No. 101413-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SANDRA EHRHART, individually and as personal representative of the Estate of Brian Ehrhart,

Appellant,

v.

KING COUNTY, operating through its health department, Public Health – Seattle & King County,

Respondent.

KING COUNTY'S RESPONSE TO PETITION FOR REVIEW

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I. INTRODUCTION

Over two years ago, the Washington Supreme Court rejected as a matter of law the Estate of Brian Ehrhart's ("Ehrhart") tort claim arising from Mr. Ehrhart's death from Hantavirus. Following this ruling, and concededly in an attempt to make up for the failed tort action, Ehrhart sued King County under the Public Records Act ("PRA"), claiming entitlement to millions of dollars in penalties.

It is undisputed that Ehrhart filed her PRA claim more than one year after her March 2017 public records request was closed. The Superior Court thus properly ruled that Ehrhart's suit was barred by the PRA's one-year statute of limitations. RCW 42.56.5 50(6). Affirming the Superior Court, the Court of Appeals held that Ehrhart's PRA claims were untimely and neither the discovery rule nor equitable tolling applied to salvage the claims.

The Court of Appeals' decision affirming the dismissal of Ehrhart's claims as time-barred ("Decision") is consistent

with well-settled Washington appellate court decisions and does not present an issue of substantial public interest. There is no basis to grant review.

II. COUNTERSTATEMENT OF THE ISSUES

1. Where Ehrhart has failed to identify any case that conflicts with the Court of Appeals decision, should review be denied? Yes.

2. Where there is no public interest in disturbing the Legislature's balance between ensuring PRA compliance and limiting litigation, has Ehrhart failed to identify a substantial public interest warranting review? Yes.

III. COUNTERSTATEMENT OF THE CASE

A. Background

Hantavirus is a rare and serious infection transmitted by deer mice through their droppings. *Ehrhart*, 195 Wn.2d at 392. In February 2017, Brian Ehrhart died after a brief illness. *Id*. at 391. To assist healthcare providers in determining the cause of death, King County Public Health launched an investigation,

which revealed that Mr. Ehrhart died of a Hantavirus infection. Opinion at 2.

B. The First Public Records Request

On March 24, 2017, Mr. Adam Rosenberg, counsel for Ehrhart, made a PRA request (the "March Request") to King County seeking twelve categories of records.

The request was assigned to Ms. Penny Larsen, Senior Public Records Analyst for King County Risk Management Services, who was supporting Public Health at the time because the County's permanent records manager was on a temporary detail. CP 314. Contrary to Ehrhart's claims, assigning the request to Ms. Larsen was not "outside the normal process" for handling PRA requests. *Id.*; *see* Pet. at 5-6. Rather, Ms. Larsen handled all Public Health requests during this period. CP 314.

Ms. Larsen timely acknowledged the request and informed Mr. Rosenberg that she would begin the process of searching for and producing responsive records. She also advised Mr. Rosenberg that certain items of his request likely included

records containing Protected Health Information ("PHI") that required a Release of Information ("ROI"). CP 314, 327-329. In response, Mr. Rosenberg refused to provide the ROI, and instead directed Ms. Larsen to redact the records. CP 314, 331.

Because the request sought documents relating to Hantavirus, Ms. Larsen contacted Dr. Meagan Kay, Krista Reitberg, and Shelly McKiernan in the Communicable Diseases Epidemiology Department ("CD-Epi") to request input on identifying appropriate custodians and search terms. CP 315. Dr. Kay is the Deputy Chief and Medical Epidemiologist for Public Health, and she served as the point person for Ms. Larsen in her processing of Mr. Rosenberg's requests. CP 466. Given her expertise and supervisory role, Dr. Kay assisted Ms. Larsen in compiling a list of 15 potential custodians in the CD-Epi and Communications groups at Public Health. CP 315. Ms. Larsen then worked with CD-Epi staff to identify appropriate search terms. CP 315.

