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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 365387

IN THE COURT OF APPEALS, DIVISION THREE

PALMER D. STRAND AND PATRICIA N. STRAND

Appellant

v.

SPOKANE COUNTY AND SPOKANE COUNTY ASSESSOR

Respondents

BRIEF OF APPELLANT

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Appellant

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A. INTRODUCTION

Appellant, Palmer and Patricia Strand (“Strand”), own real property in Spokane County. Since 2009 the Strands requested the Spokane County Assessor (“Assessor”) produce the records that are the basis of valuing¹ now approximately 40 parcels. The Law² states the basis of value are current-specific-similar sales, cost of new construction and physical inspections. These bases are public records required to be produced upon request. Records were requested but never produced.³

This case is to find out if records of physical inspections that comply with The Law exist. The Law states physical inspection are to occur minimally on a six-year cycle but also can occur upon sales; to collect data to reconcile inconsistencies, to calibrate valuation models, on non-homogeneous properties; upon appeals. Building permits for new and remodeled construction are reasons for physical inspections. The Law states at a minimum physical inspections are to be appropriately

¹ RCW 84.40.030 uses synonymously valuation, assessment and appraisal

² The Law: WA. Constitution Article 7 §1 (uniformity of valuation); RCW 36.21.015 and WAC 458-10 (accredited appraiser standards of practice are Uniform Standards of Professional Appraisal Practice and require disclosure, ethics, record keeping, credibility), RCWs 84.40.020 (assess and list annually on 1/1/xx; public records), 84.40.030 (basis of value sales and cost of new construction; value land exclusive of structures, disclose basis when requested), 84.41.30 and 84.41.041 (annual valuations based on appropriate data), 84.48.150 (in appeal disclose basis of value); WAC 458-07-015 (accurate appraisals, physical inspections, appropriate documentation on Cards); WAC 173-27-030 defines structures in broadest of all terms

³ CP 152 line 12, CP 153 lines 1-15, CP 154 No. 9-13, CP 157 No. 14.2, CP 158 No. 4

documented on the property record card⁴ with the physical characteristics that affect value. (“Card”)

The Assessor alleges their appraisers perform physical inspections that comply with The Law. [CP 57]

B. STATEMENT OF THE CASE

a. Complaint for Assessor’s Denial of Public Records

NOTE: All responses in this case are by Mr. Oesterheld⁵ (PRA agent) for the Assessor (principal)

On December 29, 2016 Strand requested six groups of records about appraisers’ jobs. [CP 18] RCW 42.56.520(3) states the Assessor should have produced an estimate of the time required to produce this sizable request and should have disclosed all records that satisfied the request – a privilege log. (“PRA”) This never happened violating the PRA.

On September 10, 2018 Strand filed a *Complaint* for judicial review

⁴ The label “property record card” appears nowhere on the Card. WAC 458-07-015(4) uses label “property improvement record”. The label on the Strand Card is appraisal [CP 193 (F) and CP 194]. The Assessor is very secretive about Cards and has never disclosed records since 2009 [CP 224-226; CP188-189; 192]

⁵ Frank Oesterheld left the Assessor’s office in 2018, CP 166 states: he was Executive Assistant to the Assessor since 7/15, Spokane County Appraisal Support Specialist 11/14 to 6/15, BA in history (2011) MA in Public History (2014) with concentrations in archives and public records; CP 167 states: We have great respect for the Act and a deep understanding of its purpose and the evolution of its substantiating case law . . . he has years of experience in WA. State records and the Public Records Act as an archivist and records manager; CP 170 states: from 2012-2014 he worked as an archivist intern for the WA. State Archives Eastern Region where he fulfilled hundreds of public records requests. He completed the Electronic Records 1 and Public Records 101 courses.

(RCW 42.56.550) alleging the Assessor denied records from group five of the request violating the PRA:

RECORDS REQUESTED IN DATABASE (EXCEL) FORMAT AND PHOTOS

- 5. The complete real property inspection history of each-and-every appraiser for each year from Jan/1/2012 through the date the records are produced. This should include the properties inspected with a column for at least these inspection specifics:**
- A. parcel number,**
 - B. parcel address,**
 - C. inspection date,**
 - D. "NC" if inspection resulted in No Change in value due to inspection. [CP 18] (“complete inspection history”)**
(emphasis added)

b. 2017 Responses to Complete Inspection History

1) On February 16th the Assessor identified data in their Proval database [CP 33-34] as responsive records to the complete inspection history request. This is the identification of a data compilation.

#5: The complete real property inspection history of each-and-every appraiser for each year from Jan/1/2012 through the date the records are produced.

We do not generate any such record. As we have told you many times, **the entire history of every inspection of every parcel is contained in the data entered into Proval.**⁶ [CP 31] (emphasis added)

A database is an organized collection of data, stored and accessed electronically. Database designers typically organize the data to model aspects of reality in a way that supports processes requiring information,

⁶ The Assessor has previously identified separate databases for the website (<http://cp.spokanecounty.org/SCOUT/propertyinformation> . . .) and Proval but has never identified all databases, what records are on databases, who accesses databases, or anything about databases.

such as (for example) modelling the availability of rooms in hotels in a way that supports finding a hotel with vacancies. [CP 6]

The database management system (DBMS) is the software that interacts with end users, applications, and the database itself to capture and analyze data. A general-purpose DBMS allows the definition, creation, querying, update, and administration of databases.

RCW 42.56.010(3) identifies data compilations as writings; RCW

42.56.010(2) states writings are records subject to RCW 42.56.520.

WAC 44-14-05001 Access to electronic records. The Public Records Act does not distinguish between paper and electronic records. Instead, the act explicitly includes electronic records within its coverage. The definition of "public record" includes a "writing," which in turn includes "existing data compilations from which information may be obtained or translated."

After this response Strand expected the Assessor to produce the records of the complete inspection history from the Proval database in a database format. The Assessor did this exact thing in 2011. [CP 270-274]. The Assessor's fulfillment logs dated "Jan 13, 17", "Jan 20, 17" and "Jan 27, 17" alleged this request was "in process". [CP 145, 147, 149] Database records were never produced!

2) On May 8th **Strand requested the Assessor produce a schedule of their unfinished production.** [CP 47] (emphasis added) On May 9th (131 days after request) the Assessor refused and stated closing the request. [CP 48] No records of the complete inspection history had been produced. The refusal of the schedule (privilege log) violated RCW 42.56.520(3).

3) On May 24th the Assessor made two offers to satisfy records for the complete inspection history by producing Cards in different formats over either two or 8.27 years. [CP 49] (emphasis added)

Hodgson⁷: The property record cards is not a record that exists in the office. It has to be created. The property record card itself is a – is part of the canned software of ProVal. And actually we haven't used that property record card all that much until Mrs. Strand's requests came. Not that we haven't used it, but it's something that has to be created. And it is basically date driven. [CP 192]

The offers to create Cards violates the PRA. What is offered did not exist when the request was made. What is offered cannot be examined to see if it satisfies the records of the complete inspection history. What is offered is a future long-term contract to perform.

4) On May 29th Strand refused both offers. [CP 50-51] Strand requested the Assessor produce **records created during inspections.** (emphasis added) On June 3rd **Strand requested the Assessor search for and produce them.** Assessor Horton and Mr. Hodgson testified to these inspection records,

The following eight records were identified in Spokane County Superior Court Case 14-2-01079-1 *Strand v. Spokane County Assessor*: (1) on-site notes, (2) Ortho maps, (3) pre-inspection appraisal . . . (4) building permits, (5) inspection schedules . . . (6) aerial photos (7) stipulated value agreements and (8) on-site photos.

⁷ Byron Hodgson, Chief Deputy Assessor

The Assessor produced these records after denying their existence in *Strand v. Spokane County Assessor*, 162010797. [CP 52] The Assessor made no search for records created during inspections.

5) On June 30th the Assessor denied having records that satisfied the complete inspection history request. [CP 58] The Assessor then edited an existing database to create a new record to allegedly satisfy the request. [CP 58, CP 61] This new database is a mess of addresses. [CP 62]

6) On July 26th **Strand requested a meeting so she could inspect Assessor records to resolve the request.** [CP 63] (emphasis added) On August 7th the Assessor refused a meeting by stating Strand did not understand their work or their records. He stated appraisers do everything and control everything. This inferred a meeting with every appraiser was required. The offer of Cards was repeated because the Card was the official record. [CP 64] An offer of a list of appraisers was made.

7) On August 8th the Assessor offered **Neighborhood Reports to satisfy the request.** (emphasis added)

2. Neighborhood reports, which show the appraiser, parcel number, the inspection . . . dates, and all the vital information for the parcel . . . [CP 65]

On August 14th Strand asked if the Reports were for inspections from 1/1/12 through the date produced and if the dates on the Cards and the Reports were the same. [CP 66] This was the response,

Both the Property Record Cards and the Neighborhood Reports are pulling from the same database, so yes, the appraisal and inspection dates would be the same on both records. [CP 67]

The Assessor states their database(s) download inspection data into Cards and Reports. There is no statement that Reports span the request period! (emphasis added)

Strand received thousands of Reports. [CP 8 No. 3.20] An analysis of a random sample of them showed the inspection dates were all prior to 1/1/2016, they were all residential reports (no commercial parcels), there is no way to determine how many parcels were present because of substantial duplications with slight data differences that required line-by-line comparisons⁸ on the thousands of Report pages. [CP 329-3002]

Strand's collated the sample analysis to timesheets⁹. On November 4, 2013 Appraiser Rhodora Capiral did 211 inspections in 4.8 hours without lunch or rest breaks. This is an incredible feat of unsubstantiated inspection magic. It is unsubstantiated because the only records of these 211 inspections is a date. [CP 73-79] WAC 458-07-015(4) requires appropriate documentation of inspections. A database download of the documentation of these 211 inspections is what was requested.

⁸ Assessment Year 2016, neighborhood 231720, pages 18-23 of 29 pages have duplicate parcels with pages 24-29

⁹ Timesheets were produced CP 21, Timesoft Reports No. 8. Residential_2013

The timesheet showed Ms. Capiral in the office from 7:32-to-8:10 and 1:57-to-4:59. Travel time to-and-from the office to neighborhood 113602 (Shiloh) totals 12.2 miles –1 hour.

		HOURS
11/04/13 07:32 AM In	11/04/13 Capiral, Rhodora	13:57
11/04/13 07:32 AM In	11/04/13	-8:10
11/04/13 08:10 AM Field Appraisal	11/04/13 Capiral, Rhodora shilo	5:47
11/04/13 08:11 AM Field Appraisal	11/04/13 Capiral, Rhodora shilo/sche w/ 118	-1:00
11/04/13 01:57 PM In	11/04/13 Capiral, Rhodora	4:47
11/04/13 04:59 PM Out	11/05/13 Capiral, Rhodora	

On August 23rd and 26th Strand notified the Assessor their Report

production excluded commercial Reports [CP 99] and followed up with,

1. `Do these Final Review reports identify 100% of the Spokane County real property parcel six year inspection dates, Yes or No?
2. `What are the record(s) that are the source/basis of the inspection dates on the Final Review reports?

I previously requested 'all' inspection dates from 1/1/12 through the date the dates are produced. Are all inspection dates in the aforementioned database, Yes or No? [CP 103]

From the 24th to 28th the Assessor responded,

1. **No. There are no inspection dates on the Commercial Final Review reports. . . . [CP 104]**
2. **The source of these records is the Proval database, which is exempt from disclosure because it contains proprietary information protected by a user agreement between Thomson-Reuters and Spokane County. (emphasis added)**

The Proval database that was this on February 16th,

We do not generate any such record. As we have told you many times, **the entire history of every inspection of every parcel is contained in the data entered into Proval.** [CP 31] (emphasis added)

is now exempt, proprietary and protected by a user agreement! Where is the statutory basis!

8) From August 29th to 31st Strand requested the creation of an arbitrary-sample of commercial and residential Cards. [CP 105-107]

Strand analyzed the Cards to prove to the Assessor they were

nonresponsive to the request with these observations: [CP 108-110]

WAC 458-07-015 on physical inspections requires 6-year cycle inspections on all property -- improved and land and the reporting of observations. There should be inspection dates on all of the cards. There are not! [CP 109]

- A picture is a way to report observations the omission of pictures in addition to no 'Data Collector Date' support no inspections in violation of the law.
- None of these cards say anything about inspections.
- The pictures on your website indicate appraisers were on these properties (numbers 1, 4, 11, and 12) for inspections not reported on the cards.
- The appraisal notes on these cards indicate inspections not reported on the cards.
- The material valuation differences of these properties indicate they should have been inspected, ie number 2 going from \$42.5 thousand to \$279.7 thousand.
- CONCLUSION ON COMMERCIAL CARDS: A random sample of 12 commercial cards is sufficient to show the cards are not responsive to my request.
- The comparison of evidence of inspections -- the cards versus the pictures you provided on these properties -- shows more than twice as many inspections occurring on these properties than reported on the cards. [CP 110]
- CONCLUSION ON RESIDENTIAL CARDS: A specific sample of cards is sufficient to show the cards are not responsive to my request.

Strand's observations about newly created Cards as not responsive had no effect in the Assessor continued offers!

9) On September 5th Strand stated,

On 8/26/17 11 :29 AM – I requested the records that are the source of the inspection dates in your database of inspection dates on Final Review Reports, Property Records Cards, photographs, etc. You can either provide these dates as a download from this data base (properly identified by parcel number) in a database format as they currently exist or you can provide these source records. [CP 110] (emphasis added)

This was the response,

We have told you many times in the past that the "source records" for the database information in Proval do not exist. Appraisers transcribe them directly into Proval and then the "source records" are destroyed. [CP 111] (emphasis added)

These acts violate the protections of RCW 42.56.100.

