evergreen State College. I am a Certified Oxygen Forensics Detective, Certified Forensic Explorer Examiner, and Certified Digital Forensic Examiner. I have received additional training that consists of SANS 401 security essentials, computer crime essentials, and hundreds of classroom hours of training on cell phone forensics, investigations, and digital forensics.

1           3.       My duties as Chief Digital Forensics Investigator consists of providing technical  
2 analysis, consultation, and documentation to staff, agency-wide, supporting investigations  
3 pertaining to the use of the department's information systems and data to include developing  
4 policy, procedures and guidelines in performing digital forensics. As well as developing methods  
5 and procedures to run an agency-wide investigation support program to meet department, law  
6 enforcement and industry standards. I provide support and guidance to the Cyber Security Policy  
7 Administrator, for analyzing systems related to the inmate computer auditing program (ICAP).  
8 I also assist in providing tier 2 and tier 3 expert-level support to the Electronics Records

9 Discovery Unit in the areas of locating, acquiring, and handling information following the rules  
10 of evidence, legal requirements, and public records requirements. I monitor and protect DOC  
11 from insider threats and possible government fraud from misuse of state owned IT resources.  
12 My position is the technical lead and expert for the IT security forensics investigations  
13 department-wide. This includes 18 years in my current position and 2 years with OSOS.

14           4.       I have been asked to review the public records request seeking the following: (1)  
15 the "metadata associated with the Incident Report (IR) written by Chris Burnette, on May 19,  
16 2017, specifically the date and time this incident report (IR) was created (generated)" and (2)  
17 "metadata associated with the Incident Report (IR) written by G. Sauter, on May 19, 2017,  
18 specifically the date and time this incident report (IR) was created (generated)."

19           5.       My understanding is that the only saved incident reports were reports which were  
20 drafted, printed, signed and then saved as scanned copies. These scanned copies would not  
21 contain metadata of the date and time the incident reports were created. The only metadata  
22 associated with the scanned copies would be the date and time the reports were later scanned.

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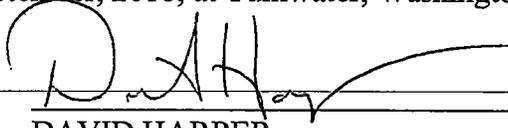
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1           6.       In addition, only limited information is maintained on a user's computer usage  
2 for 90 days. For that short period, only domain logs, users logon/logoff times and the equipment  
3 being used is accessible. Information on when specific documents were created/generated would  
4 not be maintained.

5           I declare under the penalty of perjury under the laws of the state of Washington that the  
6 foregoing is true and correct to the best of my knowledge.

7           EXECUTED this 20 day of September, 2018, at Tumwater, Washington.

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9           DAVID HARPER  
10           Chief Digital Forensics Investigator  
11           Information Technology Cyber Security Unit

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**EXHIBIT 4**

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STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT

JOSEPH THURURA,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT  
OF CORRECTIONS,

Defendant.

NO. 18-2-01696-1

DECLARATION OF CANDIE M.  
DIBBLE

I, CANDIE M. DIBBLE, make the following declaration:

1. I have knowledge of the facts herein, am over eighteen years of age, and am competent to testify to such facts. I am not a party to this action.

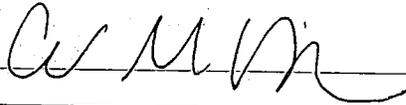
2. I am the Assistant Attorney General assigned to represent Defendant, Washington Department of Corrections, in this matter.

3. On May 30, 2018, I sent the Plaintiff a letter informing him that I had confirmed with the Department's Information Technology department that there would be no metadata that exists for his PRA request. I also informed him that the Department's Information Technology department confirmed that it is unable to track employee computer usage that would identify the date/time employees create incident reports. At that time, I requested Plaintiff voluntarily dismiss his lawsuit and informed him that I would seek costs and a finding of frivolousness.

1           4.     Since the letter, the Department has responded to three sets of discovery noting  
2 the same information provided through this show cause motion and confirming the information  
3 in my May 30, 2018 letter.

4           I declare under penalty of perjury under the laws of the state of Washington that the  
5 foregoing is true and correct.