Ms. Larsen set up a repository folder on a shared network drive at Public Health and directed the identified custodians to search emails, network or hard drive files, paper files, notebooks, SharePoint, databases or any other locations where responsive records may exist. CP 315-16. Ms. Larsen sent the 15 custodians the County's "Guide for Responding to Public Records Requests" which provides additional details and instructions on specific areas to search, including personal devices and emails if applicable.[1] CP 315-16.

Ms. Larsen further instructed the custodians to be over-inclusive in identifying potentially responsive documents, to inform her if any additional custodians or search terms should be added, and to endeavor to provide her with responsive records within two weeks. CP 315. She also offered to assist custodians with their searches and followed up repeatedly with each

[1] Ehrhart's repeated claims that County personnel were not told to search personal devices or that key custodians were omitted are not supported by the record. *Compare* Pet. at 7, note 2 *with* CP 466-67.

custodian to ensure that all responsive records were timely collected. CP 315. As she explained to Mr. Rosenberg, because the CD-Epi group was engaged in mission critical public health investigations at the time of the March Request, Ms. Larsen provided the initial installment from the Communications group. CP 334-338.

Ms. Larsen provided Mr. Rosenberg frequent updates on the review progress and on several occasions sought clarification of the scope and intent of the request. Mr. Rosenberg never responded to indicate that she had misunderstood the scope of his request and often failed to respond to her requests for clarification. CP 316-17; 335.

On May 31, 2017, Mr. Rosenberg asked Ms. Larsen to expedite production of the remaining files. CP 340. In response, Ms. Larsen told Mr. Rosenberg that if he provided an ROI, she could release Mr. Ehrhart's records without redaction and considerably speed their production. CP 347. Again, Mr. Rosenberg did not respond. CP 345-353.

Between March 24 and August 7, 2017, Ms. Larsen communicated with Mr. Rosenberg or his paralegal, Ms. Blair, via email 14 separate times. CP 317. In total, Ms. Larsen provided responsive records in four installments on the following dates: April 27, May 5, June 17 and August 7, 2017. CP 317. The slightly longer period between the third and fourth installment was due to the time-consuming redactions required to release Mr. Ehrhart's files without an ROI. CP 317; 340-343. No records were withheld in response to the March Request, and the only exemption that applied was for the redactions of PHI. CP 317-318. On August 7, 2017, Ms. Larsen emailed Mr. Rosenberg and Ms. Blair to officially close the request. CP 317; 344-353. In her closing email, Ms. Larsen invited Mr. Rosenberg to let her know if he had any questions. CP 345. Mr. Rosenberg did not respond or contact the County again about the March Request. CP 317.

C. The Second Public Records Request

On October 25, 2017, Mr. Rosenberg made a second PRA request to the County, seeking 6 categories of documents generally relating to public health notifications or announcements furnished to local hospitals or health care providers concerning unusual or rare diseases. CP 354-356. As with the March Request, the County diligently searched for and released records to Mr. Rosenberg. CP 317-321.

D. The Tort Litigation

On June 21, 2018, Ehrhart sued the County, Swedish Hospital and Mr. Ehrhart's treating physician in negligence, alleging fault for Mr. Ehrhart's death from Hantavirus. *Ehrhart*, 195 Wn.2d at 394. Ehrhart served 17 Interrogatories and 33 Requests for Production upon the County with the Complaint. CP 393-400. The County produced documents in August, September, and October of 2018 in response to Ehrhart's discovery requests. CP 391.

In late July 2018 (before any discovery had been completed), Ehrhart moved for partial summary judgment, asking the court to strike several of the County's defenses, arguing that the "failure to enforce" and "rescue doctrine" exceptions to the public duty doctrine applied. *Ehrhart*, 195 Wn.2d at 394. On September 28, 2018, the trial "court granted partial summary judgment for Ehrhart on the failure to enforce exception, 'conditioned on a finding by the jury that [King] County's action was not appropriate.'" *Id*. at 395-96. On October 19, 2018, Ehrhart filed an amended Complaint adding the PRA claim. CP 21-32.

