

No. 73843-7-I

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

JAMIE WALLIN,
Appellant,

v.

CITY OF EVERETT, ET AL,
Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Anita L. Farris, Judge

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APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. The court erred by dismissing Mr. Wallin's Public Records Act claim as time-barred under the Act's one-year statutory limitations period.

2. The court abused its discretion by denying Wallin's motion for reconsideration.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether an agency's single production of records constitutes an "installment" of records under the Act when no other records are produced.

2. Whether an agency must claim a statutory exemption to every record withheld by the agency under the Act when multiple records are withheld from the requester.

3. Whether an agency is required to provide a detailed privilege log when multiple records are withheld in whole and/or in part from the requester.

4. Whether an agency must complete a request under the Act either by producing all relevant records and/or by claiming statutory exemption to all records withheld in whole or in part before the one-year statute of limitations period is triggered under RCW 42.56.550(6).

5. Whether the trial court erred by dismissing plaintiff's claim as time-barred under the Act's one-year limitations period.

6. Whether the two-year general "catch-all" statute of limitations period codified at RCW 4.16.130 applies to Public Records Act claims if the one-year statute of limitations period under the Act codified at RCW 42.56.550(6) does not apply, i.e., was not "triggered."

7. Whether the trial court abused its discretion by denying plaintiff's motion for reconsideration.

C. STATEMENT OF THE CASE

1. Substantive Facts

On August 27, 2012, the City of Everett Police Department ("the City") received a three-page Public Records Act (PRA) request dated August 21, 2012 from Jamie Wallin, a prisoner housed at Washington State Penitentiary, for 24 separate and identifiable public records. CP 113. Wallin requested police reports, witness statements, other reports, a medical report, handwritten notes, search warrant and related documents, decline notice, five photographs, and two DVD's. CP 113, 129. Wallin specifically requested that the City mail all records, once gathered, at one time instead of producing the request in installments due to prior incidents of lost correspondence and records in previous requests to the City. CP 113.

The City made three responses by letters dated September 4, 2012, September 25, 2012, and October 9, 2012, requesting more time to complete the request. CP 113-114.

In addition, the City's October 9th letter stated that a waiver previously provided by Mr. Wallin for a medical report did not comply with state statute and federal legislation. CP 114.

Allegedly, on November 21, 2012, the City mailed to Mr. Wallin without charge a "first installment" of responsive records. Wallin did not receive this mailing. CP 114. A later obtained copy of the City's November 21st letter indicated that a further response by the City could be anticipated by January 7, 2013 as the City needed more time to complete the request. CP 114-115.

On December 4, 2012, Mr. Wallin mailed a letter to the City requesting an update to his request as he had received no response since their letter of October 9th. Wallin also told the City that he was abandoning the medical records portion of his request and would supply another waiver at a later date. CP 115.

On December 13, 2012, the City re-mailed the records to Mr. Wallin that were allegedly sent on November 21st. Due to a rejection by the prison's mailroom on January 10, 2013, Wallin did not receive a rejection notice for the records till the following day. CP 115-116. Wallin arranged for the records to be mailed to a third party. CP 116. The records were mailed out to Wallin's grandmother. CP 117.

The City made no response to Mr. Wallin on or before

January 7, 2013 pursuant to their letter of November 21st.
CP 122-123.

On January 7, 2013, Mr. Wallin sent a letter to the City stating that he had received no response from them since October 9th, and requested an update on his request. CP 115. The City responded by letter dated January 17, 2013. CP 115.

The City's January 17th letter indicated that it appeared that prison mailroom rules may have been affecting what records Mr. Wallin was receiving, and that once the City had mailed its response it had fulfilled its obligations under the PRA. CP 117-118. That final letter by the City did not indicate that any records were withheld from Wallin. CP 118. At that time, Wallin reasonably believed the City had produced all of the records requested. CP 123.

Approximately fourteen months later, Mr. Wallin directed his grandmother to mail him select pages of records. Two of the four pages Wallin received was a copy of the City's November 21st letter and a copy of the second page to Wallin's August 21, 2012 PRA request containing checkmarks next to 16 of the 24 records originally requested by Wallin. CP 118-119, 128-129.

After receiving those pages, Mr. Wallin directed his father to examine the remaining records in order to inventory and establish what the City had produced. It was determined that the City had only produced 16 records responsive to

Wallin's request, and had provided a redaction log¹ specific only to a Decline Notice (Item #24) produced by the City. CP 119, 122.

