

FILED
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STATE OF WASHINGTON
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No. 100458-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 55111-0-II)

JERRIE O'CONNOR,
O'Connor,

vs.

LEWIS COUNTY,
Respondent,

RESPONSE TO MOTION FOR REVIEW

On review from the Court of Appeals, Division Two,
And Superior Court of Thurston County

JONATHAN MEYER
Lewis County Prosecuting Attorney

By:



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TABLE OF CONTENTS

TABLE OF AUTHORITES ii

A. COURT OF APPEALS DECISION 1

B. COUNTERSTATEMENT OF THE ISSUES 1

C. STATEMENT OF FACTS 1

D. ARGUMENT 5

E. CONCLUSION 11

TABLE OF AUTHORITIES

Washington Cases

<i>Courtland v. Lewis Co.</i> , 14 Wn. App. 2d 249, 473 P.3d 272 (2020)	7, 9
<i>Health Pros Nw., Inc. v. Dep't of Corr.</i> , 10 Wn. App. 2d 605, 614, 449 P.3d 303 (2019)	7
<i>Hobbs v. Wash. State Auditor's Office</i> , 183 Wn. App. 925, 335 P.3d 1004 (2014)	5, 7, 8, 9

Statutes

RCW 42.56	5
RCW 42.56.120(4).....	6
RCW 42.56.520(2).....	6
RCW 42.56.550(1).....	6
RCW 42.56.550(2).....	6

Other Rules or Authorities

RAP 13(b)(1)-(4).....	10
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A. COURT OF APPEALS DECISION

The Petitioner, Jerrie O'Connor, seeks review of the unpublished opinion in *O'Connor v. Lewis County*, Court of Appeals, Division II, cause number 55111-0-II, filed November 8, 2021, attached for the Court's convenience as Appendix A.

B. COUNTERSTATEMENT OF THE ISSUES:

1. Was the Court of Appeals, Division II correct when it reversed the trial court because the underlying Public Records Act lawsuit was filed prematurely?
2. Was the Court of Appeals correct in finding no reasonable requestor would believe no further documents were going to be produced?

C. STATEMENT OF FACTS

In June of 2019, O'Connor, through her attorneys, submitted a public records act request ('PRA' herein) to Lewis County. O'Connor requested records from the employment lawsuit she was litigating against the County that was being defended by an outside law firm. CP 435.

Initially, Casey Mauermann, the County's public records coordinator, told O'Connor the County would produce records either in whole or in installments, by August 1, 2019. CP 442. The County missed the self-imposed deadline but, without prompting from O'Connor, produced the first installment on September 24, 2019. CP 438, 440. The delay was due to unforeseen complications in locating, sorting and redacting the first installment of responsive documents. CP 28-33. When Mauermann produced the first installment of records on September 24, 2019, she told O'Connor that the County would produce the next installment around October 22, 2019. CP 440.

Eleven days after O'Connor was informed further installments were forthcoming on a specific date, she filed a PRA lawsuit in the Thurston County Superior Court. CP 1-3. Sensing there was some confusion on behalf of the O'Connor that the request had been closed, the County

reiterated two days later, on October 4, 2019, that the County was, “continuing to process the request.” CP at 36.

The complaint O’Connor filed had causes of action for both denial of access to records under RCW 42.56.550(1) and unreasonable estimate of time under RCW 42.56.550(2).¹ O’Connor settled the second cause of action, the timeliness cause of action, by accepting an offer of judgment in November of 2019. CP 41.

The only remaining cause of action was for a denial of access to records under RCW 42.56.550(1). There were no allegations that responsive records were not produced or that any redactions were improper.

The second set of documents were made available on October 30, 2019 but were not claimed until November 25, 2019, almost a month later. CP 437.

¹ There was no mention of the newly minted “silent withholding” cause of action O’Connor urges this court to adopt.