6           DATED this 11<sup>th</sup> day of October, 2018, at Spokane, Washington.  
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9 \_\_\_\_\_  
10 CANDIE M. DIBBLE, WSBA #42279  
11 Assistant Attorney General  
12 Corrections Division  
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APPENDIX I

RECEIVED  
OCT 12 2018  
SUPERIOR COURT  
ADMINISTRATORS OFFICE

OCT 12 2018  
SPOKANE COUNTY CLERK

CN: 201802016961

SN: 18

PC: 2

FILED

NOV 16 2018

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT

JOSEPH THURURA,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT  
OF CORRECTIONS,

Defendant.

NO. 18-2-01696-1

ORDER GRANTING DEPARTMENT'S  
MOTION TO SHOW CAUSE

[PROPOSED]

THIS MATTER came before the Court on the Department's Show Cause Motion on November 9, 2018. In reaching its decision, the Court considered the Department's Motion to Show Cause and all briefing with exhibits and oral argument by both parties; does hereby find and ORDER:

1. The Department's Show Cause Motion is **GRANTED**;
2. Plaintiff's claims are **DISMISSED** with prejudice;
3. ~~Plaintiff PRA claims are frivolous and is issued a "strike" under RCW 4.24.430,~~
4. Defendant Department of Corrections is awarded its costs and fees; and

ORDER GRANTING DEPARTMENT'S  
MOTION TO SHOW CAUSE  
No. 18-2-01696-1

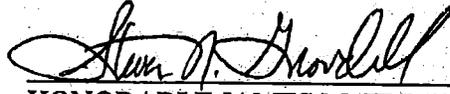
ATTORNEY GENERAL OF WASHINGTON  
Corrections Division  
1116 West Riverside Avenue, Suite 100  
Spokane, WA 99201-1106  
(509) 456-3123

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5. The Clerk of the Court is instructed to send uncertified copies of this Order to the Plaintiff and counsel for the Defendants.

DATED this 16<sup>th</sup> day of Nov., 2018.



HONORABLE ~~JAMES M. TRIPLETT~~ *Steven Grovdahl*  
Spokane County Superior Court Judge *Pro Ten*

Submitted by:  
ROBERT W. FERGUSON  
Attorney General

**Steven N. Grovdahl**  
**Judge Pro Tempore**



*Telephonically appeared*

CANDIE M. DIBBLE, WSBA #42279  
Assistant Attorney General  
Corrections Division

APPENDIX K

October 23, 2018

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

SEAN LANCASTER,

Respondent/Cross Appellant,

v.

WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS,

Appellant/Cross Respondent.

No. 48708-0-II

UNPUBLISHED OPINION

WORSWICK, J. — Sean K. Lancaster is an inmate in the custody of the Washington State Department of Corrections (Department). Lancaster filed a lawsuit against the Department for failing to provide records responsive to his Public Records Act (PRA), chapter 42.56 RCW, request for records of phone calls made with his inmate identification number. The Department conceded that the requested phone records were public records that should have been disclosed. The trial court ordered partial summary judgment in Lancaster's favor. The trial court also awarded Lancaster monetary penalties after determining that the Department had acted in bad faith in failing to disclose the phone records.

The Department appeals, arguing that the trial court erred in awarding Lancaster penalties because the Department did not act in bad faith in failing to disclose the records. Lancaster cross appeals, arguing that the trial court erred in failing to find that the Department acted in bad faith in withholding responsive records relating to his initial and follow-up requests for phone records and that the trial court erred by awarding him a monetary penalty near the low end of the

No. 48708-0-II

statutory range. We reverse the trial court's award of monetary penalties and remand to the trial court for further proceedings consistent with this opinion.

#### FACTS

The Department contracted with Global Tel Link (GTL), a private company, to provide and manage phone services to inmates in its facilities. The Department's contract with GTL allowed the Department to access phone records to monitor inmates' phone calls. GTL tracked all phone calls by an inmate's identification number and could generate reports of all calls associated with a particular identification number.

In 2013, the Department reevaluated its public disclosure policies and determined that inmates' phone records were generally not public records because the records were maintained by a private company. As a result, the Department adopted a policy that phone records were not subject to disclosure under the PRA unless the records had been used by the Department for agency business.

On November 4, 2014, Lancaster sent a letter to the Department requesting records of phone calls involving his inmate identification number. Specifically, Lancaster requested "each outgoing number called, or attempted, and the date and time of each call, and from which specific telephone (by unit and pod, or recreation yard) used." Clerk's Papers (CP) at 110. The Department failed to perform a search to determine whether Lancaster's records had been used for agency business. Pursuant to its policy, the Department notified Lancaster that "[t]he Department's phone system is run and maintained by an outside vendor and the phone call records you request are not public records created, used or maintained by the [D]epartment; therefore, the records are not disclosable under the [PRA]." CP at 25.

