

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

10 DEC 28 PM 4:16

BY RONALD R. CARPENTER

NO. 84108-0

CLERK

THE SUPREME COURT OF WASHINGTON

NEIGHBORHOOD ALLIANCE OF SPOKANE COUNTY,
a non-profit corporation,

Petitioner,

v.

SPOKANE COUNTY,
a political subdivision of the State of Washington

Respondent.

FILED
SUPREME COURT
STATE OF WASHINGTON
2011 JAN 11 P 2:32
BY RONALD R. CARPENTER
CLERK

AMICUS CURIAE BRIEF OF ALLIED DAILY NEWSPAPERS
OF WASHINGTON, WASHINGTON NEWSPAPER
PUBLISHERS ASSOCIATION, THE SEATTLE TIMES,
TACOMA NEWS TRIBUNE, AND TRI-CITY HERALD

Michele Earl-Hubbard
Chris Roslaniec
Allied Law Group LLC
2200 Sixth Avenue, Suite 770
Seattle, WA 98121
(206) 443-0200 (Phone)
(206) 428-7169 (Fax)



ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

TABLE OF CONTENTS

I. IDENTITY And INTEREST OF AMICI 1

II. STATEMENT OF THE CASE..... 2

III. ARGUMENT AND AUTHORITY 6

 A. An Inadequate Search is a Violation of the PRA..... 7

 B. The PRA Does Not Require Specialized Discovery Rules..... 11

 1. Relevancy and the Civil Rules provide the necessary
 boundaries on discovery 11

 2. FOIA should not be utilized to overly narrow the scope of
 discovery in PRA actions 16

 C. The County Violated the PRA by Failing to Produce Records in
 Response to NASC’s Request for Documents Revealing the
 Identities of Ron and Steve. 19

IV. CONCLUSION..... 20

TABLE OF AUTHORITIES

State Cases

American Civil Liberties Union v. Blaine Sch. Dist. No. 503
86 Wn. App. 688, 937 P.2d 1176 (1997) 16

Building Industry Association of Washington v. Pierce County Auditor, 152 Wn. App. 720, 218 P.3d 196 (2009) 14

Daines v. Spokane County,
111 Wn. App. 342, 44 P.3d 909 (2002) 19, 20

Houck v. University of Wash.
60 Wn. App. 189, 803 P.2d 47 (1991) 11

Neighborhood Alliance of Spokane County v. County of Spokane
153 Wn. App. 241, 224 P.3d 775 (2009) passim

O'Connor v. Washington State Dept. of Social and Health Services
143 Wn.2d 895, 25 P.3d 426 (2001) 11

Progressive Animal Welfare Soc. v. Univ. of Wash.
125 Wn.2d 243, 884 P.2d 592 (1994) 8

Sanders v. State
---Wn.2d---, 240 P.3d 120, (September 16, 2010)..... passim

Spokane Research & Defense Fund v. City of Spokane,
155 Wn.2d 89, 117 P.3d 1117 (2005) 19, 20

Federal Cases

Niren v. Immigration & Naturalization Serv.,
103 F.R.D. 10, (D.Or.1984) 17

Statutes

RCW 42.56.070(1).....	6
RCW 42.56.100	6, 17
RCW 42.56.120	17
RCW 42.56.210(3)	6
RCW 42.56.550	12, 17

Rules

CR 1	11
CR 26	11
ER 401	11
ER 402	11

I. IDENTITY AND INTEREST OF AMICI

Amicus curiae are newspaper associations Allied Daily Newspapers of Washington (“ADNW”) and Washington Newspaper Publishers Association (“WNPA”) and daily newspapers The Seattle Times, The Tacoma News-Tribune and Tri-City Herald (collectively hereinafter “Newspapers”).

This case deals with three primary issues: (1) whether an independent cause of action exists under the Public Records Act (“PRA”) for failure to conduct an adequate search for records; (2) whether the scope of discovery is different in PRA actions than in other civil actions; and (3) whether records in the possession of a requestor, prior to bringing suit, can form the basis of a cause of action when the original request was denied, the records were produced in response to a different request, and the agency gave no indication they were responsive to the original request. The County asks the Court to adopt positions which will excuse superficial searches for records and will hinder requestors in proving violations of the PRA. This Court’s decision will directly impact the Newspapers and the public at large, and the Newspapers have a legitimate interest in assuring the Court is adequately informed about the issues and impact its decision will have on all record requestors and agencies, not only the parties.

