

No. 64819-5-I

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

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HARLEY H. HOPPE & ASSOCIATES, INC.,

*Plaintiff/Appellant,*

v.

KING COUNTY,

*Defendant/Respondent.*

2019 APR 25 AM 3:21

COURT OF APPEALS  
CLERK OF COURT  
KING COUNTY  
*[Signature]*

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**BRIEF OF APPELLANT**

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## **I. INTRODUCTION**

For most citizens, taxation is the most powerful means by which the government can affect their lives and livelihoods. Article 7, Section I of our state constitution mandates uniformity in taxation. Moreover, government action—such as taxation—is meant to be transparent to the citizens of Washington, and the government must fully respond to public records requests to maintain that transparency.

Harley Hoppe & Associates, Inc. (“Hoppe”) is a tax consulting firm. Hoppe made a public records request to King County for the documents making up the annual ratio audit of 2006, an audit performed under the auspices of the Department of Revenue and the authority of RCW 84.48.080. Hoppe is motivated by a desire to obtain the best tax treatment possible for its clients, and this specific request stemmed from learning that four King County taxpayers, including Paccar, had appealed their 2006 private property assessments and had been assigned to a more beneficial depreciation schedule. King County has refused to produce the public records Hoppe requested.

## **II. ASSIGNMENTS OF ERROR**

The trial court erred in denying Hoppe’s motion for partial summary judgment and granting King County’s motion for summary judgment.

### III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Whether the ratio audit mandated in RCW 84.48.080 may be disclosed in response to a public records request or whether any exemption in the public disclosure act prohibits the disclosure of the ratio audit as requested.

### IV. STATEMENT OF THE CASE

#### A. The Ratio Audit

The Department of Revenue (“DOR”) is required to equalize property taxes on a yearly basis under RCW 84.48.080(1). It uses a “ratio audit”—a comparison of the valuation of property in each county to the total valuation of all property in the state—to do this. *See* CP 96.

The ratio audit is used by the Washington State Department of Revenue in calculating the school levy component of property tax. While the Assessor downplays its relevance in its Answer in this case, it does “admit[] *the ratio audit is used in limited respects* by the Washington State Department of Revenue in calculating the school levy component of property tax.” CP 61 (emphasis added). *See also* CP 35 (Answer originally did not include the words “in limited respects”). In addition, the Assessor declared:

The DOR audit procedure . . . is *designed to ensure uniformity and equity* in property taxation throughout the state to the maximum extent possible (WAC 458-53-010). The Paccar audit is only one of hundreds of audits

performed by the [DOR] for purposes of classifying real and personal property value in each of the 39 counties across the state. The overall values derived in part from the many audits over a three year period become part of a statistical model that is used to equalize values in each of the 39 counties and accordingly calculate their respective state school levy in support of common schools . . . .

CP 95–96 (emphasis added).

The personal property ratio audit included information from businesses across the state. *See* CP 96 (“hundreds of audit performed by the Department of Revenue for purposes of classifying real and personal property value in each of the 39 counties across the state”).

**B. Change in Personal Property Depreciation Schedule for Manufacturers**

Unlike real estate, which usually increases in value over time, personal property usually decreases in value over time. CP 220. Personal property has a finite useful life and, as the useful life is consumed, the value of the property is reduced or depreciated. *Id.* The King County Assessor’s standard practice with respect to personal property is to tax at 100 percent of its original cost and then to reduce its value annually over time according to the applicable depreciation schedule. *Id.*

To achieve this aim, the King County Assessor has created over 300 depreciation schedules, covering an incredible assortment of personal property including, for example, Artworks and Antiques (Category 680), Foundry Furnaces (Category 83), Flight Simulators (Category 165),

Bowling Alley Lanes (Category 230), Beer Kegs (Category 70), Propane Tanks (Category 520) and Portable Sawmills (Category 353). *Id. See also* CP 123–33. The depreciation schedules for the various categories can differ by enormous amounts. Accordingly, the selection of the category into which a given item of personal property is placed may significantly affect *both* the taxable life of the product and the amount paid in tax in each year. CP 220. Over time, the difference in total taxes paid among the various categories, depending on depreciation schedule, could easily result in a difference of over 100 percent. *Id.* Here is a comparison of identical assets on a 7.5 percent and 12 percent schedule, from the 2007 Department of Revenue Trended Table for Personal Property:

**Asset Value**

	<b>0.075</b>	<b>0.120</b>
Percent Good		
Year 1	0.925	0.880
Year 2	0.892	0.807
Year 3	0.863	0.743
Year 4	0.815	0.667
Year 5	0.761	0.593
Year 6	0.709	0.525
Year 7	0.660	0.466
Year 8	0.618	0.415
Year 9	0.575	0.367
Year 10	0.537	0.326
Year 10 AV	53.700	32.600

CP 220–21. In just the first 10 years, a taxpayer on the 7.5 percent depreciation schedule will pay 65 percent *more* in taxes. *Id.* The depreciation rate selected is critically important to the taxpayer. *Id.*

Prior to 2006, the King County Assessor’s Category 340 M&E (Manufacturing and Equipment) designation provided for 12 percent depreciation. CP 221. In 2006, the rate was *decreased* to 7.5 percent, *increasing* the tax burden. *Id.*

**C. Preferential Tax Treatment for Four Manufacturers in King County**

Four taxpayers—Paccar, Swift Tool Company, New Tech Cutting Tools, and United States Gypsum Company—questioned the reduction (and corresponding increases in assessed value). CP 221. The 12 percent rate was reinstated on a taxpayer-by-taxpayer basis for the four taxpayers and no one else. *Id.* For instance, in Paccar’s case, a truck manufacturer was reassigned to a “table 12” category of “Agricultural Manufacturing and Equipment Tractors”—even though the supervisor recognized the business was “not AGR M&E Tractors.” CP 230.

The record, including documents submitted by King County, demonstrates the results-oriented analysis:

- “DOR confirmed that table 12 is appropriate” although DOR could not identify a table 12 category any closer to Paccar’s business than AGR M&E Tractors. CP 228, 230.

- “The [assessor’s] overriding objective . . . is to ensure we use the correct rate to depreciate the equipment, regardless of the category description label.” CP 346.
- “While there are 38 category descriptions that are assigned this depreciation rate of 12 percent, none reflects the ‘assembly’ nature of the equipment used by Paccar.” CP 347.

The results were, of course, highly desirable. *See* CP 220–21. For Paccar alone, the assessed value of its personal property dropped by \$9 million. CP 228. Further, the results were speedy: Paccar’s 2006 personal property tax bill was changed with no supporting documentation submitted to the King County Department of Finance and approved in a few days, far faster than a normal taxpayer would experience. CP 223. Typically, the process takes a minimum of 20 days and may well take a couple of months. *Id.*

**D. Background of Public Records Requests**

On October 26, 2007, Hoppe requested from the King County Department of Assessments all documents related to this issue:

[W]e request copies of all information relating to stipulated changes to personal property accounts involving category code 340 for the period August 1, 2007 through October 26, 2007.

CP 232. In response to this Public Disclosure Request, Hoppe received

34 documents responsive to your request regarding information relating to stipulated changes to personal property accounts involving category code 340 for the period of August 1, 2007 through October 26, 2007.

CP 235. None of the material received explained: (a) why Paccar's equipment had been placed back on a 12 percent depreciation schedule when it had briefly been on a 7.5 percent schedule; or (b) why Paccar's equipment was labeled "Agr. M&E Tractors." CP 223-24. On November 12, 2007, Hoppe framed the request more specifically:

We have attached a copy of a stipulation between PACCAR and Scott Noble dated September 18, 2007. The stipulation provides, in part, that:

- The "[m]ajority of equipment [had been] mis-categorized as M&E Other."
- A "[s]ite visit confirmed equipment is used for assembly, not manufacturing."
- The Washington State Department of Revenue has "confirmed that Table 12 is appropriate."

We are attempting to understand what has occurred here. With respect to the stipulation, we request the following:

- All documents relating to the site visit referenced.
- All documents reflecting the new category code assigned to the equipment, including the category number and its definition, scope, or application.
- All documents reflecting the decision to change the valuation table from one reflecting a 7.5 percent depreciation rate to a 12 percent depreciation rate.
- All documents relating to the communication with the Department of Revenue referred to in the Stipulation, including (without limitation) e-mails and phone logs.
- All documents relating to the procedure to be followed when creating a new category code.