10) On September 16th Strand repeated the request of September 5th

and requested proof of destruction of inspection records – **destruction**

logs. [CP 112] On the 18th this was the response, (emphasis added)

Notes that appraisers take in the field are transcribed into Proval - which is the official record of inspection - when the Appraiser returns from the field. The notes are then discarded. Because field notes fit the definition of "Records Documented as Part of More Formalized Records," they fall into the category of "transitory records," so an entry on the destruction log is not required. Please see the CORE retention schedule version 4.0, page 161, which is available here. Because no such records exist, your request is denied. [CP 113-114] (emphasis added)

You also requested that we use our database "to generate a list of all inspection dates from 1/ 1/12 through the date the dates are produced." This would constitute the creation of a custom record. The Public Records Act does not require agencies to create custom records

or reformat existing records to suit a requester's purposes. Accordingly, your request is denied. (emphasis added)

Strand has Cards on about 40 parcels with complete “Notes”. None of these Cards show appropriate documentation of physical inspections.

11) From September 18th to 28th commercial Reports were produced.

The 28th was the last installment production. (emphasis added) On

October 6th Strand asked if the Assessor’s production was finished. The response was the Assessor’s office was busy. [CP 141] On November 21st (327 days after request was filed) the request was closed,

After reviewing our production, I have concluded that we have provided all the responsive records in our possession with the exception of the property record cards - the only official record of inspection - for all parcels in the County, which you asked us not to send. I am closing this request as of today, November 21, 2017. [CP 142]

c. CONCLUSION: Assessor Responses Prove These PRA Violations for Denied Records

- 1) RCW 42.56.520(3) was violated by the Assessor not producing an estimate of time required for production and the disclosure of records that satisfy the request – a privilege log.
- 2) RCW 42.56.520 was violated by the Assessor not disclosing, not searching for, not allowing Strand to inspect and not producing the records of the complete inspection history from all sources – database(s), appraisers computers and workfiles, Assessor’s records.

3) RCW 42.56.100 was violated by the Assessor destroying inspection records that existed on or after December 29, 2016. These records were protected by Strand's request.

4) RCWs 40.14.050 and 40.14.060(1) were violated by the Assessor destroying original inspection records that were protected under Retention Schedules.

d. Defendant's Summary Judgment

On October 1, 2018 defense filed for summary judgment (scheduled for hearing November 2, 2018). It made this argument,

The Plaintiff Has Failed to Show A PRA Violation ... The Assessor's Office does not have any record specifically responsive to #5 of Mrs. Strand's request. However, the information requested by Mrs. Strand in her #5 request is found on the Property Records Cards which includes appraiser, parcel number, parcel address, inspection date, and if value changed due to inspection. (Declaration of Oesterheld) Mrs. Strand advised the Assessor's Office that she did not want the very records -property record cards -which contain the information she requested in paragraph 5 of her request. Mrs. Strand modified her request stating she did not request property records cards. She cannot now seek penalties and costs from the County for not providing the property record cards which contain the information that was responsive to paragraph #5 of Mrs. Strand's request. An action under the Public Records Act will not lie under this circumstance. [CP 178]

e. Strand Show Cause Order and Response to Summary Judgment

On October 8, 2018 Strand files for show cause order (scheduled for hearing October 26, 2018). It was to compel the Assessor to disclose the

alleged statutory exemption for the Proval database not being subject to the PRA. [CP 177 Conclusions]

On October 8, 2018 Strand responded to defense summary judgment with disputed genuine issues of material fact and matters of law: (1) the offered 215,000 Cards cannot satisfy the request because the Assessor plainly states they do not exist and (2) the denial of existing Proval database records. [CP 179 No. 4; CP 181 No. 6.2]

f. Defendant's Show Cause Response

On October 19, 2018 defense response to producing a statutory exemption for the Proval database,

The Assessor's Office uses a computer software program known as ProVal. Spokane County does not own Pro Val, but uses it under certain terms and conditions set forth in a non-exclusive license. Proval's internal calibration and embedded object code is proprietary and not subject to public disclosure. (Declaration of Oesterheld)

The Assessor's Office is not asserting any exemption to request #5 based on proprietary information protected by a User Agreement between Thomson-Reuter and Spokane County. (Declaration of Oesterheld)

The history of every inspection of every parcel is contained in the data entered into Pro Val is a public record. (Declaration of Oesterheld) (emphasis added) [CP 206]

g. Strand's Summary Judgment

On October 22-26, 2018 Strand filed for summary judgment (scheduled for hearing November 26, 2018). It was never heard. [RP 8; CP 239] The case was dismissed under defense summary judgment with

prejudice. Strand's summary judgment included evidence of the Assessor's history of false statements that their database(s) are not public records since 2009.¹⁰

h. Trial Court Hearing and Order

On October 26, 2018 the trial court heard Strand's show cause argument but did not hear its resolution; the defense withdrawal of the allegation on October 19th. [RP 7 line 9] Strand also gave her argument that Cards cannot satisfy her request but did not believe it.

MR. BINGER: . . . The response that we gave Mrs. Strand consisted of web – web internet addresses to a number of websites that the county assessor maintains that provide parts of paragraph five. The assessor also provided 2600 some pages that provide parts of number five. **The issue is here we have no document that satisfies all of the elements of number five. The property cards come closest to that.** And the missing document -- or the missing -- not missing -- the documents we don't have is Paragraph D of number five which asks for NC, in quotes, if inspection resulted in no change in value due to the inspection. There is no such document anywhere in the assessor's office or database. We simply don't have that. [RP 9] (emphasis added)

¹⁰ Strand email was afbyps@fastlane-.com

- (1) 2009 request for Proval code sheets to explain the jargon on the Card [CP 224-225] and CP 226 denies any production due to "proprietary appraisal software;
- (2) 2011 request basis of value changes on assessments on Card and response was "cost table changes". Request for cost tables they are exempt due to proprietary and copyrighted. Request for exemption response RCW 42.56.270 which has nothing to do with the Assessor and Proval database. [CP 227-233];
- (3) 2012 request for lawful basis of Assessor's changes in Quality of Construction and Depreciation on *Assessor's Answers to Real Property Petition to the Spokane County Board of Equalization* and *Assessor's Answers to Real Property Petition to the WA State Board of Tax Appeals* versus what was on Cards for same year when Strand appealed values [CP 234-235] and response "No Records subject to Public Disclosure" [CP 236]
- (4) 2015 request for Marshall & Swift cost tables and response "protected by an end-user license agreement" [CP 237-238]

...

So what we do have is the items we gave her. We said we'll give you everything we can that has bits and pieces, and in fact the majority of the information wanted in number five. The main -- the most responsive document is the property card. [RP 10]

...

So our -- my request to the court would be respectfully that you deny her motion, dismiss this matter with prejudice. [RP 10]

...

All we're providing to her is paper, and she tends to want to argue what's in the paper is not, in her mind, consistent with the WAC or the RCW; not before the court. [RP 12] (emphasis added)

Strand stated to the trial court that all of the records defense just identified including the Cards use data that is downloaded -- edited -- from database(s) into formats the Assessor wants. [RP 12, lines 6-15; RP 14 line 7] Strand does not want the Assessor's formatting and editing. The request is for data records. And, Strand requested an opportunity to inspect the records; it was denied. [RP 15 line 11-16; CP 63] Then the trial court spoke!

THE COURT: Then I've got to go back, because I think I saw -- maybe I making stuff up -- but I thought I saw some concern that the Proval code is proprietary, and you're asking that to be --[RP 15]

...

MS. STRAND: My request has nothing to do with the Proval code. My request has to do with the data about real property in Spokane County, which is a world apart from the Proval code. I have never asked for the Proval code. [RP 16]

...

THE COURT: -- is, I don't want anybody else to format any of the information that's in the Proval entries. I want access. To me, that means, get everything out of the way and I get to dig in, and that would require

some way to have the Proval code. Otherwise there's no way to get information out of Proval, other than some formatting. [RP 16]

...
MS. STRAND: . . . What Mr. Oesterheld claimed prior to October 19th was that all information about real property in Spokane County was proprietary and did not have to be disclosed because there was a statutory exemption to disclosing any information about real property in Spokane County. On October the 19th, Mr. Oesterheld . . . said, well, the Proval database about Spokane County records is not proprietary. It's a public record. [RP 17]

...
Next paragraph: The assessor's office is not asserting any exemption to request number five -- my request for public records about inspections -- to request number five based on proprietary information protected by user agreement. The history of every inspection of every parcel is contained in the data entered into Proval. It is a public record. [RP 18]

...
THE COURT: Well, you inserted an extra word there. The history of every inspection of every parcel is contained in the data entered into Proval. [RP 18]

MS. STRAND: Is a public record.

THE COURT: Yes. So the history --

MS. STRAND: That's what I'm looking for.

THE COURT: The history is a public record.

...
THE COURT: Yeah. But you don't like that. You took me to the property card and said, I don't like this, because it has this format, and there's this other data that should be there that isn't there. [CP 22]

...
THE COURT: Thank you. From the presentation today and from, in my ability to read the documentation, I think that there's a basic misunderstanding, and I think that the show cause motion must be denied at this point. Because I believe that the declaration of Mr. Oesterheld and the Memorandum in Response to Plaintiff's Motion to Show Cause indicate that the responses have been continuing, and in the -- to the way that I can understand, have been complete. [RP 24]

...
THE COURT: . . . All right. So I've interlineated that the court received but did not review Plaintiff's Supplemental Memorandum in Support of Motion For Summary Judgment with attachments immediately prior to the hearing,

and then I have signed the order denying Plaintiff's Motion to Show Cause and dismissing the claims with prejudice.

CONCLUSION: The trial court dismissed with prejudice the case based on: (1) the Assessor producing Cards over the next 8.27 years that violate the PRA and, (2) Strand's receiving records from the Proval database endangered it, (3) Strand must accept whatever the Assessor wants to produce and (4) the Proval database is exempt and proprietary.

i. October 26, 2018 Order Dismissing Case

The order's "II. Conclusions of Law" are most important. [CP 241-243]

- 1) Number 1 of the Conclusions misstates the request omitting "Records Requested in Database (Excel) Format . . ." which at the top of the page. [CP 18]
- 2) Numbers 2-5 of the order ignore the Assessor's February 16th statement, "the entire history of every inspection of every parcel is contained in the data entered into Proval" [CP 31] which is repeated as Number 10. This statement should have squashed summary judgment. Numbers 2-5 that allege to provide parts of the request also ignore the Assessor's statements that these records are produced by downloading data from the database(s) [CP 67, 104, 111, 113-114] Why are parts of the request acceptable when the entire request is the law.

3) Numbers 6-7 Cards cannot satisfy the request because they do not exist.

4) Numbers 8-9 are the Assessor's withdrawal of the alleged exemption for proprietary. This should have squashed summary judgment!

The defense order and the trial court make no sense. Then the case continued with a November 5, 2018 Order and Briefing Schedule. Strand filed for reconsideration on November 5th and a reply brief on November 9th. On December 24th reconsideration was denied.

C. ASSIGNMENT OF ERROR

1. The trial court erred in entering the Order of October 26, 2018 that denied Strands Motion to Show Cause and dismissed Strands public records act case with prejudice.
2. The trial court erred in entering the Order of December 24, 2018 that denied Strands Motion for Reconsideration.

Issues Pertaining to Assignments of Error

- Issue a: Whether the refusal to provide a privilege log of records and time required to satisfy the request is a separate PRA violation not an aggravating factor in determining an award for PRA violations?
- Issue b: Whether the Assessor's offered records ever satisfied the requested "complete" inspection history?
- Issue c: Whether the ignoring of Strand's request for a search for records and the denial of Strand's request to inspect records are aggravating factors in determining an award for PRA violations?

- Issue d: Whether the Assessor's allegations of every appraiser destroying all original inspection records violated a lot of laws and has other consequences.
- Issue e: Whether the Assessor has to create versus produce records from their database(s)?
- Issue f: Whether Mr. Oesterheld's repeated offers to produce records that do not exist was dishonest, negligent, reckless, wanton bad faith and intentional noncompliance with the PRA?
- Issue g: Whether the Assessor and agent can make false statements of databases being exempt with impunity for more than ten years?

D. SUMMARY OF ARGUMENTS

Strand asked the Assessor for the records of the complete inspection history of all real properties in a database format. Laws and codes require these records exist and have appropriate documentation of inspection findings on them. Laws require these records be retained.

The Assessor identified some of these records. The Assessor offered to create new versions of some of these records. The Assessor denied an inspection of some of these records. The Assessor alleged some of these records were proprietary and exempt – not public records. The Assessor did not perform a search for these records. The Assessor alleged destroying all of the original records. The Assessor did not produce some of these records.

Strand alleges the Assessor violated the PRA and other laws with these actions.

E. ARGUMENTS

a. The Denial of a Schedule, a Privilege Log, Was a PRA Record Violation

On May 8th (130 days after the request) Strand asked for this,

Your office is requested to produce a schedule of all of the records you plan to produce to satisfy my December 29, 2016 request in the next five business days. The schedule should include the name and/or description of the records you plan to produce with the dates the records will be produced. The schedule should include an association of the records you plan to produce with the six groups of records requested. [CP 47]

RCW 42.56.520 has four possible responses to a public records request:

(1) produce the records, (2) produce an internet address and link to the records, (3) produce a reasonable estimate of time needed to produce the records or (4) deny the records request. The Assessor did none of these.

Rental Housing Assoc. v. City of Des Moines, 165 Wn.2d 525 at 527, 538; 199 P.3d 393 (2009)

RHA argues that the limitations period did not begin to run until at least April 14, 2006, when the City first provided a privilege log identifying individual records it was withholding under a claim of exemption. We agree, and reverse and remand.

...

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

Strand specifically asked for a privilege log after the request was open for 131 days. A privilege log is integral to compliance with the PRA.

CONCLUSION: The privilege log is a separate PRA violation because it was a specific record request and denial [CP 48, CP 141] and PRA requirement. If Strand had not specifically requested the record and been denied it; then it would be a violation of a PRA process and under *Yousoufian v. Sims*, 165 Wn.2d 439; 200 P.3d 232 (2009) an aggravating factor. As a factor it would show intentional noncompliance with procedural requirements and no explanation for the noncompliance.

REMEDY: Remand to the trial court and the process of Discovery to compel production of this record.