The Supreme Court granted the County's request for direct discretionary review of the summary judgment order on the tort claim. *Ehrhart*, 195 Wn.2d at 396. On April 2, 2020, the Supreme Court unanimously reversed the trial court. Examining the plain terms of WAC 246-101-505, the Court held that "WAC 246-101-505 creates only a general obligation to the public and not a duty to any particular individuals." *Id*. at 408-09.

Accordingly, the Court held that Ehrhart had failed to establish a legal duty or an exception to the public duty doctrine. As such, Ehrhart's tort claim failed as a matter of law. *Id*. at 409. The case was remanded to the superior court to enter summary judgment in the County's favor on Ehrhart's negligence claim.

E. The Superior Court Grants Summary Judgment on Ehrhart's PRA Claim and the Court of Appeals Affirms.

On remand, the parties cross-moved for summary judgment on Ehrhart's remaining PRA claim. At first, Ehrhart challenged both the March and October Requests, alleging the County had wrongfully withheld "thousands" of documents and seeking millions of dollars in PRA penalties. CP 54-71.

The essence of Ehrhart's PRA claim was that the County produced documents in response to her discovery requests during the tort litigation that should have been produced in response to her PRA requests. CP 45-71. Without acknowledging the substantive and timing differences between the discovery requests and the PRA requests, Ehrhart suggested (without

support) that the documents at issue painted the County in a bad light, such that the court should assume bad intent on the part of the County. CP 65-71. Ehrhart pointed to no evidence that the County in fact acted improperly in its search or production of any records, but rather claimed the allegedly withheld documents were "smoking guns" that were "damning" on their face. CP 443-445.

The County responded with detailed declarations explaining the process and results of the County's searches in response to both of Ehrhart's requests, as well as Ms. Larsen's frequent and timely communications with counsel for Ehrhart, most of which went unanswered by Mr. Rosenberg. CP 252-285; 312-389; 465-469; 5493-5499. The County's declarations further demonstrated that hundreds of the allegedly wrongfully withheld documents had in fact been produced, post-dated the requests, or were plainly not responsive. CP 5493-5499.[2]

[2] Ehrhart's record of unfounded allegations of withholding continued into the appellate litigation. On multiple occasions

Over the course of the litigation, Ehrhart's allegation that the County improperly withheld "thousands of documents" was whittled down to an allegedly missing "close to 500 documents." Pet. at 8. As with her prior allegations of wrongful withholding, Ehrhart never substantiated her claim that "500 documents" that Ehrhart received in the tort discovery should have been produced in response to the March 2017 request or that any documents had been intentionally withheld.

On September 4, 2020, the court ruled that Ehrhart's claims arising out of the March Request were time-barred and that no basis existed upon which to equitably toll the statute of limitations. Verbatim Report of Proceedings ("VRP"), 9/4/2020

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before the appellate court, Ehrhart pointed to specific documents she claimed demonstrated the County's bad faith only to have to walk back those claims after the County demonstrated that the documents at issue had in fact been produced or were plainly non-responsive to the March 2017 request. Op. Br. at 29; Respondent Br. at 20; Reply Br. at 17. Moreover, while repeatedly insisting the County produced only 500 records, Ehrhart ignored that the County also produced thousands of pages in electronic format in the form of links to records the County maintains publically online. CP 335.

at 75:18-76:5; CP 604. The Court rejected Ehrhart's claim that any of the allegedly withheld documents evidenced bad faith by the County, and further ruled that Ehrhart had provided no evidence of bad faith, deception, or false assurances that would support equitable tolling of the statute of limitations. VRP, 9/4/2020 at 76:22-77:9. Further, because nearly 1,700 documents that Ehrhart claimed were "wrongfully withheld" in fact post-dated the March Request, the Court also ruled as a matter of law that such records were *per se* nonresponsive and dismissed Ehrhart's claims relating to those records on that additional ground. VRP, 9/4/2020 at 77:10-29; CP 604.