The County estimated it would produce the final set of records on December 10, 2019. CP 437. O'Connor's attorney told the County that they did not want the final installment if it was the same as prior installments. Out of an excess of caution, the County provided the final set of records on December 18, 2019 at no cost and O'Connor's request was closed. CP 436.

After briefing and oral argument on the merits of the single, denial of access claim remaining in the complaint, the trial court judge found that Lewis County was liable for what the trial court characterized as a delay in the production of the third installment only. In doing so, the trial court found that the County would not have produced the records timely, if at all, absent the filing of the lawsuit between the first and second installment. CP 610.

The County appealed, and the Court of Appeals, Division II, held oral argument on October 22, 2021. On November 8, 2021, Division II issued its decision reversing

the trial court and ordered that judgment be entered in the County's favor. Division II held that under the PRA a requestor cannot file a claim until there is final agency action denying access to records. The Court also held that no reasonable requestor would have believed further records were not forthcoming.

O'Connor is now seeking review by the Supreme Court.

D. ARGUMENT.

The Court of Appeals, Division II, correctly decided this case. Their unanimous decision was based on undisputed facts and dispositive case law. This Court should deny review.

1. The lower court was correct in reversing the trial court based on *Hobbs v. State Auditor's Office*.

The Public Records Act, Revised Code of Washington 42.56 et seq, was originally passed via

initiative² and subsequently amended by the legislature. The resulting statutory framework outlines the duties a custodian of records when responding to a request.

At the outset, the County was required to respond to the O'Connor's request within five (5) days. 42.56.520(1). During the pendency of production, the County was required to perform a reasonably diligent search for records in a reasonable amount of time. RCW 42.56.550(2). Once records were identified as responsive, the County was required to produce the records in whole or installments and could only withhold or redact if there was a specific exemption. RCW 42.56.550(1); RCW 42.56.120(4). Finally, the County was required to produce the records with parameters around charging. RCW 42.56.120. There are no allegations in either the trial court or Division II that any of those duties were not met by the County. To the extent this lawsuit could be read to be a

² 1972 Washington Initiative 276.

violation of 42.56.550(2), O'Connor voluntarily settled that claim in November of 2019. CP at 41.

O'Connor wants this Court to recognize a duty to tell a requestor who is receiving documents in installments what documents exist, where, and if an installment is not claimed, what documents the requestor would not get in later instalments. No such duty exists within the PRA.

The *Hobbs* court rejected the plaintiff's interpretation of former RCW 42.56.520 as requiring the agency to provide an estimate of the reasonable amount of time needed to complete a request, stating it would not add words to the statute. *Health Pros Nw., Inc. v. Dep't of Corr.*, 10 Wn. App. 2d 605, 614, 449 P.3d 303 (2019) *citing Hobbs v. Washington State Auditor's Office*, 173 Wn. App. 925, 942, 335 P3d 1004 (2014). O'Connor requests the same result here.

Had the legislature or the original ballot measure drafters wanted to require a record holder to alert the

requesting party what records existed and where before producing in installments they could have included that requirement but did not.

In reality, a denial of public records only occurs “when it reasonably appears that an agency will not or will no longer provide responsive records.” *Hobbs*, 183 Wn. App. at 936, 335 P.3d 1004 (2014); *Cortland v. Lewis County*, 14 Wn. App. 2d 249, 258, 473 P.3d 272, 277. When an agency produces records in installments, the agency does not deny access to the records until it finishes producing all responsive records. *Hobbs*, 183 Wn. App. at 936. Based on the plain language of the statute, the *Hobbs* court noted, “[Petitioner] takes the position that a requester is permitted to initiate a lawsuit prior to an agency's denial and closure of a public records request. The PRA allows no such thing.” *Id.*

In this case, the O'Connor asks this court to create a new cause of action, “silent withholding”, that does not

exist in the PRA. Considering O'Connor knew what records she would be getting owing to the narrow request she made, it is particularly disingenuous to say O'Connor was not aware of what records may or may not come in future installments. As the *Hobbs* Court noted at footnote 12, "As a policy matter, the purpose of the PRA is best served by communication between agencies and requesters, not by playing 'gotcha' with litigation. In cases such as this, where an agency is making every effort to cooperate with a requester to provide the requested records, there certainly cannot be any legitimate purpose served by initiating a lawsuit prior to the agency making a final decision regarding what documents it will and will not produce." *Id.* at 1011.