**b. The Assessor Denied Strand All Records
Comprising the Complete Inspection History**

On December 29, 2016 Strand requested the complete inspection history of all appraisers that means **everything existing as of December 29, 2016 and after**. (emphasis added) These responsive occur at four points in time:

- Type 1 records are lists of properties to inspect – inspection schedules. [CP 56] Inspection schedules include: parcel numbers, parcel addresses, appraiser(s) IDs, parcel physical characteristics to

inspect to, etc. Based on the Assessor's various statements about their inspection process appraisers directly access database(s) and download type 1 records into their individual computers to create their own inspection schedules to their tastes. [CP 64, 115] Strand in the past requested if the Assessor had standard inspection forms. None were produced. Strand believes CP 137 and 139 are examples of individual appraisers' inspection schedules augmented with other data after the schedules were used.

- 1) Type 2 records are original inspection records appraisers obtain for and/or create during inspections. [CP 52 bracketed] Strand does not know if the inspection schedule becomes an original inspection record with inspection observations on it.
- 2) Type 3 records are electronic data compilations – database(s). Appraisers inputting inspection data into databases from original inspection records create Type 3 records. [CP 111, 113]
- 3) Type 4 records are downloads of inspection records from databases into computerized templates/formats and appraiser computers for paper and electronic records. The Assessor states downloading inspection data from the database(s) to create Cards, Reports and databases. [CP 67, 104]

The only records the Assessor produced were type 4 records – Neighborhood Reports¹¹, Cards¹², website databases¹³, downloads of appraiser spreadsheets¹⁴.

The Assessor alleges type 1 records do not exist. The spreadsheets submitted from commercial appraisers with parcel numbers, addresses, appraiser IDs, physical characteristics [CP 139] look like type 1 records augmented. No type 1 records were disclosed or produced.

The Assessor alleges all type 2 records are destroyed with no records of who destroyed them, what was destroyed and when the destruction occurred. [CP 111, 113-114] No inspection records were disclosed or produced.

On August 28th the Assessor alleged the Proval database (type 3 records) was exempt and contained proprietary information. On September 18th the Assessor alleged using their database(s) to generate records was creating custom records not required by the PRA. On October 19th the Assessor withdrew the allegation of exempt and proprietary. The Assessor has presented nothing supporting the allegation that satisfying the request from the database would create a custom record.

¹¹ CP 329-3002; CP 73-98

¹² CP 193-194, CP 267-269; CP 3004-3013

¹³ CP 61-62

¹⁴ CP 115, 133

Cards in Strand's possession have substantially all of the complete inspection history.

Statutes and codes require type 2 and 3 (database inspection compilations inputted by appraisers into the database immediately on return from the field before destroying original inspection records) records be created, contain appropriate documentation of observations of inspections and be retained. This means types 2 and 3 records have everything and more than Cards are required to have.

Progressive Animal Welfare Society v. University of Washington, 114 Wn.2d 677; 790 P.2d 604 at 606 and 683 (1990)

Judicial intervention is provided for if an agency refuses to provide requested public records, or attempts to edit them in a fashion deemed unacceptable by the requester. ² In such an action, the following rules apply: the agency has the burden of proving that the records should be exempt from disclosure. . . ³ This court has held that "[t]he statutory scheme establishes a positive duty to disclose public records unless they fall within the specific exemptions." ⁴ An agency which discloses only edited parts of a public record has the burden of proving that full disclosure is not required. ⁵

. . .
An agency has an affirmative duty to promptly provide access to public records unless the records fall within a specific statutory exemption. The mandate for disclosure is liberally construed and the exemptions are inapplicable if the agency can delete information which would violate privacy or vital government interests. A refusal to provide records (or parts of records) must be in writing and supported by reasons.

CONCLUSION: The Assessor's failure to disclose, failure to search for, failure to allow inspection of and the denial of production of type 1, 2

and 3 records violated the PRA. These records were requested. The Assessor never presented any evidence to prove no disclosure, no search, no inspection, no production complied with the PRA.

REMEDY: Remand to the trial court and the process of Discovery to compel disclosure, a search, inspection and production of type 1, 2 and 3 inspection records.

c. The Assessor Conducted No Search and Denied Strand an Inspection of their Records

On June 3rd Strand requested the Assessor conduct a search for original inspection records and document it because they were not produced. The request was ignored. No search was conducted. No original inspection records were produced. A search for records is the law to prove if an agency that does not produce records is telling the truth that they do not exist! It is not sufficient that an agency alleges records do not exist or that they destroyed them. The burden is on the agency to prove it.

Neighborhood Alliance v. Spokane Co., 153 Wn. App. 241 at 257; 224 P.3d 775 (2009)

The adequacy of the agency's search is judged by a standard of reasonableness, construing the facts in the light most favorable to the requestor." *Citizens Comm'n on Human Rights v. Food & Drug Admin.*, 45 F.3d 1325, 1328 (9th Cir. 1995). An agency fulfills its obligations under the PRA if it can demonstrate beyond a material doubt that its search was " 'reasonably calculated to uncover all relevant documents.' " *Weisberg v. U.S. Dep't of Justice*, 240 U.S. App. D.C. 339, 745 F.2d 1476, 1485 (D.C. Cir. 1984) (quoting *Weisberg v. U.S. Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1350-51 (1983)). Moreover, the agency must show that

it "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 287 U.S. App. D.C. 126, 920 F.2d 57, 68 (1990).

On August 7th the Assessor denied Strand a requested inspection of their inspection records including databases by alleging these things. No type 1 pre-inspection records exist (lists of parcels) and Cards are official inspection records. The inspection process is run by appraisers who alone know: what was inspected, when it was inspected, what the inspection involved and what inspection records were destroyed. There was no explanation of why appraisers records were not Assessor records and could not be inspected. And, Strand was offered a list of appraisers instead of a list of inspections.

Progressive Animal Welfare Society v. The University of Washington, 125 Wn.2d 243 at 250; 884 P.2d 592 (1994)

In order to implement its policy of full access to public records, the Public Records Act mandates that: "*Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, RCW 42.17.310, 42.17.315, or other statute which exempts or prohibits disclosure of specific information or records.*" (Italics ours.) RCW 42.17.260(1).

The stated purpose of the Public Records Act is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions.

The Supreme Court in *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 418 P.3d 102 (2018) reiterated Strand's right to inspect public records.

CONCLUSION: the absence of the search and the denial of the requested inspection are *Yousoufian v. Sims* aggravating factors. They show no compliance with procedural requirements under the PRA.

REMEDY: Remand to the trial court and the process of Discovery to compel a search and inspection for the denied records.

d. The Assessor's Statements of Destroying Original Inspection Records Violates Statutes and Has Other Consequences

On September 5th and 18th the Assessor alleged a practice of appraisers destroying all original inspection records (type 2) as soon as they returned from the field.

The request for records of the complete inspection history was open from December 29, 2016 until November 21, 2017 and the Assessor did not produce a single original inspection record for those 327 days in which annual inspections occurred because they occur every year. The Assessor did not conduct a search for those records for 327 days. The Assessor produced nothing to document the records were destroyed, who destroyed them, when they were destroyed or what was destroyed for 327 days.

RCW 42.56.100 protected all records responsive to the complete inspection history since December 29, 2016. RCWs 40.14.050 and

.060(1) protected original inspection records under Retention Schedule 2.1¹⁵ for six years (referencing RCW 84.41.030) and one year¹⁶. RCW 36.21.015 and WAC 458-10 *et seq.* identify appraiser standards of practice as Uniform Standards of Professional Appraisal Practice and protect records for two years as appraisers workfiles. Spokane County Job Specifications for appraisers state standards of maintaining accurate records and knowledge of real property law – the aforementioned law. These laws are all violated by the Assessor’s destruction allegations.

O’Neill v. City of Shoreline, 170 Wn.2d 138 at 148; 240 P.3d 1149; 2010

Office of the Sec’y of State, Div. of Archives & Records Mgmt., Local Government Agencies of Washington State, Records Management Guidelines (June 2001)

The petitioners ask us to consider the Guidelines as evidence that metadata need not be released under the PRA. They argue that the Guidelines authorize government agencies to delete certain records once they have been printed. This argument is unpersuasive. While the PRA implies that there are circumstances when public records can be scheduled for destruction, the PRA does not allow agencies to destroy records that are subject to a pending records request. It states that agencies "shall retain possession of the record, and may not destroy or erase the record until the request is resolved." RCW 42.56.100. Here, the electronic version of the e-mail, including its embedded metadata, is a public record, so it could not be destroyed once Ms. O’Neill made a request for it.

¹⁵ Attachment: P-1 to P-3 Retention Schedules excerpts <https://www.sos.wa.gov/archives/recordsmanagement/records-retention-schedules-for-county-assessors.aspx>; P-4 to P-6 USPAP excerpts on record keeping for appraisers; P7 to P-14 Spokane County job descriptions for appraisers identifying standards of knowledge of the law and record keeping

¹⁶ RCWs: 84.40.020 assessments as of January 1/xx; 84.40.030 uses terms valuation/assessment/appraisal synonymously; 84.41.030 mandate annual valuations

Neighborhood Alliance v. Spokane Co., 172 Wn.2d 702 at 723, 750; 261 P.3d 119 (2011)

An agency is forbidden from destroying responsive documents while a PRA request is pending. RCW 42.56.100. Because of this prohibition, an agency must show that any recently destroyed documents were not wrongfully destroyed, and this naturally will require more discovery regarding the destruction, not less, as the County seems to be advocating here.

...

For example, in *Yacobellis v. City of Bellingham*, 55 Wn. App. 706, 780 P.2d 272 (1989), the city refused to produce requested records of raw data collected by the city, claiming that they did not have to be produced because they were reflected in a final report. The city destroyed the raw data records while the request was pending. The court concluded that no exemption applied, that the city's destruction of the records violated the PRA, and that the requester was entitled to attorney fees and penalties for each day he was denied the right to inspect the documents.

CONCLUSION: On August 7th the Assessor alleged appraisers have sole possession and control of original inspection records. On September 5th and 18th the Assessor alleged appraisers destroy original inspection records as soon as they return from field inspections. No original inspection records have been produced but no destruction records have been produced either. These facts violate the PRA, WA. Retention laws, appraiser standards of practice and Spokane County appraiser job specification standards.

The law requires there be findings on records of inspection observations about the physical characteristics on property to make proper valuations. Where are these records? They were requested. They were not produced.

REMEDY: Remand to the trial court and the process of Discovery to compel disclosure, a search and production of original inspection records and destruction records. If no records exist that is a different set of laws and outcomes.

e. In Electronic Databases What is the Difference Between Creating and Producing and How Many Records Exist

On February 16th the Assessor stated, the “entire history of every inspection of every parcel is contained in the data entered into Proval” – a database. This is the disclosure of responsive public records under RCW 42.56.010 and WAC 44-14-05001. But, the Assessor produced no records from this database. On August 28th the Assessor alleged the Proval database was exempt because it contained proprietary information. On September 18th the Assessor alleged they would not produce records from the database because “This would constitute the creation of a custom record”, not required under the PRA. On October 19th the Assessor withdrew the allegation of an exempt and proprietary Proval database. But, the Assessor still produced no records from the Proval database.

Fisher Broad.–Seattle TV LLC v. City of Seattle, 180 Wn.2d 515, 326 P.3d 688 at 693 (2014)

SPD contends that Vedder was asking it to create a new record. This is clearly true to some extent; producing a document that would correlate all of the information Vedder requested would have required mining data from two distinct systems and creating a new document. This is more than the PRA requires. . . . However, as SPD's later response to Rachner

demonstrated, it did have the capacity to produce a partially responsive record at the time it denied her request. It should have done so.

We recognize that neither the PRA itself nor our case law have clearly defined the difference between creation and production of public records, likely because this question did not arise before the widespread use of electronically stored data. Given the way public records are now stored (and, in many cases, initially generated),

Whether a particular public records request asks an agency to produce or create a record will likely often turn on the specific facts of the case and thus may not always be resolved at summary judgment. But for SPD's response to Rachner's request, this might well have been such a case. However, the uncontroverted evidence presented showed that a partial response could have been produced at the time of the original denial. The failure to do so violated the PRA.

The Assessor has never disclosed all of their databases or what those databases do. The Assessor has never disclosed what records come from their various databases. The Assessor has never disclosed how many databases are used to create the many formats of Cards? The databases that download records into Cards appear to satisfy everything Strand requested of type 3 records and that includes time specific valuations¹⁷ that the Assessor denied existed but appear on Cards. Since the Assessor regularly produces Cards that contain a form of the records Strand requested there should be no issue of production versus creation.

How many records are in a database? *Lowy v. PeaceHealth*, 174 Wn.2d 769, 280 P.3d 1078 (2012) found the database a single record.

¹⁷ RP 10, the missing document. . . Paragraph D . . . NC

CONCLUSION: Strand requested records of the complete inspection history of real property. Type 3 records that are responsive are on the Assessor's database(s). This is not a custom record. This is not an exempt record. This is not a proprietary record. This is just a record that was unlawfully denied violating the PRA.

REMEDY: Remand to the trial court to compel inspection of the database(s) records, agreement on satisfactory data and download of that data in database format.

f. Nonexistent Records Cannot Be Alleged to Satisfy A PRA Request By the Highly Credentialed and Experienced Mr. Oesterheld Without Consequences

On May 24th Mr. Oesterheld for the Assessor made Strand offers,

I found a way to produce batches of property record cards by statistical neighborhood. However, the pricing ladder is not available in this option. Instead, the record cards come with a property photo. Also, Proval will not append extended notes to a second page, so I would have to document the notes another way, which would add to the production time. All in all, I estimate that this option will require about 2 years to complete. [CP 49]

Regarding item #5, "the complete real property inspection history for each-and-every appraiser for each year from Jan/1/2012 through the date the records are produced," the Assessor's office does not generate any such record. However, all that information would be on the property record card for every parcel in the County. I can produce those for you, but I must create all 215,000 one at a time. It takes about a minute to create one property record card. I can spend about 10 hours per week on public records requests. If I worked only on your public records request and could generate 500 property record cards per week, it would take a little over 8 years to finish production ($215,000/500 = 430$ weeks/ 52 weeks per year = 8.27 years.) I typically have 2-3 requests to fill at any one time, so producing all

215,000 record cards will take significantly longer than that. Please let me know whether you want to pursue this option.

