

67275-4

67275-4

NO. 67275-4-I

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

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RESIDENT ACTION COUNCIL,

Respondent,

v.

SEATTLE HOUSING AUTHORITY,

Appellant.

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**BRIEF OF APPELLANT**

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## TABLE OF CONTENTS

INTRODUCTION .....	1
ASSIGNMENTS OF ERROR.....	2
ISSUES RELATED TO ASSIGNMENTS OF ERROR .....	3
STATEMENT OF THE CASE .....	5
A.    SHA maintains redacted copies of grievance-hearing decisions pursuant to 24 C.F.R. § 966.57. ....	5
B.    RAC requested copies of the grievance-hearing decisions under the PRA and SHA provided the redacted copies, where the unredacted copies are exempt from disclosure. ....	7
C.    Procedural History.....	9
ARGUMENT .....	13
A.    Standards or review. ....	13
B.    SHA provided RAC all that RAC was entitled to – grievance-hearing decisions redacted pursuant to 24 C.F.R § 966.57.....	13
C.    The PRA does not and cannot require SHA to create a new redacted document from categorically exempt files that are not subject to the PRA redaction provision. ....	19
D.    Nothing in the PRA required SHA to provide electronic documents to RAC.....	25
E.    The trial court erroneously awarded damages and injunctive relief, where SHA had no duty to create less-redacted versions of the categorically exempt grievance-hearing decisions.....	28
1.    RAC cannot be “adversely affected” by the lack of published procedures for requesting documents.....	30
2.    SHA does not assert any exemptions not listed in the PRA.....	30

3.	SHA had no duty to adopt policies for implementing 24 C.F.R. § 966.57(a), so RAC has no corresponding right. ....	31
4.	There is no federal regulation requiring SHA to explain deletions made under 24 C.F.R. § 966.57(a), and the PRA provision on this point does not apply. ....	32
5.	RAC had no legal right to receive paper records electronically. ....	34
6.	Damages are also inappropriate for the same reasons that the injunctive relief is inappropriate. ....	34
7.	The trial court erroneously denied SHA's request for a continuance, striking its brief on damages and injunctive relief. ....	36
	CONCLUSION .....	37

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<b><i>Build. Indus. Ass'n of Wa. v. McCarthy,</i></b> 152 Wn. App. 720, 218 P.3d 196 (2009) .....	25
<b><i>City of S. San Francisco Hous. Auth. v. Guillory,</i></b> 41 Cal. App. 4th Supp. 13, 49 Cal. Rptr. 2d 367 (1995) .....	13
<b><i>Diversified Wood Recycling, Inc. v. Johnson,</i></b> 161 Wn. App. 859, 251 P.3d 293 (2011) .....	13
<b><i>Dowell v. Comm'r of Transitional Assistance,</i></b> 424 Mass. 610, 677 N.E.2d 213 (1997) .....	15
<b><i>Farley v. Phila. Hous. Auth.,</i></b> 102 F.3d 697 (3rd Cir. 1996) .....	15
<b><i>Flowers v. Smith,</i></b> 726 F. Supp. 141 (S.D. Miss. 1988) .....	15
<b><i>Hill v. Ypsilanti Hous. Comm'n,</i></b> 2010 U.S. Dist. LEXIS 82556 (E.D. Mich. 2010).....	15
<b><i>Hous. Auth. of St. Louis Cnty. v. Lovejoy,</i></b> 762 S.W.2d 843 (Mo. App. 1988) .....	15
<b><i>Kucera v. Dep't of Transp.,</i></b> 140 Wn.2d 200, 995 P.2d 63 (2000).....	29, 30, 32, 34
<b><i>Lakota Cmty. Homes, Inc. v. Randall,</i></b> 2004 SD 16, 675 N.W.2d 437 (2004) .....	13
<b><i>Lindeman v. Kelso Sch. Dist. No. 458,</i></b> 127 Wn. App. 526, 111 P.3d 1235 (2005), <i>rev'd on</i> <i>other grounds</i> , 162 Wn.2d 196, 172 P.3d 929 (2007).....	20, 21

<b><i>Lindeman v. Kelso Sch. Dist. No. 458,</i></b> 162 Wn.2d 196, 172 P.3d 329 (2007).....	13, 20, 24
<b><i>Locke v. Pac. Tel. &amp; Tel. Co.,</i></b> 178 Wash. 47, 33 P.2d 1077 (1934).....	31, 34
<b><i>Mechling v. City of Monroe,</i></b> 152 Wn. App. 830, 222 P.3d 808 (2009), <i>rev. denied,</i> 169 Wn.2d 1007 (2010).....	27
<b><i>Mitchell v. Dep't of Corr.</i></b> ___ Wn. App. ___, 260 P.3d 249 (2011) .....	27, 28
<b><i>Nat'l Labor Relations Bd. v. Sears, Roebuck &amp; Co.,</i></b> 421 U.S. 132, 95 S. Ct. 1504, 44 L. Ed. 2d 29 (1975) .....	25
<b><i>Progressive Animal Welfare Soc'y v. Univ. of Wash.,</i></b> 125 Wn.2d 243, 884 P.2d 592 (1994).....	20
<b><i>Samuels v. D.C.,</i></b> 669 F. Supp. 1133 (D.D.C. 1987) .....	15
<b><i>Shepherd v. Weldon Mediation Servs., Inc.,</i></b> 2011 U.S. Dist. LEXIS 71448 (W.D. Wash. 2011) .....	15
<b><i>Smith v. Okanogan Cty.,</i></b> 100 Wn. App. 7, 994 P.2d 857 (2000) .....	25
<b><i>Sperr v. City of Spokane,</i></b> 123 Wn. App. 132, 96 P.3d 1012 (2004) .....	25
<b><i>Tyler Pipe Indus., Inc. v. Dep't of Revenue,</i></b> 96 Wn.2d 785, 638 P.2d 1213 (1982).....	29
<b><i>Watson v. Philadelphia Hous. Auth.,</i></b> 629 F. Supp. 2d 481 (E.D. Penn. 2009) .....	15
<b>STATUTES AND REGULATIONS</b>	
24 C.F.R. § 966.50.....	18
24 C.F.R. § 966.56(b)(3).....	6

24 C.F.R. § 966.57.....	passim
RCW 42.56.040 .....	30
RCW 42.56.070 .....	20, 30, 31, 32, 33
RCW 42.56.080 .....	26
RCW 42.56.120 .....	26, 28
RCW 42.56.210 .....	22, 23, 25
RCW 42.56.230 .....	passim
RCW 42.56.550(4).....	34, 35, 36
WAC 44-14-050 .....	26
WAC 44-14-00001 .....	26
WAC 44-14-00003 .....	26, 34
WAC 44-14-05001 .....	26
WAC 44-14-05002 .....	26
LAWS OF 2005, ch. 274, §§ 103, 401-03 .....	20
<b>RULES</b>	
RAP 2.5(a) .....	37
RAP 13.5 .....	5, 36
<b>OTHER AUTHORITIES</b>	
42 AM. JUR. 2D, <i>Injunctions</i> § 2, at 728 (1969).....	29

## **INTRODUCTION**

Pursuant to 24 C.F.R. § 966.57(a), Seattle Housing Authority (“SHA”) deleted names and “identifying references” from grievance-hearing decisions, making the documents available to those classes of persons defined by the C.F.R. SHA gave Resident Action Counsel (“RAC”) these redacted grievance-hearing decisions in response to RAC’s Public Records Act (“PRA”) request, making no further redactions. Yet in considering RAC’s claim that SHA redacted the grievance-hearing decisions too heavily, the trial court failed to apply the C.F.R., instead applying the PRA’s broad disclosure policy. SHA complied with 24. C.F.R. § 966.57(a) – the court erred in applying inapplicable PRA policy.

The court erred again in ordering SHA to create new, less-redacted versions of the grievance-hearing decisions for RAC. To do so, SHA would have to redact categorically exempt client-files, which the PRA does not require. And a wealth of common law provides that a public agency has no duty to create new records in response to a PRA request.

The court erroneously awarded RAC damages, and enjoined SHA to comply with inapplicable PRA provisions. This Court should reverse.

## **ASSIGNMENTS OF ERROR**

1. The trial court erred in finding that the only time SHA gave a reason for not providing electronic copies was in oral argument. CP 167, FF 11.<sup>1</sup>

2. The court erred in entering the Order to Comply with the Public Records Act, ordering SHA to (CP 171):

(a) produce all grievance-hearing decisions subject to RAC's request, removing only names and identifying information of SHA tenants, and removing only that portion of the address necessary to prevent identification;

(b) provide a distinguishing code or mark to differentiate between redactions;

(c) provide all documents in electronic form; and

(d) pay RAC costs, fees, and damages.

3. The court erred in denying SHA's motion for a continuance. CP 285.

4. The court erred in striking SHA's opposition to RAC's request for damages and injunctive relief. CP 310.

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<sup>1</sup> The Order to Comply with the PRA contains enumerated findings followed by the court's analysis. CP 165-72. The analysis does not contain any findings, and SHA does not believe it is necessary to assign error to the analysis. To the extent that this Court determines otherwise, SHA assigns error to any findings in the analysis section.

5. The court erred in entering the Order for PRA Damages and Equitable Relief, ordering SHA to pay damages in the amount of \$25 per day from July 1, 2010, and enjoining SHA to:

- (a) publish procedures for requesting public records;
- (b) publish a list of laws other than those in the PRA exempting disclosure of SHA documents;
- (c) establish a policy and procedure for redacting grievance-hearing decisions;
- (d) establish a policy and procedure for providing written explanations whenever SHA withholds a record or a portion of a record; and
- (e) provide records in electronic format when requested.

CP 305-311.<sup>2</sup>

6. The trial court erred in entering an order for costs and fees. CP 329-30.

### **ISSUES RELATED TO ASSIGNMENTS OF ERROR**

1. Did the trial court err in ruling that SHA redacted the requested grievance-hearing decisions more heavily than the PRA allows, and in ordering SHA to create new, less redacted copies for

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<sup>2</sup> SHA does not believe it is necessary to assign error to the Order for PRA Damages and Equitable Relief, as the order does not contain any findings. To the extent that this Court determines otherwise, SHA assigns error to any findings in the order.

RAC, where SHA complied with 24 C.F.R. § 966.57(a), requiring housing authorities to delete “all names and identifying references” from grievance-hearing decisions and to make them available to potential complainants?

2. Even assuming arguendo that the PRA governs SHA's disclosure mandated by 24 C.F.R. § 966.57(a), did the court incorrectly rule that SHA violated the PRA, where (1) the unredacted grievance-hearing decisions are categorically exempt from disclosure, so are not subject to the PRA provision requiring disclosure of otherwise exempt documents that can be redacted; and (2) SHA cannot be required to create new otherwise non-existent documents for RAC?

3. Did the trial court improperly order SHA to provide RAC with electronic copies, where there is no PRA provision requiring public entities to convert documents existing only in paper form into electronic form, and where the model rules on the issue are advisory only and create no legal duty?

4. Did the trial court erroneously (a) deny SHA's motion for a continuance to file its objection to RAC's motion for damages and injunctive relief; and (b) strike SHA's opposition, where SHA's motion was based on the stipulation and order suspending briefing

pending the resolution of SHA's motion for discretionary review, and SHA was in the process of seeking discretionary review from the Supreme Court under RAP 13.5?