Likewise, had the legislature wanted to require the producing agency to alert the requester of what records might not be produced if the requestor did not claim an installment; the legislature could have, but did not.

The “silent withholding” theory Plaintiff pressed at the Court of Appeals, and repeats here³, has no ground in the statutes or case law surrounding the PRA. It would be a matter solely for the legislature to create the duty O’Connor envisions. Therefore, review should be denied as this is not an appropriate case for review under RAP 13.4. It does not present a matter of general public interest and she has not cited any case from this Court that the Division II opinion is in conflict with.

2. The Court of Appeals, Division II, was correct in holding that no reasonable requestor would believe further documents were not forthcoming.

The core finding in this case was that no reasonable requestor would believe more documents were not forthcoming. Therefore, Division II held that the lawsuit was premature pursuant to *Hobbs and Courtland. O’Connor v. Lewis County*, No. 55111-0-II Slip Op. at 10 (Wash. Cr.

³ See Plaintiff’s Issues Presented for Review at a. and b.

App. November 9, 2021) (unpublished)⁴. O'Connor here asks this Court to reverse that finding because it is dispositive of the case.

Whether or not a case should be reviewed by this Court is outlined in the Rules for Appellate Procedure, Rule 13(b)(1)-(4). Reversing specific and fatal factual findings amply supported by the record is not among the grounds for review.

In this case, Division II correctly noted that when the County gave O'Connor the first installment of responsive records, the County told O'Connor further records would be produced as they were located and gathered as well as an estimated date for future installments. O'Connor then filed her lawsuit. Production of the second and third installments were on time.

Because a requestor cannot initiate a denial of access claim until their request is closed, the Division II

⁴ Cited pursuant to GR 4(1)(a) as the underlying opinion.

Court correctly found Plaintiff's suit was premature citing to *Hobbs and Freedom Foundation*. Division II held, "Because the County was continuing to fulfill O'Connor's PRA request at the time she filed suit, the complaint was premature and the superior court erred by denying the County's motion for summary judgment dismissal of O'Connor's PRA lawsuit." Decision at 1.

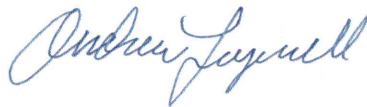
E. CONCLUSION

The State respectfully requests the Court not accept review of O'Connor's petition. O'Connor has not shown an issue of general import nor has she demonstrated that the underlying case is in conflict with any opinion of this Court. If the Court were to accept review or request argument in this case, the County respectfully requests an opportunity to submit supplemental briefing.

The undersigned certifies that this response contains
2015 words pursuant to RAP 18.17(b).

RESPECTFULLY submitted this 7th day of January, 2022.

JONATHAN MEYER
Lewis County Prosecuting Attorney



By:
ANDREW LOGERWELL, WSBA 38734
Chief Civil Deputy
Attorney for Respondent

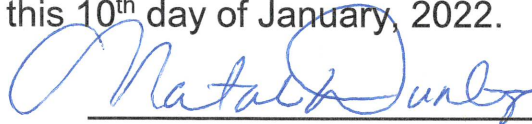
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The undersigned certifies under penalty of perjury
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Dated this 10th day of January, 2022.



Natalie A. Dunlap, Civil Paralegal

APPENDIX A

November 9, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JERRIE O’CONNOR, an individual,

Respondent/Cross-Appellant,

v.

LEWIS COUNTY, a political subdivision of the
station of Washington,

Appellant/Cross-Respondent.