Ehrhart then filed a motion for reconsideration of the court's order pertaining only to the statute of limitations issue, arguing that the trial court inappropriately considered only whether the County had withheld a "smoking gun" document in assessing whether equitable tolling applied. CP 606-619. In denying the motion to reconsider, the court took the opportunity to clarify its prior ruling, stating that "[i]t was never my intent to

rely exclusively on whether or not there was a smoking gun document, whether these documents would have made any difference to the supreme court in their ruling in order to demonstrate bad faith." VRP, 11/13/2020 at 19:20-25. Rather, the court ruled that Ehrhart had presented no evidence of bad faith, deception or false assurances, and accordingly, had failed to carry her burden to show equitable tolling was warranted. Ehrhart's argument was essentially that the County had conducted an inadequate search, which is insufficient to toll the statute of limitations. *Id.* 20:7-21:14; CP 5513-5515.

Ehrhart appealed and the Court of Appeals, Division Two, affirmed the superior court on August 30, 2022. In its unpublished decision, the Court of Appeals held that Ehrhart failed to meet her burden to establish equitable tolling applies, and the discovery rule does not apply to PRA claims. *Ehrhart v. King Cnty.*, No. 55498-4-II, 2022 WL 3754904 (Wash. Ct. App. Aug. 30, 2022) ("Opinion").

Ehrhart now petitions this Court for review. Specifically, Ehrhart asks the Court to overturn established law regarding the discovery rule's inapplicability to the PRA. In her petition, Ehrhart continues to claim, without support, that close to 500 records "undisputedly" should have been produced in response to her March 2017 Request. *See* Petition at 10. But as in the trial court and the Court of Appeals, this claim is unsubstantiated. Additionally, after previously moving for summary judgment, Ehrhart now contends that a factual issue exists to warrant a trial on equitable tolling. Pet. at 19. The facts in this case have not changed since Ehrhart filed her motion for summary judgment. There is no basis on which to grant review.

IV. ARGUMENT

Ehrhart's Petition should be denied. The Decision is consistent with numerous prior decisions of this Court and the Court of Appeals. Ehrhart's objections to the PRA statute of limitations have been addressed by this and other courts, and do

not present a conflict of law or issue of substantial public interest to warrant this Court's review. *See* RAP 13.4(b)(3).

A. Ehrhart's Petition Fails to Present a Conflict Under RAP 13.4(b)(1) or RAP 13.4(b)(2).

Ehrhart does not identify the basis on which she seeks review under RAP 13.4(b). The Supreme Court may accept a petition for review if the decision of the Court of Appeals is in conflict with a decision of this Court or with a published opinion of the Court of Appeals. RAP 13.4(b)(1), (2). Ehrhart, however, does not identify any conflict between the Decision in this matter and the primary cases on which her petition relies—*Dotson*, *U.S. Oil,* and *Belenski*. Instead, Ehrhart generally objects to the universe of well-settled PRA case law, claiming that numerous decisions run counter to her view of the PRA's purpose. Ehrhart's general disagreement about PRA policy does not undermine the Court of Appeals' well-reasoned ruling. Moreover, Ehrhart's failure to adequately brief any conflict argument waives it. Pet. at 13; *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (the court

need not consider arguments that are not developed); *see also* RAP 10.3(a)(6). As detailed below, the Court of Appeals correctly applied well-settled precedent to hold that Ehrhart's claims are untimely, and neither the discovery rule nor equitable tolling apply.

1. The Discovery Rule does not apply to the PRA.

The PRA is subject to a strict one-year statute of limitations. RCW 42.56.550(6); *Belenski v. Jefferson Cnty.*, 186 Wn.2d 452, 460-61, 378 P.3d 176 (2016) (one-year statute of limitations applies to "all possible responses under the PRA**")**; *Klinkert v. Washington State Criminal Justice Training Comm'n*, 185 Wn. App. 832, 837, 342 P.3d 1198, 1200 (2015). Where, as in the PRA, the legislature has identified a triggering event for the accrual of a cause of action, the discovery rule does not apply. *Dotson v. Pierce Cty*., 13 Wn. App. 2d 455, 472, 464 P.3d 563, *as amended* (July 8, 2020) (citing RCW 42.56.550(6)); *Belenski v. Jefferson Cnty.*, 186 Wn.2d at 461. The Court of Appeals properly rejected Ehrhart's request to

depart from this well-established precedent.