5. Did the trial court erroneously award RAC damages and injunctive relief, where SHA has no duty to (a) create less-redacted grievance-hearing decisions from categorically exempt files; or (b) follow inapplicable PRA procedural provisions, particularly where no similar provision exists in the applicable C.F.R.s?

#### **STATEMENT OF THE CASE**

**A. SHA maintains redacted copies of grievance-hearing decisions pursuant to 24 C.F.R. § 966.57.**

SHA is a government agency, providing affordable housing to low-income people in Seattle. CP 27, 35. It receives a great portion of its funding – 65% in 2010 – from the federal Department of Housing and Urban Development (“HUD”). CP 27, 36.

SHA's public housing tenants are entitled to an informal grievance hearing if they have been adversely affected by SHA's acts or failures to act pursuant to the tenant's lease or HUD regulations. CP 43, 124-25, 146-48. Most grievance hearings involve the tenant's failure to pay rent or to comply with a provision

of the tenant's lease, which includes failure to report income, unauthorized persons living in the unit, and drug use. CP 148.

HUD regulations direct that the hearings are private unless the tenant requests otherwise. CP 151; 24 C.F.R. § 966.56(b)(3). Although SHA's operating manual provides that the hearings are public unless the tenant requests a private hearing, the parties agree that when SHA's policies and HUD's policies conflict, HUD's policies control. CP 159 n.2; RP 23-24.

SHA contracts with private parties to serve as hearing officers for the grievance hearings. CP 147. The hearing officer sends a hard-copy of its written decision to SHA, who mails a copy to the interested parties. CP 147. Hearing officers have never sent SHA decisions in an electronic format. CP 147.

Pursuant to HUD regulations, SHA places a copy of these decisions in the tenant's file. CP 148; 24 C.F.R. § 966.57(a)<sup>3</sup>. SHA policies and HUD regulations require SHA to keep the grievance-hearing decisions strictly confidential, prohibiting anyone from accessing the tenant's file except for the tenant, the tenant's representative (by written consent), authorized housing staff, and authorized HUD staff. CP 148.

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<sup>3</sup> All relevant statutes and regulations are attached.

HUD regulations also require SHA to keep a copy of grievance-hearing decisions, "with all names and identifying references deleted," on file and made available for inspection by potential complainants, their representatives, and hearing officer personnel. CP 146, 148; 24 C.F.R. § 966.57(a). HUD does not define "identifying references," leaving it up to individual housing authorities to implement the C.F.R. as they see fit. 24 C.F.R. § 966.57; RP 22-23.

SHA keeps paper copies of the redacted decisions in a physical file. CP 148. SHA does not receive electronic decisions, and does not convert the hard-copies it receives into electronic form. CP 147-48. None of the decisions are preserved electronically. CP 148, 167 ¶ 9.

**B. RAC requested copies of the grievance-hearing decisions under the PRA and SHA provided the redacted copies, where the unredacted copies are exempt from disclosure.**

RAC is an organization of elected tenant leaders living in the SHA's public housing. CP 28. On June 17, 2010, RAC submitted a PRA request for copies of all grievance-hearing decisions and of all contracts with the hearing officers, asking for electronic copies. CP 38-39. The request asked for documents dating back to June 17,

2010, the same day as the request, causing the public disclosure officer, Nancy Sundt, to return the request, asking RAC to review the dates. CP 39-40.

RAC clarified that it wanted the documents dating back to 2007 and Sundt immediately answered that she would respond by July 2. CP 40-41, 45. On July 1, 2010, SHA messengered RAC 820 pages of documents, including the following:

- ◆ The requested grievance hearing officer contracts;
- ◆ Redacted copies of the requested grievance-hearing decisions. (CP 50-71);
- ◆ 259 pages of decisions from its “ADA/504 Committee;”
- ◆ 95 pages of decisions from its “informal hearings” concerning rejected public housing applications;
- ◆ 24 pages of miscellaneous letters; and
- ◆ 58 pages of duplicates.

CP 29-30. SHA did not explain the redactions or why the documents were not in electronic form. CP 30.

SHA billed RAC \$133.00 – copying costs and a \$10 messenger fee. CP 29. RAC sent SHA a check for \$89.50 with a letter explaining its reductions. CP 30-31.<sup>4</sup>

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<sup>4</sup> RAC claimed that it erroneously paid \$89.50, calculating it owed only \$71.85 after its reductions. RP 30-31.

**C. Procedural History.**

RAC filed an action in King County Superior Court, alleging that SHA's disclosure violated the PRA. CP 6. RAC also alleged that SHA erroneously failed to publish procedures for requiring public records, improperly charged for reproducing the files, and erroneously failed to provide electronic copies. CP 6.

RAC filed a motion for an order to show cause and an order compelling production. CP 12-26. RAC agreed that SHA "appears to have provided all the records RAC[] requested," but argued that SHA should justify all the redactions, that the redactions were improper or excessive, and that the documents should have been provided electronically. CP 13, 15-24.

In support of its motion, RAC submitted seven grievance-hearing decisions showing SHA's redactions. CP 31-32, 50-85. RAC claimed that three of these decisions were redacted less than is required and that some decisions were "redacted more heavily than allowed by law," without identifying which ones or how many.

CP 32. Only one of the remaining four grievance-hearing decisions was within the timeframe of RAC's request. CP 50-71.<sup>5</sup>

In that decision, SHA redacted at some points the names of the tenant, the tenant's girlfriend, the property manager, a police officer, and the apartment name and unit number. CP 32, 67-71. But the first page of the decision identifies the tenant's girlfriend, the property manager, the police officer by name, and the apartment name and number where the tenant resided. CP 67. The decision also uses descriptors such as "participant" or "resident." CP 50-71.

The trial court ruled that the grievance-hearing decisions in the tenants' files are categorically exempt from disclosure under RCW 42.56.230(1). CP 168-69. The court also ruled that the copies SHA redacted and made available to potential complainants under 24 C.F.R. § 966.57 were not exempt. CP 169-70. The court did not address SHA's redactions under the C.F.R., ruling that the redactions were too broad under the "broad policy of disclosure

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<sup>5</sup> In its supporting declaration, RAC incorrectly asserts that the earliest decision produced was May 8, 2010, identifying that decision as Exhibit F. CP 31. Exhibit F is a grievance-hearing decision dated May 8, 2007, which appears to be the earliest decision. CP 49-54. In that decision, SHA redacted the first several words of the title to a newspaper article. CP 52.

mandated by the state” PRA. CP 170. The trial court also found that SHA gave no reason for failing to provide the documents electronically, and improperly charged RAC for the \$10 messenger fee and for the duplicative or unrequested records. CP 170.

The trial court ordered SHA to produce all grievance-hearing decisions subject to the request by October 29, 2010, redacting only the names and identifying information of the tenants. CP 171. The court also ordered SHA to use a “distinguishing code or mark” to distinguish between redacted items, without providing any authority for this requirement. CP 171. This ruling would require SHA to create a new set of redacted documents specifically for RAC using the unredacted, exempt grievance-hearing decisions in client files. CP 95-96, 171.

The court ordered SHA to provide the documents in an electronic format, and to refund \$17.65 to RAC for the messenger and duplicate charges. CP 171. The court determined that RAC would be entitled to costs, fees, and damages, reserving these issues and injunctive relief for further briefing. CP 171-72.

SHA sought discretionary review from this Court, and the trial court entered a stipulation and order suspending briefing pending “the outcome” of SHA’s motion. CP 173, 184. When this

Court denied review, SHA sought discretionary review in the Supreme Court, but RAC moved for damages and injunctive relief, despite the stipulation and order. CP 189, 228-34, 280-81. The trial court denied SHA's motion to continue briefing on damages and equitable relief, striking SHA's brief filed days later. CP 235-38, 285, 310.

The court awarded RAC damages in the amount of \$25 per day until SHA produced new, un-redacted grievance-hearing decisions. CP 309. The trial court also entered an injunction ordering SHA to (1) publish its procedures for requesting public records; (2) publish a list of laws exempting information from disclosure; (3) establish a policy and procedure for redacting grievance-hearing decisions; (4) establish a policy and procedure for providing written explanations when it withholds a record; and (5) provide records in electronic format when requested. CP 310.

Following an uncontested motion, the trial court also ordered SHA to pay RAC its costs and fees, totaling \$34,025.33. CP 329-30. SHA timely appealed.

## ARGUMENT

### A. Standards or review.

The appellate courts review *de novo* trial court decisions interpreting HUD regulations and addressing compliance with HUD regulations. ***Lakota Cmty. Homes, Inc. v. Randall***, 2004 SD 16, 675 N.W.2d 437, 440-43 (2004); See also ***City of S. San Francisco Hous. Auth. v. Guillory***, 41 Cal. App. 4th Supp. 13, 16, 19-20, 49 Cal. Rptr. 2d 367 (1995). The appellate courts also review PRA challenges *de novo*. ***Lindeman v. Kelso Sch. Dist. No. 458***, 162 Wn.2d 196, 200-01, 172 P.3d 329 (2007). *De novo* review applies to statutory-interpretation questions and to agency decisions to withhold records. ***Diversified Wood Recycling, Inc. v. Johnson***, 161 Wn. App. 859, 885, 251 P.3d 293 (2011); ***Lindeman***, 162 Wn.2d at 200.

### B. **SHA provided RAC all that RAC was entitled to – grievance-hearing decisions redacted pursuant to 24 C.F.R § 966.57.**

SHA gave RAC copies of grievance-hearing decisions with all names and identifying references deleted, pursuant to 24 C.F.R. § 966.57. HUD leaves it up to the housing authorities to define “identifying references,” and SHA reasonably executed HUD’s directives. But the trial court did not rule on this point – it ruled that

SHA violated the PRA, based largely on the PRA's "broad policy of disclosure." CP 170. SHA complied with the controlling C.F.R. – the court erred in applying the PRA. This Court should reverse.

Following 24 C.F.R. § 966.57(a), SHA maintains two copies of all grievance-hearing decisions: an unredacted copy in the tenant's file, and a second copy with "all names and identifying references deleted." CP 168 (quoting 24 C.F.R § 966.57(a)). Also pursuant to the C.F.R., SHA makes the redacted copy available to "a prospective complainant, his representatives, or the hearing panel or hearing officer." *Id.* In short, the redacted grievance-hearing decisions exist only because of the C.F.R. and are available only to those persons identified in the C.F.R. *Id.*

It was under the C.F.R. that SHA provided the redacted grievance-hearing decisions to RAC. RP 17-18. RAC, an "organization of elected public housing leaders" is made up of tenants in Seattle public housing. CP 165. RAC's representative requested the grievance-hearing decisions (and other documents) on RAC's behalf. CP 165-66. SHA provided the redacted grievance-hearing decisions to RAC under the C.F.R.:

THE COURT: So your provision is **not** that you redacted these to give to RAC but that they were already redacted in that separate HUD-required maintained file?

[SHA]: Right, correct.

RP 17-18 (emphasis added).