No. 55111-0-II

UNPUBLISHED OPINION

LEE, C.J. — Lewis County appeals the superior court’s order ruling that the County violated the Public Records Act, chapter 42.56 RCW, (PRA). Jerrie O’Connor cross-appeals the superior court’s order ruling that the County did not commit certain PRA violations. Because the County was continuing to fulfill O’Connor’s PRA request at the time she filed suit, the complaint was premature and the superior court erred by denying the County’s motion for summary judgment dismissal of O’Connor’s PRA lawsuit. Therefore, we reverse and remand to the superior court for entry of summary judgment in favor of the County dismissing the complaint.

FACTS

A. O’CONNOR’S PRA REQUEST

On June 25, 2019, attorney Lauren Berkowitz submitted a PRA request to the County on behalf of Jerrie O’Connor. Berkowitz requested “[a]ll billing records received from or made to any [of] the law firms Michael & Alexander and Fisher Phillips, or any person employed by those

No. 55111-0-II

firms, arising from the tort claim and/or lawsuit filed by Jerrie O'Connor." Clerk's Papers (CP) at 40 (italics omitted).

The County responded to the PRA request on June 28, within five business days of receiving the request. Casey Mauermann, the County's Public Disclosure Manager, responded to the request on the County's behalf via the County's public records online portal. Mauermann identified herself as the person assigned to fulfill O'Connor's PRA request and said she would coordinate with other County departments in the collection, review, and production of responsive records. Mauermann's response to O'Connor stated that

[w]hen a records request is for a large volume of records, the County may elect to provide records on an installment basis. You will not be charged any fees related to this request until you are provided with a cost estimate, either an installment estimate or estimate of the anticipated cost for the full request, whichever is more applicable. You will then have an opportunity to amend or withdraw your request if you wish to avoid paying the accompanying fees.

CP at 39. Mauermann provided August 1 as the time estimate for a status update or cost estimate. Mauermann also asked O'Connor to "please await the cost estimate. Conversely, if the County encounters a need to extend our estimate, you will be contacted with a revised estimated date." CP at 39.

Mauermann began to collect responsive records from various County departments and cross-referenced documents to check for completeness and potential redactions. Mauermann reached out to several County departments that would likely have responsive records, asked for assistance in producing records, and confirmed which offices did not have responsive records. At the time of O'Connor's PRA request, the County Auditor had recently switched billing systems, so it possessed both paper and electronic records on a new electronic system. Mauermann spent

No. 55111-0-II

several hours attempting to learn how to use this new electronic system to process O'Connor's request. Mauermann also had to individually review each paper record from the County Auditor, compare it to an index, and determine its responsiveness. Mauermann's assistant left employment with the County in early August, a little over one month after O'Connor's PRA request was filed. Mauermann found out on June 27 that the County's risk management department would likely possess responsive records, but the County's risk manager left County employment "[s]hortly after the request came in." CP at 398. Mauermann gathered responsive records from the County's risk management department sometime before September 13.

No communication from either party occurred on or before August 1. The next communication about the PRA request occurred on September 13, when the County provided O'Connor with a cost estimate of \$3.16. In the message providing the cost estimate, the County stated that

[w]hile the County and this office continues to desire to provide full assistance to members of the public who make public records requests, we also desire to prevent excessive interference with other essential functions. As a result, we intend to close this particular public records request on October 14, 2019 unless \$3.16 is remitted.

CP at 38. O'Connor sent a check for the cost estimate on September 13, and the County received O'Connor's check on September 16.

On September 24, the County acknowledged receipt of payment and provided O'Connor with a link to the responsive records. In this message to O'Connor, the County stated:

The County will continue to attempt to locate additional responsive records and we anticipate providing a status of our search results or a cost estimate for responsive records to you on or before October 22, 2019. If you have not received a response in that time, please do not hesitate to contact me directly inquiring as to the status. Of course, if we locate responsive records prior to this date we will provide them

to you promptly. Conversely, if the County encounters a need to extend our estimate, you will be contacted with a revised estimated date.