- All documents reflecting approval sought or obtained for this category code change.
- To the extent not covered by the foregoing, all documents defining what is covered by the new category code.

We are *not* interested in *any* confidential information of PACCAR's. In particular, we are not interested in any income or expense information.

CP 271-72. In response to this public records request, Hoppe was told the

Paccar 12 percent depreciation schedule was primarily based on a

Washington State Department of Revenue Ratio Audit:

- All documents reflecting the new category code assigned to the equipment, including the category number and its definition, scope, or application.
- We created a Category Description Table, as a result of this public information request, that reflects all the King County Category Codes using the Washington State Department of Revenue Table 12. The category chosen for PACCAR was Agr. M&E Tractors as we felt it most closely reflected their assembly plant.
- All documents reflecting the decision to change the valuation table from one reflecting a 7.5 percent depreciation rate to a 12 percent depreciation rate.
- ***A Washington State Department of Revenue (DOR) ratio audit was the primary document used in the decision to change the valuation table from one reflecting a 7.5 manufacturing table to a 12 assembly table.***

CP 276–77 (emphasis added). The ratio audit referred to above is the document Hoppe requests.<sup>1</sup>

**E. The Unanswered Public Records Request at Issue in This Case**

On February 29, 2008, Hoppe made one more public records request. CP 289–90. Hoppe asked for public information, making sure to state the request did not include confidential information:

[T]he cost detail of the 2006 State Ratio Audits for Personal Property with client name and account number(s) redacted. The information in this request would not disclose income information, client name or proprietary business information:

- The State Ratio Audits of Personal Property do not disclose income information.
- The State Ratio Audits are used in the calculation of the state school levy and the detail contained in the audits cannot therefore be considered confidential proprietary information.
- The disclosure of data contained in the State Ratio Audits could not be considered highly sensitive to a reasonable person.

*Id.* As stated, Hoppe agreed to limit the request to a redacted version of the ratio audit. CP 289. King County again denied the request, citing an exemption under the public records act. CP 292–93.

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<sup>1</sup> The Assessor’s response provides the ratio audit was the “primary document” used. CP 277. If there are any others, Hoppe seeks those, too.

**F. Procedural History**

The parties filed cross-motions on the issue of whether King County could withhold the ratio audit. CP 199–218, 294–318. The trial court denied Hoppe’s motion and granted King County’s. CP 1216–18, 1219–20. This appeal followed.

**V. ARGUMENT**

Article 7, Section 1 of the Washington Constitution provides, in relevant part:

*All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax .*

(Emphasis added.)

*[U]niformity is the highest and most important of all requirements applicable to taxation under our system.*

*Savage v. Pierce County*, 68 Wash. 623, 625 (1912) (emphasis added). By definition, King County’s tax treatment of four taxpayers was preferential, not uniform. When Hoppe requested the documents underlying this tax treatment, King County refused to explain how it reached the decision to favor four manufacturing entities over other, similar taxpayers. It has refused to provide Hoppe with the information that is required to be published according to the specific legislative mandate of RCW 84.48.080(1)(b).

**A. Standard of Appellate Review Is De Novo.**

A Court reviews *de novo* (a) all issues of statutory construction, and (b) all agency actions taken or challenged under the public disclosure act, former chapter 42.17 RCW, amended and recodified as chapter 42.56 RCW. *Bellevue John Does 1–11 v. Bellevue School Dist. No. 405*, 164 Wn.2d 199, 208–09, 189 P.3d 139 (2008).

**B. The Legislature Mandates Publication of the Yearly Ratio Audit.**

While the term “ratio audit” is perhaps not familiar to the layman, it is a prominent feature of our state’s tax system. RCW 84.48.080 *requires* that county taxes be “equalized” and that Ratio Audits be conducted for this purpose:

Annually during the months of September and October, the department of revenue shall examine and compare the returns of the assessment of the property in the several counties of the state . . . and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the valuation of the property in each county bears to the total valuation of all property in the state.

RCW 84.48.080(1). “Property Tax Annual Ratio Study” regulations outline with precision how the study is to be conducted. Chapter 458–53 WAC (in the record at CP 310–18). The legislature’s clear direction is that the proceedings related to the ratio audit described in RCW 84.48.080(a) “*shall be published*”:

The department shall keep a full record of its proceedings and the same *shall be published* annually by the department.