Mr. Oesterheld⁵ is highly credentialed. He has BA in history and a MA in Public History with concentrations in archives and public records. He is highly knowledgeable and experienced about records as an archivist and records manager for the WA. State Archives Eastern Region where he fulfilled hundreds of public records requests. He completed the Electronic Records 1 and Public Records 101 courses. He knows the Assessor's policies, procedures and records because he was Executive Assistant to the Assessor and a Spokane County Appraisal Support Specialist. His name appears on Strand PRA responses from the Assessor in March 2015 as Appraisal Support/Public Records Coordinator. He stated having great respect for the Act and a deep understanding of its purpose and the evolution of its substantiating case law.

The offers are also unlawful violating the PRA. (emphasis added)

His offers are deliberately manipulative. They infer contracts that on their face are voidable by the Assessor at any time because they are unlawful.

The offers contradict Mr. Oesterheld's often repeated phrase, "the Assessor's office is not required to create records that do not exist".¹⁸

Hodgson: The property record cards is not a record that exists in the office. It has to be created. The property record card itself is a – is part of the

¹⁸ CP 19, CP 25, CP 52, CP 113

canned software of ProVal. And actually we haven't used that property record card all that much until Mrs. Strand's requests came. Not that we haven't used it, but it's something that has to be created. And it is basically date driven. [CP 192]

It follows from Mr. Hodgson's statement that Strand has probably received almost all Cards created by the Assessor since her first ask in February 2009. Strand is up to following 40 properties. The County has 215,000. [CP 49] Mr. Hodgson also explained in January 2015 that newly created cards only have current information – data existing as of the date the Card is created. This means Mr. Oesterheld's newly created 215,000 Cards over 8.27 years would normally have no data about the property in 2012, 2013, 2014, 2015, 2016, 2017, 2018, etc. up to the 8.27th day-month-year in which they are created. The only data relevant to Strands request on these newly created Cards would be the address and parcel number. But, that is probably an assumption without support. Strands first Card had her property at the wrong street address, in the wrong city, with another person as owner and with the wrong house.

It took the Strands many hours of work to figure out how to read the first Cards they received. The Assessor denied them production of any Proval code sheets on the Cards [CP 224-225],

I received your public records request dated December 28, 2009 (attached). . . . You indicate a desire for definitions and explanations of many other items in your request. However, I do not have a public record of

explanations of appraisal practices, appraisal definitions, and arithmetic formulas contained in **proprietary appraisal software**. There are publications and courses that would provide detailed information on mass appraisal practices. Additionally, the public library may have books on the subject. Finally, the International Association of Assessing Officers (IAAO) may provide some guidance on these subjects. In a large degree, your request seems to ask my office to educate you on many topics involved in mass appraisal. I regret we do not have the resources to fulfill this desire . . . I am considering your request closed. [CP 226]

The Assessor has given Strand thousands of Cards in multiple formats since 2009 on the properties she follows. Strand never requested most of these Cards and had no use for them. The Assessor likes to allege Cards satisfy any and all PRA requests. But, Cards only have information after the “Printed” date. There are no historical Cards unless Strand or somebody else requested them back in historical times. [CP 192]

The offers to create new Cards are to take either two or 8.27 years. The Assessor’s devoting so much time to satisfying this request for Strand means Strand cannot request anything else for those two or 8.27 years. Strand’s rights to the PRA are full to the brim with Cards until this request is satisfied; Strand’s rights to the PRA would be suspended. Strand’s rights to the PRA were suspended between 2013 and 2015. During that period the Assessor alleged satisfying Strand’s request for every record from a list of words; “the” was on the list. Strand received thousands of computerized pages of stuff from the Assessor multiple times a week over this period. The stuff included lots of Cards. These would be some of the

historical Cards. *Strand v. Spokane County Assessor*, 142010791 settled this allegation.

Mr. Oesterheld made the offers to create Cards on May 24; June 30; August 7, August 8, August 28, August 29 and September 18 – seven times. [CP 49, 58, 64, 65, 104, 105, 113] **It was very important that the offers be front and center to show the Assessor was acting!** (emphasis added)

Sperr v. City of Spokane, 123 Wn. App. 132 at 137; 96 P.3d 1012 (2004)
The problem with Mr. Sperr's argument is that he has no right to inspect or copy records that do not exist. An agency has no duty to create or produce a record that is nonexistent.

CONCLUSION: To paraphrase *Sperr* the problem with Mr. Oesterheld's offers to create nonexistent records is that Strand cannot inspect or copy what was offered to confirm it satisfies her request because what was offered does not exist. Strand has no duty to accept such offers because they are not real. The offers have substantial risks based on the Assessor's history in 2013 to 2015. The trial court cannot compel Strand to consider such offers and cannot penalize her refusal of the offers. But, the trial court did exactly that in the hearing and order. [RP 22, CP 242 No. 7]

Because Mr. Oesterheld is so credentialed, experienced, deliberative, thoughtful and repeated seven times the offers; this was not a mistake.

The offers and their intended outcomes were deliberate and damaged Strand.

CONCLUSION and REMEDY: The offers prove Mr. Oesterheld and the Assessor are dishonest, negligent, reckless, full to the brim of wanton bad faith and intentionally do not comply with the PRA. These are the *Yousoufian v. Sims* aggravating factors that merit a penalty award sufficient to deter the second largest County in the state from continuing to violate the PRA.

g. What Are The Consequences of The Assessor Making False Statements Since 2009

On August 28th the Assessor alleged the Proval database was exempt and contained proprietary information. The PRA places the burden on the Assessor to disclose the statute proving this allegation true. Since 2009 the Assessor repeatedly alleged their database(s) were not public records with claims of exempt, proprietary, copyrighted, not subject to disclosure, license agreements, etc.¹⁰ This was the key to denying records about what the Assessor was doing.

On October 8th Strand filed for a show cause order by the trial court to compel the Assessor to disclose this statute. [CP 171-197] On October 19th without the need for a hearing the Assessor withdrew the exempt and proprietary allegations. Were the allegations false statements? Are the

Assessor and Mr. Oesterheld guilty of false statements as principal and agent?

RCW 42.20.040 False report. Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor.

The finding is important because the allegation was the Assessor's basis for the denial of type 3 inspection records -- databases. It was the bases for the dismissal of this case by the trial court (show cause order denied). The finding is important because the allegation was used continuously since 2009 to deny Strand records. This is a decade of false statements that are part of this case and violated the PRA repeatedly. These false statements damaged Strand. They also damaged Spokane County. Strand's record requests have one goal to find out how property is valued in this County. What is amazing is that it is taking more than a decade to find out.

Mr. Oesterheld as agent for the Assessor alleged exempt and in official responses to a public records request that cited RCW 42.56. [CP 18] Mr. Oesterheld as agent for the Assessor has all the authority of the Assessor's office to make these statements. But, the statements are for the Assessor's office. Mr. Oesterheld has the education, professional experience and knowledge of the law on the PRA to know a statute is the

only basis for these allegations. No statute ever existed! He was deliberately making false statements. The allegation was withdrawn because Strand finally used a tool of the PRA – the show cause order – she used it ineffectively but it got the job done!

Mr. Oesterheld made this allegation on April 24, 2015,

2.) . . . c. Item 2: Marshall & Swift cost tables are internal to the Proval software, which is protected by an end-user license agreement (EULA). It is proprietary information and will not be released under any circumstances. We have explained this to you on numerous occasions. [CP 237]

In BTA 13-179 the appeal of Strand's real property value heard in January 2016 and decided in May 2017 his allegation echoed in the decision.

13.2. Marshall & Swift, a known construction-cost service that serves as the basis for the Pro Val computations, reports significantly different cost estimates based on whether space is characterized as a basement or a lower level. **According to the Owner's unchallenged calculations using the Marshall & Swift tables**, the Assessor's overvaluation of the subject's basement is \$23,769.17. [CP 155] (emphasis added)

The Washington State Board of Tax Appeals stated the Assessor should have provided and could have provided Marshall & Swift cost tables to Strand but did not and failed to prove their valuation.

In CP 237 Mr. Oesterheld spoke the truth. He has explained many-many times that the Assessor's electronic records are exempt, proprietary, copyrighted, not subject to disclosure, license agreements, etc. These false statements meant he did not produce the requested records many many

times. Does his admission of violating the PRA on numerous occasions support a determination of his making false statements in this case?

Rental Housing Assoc. at 527

Washington's Public Records Act (PRA), chapter 42.56 RCW, is a strongly-worded mandate for open government, requiring broad disclosure of public records unless the responding agency demonstrates that the record falls within a specific exemption. RCW 42.56.070(1).

PAWS II at 252, 269, 270

The Public Records Act "is a strongly worded mandate for broad disclosure of public records". . . . The agency bears the burden of proving that refusing to disclose "is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records". RCW 42.17.340(1). Agencies have a duty to provide "the fullest assistance to inquirers and the most timely possible action on requests for information".

An agency's compliance with the Public Records Act is only as reliable as the weakest link in the chain. If any agency employee along the line fails to comply, the agency's response will be incomplete, if not illegal.

The Public Records Act clearly and emphatically prohibits silent withholding by agencies of records relevant to a public records request. The statute explicitly mandates that: Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

RCW 42.17.310(4). Silent withholding would allow an agency to retain a record or portion without providing the required link to a specific exemption, and without providing the required explanation of how the exemption applies to the specific record withheld. The Public Records Act does not allow silent withholding of entire documents or records, any more than it allows silent editing of documents or records. Failure to reveal that some records have been withheld in their entirety gives requesters the misleading impression that all documents relevant to the request have been disclosed. . . . Moreover, without a specific identification of each individual record withheld in its entirety, the reviewing court's ability to conduct the statutorily required de novo review is vitiated.

CONCLUSION and REMEDY: A finding on false reporting is appropriate in this case against Mr. Oesterheld and the Assessor because of this span of unlawful behavior. The finding of false reporting while a minimal dollar is a deterrent because their careers would be negatively impacted and they should be.

The false statements are also aggravating factors in the calculation of a damage award under *Yousoufian v. Sims*. The false statements show the unreasonableness of any explanation for the noncompliance. They show the negligent, reckless, wanton, bad faith and intentional noncompliance. They show the dishonesty. The penalty award has to be sufficient as a deterrent to the second largest County in the state that as standard practice false statements are bad.

F. CONCLUSION – RELIEF REQUESTED

Strand requests remand to the trial court for discovery to compel the Assessor to disclose, search for allow inspection of and to produce all denied records that violate the PRA:

1. The privilege log on the records comprising the complete inspection history from 1/1/2012 through the date disclosed.
2. Type 1, 2 inspection records. SEE this Brief page 22.
3. All records documenting the destruction of inspection records from December 29, 2016 to the date disclosed.

4. All databases with inspection data dating from 1/1/2012 through the date inspected.

Strand request this court rule on the following as aggravating factors:

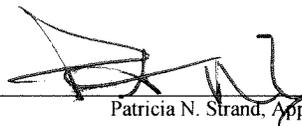
1. If privilege log is not a PRA record it is an aggravating factor
2. The claim of exempt, proprietary, etc. on databases
3. The failure to perform a search
4. The denial of inspection
5. The length of time of denial of records
6. The destruction of records
7. The nonexistent record offers

Strand requests recovery of all costs and attorney fees pursuant to RAP 18.1(a).

SUBMITTED this 24th of April 2019



Palmer D. Strand, Appellant



Patricia N. Strand, Appellant

CERTIFICATE OF SERVICE

I certify that on April 24, 2019, I served a true and correct copy of Brief
of Appellant to:

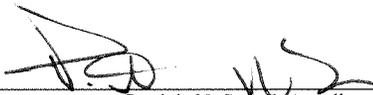
Court of Appeals - III
500 N Cedar Street
Spokane, WA 99201-1905

BY: Hand Delivery

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

BY: Hand Delivery

DATED this 24th of April 2019



Patricia N. Strand, Appellant

ATTACHMENT



This schedule applies to: County Assessors

Scope of records retention schedule

This records retention schedule covers the public records of county assessors relating to the functions of property valuation, property tax rate calculation, and property tax rolls. It is to be used in conjunction with the *Local Government Common Records Retention Schedule (CORE)*.

Disposition of public records

Public records covered by records series within this records retention schedule must be retained for the minimum retention period as specified in this schedule. Washington State Archives strongly recommends the disposition of public records at the end of their minimum retention period for the efficient and effective management of local resources.

Public records designated as Archival or Permanent must not be destroyed. Records designated as Potentially Archival must be appraised by the Washington State Archives before disposition. Public records must not be destroyed if they are subject to ongoing or reasonably anticipated litigation. Such public records must be managed in accordance with the agency’s policies and procedures for legal holds. Public records must not be destroyed if they are subject to an existing public records request in accordance with RCW 42.56. Such public records must be managed in accordance with the agency’s policies and procedures for public records requests.

Revocation of previously issued records retention schedules

All previous versions of the *County Assessor General Records Retention Schedules* are revoked. County Assessors must ensure that the retention and disposition of public records is in accordance with current, approved records retention schedules.

Authority

This records retention schedule was approved by the Local Records Committee in accordance with RCW 40.14.070 on January 29, 2009.

Signature on File

For the Attorney General: Cindy Evans

Signature on File

For the State Auditor: Mark Rapozo

Signature on File

The State Archivist: Jerry Handfield



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2. ASSESSMENT

2.1 GENERAL						
ITEM NO.	SERIES TITLE AND DESCRIPTION	OPR or OFM	PRIMARY (SOURCE DOCUMENT/ORIGINAL) RECORD COPY	SECONDARY (ALL OTHER) RECORD COPIES	DISPOSITION AUTHORITY NUMBER	REMARKS
2.1.1	APPRAISAL MANUALS	OFM	Department of Revenue has primary copy	Destroy when obsolete or superseded	AS01-03A-01	
2.1.2	APPRAISAL RECHECK OR REVIEW	OPR	6 years	None	AS01-03A-02	
2.1.3	APPRAISER'S WORKING FILES AND NOTES	OFM	Until superseded by new valuation cycle	None	AS01-03A-03	
2.1.4	AREA FILES Documentation of estimated market value for the various types of property in each appraisal area.	OFM	Until superseded by new appraisal cycle. Potential archival value - See remarks	None	AS01-03A-04	Contact your Regional Archivist before disposing of this record.
2.1.5	BOUNDARY REVIEW BOARD AND ANNEXATION FILES Created after the formation of Boundary Review Board.	OFM	Boundary Review Board - PERMANENT - See remarks	Destroy when maps and reference files are updated	AS01-03A-05	Contact your Regional Archivist before disposing of this record.