The trial court asked SHA for “authority” for its position that names and identifying references as used in 24 C.F.R. § 966.57(a), includes all names of anyone appearing, all addresses, and any other item, such as locations, that may be an identifier under certain fact patterns. RP 22. Counsel correctly responded that there is no authority defining “identifying references.”<sup>6</sup> RP 22-23. Rather, HUD leaves it up to each Housing Authority to interpret the C.F.R. and to remove all names and identifying references as it sees fit (RP 18, 22-23):

[SHA]: . . . there’s no HUD standard, there’s no legal standard of how redaction is supposed to be done.

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<sup>6</sup> Fifty-one state and federal courts have cited 24 C.F.R. § 966.57. Many courts cite the regulation to describe the grievance hearing procedures. See, e.g., *Watson v. Philadelphia Hous. Auth.*, 629 F. Supp. 2d 481, 486 (E.D. Penn. 2009); *Dowell v. Comm’r of Transitional Assistance*, 424 Mass. 610, 616, 677 N.E.2d 213 (1997). Others explain that housing authorities are bound by hearing officers’ decisions or explain that the decisions do not affect tenants’ rights during a trial *de novo*. See, e.g., *Farley v. Phila. Hous. Auth.*, 102 F.3d 697, 699, 702-03 (3rd Cir. 1996); *Flowers v. Smith*, 726 F. Supp. 141, 146 (S.D. Miss. 1988); *Hous. Auth. of St. Louis Cnty. v. Lovejoy*, 762 S.W.2d 843, 845 (Mo. App. 1988). A small minority address subsection (a), but none address the meaning of “identifying information.” See, e.g., *Shepherd v. Weldon Mediation Servs., Inc.*, 2011 U.S. Dist. LEXIS 71448 (W.D. Wash. 2011); *Hill v. Ypsilanti Hous. Comm’n*, 2010 U.S. Dist. LEXIS 82556 (E.D. Mich. 2010); *Samuels v. D.C.*, 669 F. Supp. 1133, 1138 (D.D.C. 1987).

...

[SHA]: . . . There is no authority, your Honor. HUD's guidance is what you see here, and every Housing Authority interprets it as it understands it.

SHA did not overstep HUD directives. 24 C.F.R § 966.57(a) directs SHA to remove "all names" – not some names, tenant and live-in family-member names, or "client/resident witness[]" names. CP 169. "[A]ll names" is not limited to persons who could identify the tenant. 24 C.F.R § 966.57(a). As such, SHA did not err in occasionally removing the names of witnesses, police officers and SHA employees. CP 166. And SHA had discretion to remove items like the title of a newspaper article, where the article included the client's name and other identifying references.<sup>7</sup> CP 52, 166.

RAC also did not provide any authority defining identifying references. CP 169. RAC's only argument touching on this point is the single conclusory sentence that "[s]ome of the grievance decisions SHA produced had redactions not even authorized by HUD." CP 32. But RAC provided no argument or authority, failing to point to even one redaction that supposedly violated 24 C.F.R §

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<sup>7</sup> The single grievance-hearing decision in the record that deleted the title of a newspaper article predates the scope of RAC's request. CP 50-54. In any event, a quick Google search revealed this article, which contains the client's name and other identifiers. <http://www.seattleweekly.com/2007-03-28/news/project-greenbribe/>

966.57. *Id.* Rather, RAC only cited to a declaration, which summarily concludes that “some” of the grievance-hearing decisions were “redacted more heavily than allowed by law,” without any reference to the “law” RAC was referring to. CP 157 (citing CP 32).

RAC provided only one grievance-hearing decision within the timeframe of its request that is supposedly redacted too “heavily.” CP 32; *supra*, Statement of the Case § C. But that decision includes the names of the tenant’s girlfriend, the property manager, and the police officer, as well as the tenant’s apartment building and number. *Id.*

RAC was plainly focused on SHA’s compliance with the PRA, not the C.F.R. CP 156-57. And the trial court did not rule on SHA’s compliance with the C.F.R., instead analyzing SHA’s disclosures under the PRA. CP 168-69. This is where the court erred. *Id.*

The court turned to the PRA to interpret 24 C.F.R. § 966.57(a), ruling that SHA could redact only “identifying information of the grievant” and family members residing with him or her, and any “client/resident” witnesses. CP 169-70. Although the court did

not define “identifying information,” it ruled that SHA redacted more than was permitted under the PRA’s “broad policy of disclosure”:

Other than to maintain the privacy provided by RCW 42.56.230(1) of client records, there is no reason to redact anything other than identifying information of the grievant, his or her family member residing at the locale, and other client/resident witnesses in the hearing. Neither party puts forward any authority which interprets the reference to “identifying information” in 24 CFR 966.57 any more restrictively. Given the broad policy of disclosure mandated by the state Public Records Act, redactions should go no further.

The trial court plainly erred – there is no basis for applying the PRA’s broad disclosure policy to documents created and produced pursuant to 24 C.F.R. § 966.57(a), where HUD has no similar policy. 24 C.F.R. § 966.50. HUD’s purpose statement does not address the disclosure of any documents HUD directs housing authorities to create and store. *Id.* 24 C.F.R. § 966.57(a) is also silent on the policy underlying its provisions.

24 C.F.R. § 966.57(a) could not reasonably be interpreted to require broad disclosure. Unlike documents produced under the PRA, redacted grievance-hearing decisions are not available to the public at large, but only to those fitting under HUD’s narrow classification – potential complainants, their representatives, and the hearing panel or officer. 24 C.F.R. § 966.57(a) strikes a

balance between protecting client confidences and providing potential complainants with information that might be relevant to their claims.

In short, the trial court failed to address the real issue – whether SHA properly redacted the grievance-hearing decisions under 24 C.F.R. § 966.57(a). There is no basis for using policies underlying the PRA to govern that inquiry.

**C. The PRA does not and cannot require SHA to create a new redacted document from categorically exempt files that are not subject to the PRA redaction provision.**

The trial court correctly concluded that the unredacted grievance-hearing decisions in SHA's client files are categorically exempt from disclosure under RCW 42.56.230(1). CP 169. The court erred, however, in ordering SHA to create new documents for RAC, which would necessarily require SHA to redact these categorically exempt files. CP 96, 171. The PRA does not require redaction of categorically exempt documents, and a wealth of common law provides that the PRA does not require public agencies to create otherwise non-existent records. This Court should reverse.

The PRA requires public agencies to disclose all public records that are not specifically exempt from disclosure. RCW

42.56.070(1); *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 250, 884 P.2d 592 (1994) (interpreting an identical provision under the former Public Disclosure Act, RCW 42.17.310(1)). The PRA specifically exempts from disclosure the “[p]ersonal information in any files maintained for . . . clients of public institutions . . . or welfare recipients.” RCW 42.56.230(1). Subsection (1) does not limit “personal information” to information that violates a privacy right, unlike the other subsections, but provides “heightened protection to a specific, narrow class of persons distinct from those discussed in other PDA exemptions.” *Lindeman v. Kelso Sch. Dist. No. 458*, 127 Wn. App. 526, 534-35, 111 P.3d 1235 (2005), *rev’d on other grounds*, 162 Wn.2d 196, 172 P.3d 929 (2007).<sup>8</sup> In other words, subsection (1)(a) creates a categorical exemption:

For public disclosure purposes, the Legislature has drawn an express distinction between clients and public institutions, such as public school students, and persons involved in running our public institutions, such as public employees or elected or appointed officials. . . . By omitting from subsection (1)(a) the last clause of subsection (1)(b), “to the extent that disclosure would violate their right to privacy,” the Legislature thus created broader protection from public

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<sup>8</sup> *Lindeman* analyzes former RCW 42.17.310, the predecessor statute to RCW 42.56.230. *Lindeman*, 162 Wn.2d at 199 n.1. The recodification was not intended to “effectuate any substantive change to any public inspection and copying exemption.” LAWS OF 2005, ch. 274, §§ 103, 401-03.

disclosure for clients of government institutions, such as students.

...

We further note that subsection (1)(a) reflects the legislature's decision to provide heightened protection to a specific, narrow class of persons distinct from those discussed in other PDA exemptions. Unlike the other PDA exemptions, subsection (1)(a) applies to information related to persons in public schools, patients and clients of public institutions or public health agencies, and welfare recipients. Because of the nature of these agencies, their clients, and the services they provide, much of the personal information gathered in administering these programs relates to a *specific individual's typically confidential needs or evaluation* rather than to the general administration of government by those acting on behalf of our government.

**Lindeman**, 127 Wn. App. at 534-35 (citation omitted, emphasis original).

The trial court correctly concluded that the unredacted grievance-hearing decisions in the client files are categorically exempt. CP 169. RAC all but conceded this point (CP 18):

The Public Records Act does exempt “[p]ersonal information in any files maintained for . . . clients of public institutions or public health agencies, or welfare recipients” from disclosure. RCW 42.56.230(1). SHA public housing tenants are presumably clients of a public institution or welfare recipients (or both), and administrative grievance decisions often have contents that could potentially constitute “personal information.” Thus, at least some SHA records containing public housing tenant names, and perhaps other identifying information, appear exempt from disclosure. See RCW 42.56.230(1).

The trial court went on to hold that the redacted decisions on file for prospective complainants are not categorically exempt under RCW 46.56.230(1). CP 169. This is irrelevant – SHA produced those files.

But the court erred in going a step further, ruling that SHA had to create a new, less redacted version of the grievance-hearing decisions for RAC. CP 171. The only way SHA could accomplish this would be to go back to the categorically exempt decisions in the client files and redact them according to the PRA and the court's amorphous instructions. CP 95-96, 171. There are (at least) two problems with this court-imposed requirement: (1) categorically exempt files are not subject to the PRA redaction provision (RCW 42.56.210); and (2) the court cannot require SHA to create new documents specifically for RAC.

Under RCW 42.56.210, some exempt documents lose their exempt status and can be overturned, if it is possible to delete the information giving rise to the exemption:

[T]he exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought.

On its face, this redaction rule applies only to documents falling under the limited exemptions in RCW 42.56.230(2) & (3), exempting personal information in files maintained for employees, appointees, or elected officials of any public agency, or information required of a taxpayer in connection with an assessment or collection of tax, *to the extent such disclosure would violate their rights to privacy*. Such records lose their exempt status if the private information can be redacted. RCW 42.56.210.

This § .210 exception does not apply to records categorically exempted under RCW 42.56.230(1), including records maintained for clients of public institutions. RCW 42.56.230(1) exempts all personal information of government institution clients, regardless of whether the disclosure of such information “would violate their privacy rights.” *Compare* RCW 42.56.230(1) *with* §§ .230(2) & (3). The privacy-right language in sections (2) and (3) is not found in section (1). The trial court plainly erred in applying § .210 to categorically exempted documents and ordering SHA to provide redacted copies of records categorically exempt from disclosure.

This plain-language reading is consistent with the “broader protection from public disclosure” the Legislature provided clients of public institutions, by categorically exempting their files from

disclosure, regardless of whether “disclosure would violate their right to privacy.” *Lindeman*, 127 Wn. App. at 334. It is also consistent with *Lindeman’s* recognition that much of the information that is categorically exempt from disclosure “relates to a *specific individuals typically confidential needs*,” not to “the general administration of government” by government employees. 127 Wn. App. at 335 (emphasis in original).

