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COURT OF APPEALS

DIVISION III  
OF THE STATE OF WASHINGTON

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PALMER D. STRAND and PATRICIA N. STRAND,  
APPELLANTS

v.

SPOKANE COUNTY, et al., RESPONDENTS

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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**BRIEF OF RESPONDENTS**

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**I. RESPONDENTS' RESTATEMENT OF THE ISSUES**

1. Whether Plaintiffs' Show Cause Motion was properly denied?
2. Whether the trial court acted within its discretion in denying reconsideration?

**II. STATEMENT OF THE CASE**

On December 29, 2016, the Spokane County Assessor's Office received a public records request from Palmer and Patricia Strand dated December 29, 2016. (CP 328)

Between December 29, 2016 and September 28, 2017, Spokane County provided Mrs. Strand with 16 installments of public records in response to her request. (CP 11).

On November 21, 2017, Frank Oesterheld advised Mrs. Strand by e-mail that:

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)

On September 10, 2018, the Strands filed a Complaint alleging in part: “Inspection history of appraisers, #5, was denied”. The Complaint requesting the following relief: “Have the Assessor produce the unlawfully denied records request in P-001 #5;” (CR 14)

On October 8, 2018, the Strands filed a Motion for Show Cause Order<sup>1</sup>. (CP 171) A show cause hearing in a PRA case is a method for expedited review whereby the agency is ordered to appear in front of a judge who will consider whether the agency’s actions violated the PRA. *Wood v. Thurston County*, 117 Wn. App. 22, 27, 68 P.3d 1084 (2003).

On October 26, 2018, Judge Fennessy entered an Order Denying Plaintiffs’ Motion to Show Cause and Dismissed with Prejudice Plaintiffs’ Claims. (CP 243) On December 24, 2018, Judge Fennessy entered an Order Denying Plaintiffs’ Motion for Reconsideration. (CP 306)

On December 27, 2018, the Strands filed a Notice of Appeal to the Court of Appeals, Division Three. (CP 307-315)

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<sup>1</sup> The County filed a Motion for Summary Judgment on October 1, 2018. The Strands filed a Motion for Summary Judgment on October 22, 2018. These motions became moot when Judge Fennessy entered the Order on Show Cause.

### III. APPLICABLE LAW

- **RAP 10.3**

RAP 10.3(a)(5) & (6) provide:

(5) Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement.

(6) Argument. The argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary. The court ordinarily encourages a concise statement of the standard of review as to each issue.

- **SHOW CAUSE**

This Court reviews challenges to agency actions under the PRA de novo. RCW 42.56.550(3); *City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009); *Mechling v. City of Monroe*, 152 Wn. App. 830, 222 P.3d 808 (2009), *review denied*, 169 Wn.2d 1007, 236 P.3d 206 (2010). Appellate courts stand in the same position as the trial courts when the record on a show cause motion consists only of affidavits, memoranda of law, and other documentary evidence. *Mitchell v. Washington State Dept' of Corr.*, 164 Wn. App. 597, 602, 277 P.3d 670 (2011), as amended on reconsideration in part.

- **RECONSIDERATION**

This Court reviews the superior court’s denial of a motion for reconsideration for abuse of discretion. *Martini v. Post*, 178 Wn. App. 153, 161, 313 P.3d 473 (2013). A court abuses its discretion if its ruling is manifestly unreasonable. *Ryan v. State*, 112 Wn. App. 896, 899, 51 P.3d 175 (2002). A court’s ruling is manifestly unreasonable when it is “outside the range of acceptable choices, given the facts and applicable legal standard”. *Id.*(quoting *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

#### IV. ARGUMENT<sup>2</sup>

##### 1. RAP 10.3

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<sup>2</sup> The Strands’ brief is difficult to respond to because of its wandering nature. The County believes the issues before the Court are captured by its Restatement of the Issues. In addition, the following arguments by Ms. Strand are addressed for the Court’s convenience.