DEFINITIONS

- 148 value. In appraisal practice, value must always be qualified - for example, market value,
149 liquidation value, or investment value.
- 150 **WORKFILE:** documentation necessary to support an appraiser's analyses, opinions, and
151 conclusions.

271 Comment: When all confidential elements of confidential information are removed through
272 redaction or the process of aggregation, client authorization is not required for the disclosure
273 of the remaining information, as modified.

274 *NOTICE: Pursuant to the passage of the Gramm-Leach-Bliley Act in 1999, numerous agencies have adopted
275 new privacy regulations. Such regulations are focused on the protection of information provided by consumers
276 to those involved in financial activities "found to be closely related to banking or usual in connection with the
277 transaction of banking." These activities have been deemed to include "appraising real or personal property."
278 (Quotations are from the Federal Trade Commission, Privacy of Consumer Financial Information; Final Rule,
279 16 CFR Part 313.)

280 Record Keeping:

281 An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting
282 assignment. The workfile must include:

- 283 • the name of the client and the identity, by name or type, of any other intended users;
- 284 • true copies of any written reports, documented on any type of media;
- 285 • summaries of any oral reports or testimony, or a transcript of testimony, including the
286 appraiser's signed and dated certification; and
- 287 • all other data, information, and documentation necessary to support the appraiser's opinions
288 and conclusions and to show compliance with this Rule and all other applicable Standards, or
289 references to the location(s) of such other documentation.

290 An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least
291 two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony
292 related to the assignment, whichever period expires last.

293 An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access,
294 and retrieval arrangements with the party having custody of the workfile.

295 Comment: A workfile preserves evidence of the appraiser's consideration of all applicable
296 data and statements required by USPAP and other information as may be required to support
297 the appraiser's opinions, conclusions, and recommendations.

298 A photocopy or an electronic copy of the entire actual written appraisal, appraisal review, or
299 appraisal consulting report sent or delivered to a client satisfies the requirement of a true copy. As an
300 example, a photocopy or electronic copy of the Self-Contained Appraisal Report, Summary
301 Appraisal Report, or Restricted Use Appraisal Report actually issued by an appraiser for a real
302 property appraisal assignment satisfies the true copy requirement for that assignment.

303 Care should be exercised in the selection of the form, style, and type of medium for written
304 records, which may be handwritten and informal, to ensure that they are retrievable by the
305 appraiser throughout the prescribed record retention period.

306 A workfile must be in existence prior to and contemporaneous with the issuance of a written
307 or oral report. A written summary of an oral report must be added to the workfile within a
308 reasonable time after the issuance of the oral report.

309 A workfile must be made available by the appraiser when required by state enforcement
310 agencies or due process of law. In addition, a workfile in support of a Restricted Use

ETHICS RULE

811 Appraisal Report must be sufficient for the appraiser to produce a Summary Appraisal Report
812 (for assignments under STANDARDS 2 and 8) or an Appraisal Report (for assignments under
813 STANDARD 10), and must be available for inspection by the client in accordance with the
814 Comment to Standards Rules 2-2(c)(viii), 8-2(c)(viii), and 10-2(b)(ix).



CLASS SPECIFICATION

APPRAISAL SUPERVISOR

JOB SUMMARY: This position is responsible to the County Assessor for the efficient, effective and lawful management of the Appraisal Division and the development and coordination of computerized mass appraisal systems. Assists in the tax certification processes. Directs and supervises all personnel involved with these functions.

CLASSIFICATION STANDARDS

The single position allocable to this classification is responsible for supervising the staff and functions of the Appraisal Division of the Assessor's office, including real and personal property appraisers. This position works under the administrative direction of the County Assessor and has considerable independence in managing division functions. Discretion is exercised within the broad objectives and mission of the department. Work is subject to review through conferences and reports.

EXAMPLES OF DUTIES

{ Manages the operations of and supervises the personnel of the Appraisal Division by overseeing the assessment process, assuring accuracy and uniformity, reviewing completed work, providing technical advice and directing the assessment appeal process.

Directly participates in the research, development and implementation of automated assessment processes and the application of new techniques in assessment services.

Assists in the supervision of the tax certification process by verifying tax rates and levies, overseeing computations of taxes for parcels and receivables for taxing authorities and providing relevant information.

Assists the Assessor in the development and implementation of personnel policy including supervision, discipline and labor relations within the Division.

Insures that personnel practices in the Division are consistent with the County's equal employment opportunity policy.

{ Maintains accurate and complete records of the Appraisal Division operations and provides written and verbal reports to the Assessor on a regular basis.

Represents the Assessor at hearings or meetings as needed.

Performs other related duties as required.

APPRAISAL SUPERVISOR - cont.

1121

MINIMUM QUALIFICATIONS

TRAINING AND EXPERIENCE: Two years of administrative and supervisory experience and two years experience in Property Appraisal. One year of college coursework in business or public administration may be substituted for up to one year of the administrative and supervisory experience. A bachelor's degree in business or public administration or computer science is preferred.

LICENSE: Successful completion of International Association of Assessing Officers Basic Appraisal Courses and Mass Appraisal Institute Courses.

BEHAVIORAL STANDARDS:

Respectful, courteous, and friendly to customers, other County employees, and County leadership. A team player that helps the organization meet its objectives. Takes initiative to meet work objectives. Effectively communicates with customers and other County employees. Gets along with co-workers and managers. Positively represents the County, maintaining the trust County residents have placed in each of us. Demonstrates honest and ethical behaviors.

SELECTION FACTORS

Considerable knowledge of:

- real property appraisal techniques, laws, rules, regulations, methods and procedures.
- automated assessment systems as they relate to the overall function of the Assessors office.

Knowledge of:

- modern supervisory principles and practices.
- budgetary and accounting practices and methods.
- the principles and practices of personnel management.

Ability to:

- compose relevant reports sufficient in clarity to be admitted as evidence and testify effectively.
- interpret state laws relating to appraisals and to develop division policies and procedures to implement laws.
- effectively schedule, assign, train and evaluate employees in a manner which effects uniform and timely appraisal.
- Apply appraisal principles and techniques in the equitable and justifiable appraisal of real and personal property.
- Explain appraisal and assessment methods and determinations to staff, tax payers and community groups.
- Establish effective working relationships with those contacted in the course of work.

Skilled in:

- the use of computers and related software needed to successfully complete the work of the Appraisal Division.



CLASS SPECIFICATION

COMMERCIAL APPRAISER

JOB SUMMARY: This is work in appraising commercial and agricultural property for tax assessment purposes in the County Assessor's Office.

CLASSIFICATION STANDARDS

Positions allocated to this classification are required to work independently, making sound and rational judgments with proficiency in the use of approved reference materials and equipment. Make evaluations of commercial and agricultural property, according to established and accepted guidelines. These positions demand a high degree of public contact requiring the employee to convey assessment procedures and interpret laws to the public. Positions of this class may work as a team with other positions of this class or may provide advice to others in unusual or difficult cases. Employees may initially be assigned to work with a more experienced employee of this class; however, as experience is gained, work is performed independently in accordance with written or oral instructions from a supervisor. Employees are responsible for the uniformity of appraisals and for coordination with others to ensure uniformity. Work is evaluated for the accuracy and uniformity of appraisals and the pleasant and courteous service provided to the public.

EXAMPLES OF DUTIES (Duties may include, but are not limited to the following):

Conducts on-site inspection of commercial and agricultural or other properties for valuation.

Determines and applies market data, cost approach, or income methods, or other approved and accepted techniques for property valuation.

↳ Inspects and investigates all pertinent building permits, new plats and subdivisions affecting relevant and required reports.

Explains pertinent rules, procedures, reviews and explains findings with the public or professional appraisers.

Defends findings at hearings or in court.

← Uses approved assessment procedures and equipment or reference material.

↳ Analyzes building permits, blueprints, maps, legal descriptions and new plats and accounting data.

← Maintains accurate and concise records and reports.

Establishes and audits new accounts when appropriate.

Canvasses assigned areas to determine existence of all taxable property.

Performs other related duties as required.

MINIMUM REQUIREMENTS

TRAINING AND EXPERIENCE: Two (2) years of real property appraisal experience which provides an understanding of commercial or agricultural land appraisal and passing of the IAAO Course 2 test or an equivalent test.

LICENSE: Possession of a valid lawful driver's license. Possession of the appropriate Washington State Certified Appraiser's Certificate as required by department regulations.

BEHAVIORAL STANDARDS

Respectful and courteous to customers, workers, and County leadership. A team player that helps the organization meet its objectives. Takes initiative to meet work objectives. Effectively communicates with customers and other County employees. Friendly and respectful to customers and other County employees. Gets along with co-workers and managers. Positively represents the County, maintaining the trust County residents have placed in each of us. Demonstrates honest and ethical behaviors.

SELECTION FACTORS

Knowledge of:

- techniques, theories, methods and procedures of real property valuation.
- all pertinent statutes, rules and regulations applicable to real property assessment.

Ability to:

- deal with the public in a pleasant and courteous manner and represent the County in a professional manner.
- reason and think logically.
- compile/compute data from various sources, analyze and prepare all documents and accurate reports.
- communicate effectively, orally and in writing.
- perform appraisals in a uniform manner.

Skilled in:

- the use of personal computer and related software.



CLASS SPECIFICATION

INDUSTRIAL APPRAISER

JOB SUMMARY: This is advanced level appraisal work of a combination of industrial and commercial properties within the County, or supervision of other Real Property Appraiser positions including those at the Commercial Appraiser level.

CLASSIFICATION STANDARDS

Positions allocated to this classification perform appraisals of both commercial and industrial properties. Work requires sound, uniform and rational judgments in appraisals and proficiency in the use of approved reference materials and application of appropriate appraisal methods necessary to the accurate and defensible determination in industrial property value. Work demands a high degree of public contact and required employees to convey assessment procedures and interpret law to representatives of industry and the public. Work is performed independently in accordance with written or oral instructions from the Appraisal Manager.

EXAMPLES OF DUTIES (Duties may include, but are not limited to the following):

Conducts on-site inspections of industrial, commercial and agricultural properties for valuation.

Selects and applies market data, cost approach, or income methods or other approved and accepted techniques for property valuation.

Locates layouts of parcels of land, positions of improvements on them and drafts same from physical inspection or legal descriptions and maps.

Inspects and investigates all pertinent building permits, new plats and subdivision affecting relevant appraisal areas.

Classifies, measures, photographs, and drafts new and pertinent information; prepares data for computer input; prepares and maintains all relevant and required reports.

Explains pertinent rules, procedures, reviews and explains findings with the public or professional appraisers.

Testifies as an expert industrial and commercial property appraiser at hearings or in court.

Uses approved assessment procedures and equipment or reference material.

INDUSTRIAL APPRAISER - cont.

1415

Analyzes building permits, blueprints, maps, legal descriptions and new plats and accounting data.

Maintains accurate and concise records and reports.

Establishes and audits new accounts when appropriate.

Canvasses assigned areas to determine existence of all taxable property.

Performs other related duties required.

MINIMUM REQUIREMENTS

TRAINING AND EXPERIENCE: One (1) year experience in commercial appraisal.

LICENSE: Possession of a valid lawful driver's license. Possession of the appropriate Washington State Certified Appraiser's Certificate as required by department regulations.

BEHAVIORAL STANDARDS

Respectful and courteous to customers, workers, and County leadership. A team player that helps the organization meet its objectives. Takes initiative to meet work objectives. Effectively communicates with customers and other County employees. Friendly and respectful to customers and other County employees. Gets along with co-workers and managers. Positively represents the County, maintaining the trust County residents have placed in each of us. Demonstrates honest and ethical behaviors.

SELECTION FACTORS

Knowledge of:

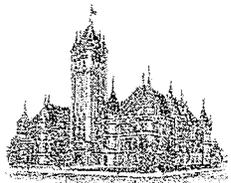
- techniques, theories, methods, and procedures of real property valuation.
- all pertinent statutes, rules, regulations applicable to real property assessment.
- supervisory procedures and techniques.

Ability to:

- deal with the public in a pleasant and courteous manner and represent the County in a professional manner.
- reason and think logically.
- compile/compute data from various sources, analyze and prepare all documents and accurate reports.
- communicate effectively, orally and in writing.
- perform complex appraisals in a uniform manner.

Skilled in:

- the use of personal computer and related software.



SPOKANE COUNTY

CLASS SPECIFICATION

RESIDENTIAL APPRAISER

JOB SUMMARY: This is experienced residential property and land appraisal work for tax assessment purposes in the County Assessor's Office.

CLASSIFICATION STANDARDS

Incumbents allocated to this classification are responsible for determining the value of land or property for tax assessment purposes under the general supervision of an Assistant Appraisal Supervisor. Incumbents are required to have accreditation by the Washington State Department of Revenue and have passed the Uniform Standards for Professional Appraisal Practice (USPAP) exam.

EXAMPLES OF DUTIES (Duties may include, but are not limited to the following):

Inspects real property such as residential, condominiums, manufactured homes and farms for valuation. Determines fair market value using a combination of two approaches to value (cost and market); utilizes computer assisted mass appraisal software (CAMA).

Classifies, measures, photographs and draws to scale structures or improvements thereon.

Explains pertinent rules and procedures to public and justifies value. May defend values at hearings or in court.

Uses approved assessment procedures, equipment and/or reference materials.

Analyzes building permits, blueprints, maps, legal descriptions and new plats. Inspects and investigates all building permits for valuation.

Computes values; maintains public contact both on phone, by letter and in person.

Canvasses assigned areas to determine existence of all taxable property.