In any event, SHA does not have to create new documents for RAC. As discussed above, the trial court correctly found (and RAC all but conceded) that the unredacted grievance-hearing decisions in client files are categorically exempt under RCW 42.56.230(1). CP 18, 169. As such, the only existing documents that SHA may produce are the redacted copies with all names and identifying references deleted. 24 C.F.R. § 966.57(a). By ordering SHA to provide another set of redacted documents and to produce them in electronic format, the court ordered SHA to create new documents for RAC using the categorically exempt files. CP 96, 171. This violates a great deal of controlling law:

Under the Freedom of Information Act, [which the PRA “closely parallels,]” an agency is not required to create a record which is otherwise non-existent. ... We agree and determine there is also no such duty under the State Act.

**Smith v. Okanogan Cty.**, 100 Wn. App. 7, 13-14, 994 P.2d 857 (2000) (citing **Nat'l Labor Relations Bd. v. Sears, Roebuck & Co.**, 421 U.S. 132, 161-62, 95 S. Ct. 1504, 44 L. Ed. 2d 29 (1975)); accord **Build. Indus. Ass'n of Wa. v. McCarthy**, 152 Wn. App. 720, 734, 218 P.3d 196 (2009); **Sperr v. City of Spokane**, 123 Wn. App. 132, 136-37, 96 P.3d 1012 (2004).

In sum, even if the PRA applied, the grievance-hearing decisions in client files are categorically exempt. These documents are not subject to the PRA's redaction exception (RCW 42.56.210) and SHA is not required to create new document for RAC in any event.

**D. Nothing in the PRA required SHA to provide electronic documents to RAC.**

The trial court erroneously found that SHA violated the PRA by failing to give RAC electronic copies, where nothing in the PRA requires public agencies to produce electronic documents. While the PRA model rules recommend that public agencies produce electronic copies when requested, the rules are not binding and create no legal duty. RAC wanted electronic copies to cut costs, but the costs would have been the same either way. This Court should reverse.

The PRA does not address the precise question raised here – whether a public agency that maintains only paper copies must produce documents electronically. Public agencies must make records “available for inspection and copying,” and may impose a “reasonable charge . . . for providing copies of public records.” RCW 42.56.080 & .120. Neither PRA section addressing copying records specifically addresses electronic copies. *Id.* Section .120 talks at some length about photocopies. RCW 42.56.120. In short, SHA did not violate the PRA by producing paper copies, where there is no PRA requirement to produce electronic copies.

The trial court ordered SHA to provide RAC electronic copies based on two comments to WAC 44-14-050, a PRA model rule providing that an agency “will” produce documents electronically when asked to do so, if the agency already has the documents stored electronically, or stored in a format that is “reasonably translatable” to electronic format. WAC 44-14-00001; CP 170 (citing comments 44-14-05001 & -05002). The model rules and accompanying comments are “advisory only” – they are not binding, create no legal duty, and use “should” or “may” precisely because they are “permissive, not mandatory” (WAC 44-14-00003):

The model rules, and the comments accompanying them, are advisory only and do not bind any agency. Accordingly, many of the comments to the model rules use the word “should” or “may” to describe what an agency or requestor is encouraged to do. The use of the words “should” or “may” are permissive, not mandatory, and are not intended to create any legal duty.

This Court has recognized that the model rule does not create an “express obligation” to provide documents electronically. ***Mechling v. City of Monroe***, 152 Wn. App. 830, 850, 222 P.3d 808 (2009), *rev. denied*, 169 Wn.2d 1007 (2010). There, the City of Monroe failed to provide electronic copies of e-mail messages, as requested. ***Mechling***, 152 Wn. App. at 838, 850. Although this Court instructed the trial court to determine whether producing the emails electronically was reasonable and feasible, it rejected the argument that the City had to electronically produce redacted e-mails, where it would have to print out the e-mails to redact them and then scan them back into electronic format. 152 Wn. App. at 850; ***Mitchell v. Dep’t of Corr.*** \_\_\_ Wn. App. \_\_\_, ¶¶ 18-21, 260 P.3d 249 (2011).

It would be equally inappropriate to require SHA to scan in documents that it does not already possess in an electronic form. The trial court erroneously concluded that an advisory, non-binding rule and comments – that “are not intended to create any legal

duty,” require SHA to create and produce electronic documents. *Id.*; CP 170, 171.

And providing hard copies was not inconsistent with RAC’s request. RAC requested electronic documents for one reason – “to minimize reproduction costs” it knew it would be responsible for under RCW 42.56.120. CP 41. Providing electronic copies would not have minimized reproduction costs – it would have cost SHA the same to create PDFs as to photocopy its hard copies. CP 96.

In sum, SHA has no obligation to produce electronic documents, and it would not have saved RAC any money anyway.

**E. The trial court erroneously awarded damages and injunctive relief, where SHA had no duty to create less-redacted versions of the categorically exempt grievance-hearing decisions.**

As discussed above, SHA had no duty to create redacted versions of the grievance-hearing decisions in response to RAC’s request. *Supra*, Argument § C. RAC has no right to the categorically exempt grievance-hearing decisions in client files, and SHA produced the only non-exempt grievance-hearing decisions it has. To have given RAC anything else, SHA would have had to re-redact the categorically exempt decisions, which the PRA does not require. Yet the injunctive relief requires SHA to do just that, and

the damages award penalizes SHA for failing to have done so in the first instance. This Court should reverse.

Injunctive relief is an “extraordinary remedy” that “should not be lightly indulged in, but should be used sparingly and only in a clear and plain case.” *Kucera v. Dep’t of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000) (quoting 42 AM. JUR. 2D, *Injunctions* § 2, at 728 (1969)). An injunction must be tailored to prevent a specific harm – it is not intended to protect “a plaintiff from mere inconveniences or speculative and insubstantial injury.” *Tyler Pipe Indus., Inc. v. Dep’t of Revenue*, 96 Wn.2d 785, 796, 638 P.2d 1213 (1982). A party seeking an injunction must prove: (1) a clear legal or equitable right; (2) a well-grounded fear of immediate invasion of that right; and (3) actual or impending substantial harm. *Kucera*, 140 Wn.2d at 209-10 (quoting *Tyler*, 96 Wn.2d at 792).

The trial court erroneously granted injunctive relief, ordering SHA (1) to publish procedures for requesting public records; (2) to publish a list of applicable exemptions other than those in the PRA; (3) to establish policies for redacting grievance-hearing decisions; (4) to establish policies for providing written explanations explaining redactions; and (5) to provide records in electronic format when

requested. CP 310. The injunction is improper, where RAC has no legal right to these remedies and suffered no substantial injury. *Kucera*, 140 Wn.2d at 209-10.

**1. RAC cannot be “adversely affected” by the lack of published procedures for requesting documents.**

RAC plainly knew how to request records from SHA, and does not claim otherwise. CP 28-32. RCW 42.56.040, which directs public agencies to publish procedures for requesting records, specifically provides that an agency’s failure to publish procedures does not “adversely affect[.]” a requesting party:

Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be . . . adversely affected by[.] a matter required to be published or displayed and not so published or displayed.

This statute precludes injunctive relief – RAC was not “adversely affected,” so did not suffer a substantial injury necessary for injunctive relief. *Kucera*, 140 Wn.2d at 209. The trial court plainly erred in enjoining SHA to publish procedures.

**2. SHA does not assert any exemptions not listed in the PRA.**

RCW 42.56.070(2) requires an agency to publish a list of laws, “other than those listed in” the PRA, that “the agency believes exempts or prohibits disclosure”:

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.

SHA plainly stated that it "has no knowledge of any law not listed in the PRA that exempts or prohibits disclosure of records." *Id.* Rather, SHA created the redacted grievance-hearing decisions under 24 C.F.R. § 966.57(a), specifically requiring SHA to create documents for public dissemination. CP 18, 169. The court erroneously enjoined SHA to comply with RCW 42.56.070(2), which does not apply.

**3. SHA had no duty to adopt policies for implementing 24 C.F.R. § 966.57(a), so RAC has no corresponding right.**

Without citing any authority, the trial court ordered SHA to "[e]stablish a policy and procedure for redacting grievance hearing decisions (and possibly other records as well) to remove only names and client-identifying information, as required by 24 CFR § 966.57(a)."<sup>9</sup> CP 310. There is no federal provision requiring SHA to do so. Since SHA has no duty to adopt procedures to implement 24 C.F.R. § 966.57(a), RAC has no right to such procedures. ***Locke v. Pac. Tel. & Tel. Co.***, 178 Wash. 47, 53, 33 P.2d 1077

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<sup>9</sup> 24 CFR. § 966.57(a) applies only to grievance-hearing decisions, so any policy or procedure for implementing the C.F.R. could not apply to "other records." CP 310.

(1934) (“There certainly can be no right without a corresponding duty”). Absent a clear legal right, injunctive relief is inappropriate. **Kucera**, 140 Wn.2d at 209-10.

Additionally, there plainly is no PRA provision requiring SHA to adopt a policy for implementing a federal regulation, and there appears to be no PRA provision requiring SHA to adopt a policy for implementing redactions required under the PRA. Even assuming *arguendo* that the PRA requires public agencies to adopt implementing policies, such provisions would not control here.

SHA did not delete anything pursuant to the PRA or to protect a privacy interest protected by the PRA. See RCW 42.56.070(1). SHA deleted “all names and identifying references” from the grievance-hearing decisions under 24 C.F.R. § 966.57(a). These deletions pre-existed and were entirely non-responsive to RAC’s request. As such, the PRA could not provide a basis for requiring SHA to adopt a procedure implementing the C.F.R.

- 4. There is no federal regulation requiring SHA to explain deletions made under 24 C.F.R. § 966.57(a), and the PRA provision on this point does not apply.**

An agency deleting information pursuant to the PRA must explain its deletions “fully in writing”:

(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 (6) 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.

RCW 42.56.070(1). This rule plainly applies only to deletions made (1) when required to protect a privacy right protected by the PRA; and (2) "in a manner consistent with" the PRA. *Id.*

Again, however, SHA did not redact the grievance-hearing decisions under the PRA, or pursuant to RAC's PRA request. SHA created the redacted grievance-hearing decisions under 24 C.F.R. § 966.57(a), completely independent of the PRA. SHA made no further redactions when RAC requested the grievance-hearing decisions, providing RAC exactly what SHA had already created under the C.F.R. CP 95-96.

There is no rule in the federal regulations requiring SHA to explain the deletions it makes under the C.F.R. And RCW 42.56.070(1) does not apply here, where SHA made no deletions pursuant to the PRA. Again, since SHS had no duty to explain its

deletions, RAC had no legal right to an explanation, making injunctive relief improper. *Kucera*, 140 Wn.2d at 209-10; *Locke*, 178 Wash. at 53.

**5. RAC had no legal right to receive paper records electronically.**

As discussed above, RAC plainly had no legal right to receive any documents electronically, making injunctive relief improper. *Kucera*, 140 Wn.2d at 209-10; *supra*, Argument § D. The PRA model rules specifically state that the rules “are not intended to create any legal duty.” WAC 44-14-00003. Without a legal duty to provide electronic documents, RAC has no right to electronic documents – again, “[t]here can certainly be no right without a corresponding duty.” *Locke*, 178 Wash. at 53.

In sum, each injunction item falls short on at least one of the elements necessary for injunctive relief. This Court should reverse.