With that information, in a new request, Mr. Wallin then obtained from the City a copy of all letters between the City and Wallin related to his August 21, 2012 PRA request. CP 119-120. The City responded by providing nine letters, three from Wallin and six from the City. The City's response contained no other letters or responses from the City beyond what had been originally provided from September 4, 2012 to January 17, 2013. CP 120.

Ultimately, after Mr. Wallin abandoned the medical report from his 24-item request, the City produced only 16 of the 23 remaining items in what they termed a "first installment", although the City made only one production of records to Wallin (16 records), and withheld the remaining records (7 records) in their entirety. CP 121, 124. The City did not claim any statutory exemption(s) to the seven withheld records, did not explain their withholding, and did not provide an exemption log. CP 124.

¹ Although Wallin termed this document as a "redaction log" in his complaint, for lack of a better term, it was merely a citation to "RCW 42.56.280" and a near verbatim recitation of the text of that statute. It did not reference the decline notice, nor did it reference, cite statute, or provide any brief explanation for withholding of any other records that were withheld by the City. CP 122.

2. Procedural Facts

Mr. Wallin then filed suit against the City to compel disclosure of the wrongfully withheld public records in the Snohomish County Superior Court on November 19, 2014, (under GR 3.1), along with a motion for waiver of the civil filing fees and surcharges. CP 49-51. Wallin's complaint at that time did not include paragraph numbers 5.41 through 5.45. CP 53-54. On December 3, 2014, the Honorable Joseph Wilson screened Wallin's complaint and denied the motion for waiver based on RCW 42.56.550(6), the PRA's one-year statute of limitations. CP 56-58.

On December 11, 2014, Mr. Wallin filed a motion to reconsider and a new motion for waiver with an attached memorandum of law. CP 60-70. Wallin also filed a revised complaint which now contained paragraph numbers 5.41 through 5.45 regarding the correct two-year "catch-all" statute of limitations applicable to the cause of action. CP 72-74.

After reconsideration, Judge Wilson granted Wallin's motion and the case proceeded under the two-year statute of limitations. CP 76-77. Wallin's cause of action was given cause number 15-2-01724-0 and the complaint was filed by the Clerk on January 5, 2015. CP 112.

After service of process and appearance by the City, the City moved to dismiss the case based on the PRA's one-year limitations period. CP 87. At a hearing held on

May 5, 2015, the Honorable Anita Farris granted the City's motion and dismissed the case with prejudice ruling that the case was filed beyond the one-year limitations period provided for in the PRA. CP 2, 34.

Mr. Wallin timely filed a motion for reconsideration pursuant to CR 59(a) arguing that Judge Farris's decision was contrary to law based on the facts. CP 18-31. After opposition by the City, CP 8-16, Judge Farris denied Wallin's motion by a four-page order. CP 4-7. Wallin timely appealed to this Court. CP 1.

D. ARGUMENT

1. THE ONE-YEAR STATUTE OF LIMITATIONS PERIOD UNDER THE PUBLIC RECORDS ACT DID NOT TRIGGER TO BAR WALLIN'S CAUSE OF ACTION AGAINST THE CITY

The Public Records Act (PRA), chapter 42.56 RCW, "is a strongly worded mandate for broad disclosure of public records." Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978); RCW 42.56.030. The PRA's disclosure requirement is broadly construed and its exemptions are narrowly construed to implement this purpose. RCW 42.56.030; Cowles Publ'g Co. v. Spokane Police Dep't, 139 Wn.2d 472, 476, 987 P.2d 620 (1999). Therefore, the PRA requires that every state and local agency produce any non-exempt public record upon request. RCW 42.56.070(1), .080. Disclosure is mandated unless the agency can demonstrate proper application of a statutory exemption to the specific requested

information; the agency bears the burden of proof. Newman v. King County, 133 Wn.2d 565, 571, 947 P.2d 712 (1997). If the agency's claimed exemption is non-specific and does not in fact cover the document, then the claimed exemption is "invalid" and the document must be produced. Sanders v. State, 169 Wn.2d 827, 836, 240 P.3d 120 (2010). Agency action taken or challenged under the PRA is reviewed de novo. RCW 42.56.550(3). The application of a statute to a fact pattern is a question of law fully reviewable on appeal. Ameriquist Mortg. Co. v. Office of Attorney General of Wash., 177 Wn.2d 467, 478, 300 P.3d 799 (2013). The interpretation of case law is reviewed de novo. Id. Appellate courts stand in the shoes of the trial court when reviewing declarations, memoranda of law, and other documentary evidence. Id.