CP at 37.

Also on September 24, Berkowitz replied that she received the records but did not see any records for 2019. Berkowitz stated that the employment lawsuit was ongoing and asked Mauermann to “please re-check your records to make certain that all invoices have been provided in response to my request[.]” CP at 37. She noted that this was “not a new request, but a follow up to my original request for records.” CP at 37.

C. INITIATION OF PRA LAWSUIT

On October 3, O’Connor filed a lawsuit against the County, alleging that the County had violated the PRA. The complaint alleged two causes of action: a denial of access claim under RCW 42.56.550(1) and an unreasonable estimate of time claim under RCW 42.56.550(2). The denial of access claim stated that the County “deprived the Plaintiff of access to the records requested by her attorney, amounting to a de facto denial or withholding of records.” CP at 3.

D. POST-COMPLAINT RESPONSES AND COMMUNICATIONS

On the morning of October 4, one day after O’Connor filed her complaint, a Lewis County attorney sent a note to Mauermann. That note said, “Ms. Berkowitz is under the impression that this request is closed, when the last correspondence from the county indicates we are continuing to process the request. Please respond to that effect.” CP at 36. In the afternoon of October 4, Mauermann responded to Berkowitz telling her that her “records request is open and we are still processing and searching for records.” CP at 36. Mauermann also reiterated that the County planned to provide a status update on or before October 22, 2019.

On October 22, the County gave a status update that the County had identified 147 pages for the next installment of records. The County told O'Connor that the County was finalizing redactions, would provide a cost estimate by October 30, and would contact O'Connor if the records were finalized in advance of that time estimate. The County provided this cost estimate on October 28. After receiving payment, the County released the second installment of responsive records on November 18. In this message, the County stated that it anticipated providing another status update or cost estimate by December 10.

On December 6, the County sent a message to O'Connor that the PRA request remained ongoing, that the County was continuing to compile records, and that it expected to provide those records on or before December 18. The County also responded to a recent inquiry from Berkowitz about the duplicity of the next installment.

On December 18, the County provided the third and final installment of responsive records to O'Connor's PRA request. In its message forwarding the third installment of responsive documents, the County stated that "[t]he County considers this particular request fulfilled and is now closed." CP at 436.

E. PROGRESSION OF PRA LAWSUIT

On October 23, 2019, the County answered O'Connor's complaint. The County denied liability for the denial of access claim and claimed that suit was barred "because no final action has been taken and it reasonably appeared that the County would continue to produce records before Plaintiff prematurely filed their suit." CP at 7. In response to the unreasonable estimate of time claim, the County admitted "that an unreasonable estimate of time was given" and agreed that

No. 55111-0-II

O'Connor was "entitled to attorneys' fees and costs to date on their second cause of action only." CP at 7.

On October 28, the County filed a motion for summary judgment dismissal of O'Connor's complaint. The County asked the superior court to dismiss the denial of access claim as unripe because the County had not taken final action and was still responding to the request. The County also asked the court to enter judgment in favor of O'Connor and against the County on the unreasonable estimate of time claim. O'Connor accepted an offer of judgment from the County on the unreasonable estimate of time claim. On November 15, the superior court entered a stipulated judgment against the County, which fully settled O'Connor's unreasonable estimate of time claim.

Both parties provided briefing on the merits of the denial of access claim and the County's summary judgment motion. The parties included copies of messages between the parties on the public records online portal, a transcript of Mauermann's deposition, and declarations outlining the facts above.

On January 3, 2020, the superior court denied the County's summary judgment motion because "[t]he facts in [*Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 1004 (2014)] were quite different from those in the case at hand as it related to the agency's diligence and communication with the requestor." CP at 610. The superior court ruled that the third installment, and only that installment, constituted a denial of records by means of delay. The superior court also ruled that "[t]he record does not establish that Lewis County acted in bad faith, with ill will, or with discriminatory motive in processing Plaintiff's records request." CP at 611.