**6. Damages are also inappropriate for the same reasons that the injunctive relief is inappropriate.**

Under the PRA, the trial court may award damages to a party who prevails in an action “seeking the right to inspect or copy any public record.” RCW 42.56.550(4). The damages award – if any – may not exceed \$100 for each day the prevailing party was “denied the right to inspect or copy said public record.” *Id.* SHA did

not deny RAC the right to inspect or copy any public record, so cannot be liable for damages. *Id.*

Again, SHA created the redacted grievance-hearing decisions under 24 C.F.R. § 966.57(a), well before RAC's request. The redactions were in no way responsive to RAC's request. The redacted decisions were the only document SHA could provide in response to RAC's request, where (1) the unredacted grievance-hearing decisions in client files are categorically exempt from disclosure; and (2) the PRA did not require SHA to redact categorically exempt documents to create new documents for RAC. *Supra*, Argument § C. As such, SHA gave RAC the only thing it was entitled to – the non-exempt, previously redacted grievance-hearing decisions.

The court summarily concluded that RAC is entitled to damages, without addressing whether SHA “denied [RAC] the right to inspect or copy” the grievance-hearing decisions. RCW 42.56.550(4); CP 171, 305. SHA did not deny RAC anything – it gave RAC the non-exempt grievance-hearing decisions. *Supra*, Argument § C. SHA cannot be penalized for failing to provide RAC a less-redacted version of the grievance-hearing decisions, where it

has no duty to make a less redacted version. *Id.* This Court should reverse.

**7. The trial court erroneously denied SHA's request for a continuance, striking its brief on damages and injunctive relief.**

Based on the parties' stipulation, the court suspended briefing on injunctive relief and damages "pending the outcome of SHA's anticipated motion for discretionary review." CP 184. But RAC filed a motion for damages and injunctive relief after this Court denied SHA's motion for discretionary review, despite being on notice that SHA was contemplating seeking discretionary review from the Supreme Court. CP 189, 237. SHA sought RAP 13.5 discretionary review, and although the Supreme Court set consideration for June 2, 2011, the trial court denied SHA's motion for a continuance on April 28, striking the brief SHA filed days later. CP 280, 285, 310.

The stipulation and order was not limited to discretionary review in this Court. CP 184. It was completely reasonable for SHA to interpret the stipulation and order to mean that briefing was suspended until SHA had exhausted all avenues of discretionary review, including in the Supreme Court. CP 237-38. The trial court could have lifted the suspension, but there was no basis for striking

SHA's response, particularly where RAC never claimed that it was prejudiced. CP 184, 301-02. In any event, the issue of injunctive relief and damages is properly before this Court – where the trial court was plainly aware that SHA opposed damages and injunctive relief. *Contrast* RAP 2.5(a).

### CONCLUSION

SHA created the redacted grievance-hearing decisions in compliance with 24 C.F.R. § 966.57(a). The C.F.R. does not have a broad disclosure policy, unlike the PRA, and the trial court plainly erred in applying the PRA's policy to this matter. The court erred again in applying specific PRA provisions to categorically exempt documents. The damages and injunction are based on the incorrect conclusion that inapplicable PRA provisions imposed certain duties on SHA. This Court should reverse.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of November 2011.

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**CERTIFICATE OF SERVICE BY MAIL**

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANT** postage prepaid, via U.S. mail on the 17<sup>th</sup> day of November 2011, to the following counsel of record at the following addresses:

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## **24 CFR 966.50**

### **Purpose and scope.**

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing agencies (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

#### **HISTORY:**

[56 FR 51579, Oct. 11, 1991]

#### **AUTHORITY:**

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

42 U.S.C. 1437d and 3535(d).

#### **NOTES:**

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Farmers Home Administration, Department of Agriculture: For agricultural credit, see 7 CFR Chapter XVIII.  
Office of Thrift Supervision, Department of the Treasury, 12 CFR Chapter V.

Department of Veterans Affairs regulations on assistance to certain veterans in acquiring specially adapted housing and guaranty of loans on homes: See Loan Guaranty, 38 CFR Part 36.

## **24 CFR 966.56**

### **Procedures governing the hearing.**

(a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.

(b) The complainant shall be afforded a fair hearing, which shall include:

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also § 966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

(2) The right to be represented by counsel or other person chosen as the tenant's representative, and to have such person make statements on the tenant's behalf;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

(d) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer or hearing panel: Provided, That a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

(e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to

judicial proceedings. The hearing officer or hearing panel shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(g) The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

(h) Accommodation of persons with disabilities. (1) The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing.

Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

(2) If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format.

**HISTORY:**

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51580, Oct. 11, 1991]

**AUTHORITY:**

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

42 U.S.C. 1437d and 3535(d).

**NOTES:**

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Department of Veterans Affairs regulations on assistance to certain veterans in acquiring specially adapted housing and guaranty of loans on homes: See Loan Guaranty, 38 CFR Part 36.

## **24 CFR 966.57**

### **Decision of the hearing officer or hearing panel.**

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the PHA and made available for inspection by a prospective complainant, his representative, or the hearing panel or hearing officer.

(b) The decision of the hearing officer or hearing panel shall be binding on the PHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the PHA Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affect the complainant's rights, duties, welfare or status;

(2) The decision of the hearing officer or hearing panel is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

(c) A decision by the hearing officer, hearing panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

#### **HISTORY:**

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NOTES TO DECISIONS: COURT AND ADMINISTRATIVE DECISIONS SIGNIFICANTLY DISCUSSING SECTION --  
N.Y. City Hous. Auth. v Margiato (2004, Sup App T) 4 Misc 3d 135A, 791 NYS2d 871

## **RCW 42.56.040**

### **Duty to publish procedures.**

(1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) Each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed.

[1973 c 1 § 25 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW [42.17.250](#).]

## **RCW 42.56.070**

### **Documents and indexes to be made public.**

(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 (6) 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 shall establish, maintain, and make available for public inspection and

copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other 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 mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) 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.

[2005 c 274 § 284; 1997 c 409 § 601. Prior: 1995 c 397 § 11; 1995 c 341 § 1; 1992 c 139 § 3; 1989 c 175 § 36; 1987 c 403 § 3; 1975 1st ex.s. c 294 § 14; 1973 c 1 § 26 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.260.]

**Notes:**

**\*Reviser's note:** Subsection (6) of this section was renumbered as subsection (7) by 1992 c 139 § 3; and subsection (7) was subsequently renumbered as subsection (9) by 1995 c 341 § 1.

**Part headings -- Severability -- 1997 c 409:** See notes following RCW 43.22.051.

**Effective date -- 1989 c 175:** See note following RCW 34.05.010.

**Intent -- Severability -- 1987 c 403:** See notes following RCW 42.56.050.

Exemption for registered trade names: RCW 19.80.065.

## **RCW 42.56.080**

### **Facilities for copying — Availability of public records.**

Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter.

[2005 c 483 § 1; 2005 c 274 § 285; 1987 c 403 § 4; 1975 1st ex.s. c 294 § 15; 1973 c 1 § 27 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.270.]

**Notes:**

**Reviser's note:** This section was amended by 2005 c 274 § 285 and by 2005 c 483 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent -- Severability -- 1987 c 403:** See notes following RCW 42.56.050.

## **RCW 42.56.120**

### **Charges for copying.**

No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. Agency charges for photocopies shall be imposed in accordance with the actual per page cost or other costs established and published by the agency. In no event may an agency charge a per page cost greater than the actual per page cost as established and published by the agency. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page. An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request.

[2005 c 483 § 2. Prior: 1995 c 397 § 14; 1995 c 341 § 2; 1973 c 1 § 30 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.300.]

## **RCW 42.56.210**

### **Certain personal and other records exempt.**

(1) Except for information described in \*RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(3) 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.

[2005 c 274 § 402. Prior: (2006 c 302 § 11 expired July 1, 2006); (2006 c 75 § 2 expired July 1, 2006); (2006 c 8 § 111 expired July 1, 2006); (2003 1st sp.s. c 26 § 926 expired June 30, 2005); 2003 c 277 § 3; 2003 c 124 § 1; prior: 2002 c 335 § 1; 2002 c 224 § 2; 2002 c 205 § 4; 2002 c 172 § 1; prior: 2001 c 278 § 1; 2001 c 98 § 2; 2001 c 70 § 1; prior: 2000 c 134 § 3; 2000 c 56 § 1; 2000 c 6 § 5; prior: 1999 c 326 § 3; 1999 c 290 § 1; 1999 c 215 § 1; 1998 c 69 § 1; prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.310.]

#### **Notes:**

\*Reviser's note: RCW 42.56.230 was amended by 2011 c 173 § 1, changing subsection (3)(a) to subsection (4)(a).

Expiration date -- 2006 c 302 §§ 9 and 11: See note following RCW 66.28.180.

Expiration date -- 2006 c 75 § 2: "Section 2 of this act expires July 1, 2006." [2006 c 75 § 4.]

Expiration date -- 2006 c 8 § 111: "Section 111 of this act expires July 1, 2006." [2006 c 8 § 404.]

Expiration date -- Severability -- Effective dates -- 2003 1st sp.s. c 26: See notes following RCW 43.135.045.

**Working group on veterans' records:** "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 § 1.]

**Effective date -- 2002 c 224 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 224 § 4.]

**Findings -- Severability -- Effective dates -- 2002 c 205 §§ 2, 3, and 4:** See notes following RCW [28A.320.125](#).

**Finding -- 2001 c 98:** "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW [70.74.285](#), could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 § 1.]

**Findings -- Conflict with federal requirements -- Severability -- 2000 c 134:** See notes following RCW [50.13.060](#).

**Effective date -- 1998 c 69:** See note following RCW [28B.95.025](#).

**Effective date -- 1997 c 274:** See note following RCW [41.05.021](#).

**Referendum -- Other legislation limited -- Legislators' personal intent not indicated -- Reimbursements for election --**

**Voters' pamphlet, election requirements -- 1997 c 220:** See RCW [36.102.800](#) through [36.102.803](#).

**Short title -- Part headings, captions, table of contents not law -- Exemptions and waivers from federal law -- Conflict with federal requirements -- Severability -- 1997 c 58:** See RCW [74.08A.900](#) through [74.08A.904](#).

**Severability -- 1996 c 305:** See note following RCW [28B.85.020](#).

**Findings -- Purpose -- Severability -- Part headings not law -- 1996 c 253:** See notes following RCW [28B.109.010](#).