The PRA contains its own statute of limitations within which to bring a cause of action. That statute provides:

Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

RCW 42.56.550(6). Thus, on its face, "the plain language of the statute is clear that the one-year statute of limitations is triggered by one of two occurrences: (1) the agency's claim of an exemption or (2) the agency's last production of a record on a partial or installment basis." Tobin v. Worden, 156 Wn.App. 507, 513, 233 P.3d 906 (2010).

The issue here is whether either of the PRA's two statute of limitations mechanisms were triggered under the fact pattern of this case, where: (1) the City made only one production of sixteen records to Mr. Wallin, and (2) the City withheld the remaining seven records from Mr. Wallin but did not claim exemption to those seven withheld records nor provided a privilege log to Mr. Wallin. Mr. Wallin maintains that, under those facts, and under relevant case law as argued below, the one-year limitations period under the PRA did not begin to run to bar Mr. Wallin's claim, and, as such, the trial court erred by dismissing Mr. Wallin's PRA claim as time-barred under RCW 42.56.550(6).

a. The City Made Only A Single Production Of Records Available To Mr. Wallin.

The second portion of the PRA's one-year limitations period, "the last production of a record on a partial or installment basis," RCW 42.56.550(6), did not trigger in this case where the City made only one, single production of records available to Mr. Wallin and withheld the remainder without claiming exemption(s) and without a proper privilege log. In this respect, this case closely parallels the fact pattern of Rental Housing Ass'n v. City of Des Moines, 165 Wn.2d 525, 199 P.3d 393 (2009).

In Rental Housing, a first request was made for 12 different categories of records relating to the City's "crime

free rental housing program." 165 Wn.2d at 528. The City produced 593 pages of documents relating to the program in only one production of documents. Id. The City withheld the remaining documents (hundreds of pages) from the city attorney's file claiming in a cover letter that they were exempt from production. Id. at 528-29. The City did not provide Rental Housing with a privilege log for the withheld records, and did not describe individual documents withheld. Id. at 529. Ultimately, the Supreme Court concluded that the City's reply did not constitute a proper claim of exemption, and by failing to claim an exemption, the City's response did not trigger the one-year statute of limitations. Id. at 539, 541.

The facts in Rental Housing are illustrative due to the fact that only one production of responsive records was made by the City to Rental Housing pursuant to their first request for records relating to the crime free rental housing program. That single production of records cannot be construed to have been a "partial" production or "installment" under the second portion of RCW 42.56.550(6) as it in essence satisfied the request by Rental Housing in its entirety when the City withheld the remaining documents. Inasmuch as the Supreme Court factually evaluated the case as it did, and held that the PRA's statute of limitations never triggered, it is clear that the City's production of those 593 pages of documents in

one single volume would not trigger the second portion of the PRA's one-year limitations period unless a request is actually provided in portioned intervals.

In precisely the same way, it cannot be gainsaid here that the City of Everett's production of records to Mr. Wallin in one volume while withholding all remaining documents constituted a "last production of a record on a partial or installment basis." RCW 42.56.550(6).

By its plain language and common usage, the terms "partial" and "installment" as used in the statute clearly anticipate those occasions where a request for public records is broken down by the agency and provided to the requester in multiple parts, i.e., provided in periodically-gathered installments till the request has been accommodated in full.²

That method of producing records under the PRA is an acceptable practice because of the necessity of agencies receiving and processing requests that are, for example, large (i.e., for hundreds or thousands of records), and where staff resources may be limited. This is clearly reflected in the legislative provisions of the PRA. See e.g., RCW 42.56.080 (agencies are allowed to produce records "on a partial or

² The Webster's II New College Dictionary (1999) defines "partial" as "Relating to or affecting only part: INCOMPLETE", (p. 800); and "installment" as "A part of something issued at intervals", (p. 574).

installment basis that are part of a larger set of requested records are assembled or made ready for inspection or disclosure."); and RCW 42.56.120 (agency may charge "for each part of the request" if provided on a partial or installment basis).