Maintains accurate records.

Administers all aspects of Open Space or Designated Forest Laws and coordinates efforts with Soil Conservation Service, Department of Agriculture or other departments and boards.

Performs other related duties as required.

MINIMUM REQUIREMENTS

One year of work experience which provides an understanding of appraisal techniques. Real Property Appraiser accreditation by the Washington Department of Revenue and passage of the Uniform Standards for Professional Appraisal Practice (USPAP) exam.

LICENSE: Possession of a valid lawful driver's license.

BEHAVIORAL STANDARDS

Respectful, courteous, and friendly to customers, other County employees, and County leadership. A team player that helps the organization meet its objectives. Takes initiative to meet work objectives. Effectively communicates with customers and other County employees. Gets along with co-workers and managers. Positively represents the County, maintaining the trust County residents have placed in each of us. Demonstrates honest and ethical behaviors.

SELECTION FACTORS

Knowledge of:

- 
- Washington State property tax laws.
 - the types and quality of building construction.
 - computer systems and software

Ability to:

- read, comprehend, interpret and uniformly apply statutes, rules and regulations applicable to property assessment.
- meet and deal with the public in a pleasant and courteous manner and represent the County in a professional manner.
- think and reason logically.
- accurately and effectively compile data from various sources, analyze data and prepare well documented reports.
- communicate effectively orally and in writing.

Skilled in:

- use of personal computer and related software.

APPENDIX LAW

TITLE 9A RCW WASHINGTON CRIMINAL CODE

RCW 9A.04.110 Definitions.

- (13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;
- (23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

TITLE 36 COUNTIES

RCW 36.21.015 Qualifications for persons assessing real property — Examination — Examination waiver — Continuing education requirement.

- (1) Any person having the responsibility of valuing real property for purposes of taxation including persons acting as assistants or deputies to a county assessor under RCW 36.21.011 shall have first:
 - (a) Had at least one year of experience in transactions involving real property, in appraisal of real property, or in assessment of real property, or at least one year of experience in a combination of the three;
 - (b) Become knowledgeable in repair and remodeling of buildings and improvement of land, and in the significance of locality and area to the value of real property;
 - (c) Become knowledgeable in the standards for appraising property set forth by the department of revenue; and
 - (d) Met other minimum requirements specified by department of revenue rule.
- (2) The department of revenue shall prepare and administer an examination on subjects related to the valuation of real property. No person shall assess real property for purposes of taxation without having passed said examination or having received an examination waiver from the department of revenue upon showing education or experience determined by the department to be equivalent to passing the examination. A person passing said examination or receiving an examination waiver shall be accredited accordingly by the department of revenue.
- (3) The department of revenue may by rule establish continuing education requirements for persons assessing real property for purposes of taxation. The department shall provide accreditation of completion of requirements imposed under this section. No person shall assess real property for purposes of taxation without complying with requirements imposed under this subsection.
- (4) To the extent practical, the department of revenue shall coordinate accreditation requirements under this section with the requirements for certified real estate appraisers under chapter 18.140 RCW.
- (5) The examination requirements of subsection (2) of this section shall not apply to any person who shall have either:
 - (a) Been certified as a real property appraiser by the department of personnel prior to July 1, 1992; or
 - (b) Attended and satisfactorily completed the assessor's school operated jointly by the department of revenue and the Washington state assessors association prior to August 9, 1971.

TITLE 40 PUBLIC DOCUMENTS, RECORDS, AND PUBLICATIONS

RCW 40.14.010 Definition and classification of public records. As used in this chapter, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film,

sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.

For the purposes of this chapter, public records shall be classified as follows:

- (1) Official public records shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Washington or any agency thereof may be a party; all fidelity, surety, and performance bonds; all claims filed against the state of Washington or any agency thereof; all records or documents required by law to be filed with or kept by any agency of the state of Washington; all legislative records as defined in RCW 40.14.100; and all other documents or records determined by the records committee, created in RCW 40.14.050, to be official public records.
- (2) Office files and memoranda include such records as correspondence, exhibits, drawings, maps, completed forms, or documents not above defined and classified as official public records; duplicate copies of official public records filed with any agency of the state of Washington; documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and other documents or records as determined by the records committee to be office files and memoranda.

RCW 40.14.040 Records officers—Designation—Powers and duties. Each department or other agency of the state government shall designate a records officer to supervise its records program and to represent the office in all contacts with the records committee, hereinafter created, and the division of archives and records management. The records officer shall:

- (1) Coordinate all aspects of the records management program.
- (2) Inventory, or manage the inventory, of all public records at least once during a biennium for disposition scheduling and transfer action, in accordance with procedures prescribed by the state archivist and state records committee: PROVIDED, That essential records shall be inventoried and processed in accordance with chapter 40.10 RCW at least annually.
- (3) Consult with any other personnel responsible for maintenance of specific records within his or her state organization regarding records retention and transfer recommendations.
- (4) Analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the state archivist and state records committee minimal retentions for all copies commensurate with legal, financial, and administrative needs.
- (5) Approve all records inventory and destruction requests which are submitted to the state records committee.
- (6) Review established records retention schedules at least annually to insure that they are complete and current.
- (7) Exercise internal control over the acquisition of filming and file equipment.

If a particular agency or department does not wish to transfer records at a time previously scheduled therefor, the records officer shall, within thirty days, notify the archivist and request a change in such previously set schedule, including his or her reasons therefor.

RCW 40.14.050 Records committee—Composition, travel expenses, meetings, powers and duties—Retention schedules. There is created a committee, to be known as the records committee, composed of the archivist, an appointee of the state auditor, an appointee of the attorney general, and an appointee of the director of financial management. Committee members shall serve without additional salary, but shall be entitled to travel expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such expenses shall be paid from the appropriations made for operation of their respective departments or offices.

The records committee shall meet at least once every quarter or oftener as business dictates. Action by the committee shall be by majority vote and records shall be kept of all committee business. It shall be the duty of the records committee to approve, modify or disapprove the recommendations on retention schedules of all files of public records and to act upon requests to destroy any public records:

PROVIDED, That any modification of a request or recommendation must be approved by the head of the agency originating the request or recommendation.

The division of archives and records management shall provide forms, approved by the records committee, upon which it shall prepare recommendations to the committee in cooperation with the records officer of the department or other agency whose records are involved.

RCW 40.14.060 Destruction, disposition of official public records or office files and memoranda—Record retention schedules.

- (1) Any destruction of official public records shall be pursuant to a schedule approved under RCW 40.14.050. Official public records shall not be destroyed unless:
 - (a) Except as provided under RCW 40.14.070(2)(b), the records are six or more years old;
 - (b) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly if lesser federal retention periods for records generated by the state under federal programs have been established; or
 - (c) The originals of official public records less than six years old have been copied or reproduced by any photographic or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.
- (2) Any lesser term of retention than six years must have the additional approval of the director of financial management, the state auditor and the attorney general, except when records have federal retention guidelines the state records committee may adjust the retention period accordingly. An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the state records committee for approval or disapproval of the change to a retention period of six years.

Recommendations for the destruction or disposition of office files and memoranda shall be submitted to the records committee upon approved forms prepared by the records officer of the agency concerned and the archivist. The committee shall determine the period of time that any office file or memorandum shall be preserved and may authorize the division of archives and records management to arrange for its destruction or disposition.

RCW 40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules—Sealed records.

- (1) (a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.
 - (b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.
- (2) (a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:
 - (i) The records are six or more years old;
 - (ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

- (iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

- (b) (i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.
 - (ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.
 - (iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.
- (c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.56.010 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

- (3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

- (a) The records are seventy years old or more;
- (b) The local records committee has approved the destruction of the public records; and
- (c) The state archivist has determined that the public records have no historic interest.

TITLE 42 PUBLIC OFFICERS AND AGENCIES

42.20.040 False report. Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor.

RCW 42.56.010 Definitions. (effective until Jan/01/12) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.
- (2) "Public record" includes any writing containing information relating 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 regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.
- (3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

RCW 42.56.070 Documents and indexes to be made public—Statement of costs.

- (1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.
- (2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.
- (3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:
 - (a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
 - (b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;
 - (c) Administrative staff manuals and instructions to staff that affect a member of the public;
 - (d) Planning policies and goals, and interim and final planning decisions;
 - (e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and
 - (f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.
- (4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:
 - (a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and
 - (b) Make available for public inspection and copying all indexes maintained for agency use.
- (5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:
 - (a) All records issued before July 1, 1990, for which the agency has maintained an index;

- (b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;
 - (c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;
 - (d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and
 - (e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.
- Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.
- (6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:
 - (a) It has been indexed in an index available to the public; or
 - (b) Parties affected have timely notice (actual or constructive) of the terms thereof.
 - (7) Each agency may establish, maintain, and make available for public inspection and copying a statement of the actual costs that it charges for providing photocopies or electronically produced copies, of public records and a statement of the factors and manner used to determine the actual costs. Any statement of costs may be adopted by an agency only after providing notice and public hearing.
 - (a)(i) In determining the actual cost for providing copies of public records, an agency may include all costs directly incident to copying such public records including:
 - (A) The actual cost of the paper and the per page cost for use of agency copying equipment; and
 - (B) The actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage and processing service.
 - (ii) In determining other actual costs for providing copies of public records, an agency may include all costs directly incident to:
 - (A) Shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; and
 - (B) Transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.
 - (b) In determining the actual costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and send the requested public records may be included in an agency's costs.
 - (8) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the administrative procedure act.

RCW 42.56.100 Protection of public records — Public access. Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference

with other essential functions of the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

RCW 42.56.270 Financial, commercial, and proprietary information. The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

- (1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;
- (2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;
- (3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;
- (4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;
- (5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;
- (6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;
- (7) Financial and valuable trade information under RCW 51.36.120;
- (8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under *chapter 70.95H RCW;
- (9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;
- (10) (a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;
(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;
- (11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health

services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

- (12) (a) When supplied to and in the records of the department of commerce:
 - (i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and
 - (ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;
- (b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;
- (c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;
- (d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;
- (13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;
- (14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;
- (15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;
- (16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;
- (17) (a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;
- (b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;
- (18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;
- (19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;
- (20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;
- (21) Market share data submitted by a manufacturer under RCW 70.95N.190(4);
- (22) Financial information supplied to the department of financial institutions or to a portal under **RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

- (23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;
- (24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;
- (25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;
- (26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;
- (27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;
- (28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board; and
- (29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information; and
- (30) Proprietary information filed with the department of health under chapter 69.48 RCW.

RCW 42.56.520 Prompt responses required. Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either

- (1) providing the record;
- (2) providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer;
- (3) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or
- (4) denying the public record request.
 - Additional time required to respond to a request may be based upon the need to clarify the intent of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the

secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it.

- to locate and assemble the information requested,
- to notify third persons or agencies affected by the request, or
- to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

RCW 42.56.550 Judicial review of agency actions.

- (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.
- (2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.
- (3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.
- (4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.
- (5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.
- (6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

TITLE 84 PROPERTY TAXES

RCW 84.40.020 Assessment date—Average inventory basis may be used—Public inspection of listing, documents, and records. All real property in this state subject to taxation shall be listed and assessed every year, with reference to its value on the first day of January of the year in which it is assessed. Such listing and all supporting documents and records shall be open to public inspection during the regular office hours of the assessor's office: PROVIDED, That confidential income data is hereby exempted from public inspection as noted in RCW 42.56.070 and 42.56.210. All personal property in this state subject to taxation shall be listed and assessed every year, with reference to its value and ownership on the first day of January

of the year in which it is assessed: PROVIDED, That if the stock of goods, wares, merchandise or material, whether in a raw or finished state or in process of manufacture, owned or held by any taxpayer on January 1 of any year does not fairly represent the average stock carried by such taxpayer, such stock shall be listed and assessed upon the basis of the monthly average of stock owned or held by such taxpayer during the preceding calendar year or during such portion thereof as the taxpayer was engaged in business.

RCW 84.40.025 Access to property required. For the purpose of assessment and valuation of all taxable property in each county, any real or personal property in each county shall be subject to visitation, investigation, examination, discovery, and listing at any reasonable time by the county assessor of the county or by any employee thereof designated for this purpose by the assessor.

In any case of refusal to such access, the assessor shall request assistance from the department of revenue which may invoke the power granted by chapter 84.08 RCW.

RCW 84.40.030 Basis of valuation, assessment, appraisal—One hundred percent of true and fair value—Exceptions—Leasehold estates—Real property—Appraisal—Comparable sales.

- (1) All property must be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.
- (2) Taxable leasehold estates must be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.
- (3) The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) must be based upon the following criteria:
 - (a) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal must be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage or highest and best use not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes or other government restrictions. The appraisal must also take into account: (i) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (ii) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements may not be used as sales of similar property.
 - (b) In addition to sales as defined in subsection (3)(a) of this section, consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance. Consideration should be given to any agreement, between an owner of rental housing and any government agency, that restricts rental income, appreciation, and liquidity; and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection must be the dominant factors in valuation. When provisions of this subsection are relied upon for establishing values the property owner must be advised upon request of the factors used in arriving at such value.
 - (c) In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon must be determined; also the true and fair value of structures thereon, but the valuation may not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops must be excluded. For purposes of this subsection (3)(c), "growing crops" does not include marijuana as defined under RCW 69.50.101.

RCW 84.41.030 Revaluation program to be on continuous basis—Revaluation schedule—Effect of other proceedings on valuation.

- (1) Each county assessor must maintain an active and systematic program of revaluation on a continuous basis. All taxable real property within a county must be revalued annually, and all taxable real property within a county must be physically inspected at least once every six years. Each county assessor may disregard any program of revaluation, if requested by a property owner, and change, as appropriate, the valuation of real property upon the receipt of a notice of decision received under RCW 36.70B.130 or chapter 35.22, 35.63, 35A.63, or 36.70 RCW pertaining to the value of the real property.
- (2) The department will provide advisory appraisals of industrial properties valued at twenty-five million dollars or more in real and personal property value when requested by the county assessor.

RCW 84.41.041 Physical inspection and valuation of taxable property required—Adjustments during intervals based on statistical data.