**Captions not law -- Severability -- Effective dates -- 1995 c 267:** See notes following RCW [43.70.052](#).

**Effective date -- 1994 c 233:** See note following RCW [70.123.075](#).

**Effective date -- 1994 c 182:** "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

**Effective date -- 1993 c 360:** See note following RCW [18.130.085](#).

**Effective date--Severability -- 1993 c 280:** See RCW [43.330.902](#) and [43.330.903](#).

**Finding -- 1991 c 301:** See note following RCW [10.99.020](#).

**Effective date -- 1991 c 87:** See note following RCW [18.64.350](#).

**Effective dates -- 1990 2nd ex.s. c 1:** See note following RCW [84.52.010](#).

**Severability -- 1990 2nd ex.s. c 1:** See note following RCW [82.14.300](#).

**Effective date -- Severability -- 1989 1st ex.s. c 9:** See RCW [43.70.910](#) and [43.70.920](#).

**Severability -- 1989 c 279:** See RCW [43.163.901](#).

**Severability -- 1989 c 11:** See note following RCW [9A.56.220](#).

**Severability -- 1987 c 411:** See RCW [69.45.900](#).

**Severability -- Effective date -- 1986 c 299:** See RCW [28C.10.900](#) and [28C.10.902](#).

**Severability -- 1986 c 276:** See RCW [53.31.901](#).

Exemptions from public inspection

basic health plan records: RCW [70.47.150](#).

bill drafting service of code reviser's office: RCW [1.08.027](#), [44.68.060](#).

certificate submitted by individual with physical or mental disability seeking a driver's license: RCW [46.20.041](#).

commercial fertilizers, sales reports: RCW [15.54.362](#).

criminal records: Chapter [10.97](#) RCW.

employer information: RCW [50.13.060](#).

family and children's ombudsman: RCW [43.06A.050](#).

legislative service center, information: RCW [44.68.060](#).

medical quality assurance commission, reports required to be filed with: RCW [18.71.0195](#).

organized crime investigative information: RCW [43.43.856](#).

public transportation information: RCW [47.04.240](#).

salary and fringe benefit survey information: RCW [41.06.160](#).

## **RCW 42.56.230**

### **Personal information. (*Effective until January 1, 2012.*)**

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

- (1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;
- (2) Personal information, including but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers, emergency contact and date of birth information for a participant in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs. Emergency contact information may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;
- (3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;
- (4) 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, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;
- (5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;
- (6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and
- (7) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

[2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

**Notes:**

**Effective date -- 2010 c 106:** See note following RCW 35.102.145.

**Effective date -- 2009 c 510:** See RCW 31.45.901.

**Finding -- Intent -- Liberal construction -- 2009 c 510:** See note following RCW 31.45.010.

## **WAC 44-14-050**

### **Processing of public records requests — Electronic records.**

(1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by WAC 44-14-07003.

(3) **Customized access to data bases.** With the consent of the requestor, the agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The (agency) may charge a fee consistent with RCW 43.105.280 for such customized access.

[Statutory Authority: 2005 c 483 § 4, amending RCW 42.56.570, 07-13-058, § 44-14-050, filed 6/15/07, effective 7/16/07. Statutory Authority: 2005 c 483 § 4, RCW 42.17.348, 06-04-079, § 44-14-050, filed 1/31/06, effective 3/3/06.]

## **WAC 44-14-00001**

### **Statutory authority and purpose.**

The legislature directed the attorney general to adopt advisory model rules on public records compliance and to revise them from time to time. RCW 42.17.348 (2) and (3)/42.56.570 (2) and (3). The purpose of the model rules is to provide information to records requestors and state and local agencies about "best practices" for complying with the Public Records Act, RCW 42.17.250/42.56.040 through 42.17.348/42.56.570 ("act"). The overall goal of the model rules is to establish a culture of compliance among agencies and a culture of cooperation among requestors by standardizing best practices throughout the state. The attorney general encourages state and local agencies to adopt the model rules (but not necessarily the comments) by regulation or ordinance.

The act applies to all state agencies and local units of government. The model rules use the term "agency" to refer to either a state or local agency. Upon adoption, each agency would change that term to name itself (such as changing references from "name of agency" to "city"). To assist state and local agencies considering adopting the model rules, an electronic version of the rules is available on the attorney general's web site, [www.atg.wa.gov/records/modelrules](http://www.atg.wa.gov/records/modelrules).

The model rules are the product of an extensive outreach project. The attorney general held thirteen public forums all across the state to obtain the views of requestors and agencies. Many requestors and agencies also provided detailed written comments that are contained in the rule-making file. The model rules reflect many of the points and concerns presented in those forums.

The model rules provide one approach (or, in some cases, alternate approaches) to processing public records requests. Agencies vary enormously in size, resources, and complexity of requests received. Any "one-size-fits-all" approach in the model rules, therefore, may not be best for requestors and agencies.

## **WAC 44-14-00003**

### **Model rules and comments are nonbinding.**

The model rules, and the comments accompanying them, are advisory only and do not bind any agency. Accordingly, many of the comments to the model rules use the word "should" or "may" to describe what an agency or requestor is encouraged to do. The use of the words "should" or "may" are permissive, not mandatory, and are not intended to create any legal duty.

While the model rules and comments are nonbinding, they should be carefully considered by requestors and agencies. The model rules and comments were adopted after extensive statewide hearings and voluminous comments from a wide variety of interested parties.

[Statutory Authority: 2005 c 483 § 4, RCW [42.17.348](#). 06-04-079, § 44-14-00003, filed 1/31/06, effective 3/3/06.]

## **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." RCW 42.17.020(48) (incorporated by reference into the act by RCW 42.56.010). Many agency records are now in an electronic format. Many of these electronic formats such as Windows<sup>®</sup> 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 43.105.250 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. Technical feasibility is the touchstone 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<sup>®</sup> 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. See WAC 44-14-05004. An agency may recover its actual costs for providing electronic records, which in many cases is de minimis. See WAC 44-14-050(3). What is technically feasible in one situation 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.

## **WAC 44-14-05002**

### **"Reasonably locatable" and "reasonably translatable" electronic records.**

(1) **"Reasonably locatable" electronic records.** The act obligates an agency to provide nonexempt "identifiable...records." RCW 42.56.080. An "identifiable record" is essentially one that agency staff can "reasonably locate." WAC 44-14-04002(2). Therefore, a general summary of the "identifiable record" standard as it relates to electronically locating public records is that the act requires an agency to provide a nonexempt "reasonably locatable" record. This does not mean that an agency can decide if a request is "reasonable" and only fulfill those requests. Rather, "reasonably locatable" is a concept, grounded in the act, for analyzing electronic records issues.

In general, a "reasonably locatable" electronic record is one which can be located with typical search features and organizing methods contained in the agency's current software. For example, a retained e-mail containing the term "XYZ" is usually reasonably locatable by using the e-mail program search feature. However, an e-mail search feature has limitations, such as not searching attachments, but is a good starting point for the search. Information might be "reasonably locatable" by methods other than a search feature. For example, a request for a copy of all retained e-mails sent by a specific agency employee for a particular date is "reasonably locatable" because it can be found utilizing a common organizing feature of the agency's e-mail program, a chronological "sent" folder. Another indicator of what is "reasonably locatable" is whether the agency keeps the information in a particular way for its business purposes. For example, an agency might keep a data base of permit holders including the name of the business. The agency does not separate the businesses by whether they are publicly traded corporations or not because it has no reason to do so. A request for the names of the businesses which are publicly traded is not "reasonably locatable" because the agency has no business purpose for keeping the information that way. In such a case, the agency should provide the names of the businesses (assuming they are not exempt from disclosure) and the requestor can analyze the data base to determine which businesses are publicly traded corporations.

(2) **"Reasonably translatable" electronic records.** The act requires an agency to provide a "copy" of nonexempt records (subject to certain copying charges). RCW 42.56.070(1) and 42.56.080. To provide a photocopy of a paper record, an agency must take some reasonable steps to mechanically translate the agency's original document into a useable copy for the requestor such as copying it in a copying machine. Similarly, an agency must take some reasonable steps to prepare an electronic copy of an electronic record or a paper record. Providing an electronic copy is analogous to providing a paper record: An agency must take reasonable steps to translate the agency's original into a useable copy for the requestor.

The "reasonably translatable" concept typically operates in three kinds of situations:

(a) An agency has only a paper record;

(b) An agency has an electronic record in a generally commercially available format (such as a Windows<sup>®</sup> product); or

(c) An agency has an electronic record in an electronic format but the requestor seeks a copy in a different electronic format.

The following examples assume no redactions are necessary.

(i) **Agency has paper-only records.** When an agency only has a paper copy of a record, an example of a "reasonably translatable" copy would be scanning the record into an Adobe Acrobat PDF<sup>®</sup> file and providing it to the requestor. The agency could recover its actual cost for scanning. See WAC 44-14-07003. Providing a PDF copy of the record is analogous to making a paper copy. However, if the agency lacked a scanner (such as a small unit of local government), the record would not be "reasonably translatable" with the agency's own resources. In such a case, the agency could provide a paper copy to the requestor.

(ii) **Agency has electronic records in a generally commercially available format.** When an agency has an electronic record in a generally commercially available format, such as an Excel<sup>®</sup> spreadsheet, and the requestor requests an electronic copy in that format, no translation into another format is necessary; the agency should provide the spreadsheet electronically. Another example is where an agency has an electronic record in a generally commercially available format (such as Word<sup>®</sup>) and the requestor requests an electronic copy in Word<sup>®</sup>. An agency cannot instead provide a WordPerfect<sup>®</sup> copy because there is no need to translate the electronic record into a different format. In the paper-record context, this would be analogous to the agency intentionally making an unreadable photocopy when it could make a legible one. Similarly, the WordPerfect<sup>®</sup> "translation" by the agency is an attempt to hinder access to the record. In this example, the agency should provide the document in Word<sup>®</sup> format. Electronic records in generally commercially available formats such as Word<sup>®</sup> could be easily altered by the requestor. Requestors should note that altering public records and then intentionally passing them off as exact copies of public records might violate various criminal and civil laws.

(iii) **Agency has electronic records in an electronic format other than the format requested.** When an agency has an electronic record in an electronic format (such as a Word<sup>®</sup> document) but the requestor seeks a copy in another format (such as WordPerfect<sup>®</sup>), the question is whether the agency's document is "reasonably translatable" into the requested format. If the format of the agency document allows it to "save as" another format without changing the substantive accuracy of the document, this would be "reasonably translatable." The agency's record might not translate perfectly, but it was the requestor who requested the record in a format other than the one used by the agency. Another example is where an agency has a data base in a unique format that is not generally commercially available. A requestor requests an electronic copy. The agency can convert the data in its unique system into a near-

universal format such as a comma-delimited or tab-delimited format. The requestor can then convert the comma-delimited or tab-delimited data into a data base program (such as Access) and use it. The data in this example is "reasonably translatable" into a comma-delimited or tab-delimited format so the agency should do so. A final example is where an agency has an electronic record in a generally commercially available format (such as Word) but the requestor requests a copy in an obscure word processing format. The agency offers to provide the record in Word) format but the requestor refuses. The agency can easily convert the Word) document into a standard text file which, in turn, can be converted into most programs. The Word) document is "reasonably translatable" into a text file so the agency should do so. It is up to the requestor to convert the text file into his or her preferred format, but the agency has provided access to the electronic record in the most technically feasible way and not attempted to hinder the requestor's access to it.

**(3) Agency should keep an electronic copy of the electronic records it provides.**

An electronic record is usually more susceptible to manipulation and alteration than a paper record. Therefore, an agency should keep, when feasible, an electronic copy of the electronic records it provides to a requestor to show the exact records it provided. Additionally, an electronic copy might also be helpful when responding to subsequent electronic records requests for the same records.

[Statutory Authority: 2005 c 483 § 4, amending RCW [42.56.570](#). 07-13-058, § 44-14-05002, filed 6/15/07, effective 7/16/07.]