Ehrhart does not and cannot argue that the Decision conflicts with a published decision of the Supreme Court or Court of Appeals. Instead, Ehrhart argues that a published decision of the Court of Appeals in another case—*Dotson*—conflicts with a 40-year-old decision of this Court—*U.S. Oil*. This manufactured conflict between two *other cases* is not a basis for review under RAP 13.4(b).

Regardless, Ehrhart's disagreement with the holding of *Dotson* does not present grounds for review under either RAP 13.4(b)(1) or (2). *Dotson* and *U.S. Oil* do not conflict. Both cases state that under the discovery rule, the statute of limitations begins to run when a plaintiff should have discovered a cause of action. *Dotson*, 13 Wn. App. 2d at 472; *U.S. Oil*, 96 Wn.2d at 92. The statute providing for penalties for unlawful waste discharges in *U.S. Oil*, RCW 90.48.144, did not contain its own statute of limitations. *U.S. Oil*, 96 Wn.2d at 87. Instead, the RCW 4.16.100(2) general two-year statute of

limitations for statutory penalties applied. *Id*. There, the Supreme Court held that the discovery rule applied to penalties under RCW 90.48.144. *Id*. at 94.

Consistent with *U.S. Oil*, *Dotson* states that the "discovery rule generally applies in cases where 'the statute does not specify a time at which the cause of action accrues.'" *Dotson*, 13 Wn. App. 2d at 472 (quoting *Douchette v. Bethel School Dist. No. 403*, 117 Wn.2d 805, 813, 818 P.2d 1362 (1991)). The unlawful waste discharge statute in *U.S. Oil* did not specify when the cause of action accrued. The PRA, on the other hand, does specify when a PRA cause of action accrues. *Id* (citing RCW 42.56.550(6)); *Belenski v. Jefferson Cnty.*, 186 Wn.2d 452, 461, 378 P.3d 176 (2016). Accordingly, *Dotson* held that the discovery rule does not apply to PRA cases because the PRA identifies a clear triggering event for the statute of limitations. *Dotson*, 13 Wn. App. 2d at 472; Opinion at 11. Nothing in *U.S. Oil* undermines this holding.

Because *Dotson* and associated PRA case law control, the Court of Appeals correctly held that the discovery rule does not apply to salvage Ehrhart's PRA claim.

2. Equitable tolling does not apply.

The Court of Appeals also properly held that equitable tolling does not save Ehrhart's untimely claims because Ehrhart failed to provide any evidence of bad faith, deception or false assurances by King County. Opinion at 11. Specifically, the Court of Appeals held that Ehrhart failed to muster any evidence that King County's public records officer, Penny Larsen, acted in bad faith or made false assurances when she timely produced hundreds of records in response to Ehrhart's request. Opinion at 10-11. As detailed in the Decision, substantial Washington authority holds that equitable tolling does not apply in the absence of bad faith, deception, or false assurances. False assurances requires a showing of a deliberate attempt to mislead. *Price v. Gonzalez*, 4 Wn. App. 2d 67, 76, 419 P.3d 858 (2018); Opinion at 9. As with the discovery rule,

Ehrhart again fails to identify any conflicting authority warranting review under RAP 13.4(b)(1) or (2) on this point.