RCW 84.48.080(1)(b) (emphasis added).

The information referred to in RCW 84.48.080(a)—and in King County’s Answer—is the information Hoppe requested. The “full record” of the statutory proceedings doubtless includes the 2006 Personal Property ratio audit. The result of the ratio audit proceedings was that in 2006, King County assessed personal property at 95.1 percent of fair market value. CP 385. It is inconceivable a taxpayer would not have access to the information from the ratio audit to check the government’s math. Every Washington citizen has an interest in this issue. However, the full record of these proceedings apparently has been withheld from a citizen requesting it.

**C. The Public Disclosure Act Mandates Transparency in Governmental Action.**

The public records provisions of the public disclosure act were enacted in 1972 by initiative, formerly chapter 42.17 RCW, now codified at chapter 42.56 RCW. *Bellevue John Does 1–11*, 164 Wn.2d at 209. The Public Records Act is a “strongly worded mandate for broad disclosure of public records.” *Progressive Animal Welfare Soc’y v. Univ. of Wa.*, 125 Wn.2d 243, 250–51, 884 P.2d 592 (1994). The legislature has clearly

identified the purpose, breadth, and power behind the public disclosure provisions:

It is hereby declared by the sovereign people to be the public policy of the state of Washington:

...

That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, *full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.*

The provisions of this chapter shall be liberally construed to promote . . . full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected.

RCW 42.17.010(11) (emphasis added). Further:

The people of this state do not yield their sovereignty to the agencies that serve them. *The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.* The people insist on remaining informed so that they may maintain control over the instruments that they have created. *This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.* In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

RCW 42.56.030 (emphasis added). The declarations of purpose and policy are sweeping. *Bellevue John Does 1-11*, 164 Wn.2d at 209.

**D. None of the Exemptions Apply to Prohibit Disclosure of, or Justify Withholding, the Ratio Audit.**

Exemptions under Public Records Act are to be narrowly construed. RCW 42.56.030; RCW 42.17.010(11); *Bellevue John Does 1–11*, 164 Wn.2d at 209. Because of the comprehensive nature of the Public Disclosure Act, it has always been clear that the agency withholding the public records bears the burden of proof 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.” *Bellevue John Does 1–11*, 164 Wn.2d at 209.

Thus, King County bears the burden of showing that a statute “exempts or prohibits disclosure” of the ratio audit “in whole or in part.” King County cites two exemptions from disclosure under the Public Records Act<sup>2</sup> for the proposition that the information *required* to be published under RCW 84.48.080 *cannot* be published.

**1. RCW 42.56.230 Does Not Exempt the Ratio Audit From Disclosure.**

The principal exemption King County cites reads:

The following personal information is exempt from public inspection and copying under this chapter:

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<sup>2</sup> In its materials, King County makes frequent references to “five” statutes. In reality, King County is only relying on two statutes, RCW 42.56.230 and -.070. RCW 42.56.230 incorporates the provisions of the three other statutes King County relies on, but these are not independent statutes exempting or prohibiting disclosure.

...

Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (a) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

RCW 42.56.230(3). Under the statute, the Court must decide:

- whether the information sought is “personal information”; and
- whether the disclosure would:
  - be prohibited by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340;
  - violate the taxpayer's right to privacy; *or*
  - result in unfair competitive disadvantage to the taxpayer.

*See Bellevue John Does 1–11*, 164 Wn.2d at 210. This exemption must be construed narrowly in order to further the purpose of full disclosure in chapter 42.56 RCW, as well as RCW 84.48.080.

**a. The Information King County Withheld Is Not “Personal Information.”**

The exemptions of RCW 42.56.230 apply only to “personal information,” which the Supreme Court has defined:

The PDA does not define “personal information.” “[P]ersonal” is ordinarily defined as “of or relating to a particular person: affecting one individual or each of many individuals: peculiar or proper to private concerns: not public or general.” Webster’s Third New International

Dictionary 1686 (2002). Thus, information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general constitutes personal information.

*Bellevue John Does 1–11*, 164 Wn.2d at 211 (identities and letters of direction in an individual’s personnel file *are* “personal information”).

At issue in this case is the information used by the government to equalize the personal property taxes across Washington’s 39 counties.<sup>3</sup> Information about specific items of personal property in the ratio audit is not “personal information” because it does not relate to or affect a particular individual or his or her private concerns. With identification of the taxpayers redacted from the ratio audit, the information is not particularized and is not “information that is not public or general.”