II. STATEMENT OF THE CASE

The Newspapers adopt the Statement of the Case set forth in Neighborhood Alliance of Spokane County v. County of Spokane, 153 Wn. App. 241, 246-55, 224 P.3d 775 (2009) (“NASC”), and in the Briefs of Neighborhood Alliance of Spokane County (“NASC”). The records at issue here deal with whether nepotism and illegal hiring practices were occurring in Spokane County. NASC came into the possession of an office layout (called “seating chart” throughout the majority of briefing) that showed individuals occupying certain desks in a particular department, including a “Ron,” a “Steve” and a second “Steve” at a particular extension. Id. at 246. A few days later (after the original chart had been leaked to NASC) a new seating chart was created removing the “Ron” and the “Steve” without the extension and instead listing only “new” for two of the work spaces. Id. at 247. The County subsequently advertised openings for positions in that department that were filled by a “Ron” and a “Steve.” Id. at 247. The “Steve” hired was the son of the then-County Commissioner Phil Harris—and the third of Phil Harris’ sons to be hired by the County. Id. NASC attempted to determine whether the County had engaged in illegal hiring practices by filling positions prior to posting them. Id. NASC was never able to obtain an electronic version of the original seating chart with the names of the hirees and was not

permitted to conduct discovery regarding the identities of the individuals shown by first name only on the seating chart, or the County's hiring practices to determine if it had been unlawfully denied records. Id. at 249.

NASC submitted two requests for records in an attempt to obtain information concerning the seating chart and its creation. The first was made on May 3, 2005, and asked

to review all records created in January 2005, February 2005, and March 2005 "that display either current or proposed office space assignments for County Building and Planning Department officials and employees." CP at 277. On May 11, the County provided Ms. Mager with three "proposed seating assignment charts." CP at 277. The first seating chart was undated. That chart appeared identical to the seating chart provided to the Alliance in February, and included the names Ron and Steve as well as Steve 7221. The other two versions of the chart were dated February 22, 2005, and April 18, 2005. The February 22, 2005 chart no longer had the names Ron and Steve in a cubicle but, instead, simply had the word "New" in two other cubicles. CP at 279.

Id. at 247. The second request was made on May 16, 2005 and stated:

Pursuant to the state public records act (RCW 42.17), I am writing to request the opportunity to review public records created, received and/or retained by Pam Knutsen, or any other county official or employee that record the following information.

1) The complete electronic file information logs for the undated county planning division seating chart provided by Ms. Knutsen to the Neighborhood Alliance on May 13th. This information should include, but not necessarily be limited to, the information in the "date created" data field for the document as it exists on the specific Microsoft Publisher electronic document file created for the referenced seating chart. The requested information should also include, but not be limited to, the computer operating system(s)

data record indicating the date of creation and dates of modification for the referenced seating chart document.

2) The identities of “Ron & Steve” individuals who are situated near the center of the seating chart referenced in item # 1. Also, the identity of the individual listed as “Steve” in the cubicle with the number 7221 at the top of the chart.

Id. at 248, CP at 225. The County did not produce any documents responsive to the second request (“Item 2”) of the May 16, 2005, request, and told NASC that the PRA “does not require agencies to explain public records. As such, no response is required with respect to item number 2 referenced above.” CP at 54.

During the discovery process, NASC moved to compel certain testimony from Pam Knutsen in order to determine the identities of Ron and Steve on the seating chart and whether the County possessed responsive records to Item 2 referenced above. The trial court denied NASC’s motion to compel, and this ruling was upheld on appeal because Division III found it to be outside the scope of discovery allowable in a PRA case. NASC, 153 Wn. App. at 263-65. This finding was based on federal, Freedom of Information Act (FOIA) case law. Id. at 264-65.

The limited discovery allowed in this case meant that NASC was unable to determine what records in possession of the County could have been responsive to its requests, and what the County did and did not do to search for records. In fact, the discovery that NASC was able to obtain

revealed that the County did not perform a search that could be considered reasonably likely to obtain the records at all. The County did not search the computer upon which the original records were created, and the one individual who searched for records simply stated “[T]here are no documents which reference the seating chart and identify the full names of ‘Ron and Steve’ or ‘Steve’ therein.” Id. at 250; CP at 62. It is important to note that, though it has been often referred to throughout this action as a “seating chart,” the record which prompted the events leading to this lawsuit was never referred to as a “seating chart” in the County records.