- **Denial of a Schedule, a Privilege Log**  
The Strands were provided January 13, 2017 as an estimate for the first installment by Mr. Oesterheld on December 29, 2016. Strand’s argument for a privilege log for nonexistent records they believe were withheld is intuitively without merit. These issues were not raised before Judge Fennessy.
- **Destroying Original Inspection Records**  
The Strands’ public records request was submitted December 29, 2016. WAC 44.14.04004(4) provides in part:  
An agency must only provide access to public records in existence at the time of the request. An agency is not obligated to supplement responses. Therefore, if a public record is created or comes into the possession of the agency after the request is received by the agency, it is not responsive to the request and need not be provided. A requestor must make a new request to obtain subsequently created public records.

The Strands’ argument that the County did not provide records created after December 29, 2016 (the date of their request) is not within the purview of the PRA or this Court’s review.

Judge Fennessy considered the following pleadings on the Motion to Show Cause (CP 239):

1. Plaintiffs' Memorandum in Support of Motion for Show Cause Order and Response to Summary Judgment; (CP 174-182)
2. Supplemental Exhibits to Memorandum in Support of Motion for Show Cause Order and Response to Summary Judgment; (CP 183-197)
3. Defendants' Memorandum in Response to Plaintiffs' Motion to Show Cause; (CP 316-321); and
4. Declaration of Frank Oesterheld in Response to Plaintiff's Motion for Show Cause w/Attachment A, B, C and D (CP 322-3016).

Judge Fennessy noted:

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.

(CP 239)

The Strands designate and cite in their brief numerous Clerk's Papers which were not considered by Judge Fennessy at the Show Cause Hearing. All alleged factual statements and arguments cited to Clerk's Papers which were not considered by Judge Fennessy should be disregarded by this court.

Further, the Strands offered no affidavits or declarations to the trial court to support their facts or arguments.

## 2. SHOW CAUSE WAS PROPERLY DENIED

The PRA requires agencies to make identifiable public records available for inspection and copying. RCW 42.56.080. An identifiable public record is “one for which the requestor has given a reasonable description enabling the government employee to locate the requested record.” *Beal v. City of Seattle*, 150 Wn. App. 865, 872, 209 P.3d 872 (2009); *see also* WAC 44-14-04002(2) (an “identifiable record” is one agency staff can “reasonably locate”). “[A] proper request under the PDA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting *all* of an agency’s documents.” *Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004). In this regard, the PRA does not require agencies to be mind readers, or to produce records that have not been requested. *Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998). To hold otherwise would put agencies in an untenable position. *Id.*

The Strands’ Complaint under Relief Requested stated: “the Assessor to produce the unlawfully denied records requested in P-001 #5”. (CP 14) Strands’ # 5 request (CP 18) was for:

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.

The Assessor’s Office does not have any record responsive to 5D. (CP 323) The Strands’ belief that the records “*should*” exist does not change this fact.

By e-mail dated December 29, 2016, Mr. Oesterheld provided the following website addresses to Mrs. Strand which contain parcel number and parcel address for all Spokane County parcels:

- [www.spokanecounty.org/219/Assessor](http://www.spokanecounty.org/219/Assessor)
- <http://cp.spokanecounty.org/SCOUT/propertyinformation/ComparableSales.aspx>
- <http://cp.spokanecounty.org/SCOUT/propertyinformation/Taxes.aspx>
- <http://cp.spokanecounty.org/SCOUT/propertyinformation/SegmentMerge.aspx>
- <http://cp.spokanecounty.org/SCOUT/propertyinformation/ImageOutput.aspx>
- <http://cp.spokanecounty.org/SCOUT/propertyinformation/Notices.aspx>
- <http://cp.spokanecounty.org/SCOUT/propertyinformation/Sketch.aspx>
- <http://cp.spokanecounty.org/SCOUT/propertyinformation/Summary.aspx>

<http://cp.spokanecounty.org/scout/SCOUTDashboard>

(CP 323-324)