**b. The Information Would Not Violate the Taxpayers’ Right to Privacy.**

Personal information is exempt from disclosure *only* to the extent it would violate the taxpayer’s right to privacy. RCW 42.56.230(3)(b). On

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<sup>3</sup> The identities of the businesses who contributed personal property information is not at issue, because Hoppe is not seeking that information. The Act contemplates production of redacted materials:

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.

RCW 42.56.070(1). Notwithstanding having agreed to redactions, we are entitled to the entire Ratio Audit. As a matter of general principle, it is inconceivable that information that drives the state’s tax mechanism would not be disclosed.

the one hand, a “right to privacy” is generally considered the right of a natural person rather than a business (such as those included in the ratio audit). Even in King County’s briefing, the only authority set forth for protecting a *corporate* taxpayer’s “right to privacy” is really about its potential “competitive disadvantage,” a different inquiry. See CP 334 (quoting *U.S. v. Richey*, 924 F.2d 857, 861 (9th Cir. 1991) (“Likewise, a *corporate tax return* will contain detailed financial information which could potentially be *abused by competitors.*”); CP 333 (“right of *individuals* to privacy”).

On the other hand, as King County has conceded, the documents have been used by the government to assess the taxes of other taxpayers in Washington: personal property taxes in this state are assessed on a relative basis, not based on absolute value. They are no longer private. By virtue of the governmental action based on the documents, they are available to the public for inspection. *Bellevue John Does 1–11*, 164 Wn.2d at 215. No corporate taxpayer has a privacy interest in the information the government uses to assess others’ tax liability.

Further, there is no evidence that the information in the ratio audit—information pertaining to hundreds of taxpayers—is not readily ascertainable to a member of the public visiting the business. King County cannot meet its burden to show a violation of a right to privacy

without setting forth evidence that such a right exists as to each taxpayer in the audit—something King County has not done.

Finally, Hoppe is not asking for any corporate taxpayer's tax return, which King County argues is private. Instead, Hoppe is asking for the ratio audit—without identifying information—mandated by statute and used by the government to equalize taxes.

**c. The Information Sought Would Not Result in Unfair Competitive Disadvantage to the Taxpayer.**

The Act also exempts disclosure of a taxpayer's personal information provided in "connection with assessment or collection of any tax if the disclosure of the information to other persons *would* . . . result in unfair competitive disadvantage to the taxpayer." RCW 42.56.230(3)(b) (emphasis added).

The disclosure of the audit would not result in any unfair competitive disadvantage because Hoppe has no objection to redaction of identifying information.

But Hoppe is not charged with proving "no unfair competitive disadvantage." Instead, the statute tasks King County with the burden of proving that providing Hoppe with the ratio audit *would* result in unfair competitive disadvantage. None of the evidence set forth by King County rises to that level of proof. *See* CP 1171–72 ("*potential breach*"; "*may*

have potential use”; “could be used.”) The most that can be said based on that evidence is that disclosure *may* have the *untried potential* to tip off competitors to the type(s) of equipment a business owns. This is not sufficient to carry King County’s burden.

**d. Confidential Tax Information Is Not at Issue in This Case.**

RCW 42.56.230(3)(a) exempts from disclosure items described in RCW 84.08.210:

Tax information is confidential and privileged, and except as authorized by this section, neither the department nor any other person may disclose tax information.

RCW 84.08.210(2). However, only limited information is “tax information,” and therefore “confidential and privileged” under that statute:

For purposes of this section, “tax information” means confidential income data and proprietary business information obtained by the department in the course of carrying out the duties now or hereafter imposed upon it in this title that has been communicated in confidence in connection with the assessment of property and that has not been publicly disseminated by the taxpayer. The disclosure of which would be either highly offensive to a reasonable person *and not a legitimate concern to the public* or would result in an unfair competitive disadvantage to the taxpayer.

RCW 84.08.210(1) (emphasis added). The subsection has no application here. There are several reasons for this.

First, the statute carves out an exception which states the government is not prohibited from disclosing information otherwise available under chapter 42.56 RCW. RCW 84.08.210(3). That is, if the public disclosure act permits disclosure, this statutory subsection does not prohibit it.