On October 31, 2005, NASC made a subsequent records request through the Center for Justice for “all records that would document Ms. Knutsen’s receipt of a new computer and the changeover of the data from her original computer to the new one as described in your October 24th letter.” CP at 488-89. In response to this request NASC came into possession of records that it believed were likely responsive to its May 16, 2005, request, Item 2—the request for which the County denied responsive records existed. NASC, 153 Wn. App. at 260-61. These records contained references to Ron Hand and Steven Davenport (the Steve with the extension on the seating chart). Id. at 260. The Court of Appeals held that NASC could not prevail for the County’s failure to produce these documents in response to the May 16, 2005, request

because it had received the documents prior to bringing suit in response to a different request. **Id.**

III. ARGUMENT AND AUTHORITY

An agency has three primary duties when responding to a PRA request: (1) to provide its “fullest assistance” to requestors and “most timely possible response,” (2) to identify all responsive records and, if exempt, to state the specific statutory exemption and explain how it applies to the specific record or records, and (3) to produce all nonexempt responsive public records. RCW 42.56.100, 42.56.210(3), 42.56.070(1). This case implicates a violation here of all three duties and will control the ability of requestors in the future to enforce their rights under the PRA and the motivation of agencies to comply with their obligations. Because agencies must provide an adequate response—identifying all responsive records and stating exemptions, producing all nonexempt public records, and providing its fullest assistance and most timely possible response—an agency has a duty under the PRA to first perform an adequate search for responsive records. A failure to perform an adequate search precludes an adequate response and identification, precludes an adequate production, and precludes a finding that an agency provided its fullest assistance and most timely possible response. Further, as an agency possesses all the information about what it possessed and what it did to respond, requestors

must be granted adequate discovery to address these issues in the context of PRA litigation and requestors allowed to sue for the illegal silent withholdings of records for records they subsequently obtain or the idea of PRA litigation becomes a farce, and the promise of the PRA—to keep the government accountable to the governed—cannot be accomplished.

A. An Inadequate Search is a Violation of the PRA.

As this Court clearly set forth in Sanders v. State, there are two distinct categories of records when performing analysis under the PRA; “disclosed” and “not disclosed.” --- Wn.2d---, 240 P.3d 120, 125 (September 16, 2010). Disclosed records are either those that are (1) produced to a requestor or (2) identified and withheld based on an exemption. Sanders, 240 P.3d at 125. Records are never exempt from disclosure, but may be exempt from production. Id. at 125. Therefore, in an instance where a requestor is bringing suit because records that are believed to exist were not disclosed, the threshold issue is whether the records existed, not whether they are exempt pursuant to the PRA. Because a requestor cannot independently search an agency’s records, the agency’s actions to locate records is the initial focus in a nondisclosure action to determine if all responsive records have been identified.

In Sanders this Court addressed the duty to identify records and specific statutory exemptions and explain how the exemptions applied. In

Sanders, this Court held that the failure to explain claimed exemptions on the withholding indexes identifying all responsive records constitutes an independent violation of the PRA because such an explanation is part of the statutorily-required response, and a requestor must be able to competently determine whether an exemption applies to a record in question without being able to see what is being withheld. Id. at 120. Indeed, the Sanders court stated “Claimed exemptions cannot be vetted for validity if they are unexplained.” Id. at 130. And, while the Sanders court found that the failure to explain exemptions could not support an independent award of penalties – only of attorney’s fees and costs – if all of the responsive records in fact were proven exempt and thus not improperly withheld, the Court ruled that the failure to explain exemptions constituted an aggravating factor in the assessment of penalties if nonexempt records were withheld. Id. at 137.

Just as a failure to adequately explain how a claimed exemption justifies withholding of a record is a violation of the PRA, as it is indicative of an incomplete response, the silent withholding of records, with no identification or exemption citation, is clearly a PRA violation. Progressive Animal Welfare Soc. v. Univ. of Wash., 125 Wn.2d 243, 269-71, 884 P.2d 592 (1994) (“silent withholding” illegal). Just as exemptions cannot be vetted without their identification and explanation,

claims that records do not exist cannot be vetted for validity unless the processes undertaken to locate that record, in addition to an agency's practices leading to the potential existence of the record, are disclosed to—or at least discoverable by—a requestor. Here, it is clear responsive records existed on a County computer at some point. It is also undisputed that the County failed to search that computer, claims it is the only place the records might exist or have existed, and does not know if the record existed as of the date of the request or not. Hence, if the records existed and were therefore improperly withheld by the County, the failure to perform an adequate search is at a minimum a distinct PRA violation for providing an inadequate answer and should constitute at least an aggravating factor in the assessment of penalties.