Rather than identify a conflict between the Decision and any published decision of this Court or the Court of Appeals on the issue of equitable tolling, Ehrhart merely re-argues the merits of her unsuccessful appeal. Specifically, Ehrhart claims that Ms. Larsen's lack of knowledge regarding any allegedly omitted documents is not determinative because an organization's actions are not limited to the actions of the employee that the organization selects. Pet. at 16-17. But this argument ignores that it is *Ehrhart's burden* to show "false assurances" or "deception" in order to establish equitable tolling. Opinion at 11 (burden to show King County acted in bad faith, as necessary for the court to apply equitable tolling, is on Ehrhart). Ms. Larsen's account of the search, in a declaration and in her deposition, establishes King County's burden on summary judgment to prove that the search was adequate. *See Block v. City of Gold Bar*, 189 Wn. App. 262,

271, 355 P.3d 266 (2015) (to establish search was adequate, agency may rely on reasonably detailed, nonconclusory affidavits). The Court of Appeals reviewed the record *de novo*, and rightly determined that Ehrhart offered nothing to rebut the County's showing. Opinion at 10 ("Here, Ehrhart has not shown that King County disregarded its procedures or performed a mere cursory search, as in *Francis.* King County presented ample evidence" of its adequate search); Opinion at 11 ("Ehrhart failed to establish that King County responded to her March 2017 PRA request in bad faith or engaged in deception or false assurance in a deliberate attempt to mislead.").

Contrary to Ehrhart's unfounded accusations, the record is devoid of any evidence that "responsive documents were hidden." Pet. at 16. Though throughout this litigation Ehrhart has attempted to impugn the credibility of County employees, claiming misconduct and improper motives, Ehrhart never made any efforts to substantiate her claims. Ehrhart did not

depose any records custodians (beyond Ms. Larsen), or take any other discovery in the PRA matter, although she could have done so. Ehrhart cannot now rely on her own failure to develop the record to argue that Ms. Larsen's testimony is not determinative of bad faith for equitable tolling purposes.[3]

Because the record contains no evidence of intentional withholding, the Court of Appeals rightly held that Ehrhart's reliance on *Belenski v. Jefferson Cty*., 186 Wn.2d 452 (2016) is misplaced. Pet. at 17. Ehrhart omits the key reason why the *Belenski* court remanded the issue of equitable tolling. In *Belenski*, the government agency mistakenly believed it did not need to disclose certain documents, and knowingly withheld those documents. The court held that the knowing withholding was dishonest and remanded to determine whether equitable tolling of the statute of limitations should be applied. *Belenski*,

[3] Though in her Petition Ehrhart now claims there are fact issues for trial, Pet. at 21, as the Court of Appeals observed, Ehrhart moved for summary judgment below. CP 45-73.

186 Wn.2d at 461. Here, there is nothing in the record that supports Ehrhart's allegations of "silent withholding" and no evidence of any wrongful conduct, let alone any intentional conduct, false assurances or deception. The Decision is consistent with *Belenski* and no conflict supports review.[4]

In an additional attempt to contrive a conflict, Ehrhart strains to equate the thorough records search that King County conducted to the cursory 15-minute search in *Francis v. Washington State Dep't of Corr*., 178 Wn. App. 42, 313 P.3d 457 (2013); Pet. at 19. The Decision does not conflict with *Francis*.

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[4] The Decision is also consistent with multiple other decisions of the Court of Appeals rejecting the same argument the Estate makes here. It is well-established that in the PRA context, the production of "records that the agency previously claimed it did not possess . . . without more" is "not sufficient to toll the running of the statute of limitations." *Strickland v. Pierce Cty.,* 2 Wn. App. 2d 1018, 2018 WL 582446, at *5 (Wash. Ct. App. Jan. 29, 2018) (unpublished); *see also Zellmer v. Dep't of Labor and Indus.*, No. 53627-7-II, 2020 WL 5537007, at *5 (Wash. Ct. App. Sept. 15, 2020) (unpublished); *Wolfe v. Wash. State Dep't of Transp.*, No. 50894-0-II, 2019 WL 1999020, at *5-6 (Wash. Ct. App. May 7, 2019) (unpublished).