On the contrary, if the second half of RCW 42.56.550(6) is read to encompass a singularly-produced volume of records to mean an "installment" of records (one part of a series of parts) when no other records can or will be provided by the agency, it would strain the plain meaning of the language of the statute and contravene the PRA's overall purpose to provide requesters full access to public records while at the same time protecting the requesters right to a cause of action when the agency fails to complete a request. See e.g., RCW 42.56.100 (stating that it is "the intent of this chapter to provide full public access to public records"); and RCW 42.56.210(3) (prohibiting agencies from withholding a record in whole or in part unless it claims an exemption).

While it is clear what the PRA's limitations statute requires as a triggering event to bar a cause of action that involves multiple parts and productions of records ("last production of a record on a partial or installment basis"), it should be pointed out that although the City did in fact call its single production of records a "first installment", CP 114, the City made no other productions withholding all

remaining records, CP 124-125, and further stated in a final letter that it had "fulfilled its obligations under the PRA", CP 117-118, the City's usage of the term "first installment" then was a misnomer. The statute does not trigger upon the agency's usage of a particularized term, but by the agency's particularized action in response to a request. Compare RCW 42.56.070 (each agency required to make available public records unless the record falls within a specific exemption), with RCW 42.56.550(6) (one-year limitations period triggers upon one of two agency actions: (1) claim of an exemption, or (2) production of the last record on an installment basis).

There is no dispute that the City made only one volume of sixteen records available to Mr. Wallin and withheld the remaining seven records. The request then, based on the City's own actions, would not fall under the second portion of the PRA's one-year limitations statute unless the City had affirmatively produced a second volume of records. Since they did not in fact produce another volume of records but instead withheld all remaining records, then, as a matter of law, the second portion of the one-year limitations period under the PRA does not apply and the trial court erred to the extent it ruled otherwise.

In addition, the City's failure to claim proper exemption to the withheld records in whole and in part did not trigger the first portion of RCW 42.56.550(6).

b. The City Did Not Claim A Proper Statutory Exemption
To All Of The Records Withheld From Mr. Wallin.

Under the PRA, when an agency receives a request for an identifiable public record within the agency's possession and control, the agency is required to: One, if the record is not exempt from production, provide the requester with the record, see RCW 42.56.070(1), .080; or Two, if the record is exempt from production in whole or in part, claim a statutory exemption to the record withheld by the agency in whole or in part, see RCW 42.56.210(3).

The PRA "does not allow silent withholding of entire documents or records, any more than it allows silent editing of documents or records. Failure to reveal that some records have been withheld in their entirety gives requesters the misleading impression that all documents relevant to the request have been disclosed." Neighborhood Alliance of Spokane County v. County of Spokane, 172 Wn.2d 702, 743, 261 P.3d 119 (2011).

A proper exemption under the PRA requires agencies to "include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld." RCW 42.56.210(3).

The plain language of RCW 42.56.210(3) and Washington case law interpreting it are clear that an agency must

identify " 'with particularity' " the specific record or information being withheld and the specific exemption authorizing the withholding. Rental Housing, 165 Wn.2d at 537-38 (emphasis added)(quoting Progressive Animal Welfare Soc. v. University of Washington, 125 Wn.2d 243, 271, 884 P.2d 592 (1994)(PAWS II)).

Here the City withheld seven records in their entirety and information from one record in part. CP 122 (§ 5.28), CP 124 (§ 5.36), CP 129. In its entirety, the City withheld two corrections reports (Items 1 and 2), two statements (Items 9 and 10), one handwritten note (Item 11), five digital photographs (Item 19), and two DVD's (Item 20). In part, the City withheld information from a decline notice (Item 24).

The City was obligated then to claim a specific statutory exemption to each and every record withheld by the City in whole or in part, and provide a brief explanation of how each record was exempt from production. Instead though, the City made a claim of exemption to only one of those eight records--the decline notice that was redacted in part.

It is not enough, for PRA statute of limitations triggering purposes, for an agency to claim an exemption to only one specific record when multiple records are withheld. To trigger the first portion of RCW 42.56.550(6) ("claim of exemption"), the agency must claim exemption (and provide a

brief explanation) for every record withheld in whole or in part for the entirety of the request. The claim of exemption by the agency must provide sufficient identifying information for the requester to determine which exemption applies to which record, otherwise, the statute does not trigger. See Klinkert v. Washington State Criminal Justice Training Com'n, 185 Wn.App. 832, 836, 342 P.3d 1198 (2015) ("If the claim of exemption does not provide sufficient identifying information, the one-year statute of limitations does not begin to run.") (citing Rental Housing, 165 Wn.2d at 539-40).