However, a failure to search the only place where the records might have been located should be treated as a far more egregious violation than a failure to fully explain a claimed exemption because a failure to search will not put a requestor on notice that responsive records exist at all. Unlike the scenario in Sanders, where an agency identifies a document but simply fails to provide an adequate explanation justifying the exemption, the failure to search opens up much greater potential for records to be withheld because the requester cannot determine whether responsive records exist at all. In this case, NASC was able to determine a

specific location where responsive records existed, but that the County failed to search. NASC, 153 Wn. App. at 259-60.

However, in many scenarios, the requestor may not be so fortuitous. A failure to adequately search leads to an unknown potential for silent withholding that a requestor will usually lack basis to challenge, because the requestor must simply rely on the agency's contention that no responsive records exist. It is precisely this problem that justifies an independent cause of action for the failure to adequately search. Absent an independent cause of action, an agency may simply perform a poor search and fail to locate records, leaving the requestor of the records without recourse.

An adequate search is compelled by all three duties under the PRA—to provide the fullest assistance and most timely possible response, to identify all responsive records and explain and identify specific applicable statutory exemptions, and to produce all nonexempt responsive records. A failure to perform an adequate search is a separate and distinct violation of the PRA and must be punished as such.

B. The PRA Does Not Require Specialized Discovery Rules.

1. Relevancy and the Civil Rules provide the necessary boundaries on discovery

Plainly, “the civil rules apply to all lawsuits of a civil nature.” See O'Connor v. Washington State Dept. of Social and Health Services, 143 Wn.2d 895, 25 P.3d 426 (2001).¹ Parties may obtain discovery regarding **any matter, not privileged, which is relevant to the subject matter** of the pending action. ... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. CR 26(a), (b)(1). This principle is mirrored in ER 402: “Evidence which is not relevant is not admissible.” See also Houck v. University of Wash., 60 Wn. App. 189, 201-02, 803 P.2d 47 (1991); ER 401 (“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”). While there has been a great deal of debate over the scope of discovery in a PRA action, CR 26 when coupled with the PRA to determine relevancy, provides all the guidance courts and litigants need.

¹ See also CR 1 (stating the Civil Rules “govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81)

The constraints on discovery in a PRA case should be derived from the concept of relevancy, and in the likelihood of leading to relevant evidence viewed in light of the unique statutory framework. Within the context of the PRA, litigation generally focuses solely on the actions of the agency, and this is a function of the PRA itself which places the burden squarely upon agencies to prove they did not violate the PRA if challenged. Indeed RCW 42.56.550(1) provides that when challenging withholding: “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.” RCW 42.56.550(2) provides that when challenging an agency’s estimate of time to produce records, “The burden of proof shall be on the agency to show that the estimate it provided is reasonable.” Therefore, as a practical matter, in most scenarios PRA discovery will be limited to the actions of an agency. However, this does not form a basis to cut off a requester from engaging in discovery to determine *whether records exist*.

Here, the boundaries placed on discovery by the appellate court were unwarranted in that the discovery sought information which was relevant to determining whether the County possessed and, in turn, withheld records. NASC was denied discovery that would have

potentially provided information regarding when records were created, who the individuals on the seating chart were, and revealed events leading up to the filling of positions that were identified in the records that NASC did receive. For example, the County refused to answer proposed deposition questions 14 through 24 concerning the identity of "Steve" on the seating chart and whether certain records identified him; 27 through 37 concerning whether the agency possessed non-exempt records revealing "Steve's" identity when NASC made its May 16, 2005, request in addition to questions concerning the identity of "Ron"; and questions 40 through 53 concerning whether the agency possessed non exempt records revealing "Ron's" identity, additional questions concerning "Steve's" identity, and questions regarding the County's search for records. See CP at 385-398 and 425-436. These subjects are central to this case.

Simply put, NASC cannot determine whether there are responsive records revealing the "identities of "Ron & Steve" individuals who are situated near the center of the seating chart" or "the identity of the individual listed as "Steve" in the cubicle with the number 7221 at the top of the chart" without being able to determine who Ron and Steve are.