No. 55111-0-II

F. PENALTIES, COSTS, AND FEES

On March 13, 2020, the superior court heard O'Connor's motion for penalties and fees. The superior court imposed a 30-day penalty of \$10 per day, for a total of \$300. The superior court decided to award O'Connor 50 percent of her requested attorney fees and costs due to its finding that one out of three records installments constituted a denial of access.

The superior court entered an order denying the County's motion for summary judgment, making findings of fact and conclusions of law on the merits, and imposing penalties, costs, and fees. The County filed a motion for reconsideration, which was denied.

The County appeals, and O'Connor cross-appeals.

ANALYSIS

A. STANDARD OF REVIEW

“The PRA mandates the broad disclosure of public records.” *Freedom Found. v. Dep't of Soc. and Health Servs.*, 9 Wn. App. 2d 654, 663, 445 P.3d 971 (2019) (quoting *SEIU 775 v. Dep't of Soc. & Health Servs.*, 198 Wn. App. 745, 749, 396 P.3d 369, *review denied*, 189 Wn.2d 1011 (2017)), *review denied*, 194 Wn.2d 1017 (2020). “Accordingly, state agencies have ‘an affirmative obligation to disclose records requested under the PRA unless a specific exemption applies.’” *Id.* (quoting *SEIU 775*, 198 Wn. App. at 749.) We review an agency's action in responding to a PRA request de novo and may examine any record from any prior proceeding. RCW 42.56.550(3).

We also review a summary judgment order de novo, engaging in the same inquiry as the superior court. *West v. City of Puyallup*, 2 Wn. App. 2d 586, 591-92, 410 P.3d 1197 (2018). Summary judgment is proper if there are no genuine issues of material fact and the moving party

is entitled to judgment as a matter of law. CR 56(c); *Meyers v. Ferndale Sch. Dist.*, 197 Wn.2d 281, 287, 481 P.3d 1084 (2021). A material fact is one upon which the outcome of the litigation depends. *Keck v. Collins*, 184 Wn.2d 358, 370 n.8, 357 P.3d 1080 (2015). Summary judgment is appropriate if reasonable persons could reach only one conclusion from the evidence presented. *Vargas v. Inland Washington, LLC*, 194 Wn.2d 720, 728, 452 P.3d 1205 (2019).

B. PREMATURE DENIAL OF ACCESS CLAIM

The County argues that the superior court erred in denying its motion for summary judgment. Specifically, it argues that O'Connor's denial of access claim should have been dismissed as premature. We agree with the County and remand for the superior court to enter summary judgment in favor of the County dismissing the complaint.

A party may challenge an agency's denial of access to records under the PRA. RCW 42.56.550(1). "In an action challenging an agency's *denial* of a records request, a requestor cannot initiate a lawsuit until the agency has denied and closed the request at issue." *Freedom Found.*, 9 Wn. App. 2d at 664.¹ A denial occurs "when it reasonably appears that an agency will not or will no longer provide responsive records." *Hobbs*, 183 Wn. App. at 936. "When an agency produces records in installments, the agency does not deny access to the records until it finishes producing all responsive records." *Cortland v. Lewis County*, 14 Wn. App. 2d 249, 258, 473 P.3d 272 (2020), *review denied*, 196 Wn.2d 1039 (2021).

¹ *Freedom Found.* held that reasonable estimate of time claims under RCW 42.56.550(2) can be initiated before an agency denies and closes the request. 9 Wn. App. 2d at 664. The court distinguished reasonable estimate of time claims from denial claims, which cannot be initiated until the agency denies and closes the request. *Id.* Here, the only remaining claim is a denial claim.