Again, the facts of Rental Housing are illustrative. There, the Supreme Court concluded that the City did not state a proper claim of exemption to trigger the PRA's one-year statute of limitations where its response letter generally characterized withheld documents but did not "specifically describ[e] each withheld individual document and the basis for withholding each document." 165 Wn.2d at 541. In addition, the agency must provide sufficient explanatory information for the requester to determine whether the exemptions are properly invoked. Id. at 539 (quoting WAC 44-14-04004(4)(b)(ii)); see also Sanders, 169 Wn.2d at 846.

Here though, the City did not make a proper claim of exemption. Its responses on November 21st (CP 122, ¶ 5.28) and January 17th (CP 117-118, ¶ 5.17) were insufficient as a

matter of fact and law to trigger the one-year statute of limitations under the PRA. Neither response specifically described each withheld document and the basis for withholding of each document.

The first portion of RCW 42.56.550(6) ("claim of exemption") should not be divorced from the duty of the agency under RCW 42.56.210(3) to claim exemption for each and every record withheld, nor should it be read to relieve the agency's positive duty to claim exemption to each withheld record simply because a statute of limitations period is at issue. That would eviscerate the PRA's overall purpose behind holding agencies accountable for their actions and the legislature's mandate requiring public agencies to explain their actions when refusing to provide public records upon request. See e.g., RCW 42.56.030; and RCW 42.56.050 (Notes: "Intent -- 1987 c 403: '...The intent of this legislation is to make clear that: ... (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records.' ").

Because the City in this case did not make a proper claim of exemption nor provide a proper privilege log, then, as a matter of law, the first portion of the one-year limitations period under the PRA does not apply and the trial court erred to the extent it ruled otherwise as Mr. Wallin's claim was not subject to the limitation period under the PRA.

c. The City Did Not Provide A Detailed Privilege Log
To Mr. Wallin.

In this case, where multiple records (including types of records) were withheld, the City was required to provide an adequate privilege log. Because they did not, the PRA's one-year limitations period did not trigger.

Under Rental Housing, an agency is required to provide a detailed "privilege log" which includes particularized information including "the type of record, its date and number of pages, and, unless otherwise protected, the author and recipient, or if protected, other means of sufficiently identifying particular records without disclosing protected content." 165 Wn.2d at 538 (citing PAWS II, 125 Wn.2d at 271 n.18). Moreover, the brief explanation requirement can be satisfied through "the form of a privilege log", which " 'need not be elaborate but should allow a requestor to make a threshold determination of whether the agency has properly invoked the exemption.' " Klinkert, 185 Wn.App. at 836 (quoting WAC 44-14-04004(4)(b)(ii)); Rental Housing, 165 Wn.2d at 539.

A privilege log is necessary because "[w]ithout the information a privilege log provides, a public citizen and a reviewing court cannot know (1) what individual records are being withheld, (2) which exemptions are being claimed for individual records, and (3) whether there is a valid basis

for a claimed exemption for an individual record." Rental Housing, 165 Wn.2d at 540.

The City here did not so provide. Their responses were insufficient to trigger the one-year statute of limitations, and due to their failure to claim proper exemption and provide a privilege log, the City did not complete Mr. Wallin's request for records.

d. The City Did Not Complete Mr. Wallin's Request For Public Records.

The PRA requires state and local agencies to "make available for public inspection and copying all public records, unless the record falls within the specific exemptions of [the PRA] or other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). The PRA then, "requires each relevant agency to facilitate the full disclosure of public records to interested parties." Resident Council v. Hous. Authority, 177 Wn.2d 417, 431, 300 P.3d 376 (2013).

Nowhere does the PRA allow for partial or incomplete production of requested records or information without a claim of exemption. Bonamy v. City of Seattle, 92 Wn.App. 403, 408, 960 P.2d 447 (1998)("The provisions of the act are to be construed liberally to promote complete disclosure of public records"); ACLU v. Blaine Sch. Dist. 503, 86 Wn.App. 688, 696, 937 P.2d 1176 (1997)("Access is the underlying

theme of the act."); Neighborhood Alliance, 172 Wn.2d at 743 ("The Public Records Act does not allow silent withholding of entire documents or records, any more than it allows silent editing of documents or records.").

Every agency then, pursuant to their obligation under the PRA, must either provide the requested record or claim a proper exemption to that record if withheld.