Further when there is a concern that an agency has improperly destroyed records, discovery must be allowed to probe into this potentiality as well. The unlawful destruction of records requested in a

PRA request leads to a PRA violation if the agency is unable to produce the unlawfully destroyed records. In Building Industry Association of Washington v. Pierce County Auditor, Division II suggested that unlawful destruction of emails could lead to a PRA violation if unlawful destruction of emails was followed by a subsequent request, and then the failure to produce could violate the PRA. 152 Wn. App. 720, 741, 218 P.3d 196 (2009). Ultimately, the BIAW court found that there was no unlawful destruction and did not find a PRA violation on this basis. Id. However, here, there is clear evidence responsive records did exist that were not produced in response to requests and have still not been produced. Division III's ruling has prevented NASC from gathering evidence to establish when records were destroyed, what records were destroyed, and whether responsive records still exist that have not been produced. The scope of discovery cannot be limited so as to effectively prevent a requestor from pursuing a claim.

Further, the Court in BIAW refused to find a violation of the PRA precisely because the discovery obtained by BIAW was insufficient to demonstrate the illegal destruction of records. Id. (Because "no improper destruction of record under the records retention act has been shown here so we are presented with no opportunity to determine if the law supports that logic.") In order to present his or her case, a requestor must be able to

obtain discovery concerning the records in question, in addition to any facts revealing why that record did, or should have existed. These include the procedures employed by an agency in creating that type of record, and all facts relevant to why the record might have been in existence at the time of the request. That is precisely what was sought here, and what, in large part, was denied.

NASC was prevented from determining when the record was created, when Ms. Knutsen's harddrive was "wiped," and what hiring practices could have led to the creation of the "seating chart" in question. Despite NASC's attempts to obtain these answers, the trial court simply found that "there is no reason for further discovery in this case and that the discovery conducted to date and other materials submitted by Plaintiff have not revealed any evidence which creates or supports an issue of fact regarding the claim made by the Plaintiff." CP 656 and 663 (same).

Strangely, while overruling the trial court and recognizing that the County performed an inadequate search for records and therefore violated the PRA, Division III also determined that the scope of discovery allowed by the trial court was proper. NASC, 153 Wn. App at 264-65. The trial court based the scope of discovery on what it believed was relevant to the action and in doing so barred discovery into the issues concerning failure to search and the potential existence of records that were not produced.

Division III's ruling overturning liability on one point and denying it on another warranted a closer examination of what discovery should have been allowed below.²

2. FOIA should not be utilized to overly narrow the scope of discovery in PRA actions

The County's, and in turn Division III's, reliance on FOIA to attempt to limit the scope of discovery in PRA actions is misplaced; there is simply no basis for such a holding. While FOIA can be used to interpret the PRA, if the FOIA and the PRA differ, then rulings concerning the differing aspects of FOIA are inapplicable. And, while FOIA may be used as guidance where appropriate, the only Washington cases dealing with discovery in the PRA context have refused to narrow the scope of allowable discovery beyond relevancy.

What constitutes a cause of action under FOIA is much narrower than under the PRA, hence the scope of relevancy under the PRA is necessarily much broader. See American Civil Liberties Union v. Blaine Sch. Dist. No. 503 86 Wn. App. 688, 696, 937 P.2d 1176 (1997) (where the PRA "differs significantly" from FOIA, a Washington court

² Additionally, Division III found a violation of the PRA without evidence that existing responsive records had been withheld, and solely based this violation on a lack of adequate search. See NASC, 153 Wn. App. at 259-260, 265. While, as discussed above, inadequate search should be a basis to find a violation of the PRA, NASC must be allowed to pursue discovery to determine if records likely existed at the time it made its requests that were withheld.

will not consider FOIA cases). In an action under FOIA, the scope of discovery is limited to whether complete disclosure has been made by the agency in response to a request for information. See Niren v.

Immigration & Naturalization Serv., 103 F.R.D. 10, 11 (D.Or.1984).

This is largely due to the fact that FOIA's sole cause of action is the nondisclosure of records, and the bounds of relevancy govern discovery. Pursuant to the PRA a requestor can sue for failure to give a reasonable estimate of time to produce records; for an agency's failure to provide the "fullest assistance" in responding to a request; improperly withholding records—whether due to an improperly claimed exemption or a silently withheld responsive record; or for being charged an improper fee to review or copy records. RCW 42.56.100, 42.56.120, and 42.56.550.