- (1) Each county assessor must cause taxable real property to be physically inspected and valued at least once every six years in accordance with RCW 84.41.030, and in accordance with a plan filed with and approved by the department of revenue. Such revaluation plan must provide that all taxable real property within a county must be revalued and these newly determined values placed on the assessment rolls each year. Property must be valued at one hundred percent of its true and fair value and assessed on the same basis, in accordance with RCW 84.40.030, unless specifically provided otherwise by law. During the intervals between each physical inspection of real property, the valuation of such property must be adjusted to its current true and fair value, such adjustments to be made once each year and to be based upon appropriate statistical data.
- (2) The assessor may require property owners to submit pertinent data respecting taxable property in their control including data respecting any sale or purchase of said property within the past five years, the cost and characteristics of any improvement on the property and other facts necessary for appraisal of the property.

RCW 84.48.150 Valuation criteria including comparative sales to be made available to taxpayer—Change.

- (1) The assessor must, upon the request of any taxpayer who petitions the board of equalization for review of a tax claim or valuation dispute, make available to said taxpayer a compilation of comparable sales utilized by the assessor in establishing such taxpayer's property valuation. If valuation criteria other than comparable sales were used, the assessor must furnish the taxpayer with such other factors and the addresses of such other property used in making the determination of value.
- (2) The assessor must within sixty days of such request but at least twenty-one business days, excluding legal holidays, prior to such taxpayer's appearance before the board of equalization make available to the taxpayer the valuation criteria and/or comparable sales that may not be subsequently changed by the assessor unless the assessor has found new evidence supporting the assessor's valuation, in which situation the assessor must provide such additional evidence to the taxpayer and the board of equalization at least twenty-one business days prior to the hearing at the board of equalization. A taxpayer who lists comparable sales on a notice of appeal may not subsequently change such sales unless the taxpayer has found new evidence supporting the taxpayer's proposed valuation in which case the taxpayer must provide such additional evidence to the assessor and board of equalization at least twenty-one business days, excluding legal holidays, prior to the hearing. If either the assessor or taxpayer does not meet the requirements of this section the board of equalization may continue the hearing to provide the parties an opportunity to review all evidence or, upon objection, refuse to consider sales not submitted in a timely manner.

[2018 c 24 § 1; 1994 c 301 § 46; 1973 1st ex.s. c 30 § 1.]

TITLE 173 DEPARTMENT OF ECOLOGY

WAC 173-27-030 Definitions.

- (15) "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels;

TITLE 44 ATTORNEY GENERAL'S OFFICE

WAC 44-14-05001 Access to electronic records.

The Public Records Act does not distinguish between access to paper and electronic records. Instead, the act explicitly includes electronic records within its coverage. The definition of "public record" includes a "writing," which in turn includes "existing data compilations from which information may be obtained or translated." RCW 42.56.010(4)¹. Many agency records are now in an electronic format. Many of these electronic formats such as Windows® products are generally available and are designed to operate with other computers to quickly and efficiently locate and transfer information. Providing electronic records can be cheaper and easier for an agency than paper records. Furthermore, RCW 43.105.351 provides: "It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public."

In general, an agency should provide electronic records in an electronic format if requested in that format, if it is reasonable and feasible to do so.² While not required, an agency may translate a record into an alternative electronic format at the request of the requestor if it is reasonable and feasible to do so, and that action does not create a new public record for the purposes of the act. RCW 42.56.120(1). For example, an agency may scan a paper record to make an electronic copy, and that action does not create a new public record. *Id.* An agency can provide links to specific records on the agency's public internet web site. RCW 42.56.520. An agency shall not impose copy charges for access to or downloading records that the agency routinely posts on its internet web site prior to the receipt of a request unless the requestor has specifically requested that the agency provide copies of such records by other means. RCW 42.56.120 (2)(e).

Reasonableness and technical feasibility are the touchstones for providing electronic records. An agency should provide reasonably locatable electronic public records in either their original generally commercially available format (such as an Acrobat PDF® file) or, if the records are not in a generally commercially available format, the agency should provide them in a reasonably translatable electronic format if possible. In the rare cases when the requested electronic records are not reasonably locatable, or are not in a generally commercially available format or are not reasonably translatable into one, the agency might consider customized access.

Delivering electronic records can be accomplished in several ways or a combination of ways. For example, an agency may post records on the agency's internet web site and provide the requestor links to specific documents; make a computer terminal available at the agency so a requestor can inspect electronic records and designate specific ones for copying; send records by email; copy records onto a CD, DVD or thumb drive and mail it to the requestor or make it available for pickup; upload records to a cloud-based server, including to a file transfer protocol (FTP) site and send the requestor a link to the site; provide records through an agency portal; or, through other means. Practices may vary among agencies in how they deliver records in an electronic format; the act does not mandate only one method and the courts have said agencies have some discretion in establishing their reasonable procedures under the act.³ Finally, other delivery issues may be relevant to a particular agency or request. For example, there may be limits with the agency's email system or the requestor's email account with respect to the volume, size or types of emails and attachments that can be sent or received.

What is reasonable and technically feasible for copying and delivery of electronic records in one situation or for one agency may not be in another. Not all agencies, especially smaller units of local

government, have the electronic resources of larger agencies and some of the generalizations in these model rules may not apply every time. If an agency initially believes it cannot provide electronic records in an electronic format, it should confer with the requestor and the two parties should attempt to cooperatively resolve any technical difficulties. See WAC 44-14-05003. It is usually a purely technical question whether an agency can provide electronic records in a particular format in a specific case.

An agency is not required to buy new software, hardware or licenses to process a request for production or delivery of public records. However, an agency lacking resources to provide, redact or deliver more records electronically may want to consider seeking funding or other arrangements in an effort to obtain such technologies. See RCW 43.105.355 (state and local agencies); RCW 40.14.026 (local agencies – competitive grant program).

Notes: ¹See also *Fisher Broadcasting v. City of Seattle*, 180 Wn.2d 515, 326 P.3d 688 (2014) (database discussion).

²*Mechling v. City of Monroe*, 152 Wn. App. 830, 222 P.3d 808 (2009) ("[T]here is no provision in the PDA [PRA] that expressly requires a governmental agency to provide records in electronic form. ... [a]lthough the City has no express obligation to provide the requested email records in an electronic format, consistent with the statutory duty to provide the fullest assistance and the model rules, on remand the trial court shall determine whether it is reasonable and feasible for the City to do so."); *Mitchell v. Dep't of Corr.*, 164 Wn. App. 597 (2011) ("Nothing in the PRA obligates an agency to disclose records electronically.")

³*Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978).

[Statutory Authority: RCW 42.56.570. WSR 18-06-051, § 44-14-05001, filed 3/2/18, effective 4/2/18. Statutory Authority: 2005 c 483 § 4, amending RCW 42.56.570. WSR 07-13-058, § 44-14-05001, filed 6/15/07, effective 7/16/07.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 44-14-08004 - Judicial review

- (1) **Seeking judicial review.** The act provides that an agency's decision to deny a request is final for purposes of judicial review two business days after the initial denial of the request. RCW 42.17.320/42.56.520.1 Therefore, the statute allows a requestor to seek judicial review two business days after the initial denial whether or not he or she has exhausted the internal agency review process.² An agency should not have an internal review process that implies that a requestor cannot seek judicial review until internal reviews are complete because RCW 42.17.320/42.56.520 allows judicial review two business days after the initial denial.

The act provides a speedy remedy for a requestor to obtain a court hearing on whether the agency has violated the act. RCW 42.17.340 (1) and (2)/42.56.550 (1) and (2). The purpose of the quick judicial procedure is to allow requestors to expeditiously find out if they are entitled to obtain public records.³ To speed up the court process, a public records case may be decided merely on the "motion" of a requestor and "solely on affidavits." RCW 42.17.340 (1) and (3)/42.56.550 (1) and (3).
- (2) **Statute of limitations.** The statute of limitations for an action under the act is one year after the agency's claim of exemption or the last production of a record on a partial or installment basis. RCW 42.17.340(6)/42.56.550(6).
- (3) **Procedure.** To initiate court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. RCW 42.17.340 (1) and (2)/42.56.550 (1) and (2).⁴ The case must be filed in the superior court in the county in which the record is maintained. RCW 42.17.340 (1) and (2)/42.56.550 (1) and (2). In a case against a county, the case may be filed in the superior court of that county, or in the superior court of either of the two nearest adjoining counties. RCW 42.17.340(5)/42.56.550(5). The show-cause procedure is designed so that a nonattorney requestor can obtain judicial review himself or herself without hiring an attorney. A requestor can file a motion for summary judgment to adjudicate the case.⁵ However, most cases are decided on a motion to show cause.⁶
- (4) **Burden of proof.** The burden is on an agency to demonstrate that it complied with the act. RCW 42.17.340 (1) and (2)/42.56.550 (1) and (2).
- (5) **Types of cases subject to judicial review.** The act provides three mechanisms for court review of a public records dispute.

- (a) **Denial of record.** The first kind of judicial review is when a requestor's request has been denied by an agency. RCW 42.17.340(1)/42.56.550(1). This is the most common kind of case.
 - (b) **"Reasonable estimate."** The second form of judicial review is when a requestor challenges an agency's "reasonable estimate" of the time to provide a full response. RCW 42.17.340(2)/42.56.550(2).
 - (c) **Injunctive action to prevent disclosure.** The third mechanism of judicial review is an injunctive action to restrain the disclosure of public records. RCW 42.17.330/42.56.540. An action under this statute can be initiated by the agency, a person named in the disputed record, or a person to whom the record "specifically pertains." The party seeking to prevent disclosure has the burden of proving the record is exempt from disclosure.⁷ The party seeking to prevent disclosure must prove both the necessary elements of an injunction and that a specific exemption prevents disclosure.⁸
- (6) **"In camera" review by court.** The act authorizes a court to review withheld records or portions of records "in camera." RCW 42.17.340(3)/42.56.550(3). "In camera" means a confidential review by the judge alone in his or her chambers. Courts are encouraged to conduct an in camera review because it is often the only way to determine if an exemption has been properly claimed.⁹

An agency should prepare an in camera index of each withheld record or portion of a record to assist the judge's in camera review. This is a second index, in addition to a withholding index provided to the requestor. The in camera index should number each withheld record or redacted portion of the record, provide the unredacted record or portion to the judge with a reference to the index number, and provide a brief explanation of each claimed exemption corresponding to the numbering system. The agency's brief explanation should not be as detailed as a legal brief because the opposing party will not have an opportunity to review it and respond. The agency's legal briefing should be done in the normal course of pleadings, with the opposing party having an opportunity to respond.

The in camera index and disputed records or unredacted portions of records should be filed under seal. The judge should explain his or her ruling on each withheld record or redacted portion by referring to the numbering system in the in camera index. If the trial court's decision is appealed, the in camera index and its attachments should be made part of the record on appeal and filed under seal in the appellate court.

- (7) **Attorneys' fees, costs, and penalties to prevailing requestor.** The act requires an agency to pay a prevailing requestor's reasonable attorneys' fees, costs, and a daily penalty. RCW 42.17.340(4)/42.56.550(4). Only a requestor can be awarded attorneys' fees, costs, or a daily penalty under the act; an agency or a third party resisting disclosure cannot.¹⁰ A requestor is the "prevailing" party when he or she obtains a judgment in his or her favor, the suit was reasonably necessary to obtain the record, or a wrongfully withheld record was provided for another reason.¹¹ In an injunctive action under RCW 42.17.330/42.56.540, the prevailing requestor cannot be awarded attorneys' fees, costs, or a daily penalty against an agency if the agency took the position that the record was subject to disclosure.¹²

The purpose of the act's attorneys' fees, costs, and daily penalty provisions is to reimburse the requestor for vindicating the public's right to obtain public records, to make it financially feasible for requestors to do so, and to deter agencies from improperly withholding records.¹³ However, a court is only authorized to award "reasonable" attorneys' fees. RCW 42.17.340(4)/42.56.550(4). A court has discretion to award attorneys' fees based on an assessment of reasonable hourly rates and which work was necessary to obtain the favorable result.¹⁴

The award of "costs" under the act is for all of a requestor's nonattorney-fee costs and is broader than the court costs awarded to prevailing parties in other kinds of cases.¹⁵

A daily penalty of between five dollars to one hundred dollars must be awarded to a prevailing requestor, regardless of an agency's "good faith."¹⁶ An agency's "bad faith" can warrant a penalty on the higher end of this scale.¹⁷ The penalty is per day, not per-record per-day.¹⁸

- Notes: 1 *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 253, 884 P.2d 592 (1994) ("*PAWS II*") (RCW 42.17.320/42.56.520 "provides that, regardless of internal review, initial decisions become final for purposes of judicial review after two business days.").
- 2 See, e.g., WAC 44-06-120 (attorney general's office internal review procedure specifying that review is final when the agency renders a decision on the appeal, or the close of the second business day after it receives the appeal, "whichever occurs first").
- 3 *Spokane Research & Def. Fund v. City of Spokane*, 121 Wn. App. 584, 591, 89 P.3d 319 (2004), *reversed on other grounds*, 155 Wn.2d 89, 117 P.3d 1117 (2005) ("The purpose of the PDA is to ensure speedy disclosure of public records. The statute sets forth a simple procedure to achieve this.").
- 4 See generally *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 117 P.3d 1117 (2005).
- 5 *Id.* at 106.
- 6 *Wood v. Thurston County*, 117 Wn. App. 22, 27, 68 P.3d 1084 (2003).
- 7 *Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 735, 744, 958 P.2d 260 (1998).
- 8 *PAWS II*, 125 Wn.2d at 257-58.
- 9 *Spokane Research & Def. Fund v. City of Spokane*, 96 Wn. App. 568, 577 & 588, 983 P.2d 676 (1999), *review denied*, 140 Wn.2d 1001, 999 P.2d 1259 (2000).
- 10 RCW 42.17.340(4)/42.56.550(4) (providing award only for "person" prevailing against "agency"); *Tiberino v. Spokane County Prosecutor*, 103 Wn. App. 680, 691-92, 13 P.3d 1104 (2000) (third party resisting disclosure not entitled to award).
- 11 *Violante v. King County Fire Dist. No. 20*, 114 Wn. App. 565, 571, 59 P.3d 109 (2002); *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 104, 117 P.3d 1117 (2005).
- 12 *Confederated Tribes*, 135 Wn.2d at 757.
- 13 *Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 95 Wn. App. 106, 115, 975 P.2d 536 (1999) ("*ACLU II*") ("permitting a liberal recovery of costs is consistent with the policy behind the act by making it financially feasible for private citizens to enforce the public's right to access to public records.").
- 14 *Id.* at 118.
- 15 *Id.* at 115.
- 16 *American Civil Liberties Union v. Blaine School Dist. No. 503*, 86 Wn. App. 688, 698-99, 937 P.2d 1176 (1997) ("*ACLU I*").
- 17 *Id.*
- 18 *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 436, 98 P.3d 463 (2004).