By the fact that the City did not bother to complete Mr. Wallin's request for public records by either making a proper "claim of exemption" or by making "the last production of [the] record[s] on a partial or installment basis", RCW 42.56.550(6), the one-year statute of limitations period did not trigger to bar Mr. Wallin cause of action and the trial court erred by dismissing Mr. Wallin's claim as time-barred under the Act's limitations period.

e. The Trial Court Erred By Dismissing Mr. Wallin's Claim As Time-Barred Under The PRA's One-Year Statute Of Limitations.

For the reasons set forth above, the trial court erred by dismissing Mr. Wallin's claim with prejudice. CP 2, 34. The trial court's May 5, 2015 Order should be vacated and this case remanded for further proceedings.

Mr. Wallin timely filed his cause of action within the appropriate two-year "catch-all" statute of limitations period which applies under the facts of this case.

2. THE TWO-YEAR "CATCH-ALL" STATUTE OF LIMITATIONS PERIOD PROPERLY APPLIES TO WALLIN'S CAUSE OF ACTION AGAINST THE CITY

Although the Public Records Act contains its own statutory limitations period within which to bring a cause of action under the PRA, the plain language of the statute itself makes clear that it must be triggered before it begins to run, and will only do so upon one of two occurrences. See RCW 42.56.550(6); Tobin, 156 Wn.App. at 513. As demonstrated above, the PRA's one-year limitations statute did not begin to run in Mr. Wallin's case because the City did not make a proper claim of exemption and did not make their single production of records on an installment basis. Consequently, the two-year general "catch-all" limitations period properly applies to this case. Mr. Wallin's cause of action then was timely filed, and the trial court abused its discretion by denying Mr. Wallin's motion for reconsideration.

a. The Statutory Two-Year Limitations Period Applies To Public Records Act Causes Of Action When The One-Year Limitations Period Does Not Apply.

Washington appellate courts have held that a request for records under the PRA is subject to two separate limitation periods. The first limitations period is found at RCW 42.56.550(6), but will only trigger upon one of two occurrences contained in the statute. "Alternatively, the two-year "catch-all" statute controls when there are no other

applicable statutes of limitation." Belenski v. Jefferson County, 2015 WL2394974, *6 (Wn.App. Div.2 2015)(citing Johnson v. Dep't of Corr., 164 Wn.App. 769, 777, 265 P.3d 216 (2011)). See also Reed v. City of Asotin, 917 F.Supp.2d 1156, 1166 (E.D.Wash. 2013)(applying two-year statute of limitation and "discovery rule" tolling provision to Washington Public Records Act claim).

The two-year statute of limitation period is codified at 4.16.130, and provides that: [a]n action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action have accrued." RCW 4.16.130. Stenberg v. Pacific Power & Light Co., 104 Wn.2d 710, 721, 709 P.2d 793 (1985)(Supreme Court stating that RCW 4.16.130 "serves as a limitation for any cause not fitting into the other limitation provisions.").

Since Mr. Wallin's cause of action would not have accrued until on or after January 17, 2013, his cause of action was timely filed within the two-year limitation period under RCW 4.16.130.

b. Mr. Wallin Timely Filed His Cause Of Action Within The Statutory Two-Year Limitation Period.

The City of Everett sent Mr. Wallin a final letter on January 17, 2013, stating, in part, that "once the City has mailed its response, it has fulfilled its obligations under the PRA." CP 117-118 (§ 5.17). That letter was the final

response by the City pursuant to Mr. Wallin's August 21, 2012 PRA request.

Mr. Wallin's cause of action accrued then, at a minimum, on or after January 17, 2013 when the City made their final response by letter of that same date. It would not be until that point in time that Mr. Wallin was informed that the City had, according to them, "fulfilled its obligations under the PRA." CP 118.

Since the one-year statute of limitations period under the PRA never triggered, the general two-year limitations period under RCW 4.16.130 applies. Therefore, when Wallin filed his complaint on December 11, 2014 (pursuant to GR 3.1), he did so within the applicable two-year period for his cause of action, 37 days before the expiration of the statute of limitations applicable to his cause of action.

Mr. Wallin's complaint was timely filed, and the trial court abused its discretion by dismissing Mr. Wallin's action and denying his motion for reconsideration.

c. The Trial Court Abused Its Discretion By Denying Mr. Wallin's Motion For Reconsideration.