However, even under FOIA's narrower scope of relevant discovery, here the information sought by NASC would have been within the purview of allowable discovery. In a FOIA case, "[w]hether a thorough search for documents has taken place and whether withheld items are exempt from disclosure are permissible avenues for discovery." Niren, 103 F.R.D. at 11. The information sought by NASC dealt with what records may exist, and such information is necessary in determining whether the search conducted by the County was reasonable. While recognizing that the search performed by the County was inadequate,

Division III lost sight of the underlying facts of the case in determining why certain discovery should be disallowed. Regarding the scope of discovery requests, Division III noted that:

Alliance inquired into such areas as: hiring practices and job postings; information about County meetings whereby the participants discussed withholding records, the identity of those who make the hiring decisions, the experience and qualifications of those who had applied for the positions of development assistance coordinator 1 and 2, Ms. Knutsen's promotion date and the hiring process by which she was selected for her current position, and facts regarding the hiring of three specifically named individuals who appear to have nothing to do with this case.

NASC, 153 Wn. App. at 264. It cannot be reasonably disputed that at least some of these areas directly concern whether relevant records existed that were not disclosed, and are likely to lead to relevant evidence concerning the adequacy of the search for records, in addition to informing whether records existed at all.

Again, this was a case regarding records concerning hiring of a "Ron" and "Steve" who showed up on a seating chart prior to the posting of the positions. Therefore, records concerning hiring practices are relevant to determine the potential existence or non existence of records relating to the employment of these two individuals, and in turn, how they came to be on the seating chart.

C. The County Violated the PRA by Failing to Produce Records in Response to NASC's Request for Documents Revealing the Identities of Ron and Steve.

In determining that NASC could not prevail for records that it had in its possession prior to initiating its action, Division III glossed over how and why NASC came into possession of those records. In essence, the manner in which they were produced—in response to a broad separate request from NASC—did not allow NASC to know that some of these records were in fact responsive to its requests months earlier: a request that had been denied by the County. In determining that NASC could not prevail for the County's failure to produce records that it already possessed in response to Item 2 of the May 16, 2005, request, Division III improperly relied on Daines v. Spokane County, 111 Wn. App. 342, 44 P.3d 909 (2002), a case where the requestor knew he possessed the responsive records prior to suing. In Daines, the requestor conceded that “(a) he had the records in his own files before he filed the action, and (b) he knew this.” Id. at 348. Reliance on Daines is error because its holding utilized the old prevailing party standard under the PRA which has since been expressly overruled—that the suit be reasonably necessary to obtain the records—and here NASC had no way to determine that records in its possession were responsive to its first request, and was not informed of this fact until after litigation had commenced. See Spokane Research &

Defense Fund v. City of Spokane, 155 Wn.2d 89, 103, 117 P.3d 1117 (overruling prevailing party standard utilized in **Daines** and holding that causing disclosure is not necessary to prevail under the PRA and “nowhere in the PDA is prevailing party status conditioned on causing disclosure.”) The County denied any responsive records existed to the earlier request and has never corrected this earlier denial. The fact that the County produced records months later in response to a broader request – which could not clearly be determined by NASC to be responsive to the earlier request – does not excuse the earlier improper silent withholding or preclude NASC’s ability sue for that PRA violation.³

IV. CONCLUSION

The Court should uphold the appellate court’s finding that a failure to adequately search for records is a violation of the PRA, but should refuse to place artificial constraints upon the scope of discovery in a PRA action when the civil rules constitute sufficient boundaries for the scope of allowable discovery.

Respectfully submitted this 28th day of December, 2010.

Allied Law Group LLC

By: /s/ Michele Earl-Hubbard
Michele Earl-Hubbard, WSBA #26454
Chris Roslaniec, WSBA #40568

³ The question of “prevailing relates to the legal question of whether the records should have been disclosed on request” **Spokane Research**, 155 Wn.2d at 103.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

10 DEC 28 PM 4:16

BY RONALD R. CARPENTER

CERTIFICATE OF SERVICE

CLERK

I certify under penalty of perjury under the laws of the State of Washington that on December 28, 2010, I delivered a copy of the foregoing Amicus Brief by the method indicated below to:

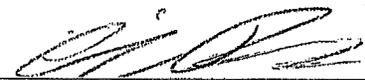
Brean Beggs, WSBA #20795
Bonne Beavers, WSBA #32765
Attorneys for Petitioners
Center for Justice
35-W. Main Ave., Suite 300
Spokane, Washington 99201

Via email pursuant to agreement

Patrick Risken
Evans, Craven & Lackie
Lincoln Building #250
818 W. Riverside Avenue
Spokane, WA 99201

Via hand delivery

Dated this 28th day of December 2010 at Seattle, Washington.



Chris Roslaniec

ORIGINAL

FILED AS
ATTACHMENT TO EMAIL