Second, the exemption covers only information that is “not a legitimate concern to the public.” The ratio audit, which is the principal tool used to equalize taxes across Washington’s 39 counties, is of legitimate—even paramount—concern to the public.

Third, as discussed above, the disclosure would not result in an unfair competitive disadvantage to the taxpayer.

Fourth, the purpose of the exemption is to prohibit taxpayers from either: (a) nosing around in the personal details of other taxpayers; or (b) to prevent Taxpaying Business 1 from learning anything proprietary about the operations of the competition, Taxpaying Business 2. The public is entitled to every single portion of the ratio audit without regard to any desire of any single taxpayer. This is not because the information has been used in setting taxes for the audited businesses; it is because the information has been used in setting the taxes of other taxpayers.

**e. An Exemption Related to Excise Tax Is Irrelevant to Property Tax.**

King County argues that RCW 42.56.230(3)(a) exempts from disclosure items described in RCW 82.32.330. However, RCW Title 82 (“Excise Taxes”) applies only to *excise* taxes. Excise is a tax on the manufacture, sale, or use of goods, or on an occupation or activity. Black’s Law Dictionary 585 (7th Ed. 1999). Personal property tax, governed by *RCW Title 84*, is not an excise tax.

**f. An Exemption Related to Real Property Is Irrelevant to Personal Property.**

King County argues RCW 42.56.230(3)(a) exempts from disclosure items described in RCW 84.40.020 as another basis for withholding the ratio audit. However, this statute contains no proviso for confidential data related to *personal property*, only “confidential income data” related to real property. RCW 84.40.020. Hoppe does not seek information about real property at all in this public records request.

**2. RCW 42.56.070(1) Does Not Exempt the Ratio Audit from Disclosure.**

King County also refused disclosure in reliance on a second subsection of the Public Disclosure Act, which provides in relevant part:

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, this chapter, or

other statute which exempts or prohibits disclosure of specific information or records.

RCW 42.56.070(1). King County relies on the “specific exemptions of . . . other statute” language, but cites no “other statute” aside from those cross-referenced in RCW 42.56.230. Thus, RCW 42.56.070(1) is not an additional exemption in this context.

**E. King County Should Be Required to Pay Attorneys’ Fees and Costs.**

The public disclosure act permits a prevailing citizen to seek attorneys’ fees and costs:

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 less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

RCW 42.56.550(4). Pursuant to RAP 18.1 and the statute quoted above, Hoppe requests that the Court of Appeals award its reasonable attorney fees and expenses, as well as the discretionary assessment for the days Hoppe’s request was denied, upon reversal of the trial court’s order.

**VI. CONCLUSION**

The record shows the Washington State Department of Revenue has “confirmed that Table 12 is appropriate” for four taxpayers. If so,

then Table 12 should be appropriate to hundreds or thousands of other taxpayers in King County with machinery and equipment now being assessed at a 7.5 percent rate (formerly at 12 percent). If the Department of Revenue is correct—and a 12 percent depreciation rate is appropriate—then King County has made a manifest error in assessment, is aware of the error, and has made the deliberate determination to maintain non-uniformity of taxation.

The jurisprudence surrounding this subject matter leaves no room for doubt that the public's right to observe the inner workings of government cannot be restricted absent a document that clearly falls within the scope of one of the narrowly tailored, strictly construed exemptions:

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. RCW 42.17.251. Without tools such as the Public Records Act, government of the people, by the people, for the people, risks becoming government of the people, by the bureaucrats, and for the special interests. In the famous words of James Madison, "A Popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both." Letter to W. T. Barry, August 4, 1822, 9 The Writings of James Madison 103 (Gaillard Hunt Ed. 1910).

*Progressive Animal Welfare Society*, 125 Wn.2d at 251. King County is required to produce the ratio audit, and Hoppe's appeal should be granted.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of April, 2010.

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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington that on April 26, 2010, a copy of the foregoing BRIEF OF APPELLANT was delivered via ABC Legal Services to:

Michael J. Sinsky, Senior Deputy Prosecuting Attorney  
CIVIL DIVISION  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
Attorneys for Defendants

Signed this 26<sup>th</sup> day of April, 2010 at Seattle, Washington.



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Carol Hudson, Legal Secretary  
Gordon Tilden Thomas & Cordell LLP