After the trial court dismissed Mr. Wallin's claim as time-barred under the PRA's one-year limitations statute at a hearing held on May 5, 2015 on the City's motion to dismiss, CP 2, 34, Mr. Wallin moved for reconsideration pursuant to CR 59(a)(7) and CR 59(a)(9). CP 18, 20. The trial court

then denied Mr. Wallin's motion for reconsideration by a four-page order. CP 4-7.

Though judicial review of agency actions taken or challenged under the PRA is de novo, see RCW 42.56.550(3), the proper standard of review of a denial of a motion for reconsideration is for abuse of discretion. O'Neill v. City of Shoreline, 183 Wn.App. 15, 21, 332 P.3d 1099 (2014).

"A trial court abuses its discretion of its decision is manifestly unreasonable or based on untenable grounds or reasons." West v. Department of Licensing, 182 Wn.App. 500, 516, 331 P.3d 72 (2014). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; and it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." Id. at 516-17.

Here, the trial court improperly denied Mr. Wallin's motion for reconsideration, and made several errors of law (and fact) in doing so.

The first error made by Judge Farris was her refusal to consider Mr. Wallin's argument on reconsideration that the City was required to claim a proper exemption, to include providing a privilege log (CP 24-26). See CP 4 ("As to

Plaintiff's claim the exemptions trigger did not occur because there was no exemption log, that argument was not raised before, so it cannot be claimed on reconsideration.").

However, Mr. Wallin did in fact raise that specific issue, multiple times before raising it in his motion. For example, in his memorandum of law filed in support of his motion for waiver of civil filing fees, Mr. Wallin stated:

In short, since the City never: one, provided Mr. Wallin with a privilege log or otherwise claimed "exemption" to the seven silently withheld records; or two, produced those seven records, i.e., made the "last production of [the] record[s] on [the] installment basis[,]" RCW 42.56.550(6), then, as a matter of law, neither of the PRA's two procedural triggering mechanisms were activated and the one-year limitations period under RCW 42.56.550(6) does not apply to bar Mr. Wallin's claims.

CP 66 (emphasis added). And in his revised complaint, Mr.

Wallin alleged:

5.34. Although the City sent Mr. Wallin a letter on January 17, 2013, (see ¶ 5.17, above), the City did not otherwise produce the still-pending next installment of requested records, and did not provide an exemption log or otherwise claim statutory exemption precluding release of the records still being silently withheld by the City.

* * * *

5.43. The City did not, and has not, at any time to date, (1) claimed any exemption to the seven records being withheld by the City to which this cause of action directly relates, or (2) produced the last record in the final installment of seven records unlawfully being withheld by the City. Thus, as a matter of law, the one-year limitations period contained within the PRA does not apply to bar this cause of action after one year because neither procedural triggering event had occurred.

CP 124, 126 (emphasis added). Additionally, Mr. Wallin made the argument at the hearing on the City's motion to dismiss.³

Even so, assuming, *arguendo*, that Mr. Wallin had not previously raised his claim that the lack of a proper exemption and privilege log failed to trigger the one-year statute of limitations period, Judge Farris, at any point in the litigation when an issue or claim is raised, will always have an ethical obligation and legal duty to follow the law (legislative and decisional) as it exists at that point in time--notwithstanding any alleged failure by a plaintiff to raise an issue or claim prior to moving for reconsideration.

Regardless, the claim was raised prior to moving for reconsideration, and it was an abuse of discretion for Judge Farris not to fairly consider the claim. Her resulting conclusions, as demonstrated hereafter, were based on untenable grounds and untenable reasons.

The second error made by Judge Farris then, was her factual determination that the City claimed two exemptions, see CP 5 ("The exemption and redaction clearly identified which two document[s] they applied to."); and her legal

³ Although Wallin raised the privilege log issue at the hearing and argued that Rental Housing controlled based on the fact that multiple records were withheld, there is no verbatim report of proceedings available for review due to Judge Farris's failure to have her court reporter at the hearing--a fact Wallin was not made aware of till after filing his notice of appeal.

conclusion that those triggered the one-year statute of limitations, see CP 4 ("Thus, the exemption claims triggered the statute of limitations.").

First, regarding the Judge's factual error, the City claimed only one exemption for a redaction of one record in part, not two exemptions to two records. See CP 122 (§ 5.28). It can only be presumed that Judge Farris confused the City's October 9, 2012 letter to Mr. Wallin regarding the deficient medical waiver as an "exemption", but it was not. CP 114 (§ 5.5). The City simply stated, in relevant part: "That waiver, however, did not comply with the requirements in chapter 70.02 RCW and federal HIPAA Legislation. ... If you wish to pursue this request, please provide a waiver that complies with all legal requirements and is accompanied by sufficient documentation. Otherwise, we will have to deny this request." After receiving that letter, Mr. Wallin abandoned his pursuit of that medical record till a later date. CP 115 (§ 5.7).