TITLE 173 DEPARTMENT OF ECOLOGY

WAC 173-27-030 Definitions. (15) "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels;

WAC 458 DEPARTMENT OF REVENUE

WAC 458-07-015 Revaluation of real property

- (1) Appropriate statistical data defined. The assessor must revalue the property at its current true and fair value using appropriate statistical data. For purposes of this chapter, "appropriate statistical data" means the data required to accurately adjust real property values and includes, but is not limited to, data reflecting costs of new construction and real property market trends.
- (2) Comparable sales data. In gathering appropriate statistical data and determining real property market trends, the assessor must consider current sales data. "Current sales data" means sales of

real property that occurred within the past five years of the date of appraisal and may include sales that occur in the assessment year. To the extent feasible, and in accordance with generally accepted appraisal practices, the assessor shall compile the statistical data into categories of comparable properties. Comparability is most often determined by similar use and location and may be based upon the following use classifications:

- (a) Single family residential;
- (b) Residential with from two to four units;
- (c) Residential with more than four units;
- (d) Residential hotels, condominiums;
- (e) Hotels and motels;
- (f) Vacation homes and cabins;
- (g) Retail trade;
- (h) Warehousing;
- (i) Office and professional service;
- (j) Commercial other than listed;
- (k) Manufacturing;
- (l) Agricultural; and
- (m) Other classifications as necessary.

(3) Appraisal processes. Appropriate statistical data shall be applied to revalue real property to current true and fair value using one or more of the following processes:

- (a) Multiple or linear regression;
- (b) Sales ratios;
- (c) Physical inspection; or
- (d) Any other appropriate statistical method that is recognized and accepted with respect to the appraisal of real property for purposes of taxation.

(4) Physical inspection cycles.

- (a) For purposes of this chapter, "physical inspection" means, at a minimum, an exterior observation of the property to determine whether there have been any changes in the physical characteristics that affect value. The property improvement record must be appropriately documented in accordance with the findings of the physical inspection. The assessor must physically inspect all real property at least once within a six-year time period.
- (b) Physical inspection of all the property in the county shall be accomplished on a proportional basis in cycle, with approximately equal portions of taxable property of the county inspected each year. Physical inspections of properties outside of the areas scheduled for physical inspection under the plan filed with the department (see WAC 458-07-025) may be conducted for purposes of validating sales, reconciling inconsistent valuation results, calibrating statistical models, valuing unique or nonhomogeneous properties, administering appeals or taxpayer reviews, documenting digital images, or for other purposes as necessary to maintain accurate property characteristics and uniform assessment practices. All properties shall be placed on the assessment rolls at current true and fair value as of January 1st of the assessment year.
- (c) In any year, when the area of the county being physically inspected is not completed in that year, the portion remaining must be completed before beginning the physical inspection of another area in the succeeding year. All areas of the county must be physically inspected within the cycle established in the revaluation plan filed with the department.

(5) Revaluation after a value is certified for the current year. In certain circumstances the assessor is authorized to revalue real property, using appraisal judgment, after a value is certified for the current year. These revaluations must not be arbitrary or capricious, nor violate the equal protection clauses of the federal and state Constitutions, nor the uniformity clause of the state

Constitution. The assessor may disregard the certified value for the current year and change a property valuation, as appropriate, in the following situations:

- (a) If requested by a property owner, when a notice of decision pertaining to the value of real property is received under RCW 36.70B.130 (Notice of decision—Distribution; local project review), chapter 35.22 RCW (First class cities), chapter 35.63 RCW (Planning commissions), chapter 35A.63 RCW (Planning and zoning in code cities), or chapter 36.70 RCW (Planning Enabling Act);
 - (b) When the owner or person responsible for payment of taxes on any real property petitions the assessor for a reduction in the assessed value in accordance with RCW 84.40.039, within three years of adoption of a restriction by a government entity;
 - (c) When there has been a "definitive change of land use designation" by an authorized land use authority, and the revaluation is in accordance with RCW 84.48.065;
 - (d) When a bona fide mistake has been made by the assessor in a prior valuation made within the current valuation cycle. The change in property valuation is not retroactive to the prior year;
 - (e) When property has been destroyed, in whole or in part, and is entitled to a reduction in value in accordance with chapter 84.70 RCW; or
 - (f) When property has been subdivided or merged.
- (6) Change of value notice. Revaluation notices must be mailed or transmitted electronically by the assessor to the taxpayer when there is any change in the assessed value of real property, not later than thirty days after an appraisal or adjustment in value.

WAC 458-10-010 Accreditation of real property appraisers—Implementation—Definitions.

- (1) Implementation of accreditation requirements. The rules in this chapter implement the provisions of chapter 36.21 RCW dealing with the accreditation of persons responsible for valuing real property for purposes of taxation. To the extent practical, these rules coordinate accreditation requirements with the requirements for certified and licensed real estate appraisers under chapter 18.140 RCW. The purpose of these rules is to promote uniformity and consistency throughout the state in the education and experience qualifications and maintain minimum standards of competence and conduct of persons responsible for valuing real property for purposes of taxation.
- (2) Accreditation required for persons valuing real property for purposes of taxation. Any person responsible for valuing real property for purposes of taxation must be an accredited appraiser. This requirement includes persons acting as assistants or deputies to a county assessor who determine real property values or review appraisals prepared by others. This requirement does not apply to persons working in the county assessor's office who do not exercise appraisal judgment with respect to real property.
- (3) Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout chapter 458-10 WAC:
 - (a) "Accreditation" means the act or process by which persons are authorized by the department to assess real property for purposes of taxation and includes the status of being accredited.
 - (b) "Accredited appraiser" means a person who has successfully completed and fulfilled all requirements imposed by the department for accreditation and who has a currently valid accreditation certificate.
 - (c) "Appraisal" means the act or process of estimating the value of real property; an estimate of value of real property; or of or pertaining to appraising real property and related functions.
 - (d) "Assessment" means the act or process of estimating the value of real property for purposes of taxation only; an estimate of value of real property for purposes of taxation only; or of or pertaining to assessing real property and related functions.
 - (e) "Classroom hour" means a minimum of fifty minutes out of each sixty-minute hour spent attending an approved course.

- (f) "Department" means the department of revenue.
- (g) "IAAO" means the International Association of Assessing Officers.
- (h) "Real property" means an identified parcel or tract of land, including any improvements, and includes one or more defined interests, benefits, or rights inherent in the ownership of real estate.
- (i) "Transactions involving real property" means any of the following:
 - (i) The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof;
 - (ii) The refinancing of real property or interests in real property; or
 - (iii) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

WAC 458-10-050 Continuing education requirements—Appraisal practice and ethics.

- (1) Introduction. This rule provides information about the process for renewing an accreditation certificate, including detailed information about the continuing education requirements required of renewal applicants.
- (2) Renewal of accreditation certificate. An accredited appraiser desiring to renew his or her accreditation certificate must complete a renewal application and submit it to the property tax division of the department at least two weeks prior to the expiration date of the certificate. In order to receive a renewal of the certificate, the applicant must provide proof that he or she has attended a minimum of fifteen classroom hours of approved instruction within the two years preceding the expiration date of the certificate.
- (3) Extensions of time for renewal. An applicant may request an extension of time to submit the renewal application and complete the continuing education requirements if the request is submitted prior to the expiration date of the certificate. The time extension shall only be approved upon a showing of good cause by the applicant and only for a maximum time period of three months from the original expiration date of the certificate. Good cause may include, but is not limited to, a showing of long-term illness or extended absence from work for valid reasons. Excessive workload, insufficient funds, lack of budget allocation, or other similar reasons are not satisfactory to show good cause.
- (4) Preapproval of courses. All courses, seminars, or workshops must be preapproved by the department in order to be applied toward the continuing education requirement. The department will use the following criteria to approve courses, seminars, or workshops:
 - (a) Any course, seminar, or workshop directly related to real property appraising and offered by qualified personnel will be approved for the full number of classroom hours involved; and
 - (b) Any seminar or workshop directly related to a topic or topics of general interest to an assessor's office and offered by qualified personnel will be approved for a maximum of three classroom hours. No more than three hours out of the fifteen classroom hours required may be on a topic or topics of general interest to an assessor's office.
- (5) Course examination not required. No examination is required for courses, seminars, or workshops taken to satisfy the requirement for continuing education classroom hours.
- (6) Participation in education other than as a student. The continuing education requirement may be satisfied by participating other than as a student in educational process and programs approved by the department including teaching, program development, and authorship of textbooks or other written instructional materials. Approval of the number of classroom hours will be based upon the subject matter and time spent in preparation or development of the training or materials. In order to meet the continuing education requirement in this manner, the following criteria must be met:
 - (a) Textbook, course, or presentation materials must originate with and be developed by the textbook or course author or the presenter;

- (b) The textbook or course author or presenter must provide the department with a description of the work involved in preparing the textbook, course, or presentation, together with the amount of time spent in preparation and amount of time, if any, proposed to be spent in actual training or presenting; and
 - (c) The course author or presenter must provide the department with a copy of the course or presentation outline showing the amount of time allotted to each topic covered in the course or presentation.
- (7) Topics covered. Courses, seminars, or workshops taken to satisfy the continuing education requirement for accredited appraisers must cover topics related to real property appraisal, such as:
- (a) Ad valorem taxation;
 - (b) Arbitrations;
 - (c) Business courses related to practice of real estate;
 - (d) Construction estimating;
 - (e) Ethics and standards of professional practice;
 - (f) Land use planning, zoning, and taxation;
 - (g) Property development;
 - (h) Real estate law;
 - (i) Real property exchange;
 - (j) Real property computer applications;
 - (k) Mass appraisal;
 - (l) Geographic information systems (GIS);
 - (m) Levy process;
 - (n) Boards of equalization; and
 - (o) Other subjects as are approved by the department.
- (8) Same or similar content.
- (a) No applicant will receive approval from the department for courses taken within any four-year time period that have the same or very similar content and are deemed comparable by the department, even if the course providers are different.
 - (b) Applicants who request approval from the department for continuing education hours for preparation and development of textbook, course, or presentation materials that have previously been approved by the department must provide sufficient information and explanation to indicate how the materials differ from the original approved materials and how much preparation and time was involved in the revision of the original materials.
- (9) Carry-over of classroom hours. A maximum of five continuing education classroom hours may be carried over and applied to the following two-year period of accreditation.
- (10) Education requirement for standards of appraisal practice and ethics. Each accredited appraiser is required to successfully complete fifteen classroom hours of a course or courses approved by the department in standards of appraisal practice and ethics. If the course or courses have not been successfully completed at the time an applicant is accredited, the course or courses attended to satisfy this requirement may also be used to satisfy the general continuing education requirement and are not in addition to the fifteen hours of continuing education required to be satisfied every two years. The requirement for successful completion of fifteen classroom hours in standards of appraisal practice and ethics must be satisfied in any one of the following three ways:
- (a) An accredited appraiser had successfully completed the fifteen classroom hours of a course or courses at the time he or she was initially accredited, and can provide proof to the department of such successful completion;
 - (b) An accredited appraiser who has not yet successfully completed the fifteen hours of such course or courses must do so within three years of the effective date of this rule; or

- (c) An applicant for accreditation must either:
 - (i) Have successfully completed fifteen hours of such course or courses within three years prior to the date of application; or
 - (ii) Successfully complete fifteen hours of such course or courses within three years of the date of accreditation.
- (11) Failure to comply with continuing education requirements. Any accredited appraiser whose accreditation certificate has expired, and who has not received an extension of time under subsection (3) of this section, is prohibited from appraising real property for purposes of taxation. After the certificate has expired, an applicant must show the following in order to renew the certificate:
 - (a) For a certificate that expired less than two years prior to the date the renewal application is submitted, an applicant must show that he or she has satisfied the fifteen classroom hours of continuing education requirement within the previous two years. Any application submitted within two years of the certificate expiration that fails to satisfy the continuing education requirement will be denied.
 - (b) For a certificate that expired more than two years prior to the date the renewal application is submitted, the application will be treated as a new application for accreditation and in addition, the applicant will be required to show that he or she has satisfied thirty classroom hours of continuing education within the previous four years.

WAC 458-10-060 Standards of practice. The standards of practice adopted by the department and governing real property appraisal activities by accredited appraisers are the generally accepted appraisal standards as evidenced by the current appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. A complete text of these appraisal standards is available for viewing during normal working hours at the property tax division of the department.

WAC 458-10-070 Denial, suspension, or revocation of accreditation.

- (1) Reasons for denial, suspension, or revocation. The department may deny, suspend, or revoke the accreditation of any person for any of the following reasons:
 - (a) Failure to meet the minimum qualifications established for accreditation by the department;
 - (b) Failure to pass the accreditation examination or to meet examination waiver or exemption requirements;
 - (c) Knowingly providing false information on application forms; or
 - (d) Failure to comply with continuing education requirements, including requirements regarding appraisal standards and ethics.
- (2) Notification of denial, suspension, or revocation—Appeal. Notification of denial, suspension, or revocation by the department shall be in writing to the applicant at the applicant's last known address and, if the applicant is currently employed in an assessor's office, to the assessor. Any appeal by an applicant or accredited appraiser of the denial, suspension, or revocation of accreditation must be made in writing to the assistant director of the property tax division of the department.