Additionally, 2673 pages of records partially responsive to 5A-C were provided to Mrs. Strand on 9/18/2017, 9/22/2017 and 9/29/2017 via thumb drives. (CP 324)

The information requested by Mrs. Strand in her #5 A-C request is also found on the Property Records Cards which include parcel number, parcel address, inspection date, and property valuation. (CP 324)

In an e-mail dated May 29, 2017, Mrs. Strand advised: “**I did not request property record cards.**” (Emphasis added) (CP 50)

In an e-mail dated November 21, 2017, Frank Oesterfeld advised Mrs. Strand that:

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)

Judge Fennessy denied Plaintiffs’ Motion to Show Cause and Dismissed Plaintiffs’ Claims on October 26, 2018. (CP 243)

The Strands offer only speculation without support of declarations or affidvits that the requested records were never produced. The PRA only requires access to existent records, not non-existent records which the Strands believe should exist. *Sperr v. City of Spokane*, 123 Wn. App. 132, 136-37, 96 P.3d 1012 (2004).

### **3. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN DENYING RECONSIDERATION.**

Judge Fennessy denied Strands' Motion for Reconsideration on December 24, 2018 (CP 306). In doing so, Judge Fennessy:

[R]eviewed Plaintiff's Motion for Reconsideration and Memorandum in Support of Motion for Reconsideration with accompanying attachments, Defendant's Response to Plaintiffs Motion for Reconsideration and Plaintiff's Reply Brief in Support of Motion for Reconsideration, the Court remains convinced that the County Assessor's Office has produced records responsive to Plaintiffs Request #5. Further, the County offered to produce "property record cards" for all properties in Spokane County, but Plaintiff requested those not be sent. See Court's Order dated October 26, 2018, Attached to Plaintiff's Memorandum in Support of Motion for Reconsideration as P-180 through P-184. For those reasons, the Court also remains convinced that the County has not violated the Public Records Act, that Plaintiffs Motion to Show Cause was properly denied and that Plaintiffs claims herein are properly dismissed with prejudice.

The Strands do not make any argument on the denial of reconsideration. RAP 10.3(a)(6) requires the appellant to present argument supporting the issues presented for review, citations to legal authority, and references to relevant parts of the record. “Assignments of error unsupported by citation authority will not be considered on appeal unless well taken on their face.” *State v. Kroll*, 87 Wn.2d 829, 838, 558 P.2d 173 (1976). We need not consider arguments that a party has not developed in the briefs and for which the party has cited no authority. *State v. Dennison*, 115 Wn.2d 609, 629, 801 P.2d 193 (1990). A party’s failure to assign error to or provide argument and citation to authority in support of an assignment of error precludes appellate consideration of an alleged error. *Emmerson v. Weilep*, 126 Wn. App. 930, 939-40, 110 P.3d 214 (2005).

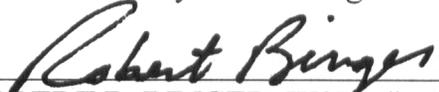
In any event, Judge Fennessy acted within his discretion in denying reconsideration.

V. CONCLUSION

Spokane County requests the Court of Appeals affirm the Trial Court's Orders.

Dated this 30<sup>th</sup> day of April, 2019.

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\_\_\_\_\_  
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· Sr. Deputy Prosecuting Attorney  
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PROOF OF SERVICE

On the 30<sup>th</sup> day of April, 2019, I electronically filed the foregoing with the Clerk of the Court using the Washington State Appellate Courts' Portal which in turn automatically generates an e-mail to Patricia Strand and deposited in the United States mail at the Spokane County Courthouse, with sufficient postage prepaid to Palmer and Patricia Strand, P.O. Box 312, Nine Mile Falls, WA 99026.

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

4/30/2019  
(Date)

Spokane, WA  
(Place)

Donna Monroe  
(Signature)

**SPOKANE COUNTY PROSECUTOR**

**April 30, 2019 - 10:09 AM**

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