Second, regarding the Judge's errant legal conclusion, the single (redaction) exemption only applied to one of the eight records withheld by the City in whole and in part, thus, it was not a proper claim of exemption and did not trigger the one-year statute of limitations for the reasons set forth above. See Part D(1)(b)-(c), pages 14-19, *supra*. Moreover, Judge Farris took no consideration whatsoever to

the fact that the City withheld seven records in their entirety in addition to the one record redacted in part. Cf. CP 4-7. Instead, after mentioning the "two documents" the "exemption and redaction" applied to (although one of which, the medical record, was not claimed as being exempt), CP 4-5, Judge Farris cited to Rental Housing for the proposition that "where numerous documents and numerous general claims of exemptions exist, a log or list with specifics may be necessary to identify exactly which document is withheld and which exemption claim is being made as to which document", but then somehow came to the conclusion that "[t]his case is not like that case." CP 5.

It is hard to imagine just how the privilege log requirement in Rental Housing somehow does not apply in this case where the City withheld eight documents in whole and in part, especially where the documents included various types records which included corrections reports, witness statements, a handwritten note, digital photographs, and DVD's, and where it is entirely unknown which statutory exemptions would apply to authorize withholding of those various records in their entirety. Contrary to the Judge's assertion that the "specific exemptions for withholding were clear", they were in fact not clear because the City made no exemptions to those seven withheld records due to their failure to provide a privilege log.

Prior to the City's motion to dismiss and Mr. Wallin's motion for reconsideration, case law made clear that a proper claim of exemption is required (statutory exemption and brief explanation for withholding) for each record withheld by the agency before the one-year statute of limitations will begin to run. See Klinkert, 185 Wn.App. at 836 ("If the claim of exemption does not provide sufficient identifying information, the one-year statute of limitations does not begin to run."); Rental Housing, 165 Wn.2d at 538-39 (detailing need for a privilege log when multiple records withheld; city's reply letter was not a proper claim of exemption to trigger the PRA's one-year statute of limitations). Thus, Judge Farris abused her discretion by her ruling that the one-year statute of limitations began to run upon the City's claim of only (one) exemption. Her decision was based on untenable reasons.

A third error made by Judge Farris was her legal conclusion that the City triggered the one-year statute of limitations by producing records to Mr. Wallin. CP 7 (court stating that plaintiff's claim was barred because "more than a year passed after the last production of a document on an installment basis").

But with regard to that errant legal conclusion, the fact that the City made only one, single volume of records available and withheld all remaining records was an action by the City that did not trigger the statute of limitations for

the reasons set forth above. See Part D(1)(a), pages 9-13, supra. It matters none that the City called that single production an "installment," it only matters how they actually handled the request. Thus, since the City made no more than one volume of records available, it was not produced on an installment basis thereby failing to trigger the one-year statute of limitations. Judge Farris abused her discretion in ruling otherwise as her decision was based on untenable reasons.

Mr. Wallin's claim was subject to the two-year statute of limitations period contained in RCW 4.16.130. The Judge abused its discretion by denying Mr. Wallin's motion for reconsideration.

3. MR. WALLIN IS ENTITLED TO RECOVER HIS COSTS AND FEES ON APPEAL AS A PREVAILING PARTY IN THIS ACTION

As a prevailing party on appellate review, RCW 42.56.550(4) entitles Mr. Wallin to recover "reasonable costs and fees incurred on appeal." City of Fife v. Hicks, 186 Wn.App. 122, 147, 345 P.3d 1 (2015)(citing Resident Council, 177 Wn.2d at 447). See also O'Neill, 183 Wn.App. at 25-26; RAP 14.2; RAP 18.1.

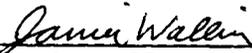
It is to this extent that Mr. Wallin respectfully requests this Court award him all of his reasonable costs and fees incurred in this appeal.

E. CONCLUSION

Based on the foregoing, Mr. Wallin respectfully requests that this Court reverse the order of the trial court and remand for further proceedings, and award him his reasonable costs and fees incurred on appeal.

DATED this 10th day of December, 2015.

Respectfully submitted,



Jamie Wallin
Pro Se