2005 Wa. ALS 274, \*; 2005 Wa. Ch. 274;  
2005 Wa. HB 1133

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STATENET  
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WASHINGTON 59TH FIRST REGULAR SESSION

HOUSE BILL 1133

CHAPTER 274

2005 Wa. ALS 274; 2005 Wa. Ch. 274; 2005 Wa. HB 1133

PUBLIC

DISCLOSURE

EXEMPTIONS

**[\*401]** NEW SECTION. Sec. 401 The purpose of sections 402 through 429 of this act is to reorganize the public inspection and copying exemptions in RCW 42.17.310 through 42.17.31921 by creating smaller, discrete code sections organized by subject matter. The legislature does not intend that this act effectuate any substantive change to any public inspection and copying exemption in the Revised Code of Washington.

**[\*402]** Sec. 402 RCW 42.17.310 and 2003 c 277 s 3 and 2003 c 124 s 1 are each reenacted and amended to read as follows:

(1) **[D>** The following are exempt from public inspection and copying: **<D]**

**[D>** (a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients. **<D]**

**[D>** (b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy. **<D]**

**[D>** (c) 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 (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer. **<D]**

**[D>** (d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy. **<D]**

**[\*403]** NEW SECTION. Sec. 403 The following personal information is exempt from public inspection and copying under this chapter:

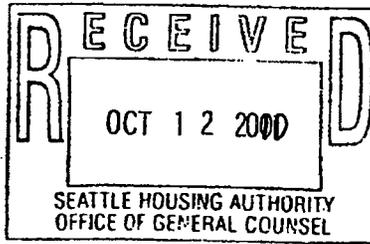
- (1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;
- (2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;
- (3) 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; and
- (4) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

RESIDENT ACTION COUNCIL,	Plaintiffs,
v.	
SEATTLE HOUSING AUTHORITY,	Defendants.

No. 10-2-26188-5 SEA  
ORDER TO COMPLY WITH PUBLIC  
RECORDS ACT

This matter came before the court on Plaintiff Resident Action Council's Motion for an Order for Seattle Housing Authority to Comply with the Public Records Act, RCW 42.56.

The following facts are unrebutted:

1. Resident Action Council (RAC) is an organization of elected public housing leaders residing in Seattle public housing.
2. The Seattle Housing Authority (SHA) is a local government agency that provides affordable housing for low income people through grants received from the U. S. Department of Housing and Urban Development (HUD), and comes under the purview of the state Public Records Act, RCW 42.56.
3. On June 17 and 18, 2010, on behalf of RAC, attorney Eric Dunn submitted a public record request to the Seattle Housing Authority seeking:

**ORIGINAL**

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a. Grievance hearing decisions ("all written decisions from grievance hearings since June 17, 2007");

b. Hearing officer contracts ("all contracts...between SHA and any person who served as a hearing officer for a grievance hearing...since June 17, 2007).

4. Dunn requested the records be provided electronically.

5. SHA responded to the request on July 1, 2010 by providing paper copies of unredacted hearing officer contracts and redacted grievance hearing decisions. Fifty-seven grievance hearing decision were provided. (Counsel for SHA conceded in oral argument that the reference in the Declaration of Nancy Sundt to "hundreds of decisions" was "clearly a mistake".) No explanation was provided for the redactions, or the failure to provide electronic copies.

6. SHA filed a document in this litigation entitled "Declaration of Nancy Sundt" dated August 13, 2010.<sup>1</sup> It provides in paragraph 2: "*The Housing Authority maintains paper copies of low-income public housing grievance hearing decisions that are redacted to delete the names and other identifying information of the residents who are involved in the grievance hearing. This is done to protect the privacy of residents and to comply with US Department of Housing and Urban Development regulations.*" (emphasis added) Contrary to the Sundt/Fearn assertions, the redactions of the documents provided were not simply identifying information of the residents involved in the grievance hearing. Other items redacted included names of SHA employees, witnesses to the proceedings, Seattle Police Officers, and a newspaper article.

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<sup>1</sup> In review of this document, the court notes it was signed "Nancy Sundt by JEF". Presumably "JEF" is James E. Fearn, counsel for SHA. This court knows of no authority for one person to sign another's signature to a declaration. However, to the extent the information is being used against SHA, and is unredacted, the substance will be considered.

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- 7. RAC was billed for 820 pages of copies at .15 per page, and a \$10 messenger fee (total of \$133). Of the materials provided in response to RAC's public records request, 58 pages were duplicates, 259 pages were unrequested and from the SHA's ADA/504 committee, 95 pages were unrequested and from decisions of "informal hearings", and 24 pages were miscellaneous letters outside the scope of the records request. Plaintiff agrees the 95 unrequested pages from informal hearings are useful, and agrees to pay for them, and thus acknowledges a total obligation of \$71.85. Plaintiff has paid \$89.50, having forgotten to deduct the messenger fee of \$10 which it disputes there is authority for, and not having discovered the duplicates at the time of payment.
- 8. On July 6, 2010, Dunn wrote to SHA public records staff objecting to the charges referenced, the failure to provide electronic copies, as well as the unexplained redactions of the grievance hearing decisions, asking that the violations be cured by providing "clean, unredacted copies..." No response to this correspondence was ever given.
- 9. SHA does not ordinarily maintain the requested records in an electronic format.
- 10. SHA has scanning equipment which can convert hard copies into electronic images.
- 11. The first and only time SHA gave a reason for not providing electronic copies was in oral argument, when counsel for SHA indicated that SHA could have provided PDF copies, but that the charge would "be essentially the same", and so it did not.
- 12. SHA maintains two copies of the grievance hearing decisions in question. One is kept in the individual tenant's file, in unredacted form. The second is maintained in a central location. SHA maintains these as result of directives from HUD, by virtue of 24 CFR 966.57 which provides:

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1 a. *The hearing officer or hearing panel shall prepare a written decision, together*  
2 *with the reasons therefore, within a reasonable time after the hearing. A*  
3 *copy of the decision shall be sent to the complainant and the PHA. The PHA*  
4 *shall retain a copy of the decision in the tenant's folder. A copy of such*  
5 *decision, with all names and identifying references deleted, shall also be*  
6 *maintained on file by the PHA and made available for inspection by a*  
7 *prospective complainant, his representative, or the hearing panel or hearing*  
8 *officer.*

9 13. HUD regulations, 24 CFR 966.57(a)(3) gives the tenant "the right to a private hearing  
10 unless...requests a public hearing". This is contrary to SHA policies, which provide in  
11 its Manual of Operations, L12.9-1 at 3 that the tenant is afforded a "public hearing  
12 unless the resident requests a private hearing".

13 14. SHA was unable to provide any records or evidence on whether any specific tenant  
14 has requested a private or public hearing.

15 15. At oral argument, RAC withdrew its request that the SHA maintain an index  
16 pursuant to RCW 42.56.070(3)(a).

17 RAC argues that SHA has violated the state Public Records Act (PRA), RCW  
18 42.56, by improperly redacting records provided, failing to justify in writing the  
19 redactions, and failing to produce the records electronically. In addition to  
20 seeking an order that the records be provided, it seeks an injunction "to  
21 facilitate SHA's prospective compliance with the Act" and damages, penalties,  
22 costs and attorney fees authorized by RCW 42.56.550.

23 Grievance Hearing decisions.

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25 SHA tenants are "clients of a public institution or welfare recipients",  
26 pursuant to RCW 42.56.230(1), which specifically exempts from disclosure  
27 "personal information in any files maintained for students in public schools,  
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1 patients or clients of public institutions or public health agencies, or welfare  
2 recipients." Although RAC argues that only certain data within the hearing  
3 decisions are personal information (e.g., identifying information, income, etc.),  
4 Lindeman v. Kelso School District, 162 Wn. 2d 196 (2003) suggests otherwise. The  
5 court in Lindeman held that for information to be exempt, it must be both  
6 "personal" and "maintained for students". In so holding, the court found that a  
7 video tape of a fight on a school bus was not personal, pointing out that it did  
8 not reveal whether discipline was imposed. 162 Wn. 2d at 203. This language  
9 suggests that if the record was one revealing whether discipline was imposed it  
10 would be subject to exemption for disclosure. A grievance decision is  
11 analogous to a discipline record, and thus this court finds that to the extent it is  
12 in the tenant's file, that copy falls under RCW 42.56.230(1) and is not subject to  
13 disclosure. However, as pointed out by the HUD regulations, a separate copy  
14 with names and identifying references deleted is to be maintained on file for  
15 inspection by a prospective complainant, his representative, or the hearing  
16 officer. This would not fall under RCW 42.56.230(1).

21 Other than to maintain the privacy provided by RCW 42.56.230(1) of client  
22 records, there is no reason to redact anything other than identifying information  
23 of the grievant, his or her family member residing at the locale, and other  
24 client/resident witnesses in the hearing. Neither party puts forward any  
25 authority which interprets the reference to "identifying information" in 24 CFR  
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1 966.57 any more restrictively. Given the broad policy of disclosure mandated  
2 by the state Public Records Act, redactions should go no further.

3 Electronic copies.

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5 WAC 44.14.05001 provides that "In general, an agency should provide  
6 electronic records in an electronic format if requested in that format".  
7 Furthermore WAC 44.14.05002 describes how scanning a document into an  
8 electronic format is analogous in effort to photocopying a document, pointing  
9 out that unless the agency lacks a scanner "scanning the record into an Adobe  
10 Acrobat PDF file" is "reasonably translatable" into electronic records. SHA  
11 concedes in oral argument that it has the ability to scan requested records and  
12 provide electronic copies and that the effort to do so would be no greater than  
13 copying and providing a paper copy. SHA gives no reason for failing to  
14 provide the documents in electronic format, or seeking to clarify whether RAC  
15 would still want them in that format, if the cost would be the same.  
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18 Charges.

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20 SHA has given no authority for charging RAC a \$10 "messenger fee".  
21 Furthermore, it has not provided justification for charging for duplicative or  
22 unrequested records.  
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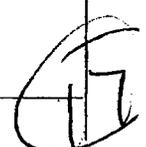
24 Injunctive Relief

25 The court finds that the issue of the court's authority to order injunctive  
26 relief regarding changes in future policies of SHA was not fully briefed. At oral  
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1 argument, Counsel for RAC offered to provide additional briefing on this  
2 subject.

3 IT IS HEREBY ORDERED AS FOLLOWS:

- 4 1. Seattle Housing Authority shall produce all grievance hearing decisions subject to  
5 RAC's request. Only names and identifying information of SHA tenants shall be  
6 redacted. Only that portion of an address necessary to prevent identification of the  
7 tenant shall be redacted (for example, in multi-unit buildings, redactions should only  
8 include the unit number). Production shall occur by October 29, 2010.
- 9 2. To the extent redactions occur, SHA shall provide a distinguishing code or mark so  
10 that one redacted item can be distinguished from references to other redacted  
11 items. Whenever a particular item of information is redacted, SHA shall use the same  
12 number, initials, or other distinguishing marker in place of that item every where it  
13 appears in the unredacted document.
- 14 3. All documents shall be provided in an electronic format for the same charge as  
15 paper copies.
- 16 4. SHA shall refund \$17.65 to RAC, representing charges billed and collected which  
17 were not authorized by RCW 42.56.120.
- 18 5. RAC is entitled to costs, fees, and damages pursuant to RCW 42.56.550(4). The  
19 amount shall be determined upon supplemental briefing of the parties, including  
20 supporting documentation. Plaintiff shall note the motion to be heard without oral  
21 argument, pursuant to briefing schedule set out in LCR 7(4)(A).
- 22 6. The issue of injunctive/remedial relief against SHA is reserved, pending the provision  
23 of further authority to support RAC's request. Should RAC wish to continue to pursue  
24 this issue, a motion and supplemental briefing shall be provided to the court. If such  
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a motion and briefing is not noted to be heard by December 10, 2010, the issue shall be deemed waived. Summary judgment briefing schedules shall apply to this issue (CR 56). This issue will be presumed to be heard without oral argument, unless either party files a written request for oral argument.