No. 48708-0-II

Soon after, Lancaster filed a lawsuit in Thurston County Superior Court, alleging that the Department violated the PRA by failing to properly respond to his records request. While Lancaster's lawsuit was pending, a Franklin County Superior Court judge ruled in unrelated litigation that inmate phone records were public records. As a result of the Franklin County ruling, the Department made the requested phone records available to Lancaster.

Lancaster then moved for partial summary judgment, requesting an order finding that the Department had violated the PRA, requiring immediate production of all records, and granting Lancaster costs, fees, and monetary penalties under RCW 42.56.565(1). In response, the Department conceded that it violated the PRA because the phone records requested were public records and should have been made available to Lancaster. However, the Department argued that Lancaster should not be awarded penalties because it did not act in bad faith in denying Lancaster's public records request. The Department contended that its prior policy that inmates' phone records were not public records was based on a reasonable belief that the records were not subject to the PRA.

The trial court granted Lancaster's motion for partial summary judgment. The trial court reasoned that the Department's policy was objectively reasonable and "appear[ed] to have been based on a good faith understanding of the law, including awareness of all three elements in the definition of public records." CP at 244-45. However, the trial court ruled that the Department acted in bad faith for two reasons. First, the Department did not notify Lancaster that, under its policy at the time of the request, inmates' phone records were public records under the PRA when they were used for an agency purpose. Second, the Department did not follow its policy when it failed to perform a search to determine whether Lancaster's phone records had been used

No. 48708-0-II

for an agency purpose. Based on its finding of bad faith, the trial court determined that Lancaster was entitled to \$25 for each day that the Department failed to disclose the requested phone records and awarded Lancaster a total of \$2,925 in monetary penalties.

The Department moved for reconsideration arguing that RCW 42.56.565(1) requires a causal connection between bad faith and the denial of records. The Department claimed that because Lancaster's records had not been accessed for any investigative or disciplinary purpose, his records would not have been provided under the policy in existence at the time. Attached to its motion, the Department included a declaration of Katie Neva, a Department employee, which stated, "I conducted a search to determine whether phone logs of Offender Lancaster had ever been pulled for use in an investigation by investigators in SIS [(Special Investigative Services)] and IIU (Intelligence and Investigations) units. After contacting the Department's facilities and reviewing Department records, I found no evidence that Lancaster's phone logs were ever accessed for use in an investigation." CP at 260-61. Lancaster also moved for reconsideration. The trial court reviewed and considered all documents filed in association with the motions and then denied both motions for reconsideration.

The Department appeals and Lancaster cross appeals.

## ANALYSIS

### I. AWARD OF PENALTIES UNDER RCW 42.56.550(4)

The Department argues that the trial court erred in awarding Lancaster penalties under RCW 42.56.565(1) because the plain language of the statute requires that an agency's bad faith cause the denial of public records. We agree.

No. 48708-0-II

The PRA requires that an agency make public records available for public inspection and copying. RCW 42.56.070(1). A “public record” includes any writing related to “the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency.” RCW 42.56.010(3).

Under RCW 42.56.550(4), a trial court may award penalties to an inmate who prevails against an agency that denied him the right to inspect or copy any public record. However, the PRA permits penalty awards to inmates “only when the conduct of the agency defeats the purpose of the PRA and deserves harsh punishment.” *Faulkner v. Dep’t of Corr.*, 183 Wn. App. 93, 106, 332 P.3d 1136 (2014).

This case concerns the proper interpretation of RCW 42.56.565(1), which governs penalty awards to inmates under the PRA. Statutory interpretation is a question of law that this court reviews de novo. *Department of Corr. v. McKee*, 199 Wn. App. 635, 643, 399 P.3d 1187 (2017). The primary goal of statutory interpretation is to determine and implement the legislature’s intent. *McKee*, 199 Wn. App. at 645. To determine the legislature’s intent, we first look to the plain language of the statute to discern its plain meaning. *McKee*, 199 Wn. App. at 645. We determine plain meaning from the ordinary meaning of the language in issue, the context of the statute where the provision is located, related provisions, and the overall statutory scheme. *McKee*, 199 Wn. App. at 645. If the plain language of the statute is subject only to one interpretation, it is unambiguous and we give effect to the statute’s plain meaning as an expression of legislative intent. *See Sanders v. State*, 169 Wn.2d 827, 864, 240 P.3d 120 (2010).