As the Court of Appeals notes, "like *Belenski*, *Francis* is distinguishable." Opinion at 10. The record is replete with evidence that unlike the search in *Francis*, the search here was comprehensive. *Id.* (detailing King County's "ample evidence" of "more than a cursory search", including frequent contact with requester, identifying multiple custodians, producing multiple installments of records and following County policies). The mere fact that the County primarily demonstrates the adequacy of its search through a declaration and deposition of one individual, the request manager Ms. Larsen, does not call the records search into question. *See* Pet. at 20. Moreover, Ehrhart is wrong that no records custodians provided declarations. Pet. at 17, note 4. Specifically, Dr. Kay also provided a detailed declaration, explaining her own search process and discussing several records Ehrhart claimed to have been withheld. CP 465-68. In short, Ehrhart fails to address the many distinctions between *Francis* and the present case and

the Court of Appeals was correct to reject the comparison out of hand.

Because the Decision properly applied well-settled law on equitable tolling and Ehrhart does not identify any conflicting authority, review is not warranted under RAP 13.4(b)(1) or (2).

B. Ehrhart Also Fails to Raise an Issue of Substantial Public Interest.

Gutting the Legislature's statute of limitations for the PRA serves no legitimate public interest. As the Court of Appeals correctly concluded: 1) "application of the discovery rule here would erode [the] legislative decision" to allow a one-year period to sue following the close of a request; and 2) "when a plaintiff can actually make a showing of bad faith, the cause of action may still be pursued under the doctrine of equitable tolling." Opinion at 12. The Legislature determined that a one-year statute of limitations "strikes an appropriate balance between ensuring compliance with the PRA through access to penalties and limiting the amount of PRA litigation."

Id. As such, the statute has been strictly applied. *See White v. City of Lakewood*, 194 Wn. App. 778, 783-84, 374 P.3d 286 (2016) (PRA claim filed one day after the expiration of the statute of limitations was time-barred); *Bartz v. State Dep't of Corrections Pub. Disclosure Unit*, 173 Wn. App. 522, 535, 297 P.3d 737 (2013) (rejecting claim that statute of limitations should be "narrowly confined to ensure that persons get timely and appropriate responses to their requests") (internal quotations omitted)).

Ehrhart fails to identify any public interest in departing from this authority. Moreover, adopting Ehrhart's argument would result in an exception that swallows the rule: as most cases in which the statute of limitations is at issue involve some number of allegedly responsive documents discovered after the limitations period has run. And every court to consider this scenario has ruled that such a discovery is insufficient to toll the statute. *Dotson*, 13 Wn. App. 2d 455; *Zellmer*, 2020 WL

5537007, at *5; *Wolfe*, 2019 WL 1999020, at *5-6; *Strickland*, 2018 WL 582446, at *5.

The fact that other cases are considering similar issues does not create an issue of substantial public importance. Pet. at 22. In fact, in the case Ehrhart cites to contrive an issue of public interest, *Earl v. City of Tacoma* (Washington Supreme Court No. 101143-1), the court decided the PRA statute of limitations issue consistently with the Decision in this case. *Earl v. City of Tacoma*, No. 56160-3-II, 2022 WL 2679522 (Wash. Ct. App. July 12, 2022). ("Following *Dotson*, we hold that the discovery rule does not apply to PRA actions because the legislature has clearly specified the event that starts the running of the limitations period in RCW 42.56.550(6)[.]"); Pet. at 22. In *Earl*, a document produced in a 2018 federal lawsuit was not disclosed to the plaintiff in the plaintiff's PRA request that closed in 2016. *Earl*, 2022 WL 2679522, at *3. The Court held that the PRA claims were untimely and not saved by either the discovery rule or equitable tolling. *Id*. at *8-9.

Accordingly, Ehrhart's own cited case demonstrates that the issues in this case are settled and do not present an issue of public interest.

In sum, no issue of public interest exists to warrant review.

V. CONCLUSION

For the reasons stated herein, King County respectfully requests the Petition be denied.

This document contains 4,684 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 28th day of November, 2022.

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