DONE IN OPEN COURT this 7 day of October, 2010.

  
\_\_\_\_\_  
JUDGE LAURA C. INVEEN



Chief Civil Judge  
Rm. W-864  
May 6, 2011

STATE OF WASHINGTON  
IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF KING

RESIDENT ACTION COUNCIL,  
  
Plaintiff,  
  
vs.  
  
SEATTLE HOUSING AUTHORITY,  
  
Defendant.

No. 10-2-26188-5 SEA

ORDER FOR PRA DAMAGES &  
EQUITABLE RELIEF  
-- RCW 42.56.550

~~Proposed~~ *yes*

IT IS ORDERED that moving party  
is required to provide a copy of this  
order to all parties who have  
appeared in the case.

This matter before the Court on Plaintiff Resident Action Council's Motion for PRA  
Damages and Equitable Relief and with the Court duly informed:

**A. Public Records Act Damages**

1. The Court previously ruled that Defendant Seattle Housing Authority (SHA)  
improperly failed to produce public records Plaintiff Resident Action Council (RAC) had  
requested under the Public Records Act, RCW 42.56 et seq.

2. A person whose request for public records is wrongly denied by an agency is entitled  
to damages of between \$5 and \$100 "for each day that he or she was denied the right to inspect  
or copy said public record." RCW 42.56.550(4).

3. The Court previously ruled RAC was entitled to damages but directed the parties to



1 submit additional briefing as to the amount; the requested briefing has been submitted and  
2 reviewed by the Court.

3 4. To properly set a PRA damage award, a court first determines an “appropriate per day  
4 penalty between \$5 and \$100 depending on the agency's actions,” then multiplies by the number  
5 of days the party was denied access to the requested records. See *Yousoufian v. Office of Ron*  
6 *Sims*, 168 Wn.2d 444, 459; 229 P.3d 735 (2010).

7 5. Assessing an appropriate per-day damage award under the PRA is also a two-step  
8 process: the court first decides upon a base amount (between \$5 and \$100) to begin the  
9 calculation, and then adjusts that figure based on relevant mitigating and aggravating factors.  
10 See *Yousoufian*, 168 Wn.2d at 467.

11 6. The existence or absence of an agency's bad faith has traditionally been “the principal  
12 factor which the trial court must consider” in setting a per-day PRA award. See *Yousoufian*, 152  
13 Wn.2d at 435, quoting *Amren v. City of Kalama*, 131 Wn.2d 25, 37-38; 929 P.2d 389 (1997).  
14 Negligent PRA violations may show “a lack of good faith,” but a finding of “bad faith” generally  
15 requires intentional nondisclosure. See *Yousoufian* 168 Wn.2d at 456; see also *P.A.W.S. v.*  
16 *University of Washington*, 125 Wn.2d 243, 268; 884 P.2d 592 (1994)

17 7. SHA committed numerous violations of the PRA that demonstrate a lack of good  
18 faith, including:

- 19 a. Unlawfully redacting information responsive to RAC’s public records request,  
20 including (in some instances) without having even a plausible basis for the deletions;
  - 21 b. Unlawfully failing to provide written explanations for redactions;
  - 22 c. Over-charging for reproduction costs by providing materials RAC never  
23 requested and attempting to charge RAC for costs not authorized by the PRA;
- 24

1 d. Arbitrarily declining to produce materials electronically, contrary to the PRA  
2 and the Washington Attorney General's model rules implementing the Act. See RCW  
3 42.56.570(2)(c); see WAC 44-14-05001;

4 e. Failing to publish procedures for requesting public records or a list of relevant  
5 exemptions, contrary to unambiguous statutory duties. See RCW 42.56.040, RCW  
6 42.56.070(2); and

7 f. Failing to produce the additional disclosures by October 29, 2010, as this  
8 Court's October 7, 2010, order had required.

9 8. SHA also made no effort to acknowledge or correct these violations when RAC  
10 brought them to its attention prior to this action.

11 9. However, SHA did not engage in intentional nondisclosure; SHA did produce many of  
12 the records RAC requested without incident, and the information SHA did withhold consisted of  
13 deletions from documents SHA otherwise produced.

14 10. Therefore, the proper starting point for the PRA damage award is somewhere near the  
15 middle of the range.

16 11. In *Yousifian*, the Supreme Court ultimately settled upon \$45 as the proper per-day  
17 award in a case involving gross negligence. See *Yousoufian*, 168 Wn.2d at 469. However, a  
18 ~~higher~~ <sup>lower</sup> starting point is appropriate here, because <sup>a substantial portion of the</sup> ~~some of~~ SHA's violations were reckless—such  
19 ~~as the redaction of SHA letterhead and the title of a newspaper article, or the unexplained refusal~~  
20 ~~to give written justifications for withheld documents.~~ <sup>records were initially provided. (yes)</sup>

21 12. Accordingly, the Court will begin the PRA award at ~~\$55~~ <sup>\$10 per</sup> per day.

22 13. Two mitigating factors support a reduction of the per-day damage award; these are:  
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1 a. SHA's public records officer promptly brought a significant typographical error  
2 to RAC's attention, enabling RAC to correct and re-submit its public records request the  
3 next day; this assistance supports a reduction of the daily penalty by \$2; and

4 b. SHA has effective systems in place for tracking and retrieving public records,  
5 which enabled SHA to produce a significant amount of the material in a reasonably short  
6 time; this assistance supports a reduction of the daily penalty by \$3; this reduction would  
7 likely be greater except that SHA had negligently maintained the most important of these  
8 systems, the "central file" in which SHA keeps redacted copies of public housing  
9 grievance decisions;

10 14. Four aggravating factors support increasing the per-day damage award; these are:

11 a. SHA gave unreasonable and untimely explanations for its noncompliance with  
12 the Public Records Act; this factor supports an increase of the daily penalty by \$2;

13 b. RAC's public records request was made as part of an investigation into SHA's  
14 administrative tribunals, which is a salutary public purpose germane to the core function  
15 of the PRA; the public importance of the request supports an increase of the daily penalty  
16 by \$9;

17 c. SHA's inappropriate refusal to provide the records in electronic format, when  
18 the records were reasonably translatable and were requested in electronic format,  
19 supports an increase of the daily penalty by \$2; and

20 d. SHA's failure to provide written explanations concerning the information it  
21 redacted from the grievance decisions it produced supports an increase of the daily  
22 penalty by \$7; SHA's failure on this point was egregious because SHA did not simply  
23 provide inadequate explanations, SHA provided no written explanations at all.

24

1 15. Accordingly, the appropriate per-day amount of the PRA award is \$70.

2 16. The date on which SHA should first have produced the records to RAC was July 1,  
3 2010; therefore, RAC is entitled to damages of <sup>\$25</sup>~~\$70~~ per day for each day since July 1, 2010, until  
4 the records are produced.

5 **B. Declaratory/Injunctive Relief**

6 1. This Court has the inherent power to issue injunctions and other equitable remedies.

7 See Wash. St. Const., Art. IV, Sec. 6; see RCW 2.08.010; see *Bowcutt v. Delta North Star Corp.*,  
8 95 Wn. App. 311, 319; 976 P.2d 643 (1999) (superior court's "inherent powers encompass all  
9 the powers of the English chancery court [including] writ of injunction"); see *State v. Chehalis*  
10 *County Superior Court*, 43 Wash. 225, 228; 86 P. 632 (1906) (superior court does not need  
11 statutory authority to issue injunction).

12 2. Also, while the PRA does not expressly authorize remedies other than damages for  
13 violations of the Act, When a superior court has "acquire[d] jurisdiction of the main purpose of  
14 an action, it has the right to grant such ancillary or incidental relief as will be necessary to make  
15 the relief sought complete." *Dare v. Mt. Vernon Inv. Co.*, 121 Wash. 117, 120; 208 P. 609  
16 (1922); see also *Allen v. American Land Research*, 95 Wn.2d 841, 852; 631 P.2d 930 (1981).

17 3. An injunction directing SHA to adopt policies and procedures for complying with the  
18 Public Records Act is appropriate in this case because:

19 a. SHA's failure to have policies and procedures in place for complying with the  
20 Public Records Act has injured RAC by impeding its ability to investigate SHA's public  
21 housing administrative hearings, an injury for which there is no plain, complete, speedy  
22 and adequate remedy at law;

23 b. SHA's ongoing failure to adopt such policies and procedures threatens to cause  
24

1 similar injuries to RAC and others in the future; and

2 c. An injunction will further serve the public interest by making it less likely that  
3 the issues resolved in this action will be re-litigated, and by reducing the exposure of  
4 SHA—a public agency—to PRA damage awards.

5 4. Therefore, consistent with this Court's October 7, 2010, Order to Comply with Public  
6 Records Act, SHA is hereby further ordered to:

7 a. Publish procedures for requesting public records, as required by RCW  
8 42.56.040;

9 b. Compile and publish a list of laws exempting information in SHA's public  
10 records from disclosure, as required by RCW 42.56.070(2);

11 c. Establish a policy and procedure for redacting grievance hearing decisions (and  
12 possibly other records as well) to remove only names and client-identifying information,  
13 as required by 24 CFR 966.57(a);

14 d. Establish a policy and procedure for providing written explanations whenever  
15 SHA withholds a record or portion of a record from a requester, as required by RCW  
16 42.56.070(1); and

17 e. Provide reasonably locatable or translatable records in electronic format when  
18 requested in that format, as required by RCW 42.56.570(2) and WAC 44-14-05001.

19 5. SHA shall complete these steps required by this Order within 30 days.

20 6. The Defendant's Reply (sk) to Plaintiff's Motion was un-

21 timely, and is stricken from consideration. Defendant's Response

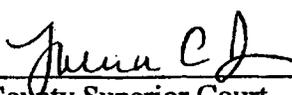
22 to Plaintiff's objection to untimely submission in dictating in  
Par 2. AS was explained in (HAR's) motion for continuance,

23 Defendant's counsel had several competing demands, deadlines,  
and obligations to be out of the city in the month of April.

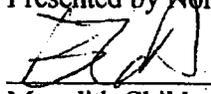
24 is specious. No such assertion was made in the motion.

This is not the first time Defendant has sought to  
continue hearings in these proceedings (August 17, 2010)

Dated this 13 day of ~~April~~<sup>May</sup>, 2010.

  
King County Superior Court

Presented by Northwest Justice Project



Meredith Childers, WSBA #33302  
Eric Dunn, WSBA #36622  
Attorneys for Plaintiff R.A.C.  
Date: April 5, 2011

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