Under the PRA, an agency must make public records available for public inspection and copying. RCW 42.56.070(1). If an agency denies an inmate the right to inspect or copy a public

No. 48708-0-II

record, the trial court may award the inmate monetary penalties. RCW 42.56.550(4). RCW 42.56.565(1) states:

A court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

We use traditional rules of grammar to discern the plain meaning of a statute. *Planned Parenthood v. Bloedow*, 187 Wn. App. 606, 621, 350 P.3d 660 (2015). Here, the term “bad faith” is modified by the term “in denying the person the opportunity to inspect or copy a public record.” *See* 42.56.565(1). Accordingly, an agency’s bad faith must cause the denial of the opportunity to inspect or copy a public record in order for an inmate to be awarded monetary penalties.

In forming its policy related to the disclosure of inmates’ phone records, the Department reasoned that the phone records did not fall under the PRA’s definition of a public record. The Department examined the PRA and its agreement with GTL to provide phone services to inmates in its custody. In doing so, the Department considered that GTL, and not the agency, prepared and retained inmates’ phone records. Because a public record includes a writing prepared or retained by an agency, the Department’s policy that inmates’ phone records were generally not public records was reasonable. *See* RCW 42.56.010(3). But the Department failed to follow its policy by not conducting a search to determine whether it had accessed Lancaster’s phone records for agency business. Such a failure to follow a reasonable policy can form the basis of a bad faith determination.

No. 48708-0-II

However, because the failure to search did not lead to the Department's denial of the records, its failure to search does not support a penalty award. Here, the trial court determined that the Department acted in bad faith because it did not notify Lancaster that inmates' phone records were public records under the PRA when they were used for an agency purpose and because the Department failed to perform a search to determine whether Lancaster's phone records had been used for an agency purpose. But neither the failure to notify Lancaster nor the failure to conduct a search denied Lancaster the opportunity to inspect or copy a public record. This is because Lancaster's phone logs were never accessed for use in an investigation. Accordingly, the trial court erred in awarding Lancaster penalties under RCW 42.56.565(1).<sup>1</sup>

## II. LANCASTER'S CROSS APPEAL

In his cross appeal, Lancaster argues that the trial court erred in failing to find that the Department acted in bad faith in withholding responsive records relating to his initial and follow-up requests for phone records and that the trial court erred by awarding him a monetary penalty near the low end of the statutory range. However, the trial court did not address the merits of Lancaster's claims regarding the missing records in the initial and follow-up requests. Without the trial court's ruling on the merits of an issue, this court has nothing to review. *Reid v. Dalton*, 124 Wn. App. 113, 120, 100 P.3d 349 (2004). In addition, we reverse the award of monetary penalties because the Department did not act in bad faith in failing to disclose the requested phone records. As a result, we do not address Lancaster's arguments.

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<sup>1</sup> The Department concedes that Lancaster is entitled to an award of costs because it violated the PRA.

COSTS ON APPEAL

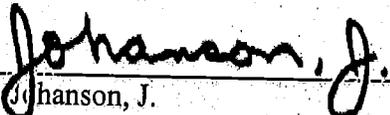
Lancaster argues that he is entitled to an award of costs on appeal as the prevailing party. RAP 18.1(a) permits an award of reasonable costs if authorized by statute. RCW 42.56.550(4) provides that “[a]ny person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record . . . shall be awarded all costs . . . incurred in connection with such legal action.” Because Lancaster is not the prevailing party on appeal, he is not entitled to costs on appeal.

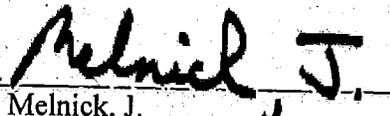
CONCLUSION

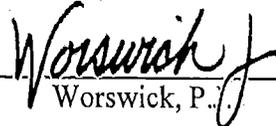
We reverse the trial court’s award of monetary penalties, and we do not consider Lancaster’s cross-appeal arguments. Because the Department conceded that it violated the PRA, we remand to the trial court for a determination of costs and for further proceedings consistent with this opinion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

We concur:

  
\_\_\_\_\_  
Johanson, J.

  
\_\_\_\_\_  
Melnick, J.

  
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Worswick, P.