Here, the County explicitly stated in its first response that the production of responsive records might come in installments, so O'Connor was on notice that the first installment might not be the final installment. The County then produced some responsive records on September 24. The County's message to O'Connor just before the initiation of this lawsuit stated, "The County will continue to attempt to locate additional responsive records and we anticipate providing a status of our search results or a cost estimate for responsive records to you on or before October 22, 2019." CP at 37. The County sent this message on September 24, which should have alerted O'Connor that the County had not completed its search and was still actively working on her request. Further, this message provided a new estimated response date of October 22, so O'Connor should have expected the County to continue its work on her request at least until that date.

O'Connor then filed suit with a denial of access claim on October 3. On that date, the record shows that the County had explicitly stated just over a week earlier that it was continuing to attempt to locate additional responsive records and would provide either a status update or cost estimate by October 22, 2019. In addition to the County informing O'Connor that it was continuing its efforts to locate additional responsive documents, O'Connor also asked the County to "re-check" its records for responsive documents just over a week before filing suit. CP at 37. Further, the County was producing records in installments, the first of which was produced on September 24, and did not finish producing all responsive records until December 18, more than two months after the complaint was filed. Though the County missed its first self-imposed August 1 deadline, the County did provide O'Connor with a cost estimate on September 13, released documents to O'Connor on September 24, and explicitly told O'Connor that it was continuing to

look for responsive records. Any confusion that may have resulted from the County missing this August 1 deadline was resolved by the time O'Connor filed her complaint on October 3.

Reasonable persons could reach only one conclusion here: the County was continuing to look for and provide responsive documents at the time O'Connor filed the complaint. Because it did not reasonably appear that the County would no longer provide responsive documents, the County did not deny nor close the request at issue before O'Connor initiated her PRA denial of access lawsuit. *See Hobbs*, 183 Wn. App. at 936. Because a requestor cannot initiate a denial of access lawsuit until their request has been denied and closed, this case was filed prematurely. *Freedom Found.*, 9 Wn. App. 2d at 664. Therefore, the case should have been dismissed on summary judgment.²

C. PENALTIES, COSTS, AND FEES

Both parties argue that the superior court erred in its determination of the penalties, fees, and costs. Because we reverse and remand for dismissal of the complaint, we also reverse the superior court's decision on penalties, fees, and costs.

The PRA provides that

[a]ny person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

RCW 42.56.550(4).

² This denial of access claim was the only remaining claim in O'Connor's suit because the superior court had already entered a stipulated judgment against the County on the unreasonable estimate of time claim. Because we reverse the superior court's ruling that the County violated the PRA by denying access to documents and remand to dismiss the complaint, we do not reach O'Connor's cross-appeal.

No. 55111-0-II

Here, the superior court awarded penalties, fees, and costs to O'Connor because she was a prevailing party. However, as discussed above, the superior court should have granted the County's motion for summary judgment and dismissed O'Connor's remaining denial of access claim. Had O'Connor's complaint been dismissed, she would not have been the prevailing party. Therefore, we reverse the superior court's decision on penalties, attorney fees, and costs.

ATTORNEY FEES ON APPEAL

O'Connor argues that she is entitled to an award of attorney fees on appeal. We disagree.

We may grant an award of reasonable attorney fees on appeal to a party that requests it in its opening brief, and as long as applicable law provides for such an award. RAP 18.1(a). As discussed above, "[a]ny person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded . . . reasonable attorney fees." RCW 42.56.550(4).

Here, O'Connor is not the prevailing party on appeal. Therefore, we deny O'Connor's request for attorney fees on appeal. RCW 42.56.550(4).

We reverse the superior court's finding of a PRA violation and imposition of penalties, attorney fees, and costs, and remand for the superior court to grant summary judgment in favor of the County and dismiss the complaint.

No. 55111-0-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, C.J.
Lee, C.J.

We concur:

Maxa, J.
Maxa, J.

Cruser, J.
Cruser, J.

LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

January 10, 2022 - 11:59 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,458-3
Appellate Court Case Title: Jerrie O'Connor v. Lewis County
Superior Court Case Number: 19-2-04897-0

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- 1004583_Answer_Reply_20220110114834SC845134_0902.pdf
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Comments:

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