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NO. 101450-3

SUPREME COURT OF THE STATE OF WASHINGTON

CARRI WILLIAMS,

Plaintiff-Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

DEPARTMENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Public Records Act (PRA) requires public agencies to respond with reasonable promptness and thoroughness to all requests. As both the superior court and the Court of Appeals concluded, the Department of Corrections (Department) responded to Petitioner Carri Williams' three complex and voluminous requests in a reasonably prompt manner. Based on its conclusion that the Department did not unreasonably delay its response to her requests, the Court of Appeals concluded that the Department did not violate the PRA.[1]

Williams argues that the Court of Appeals' decision conflicts with other Court of Appeals' decision in *Cantu v. Yakima School District No. 7*, 23 Wn. App. 2d 57, 514 P.3d 661 (2022) and this Court's case law. However, the case law that Williams cited simply applied the well-established rule that an agency must respond with reasonable promptness to the factual

[1] The Court of Appeals did conclude that the Department violated the PRA by failing to include a specific date in one of its letters related to the requests. It awarded her attorney's fees on appeal related to that issue and remanded for the trial court to award her attorney's fees incurred in the trial court related to that issue as well.

circumstances in that case. Williams' disagreements with how the Court of Appeals applied that well-established rule to her case does not present a basis for discretionary review and this Court should deny review.

II. COUNTERSTATEMENT OF ISSUES

Review is not warranted in this case, but if review were granted, the issues would be:

1. **Whether the Department violated the PRA when it responded to Williams' three complex and complicated requests in a reasonably diligent manner?**

2. **Whether the Court of Appeals' decision conflicts with, or creates an exemption to, the Public Records Act requirement for prompt production of records?**

III. COUNTERSTATEMENT OF FACTS

A. Relevant Facts

1. Williams' Unsuccessful Writ

An investigation, supported by surveillance video, determined that Williams' Prison Rape Elimination Act (PREA) claims against a Corrections Officer were unfounded and

Williams was infracted for filing a false allegation. CP 640-641, 688. At the time, Department policy required that the Superintendent find by a preponderance of the evidence that the allegations were false before an infraction could be issued. CP 689, 693.

Williams filed a petition for a writ of mandamus, seeking an order requiring DOC to withdraw the infraction, declaring Department policy unconstitutional, and granting Williams "complete immunity from prison discipline." CP 619-638. The writ asserted, among other claims, that the Superintendent's preliminary preponderance finding improperly made a guilty determination before Williams' disciplinary hearing. CP 619-638.

While the writ proceedings were pending, the Department amended its policy and eliminated the provision for the Superintendent to make a prehearing determination by a preponderance of evidence that the alleged victim falsely reported. CP 729. The Department also dismissed the infraction

against Williams, canceled the upcoming prison disciplinary hearing, and expunged the matter from Williams' file. CP 729. The Court dismissed Williams' writ as moot, denied her motion to modify the Commissioner's dismissal decision, and denied her request for more than $150,000 in attorney's fees and $10,000 in statutory penalties. CP 704, 729.

2. The Department of Corrections Public Records Unit

The Department's Public Records Unit (PRU) is a centralized unit located at the DOC Headquarters in Tumwater, Washington. CP 748. The unit is currently composed of 27 full-time staff members, including 16 Public Records Specialists, who attend formal trainings related to the PRA and processing public records requests. CP 748.

DOC operates 12 facilities, 86 field offices, and six Community Justice Centers. CP 748. It manages approximately 17,000 incarcerated individuals and supervises approximately 15,000 individuals in the community. CP 748. DOC employs

approximately 8,500 individuals, making it the second largest agency in the state. CP 748.

DOC does not have a centralized records system. CP 748. Each facility maintains records for the individuals who live and work at that facility. CP 748. The Department also has a number of different electronic record systems. CP 748. Although some of these systems can be accessed by Department personnel throughout the agency, the level of access varies depending on the system and the staff member. CP 748-749.

In 2019, the Department received 13,892 public records requests. CP 749, 759. Of these requests, 6,259 were general public records requests, of which 5,371 (92%) were assigned to the PRU at DOC headquarters. CP 749, 759, 763. When received, public records requests are logged in, assigned a tracking number, and assigned to either a Specialist within the PRU or to a Public Records Coordinator at a correctional facility or field office for processing. CP 749. The Specialist determines the response time frames, which are based on many factors,

including current workloads; the complexity and scope of the records requested; the number of locations that must be searched for potentially responsive records; and any other factor that may affect the production of the records. CP 749. Due to the large number of requests it receives, the DOC has a practice of not prioritizing requests, in front of others, that are deemed "urgent" by the requester. CP 749.

Often, additional time is needed for the Department to fully respond to a request. CP 750. This is caused by factors such as the need to clarify the request, the time it takes to locate and assemble the requested documents, the requirement to notify persons affected by the request, and the need to determine whether any of the responsive records or information contained in the responsive records are exempt from disclosure and require redaction. CP 750. Further, responsive records found earlier in a search often inform unit staff members of other records that may exist, other locations to be searched, other staff members who may have records, or additional search terms that can be used

when searching for responsive records. CP 750. Whenever possible, the Department provides the requested records within five business days; however, the turnaround time depends on how easy it is to find the records, the workload and schedule of the assigned Specialist, notification requirements, and the need to review records for redactions. CP 750.

3. PRA Request P-6581

On May 30, 2019, DOC received a public records request from Gregory Miller. That request sought:

- The witness statement provided by Inmate Sandra Weller for use at the disciplinary hearing for inmate Carri Williams, DOC #370021, that was previously scheduled for May 31, 2019.

- Any other witness statement that has been provided to the Department of Corrections for use at that disciplinary hearing, and any other witness statement that has been obtained in the course of investigating any of Carri Williams' PREA complaints.

- Any report or memo written by Sgt. Channel regarding the Williams disciplinary hearing or regarding any allegation of misconduct by Corrections Officer Alice Kaleopa.

- Any report, memo, or document sent to Sgt. Channel regarding the Williams' disciplinary hearing or

> regarding any allegation of misconduct by Corrections Officer Alice Kaleopa.

CP 798-799. The request was given tracking number P-6581 and assigned to Records Specialist Rivera. CP 752, 800.

Because the requested documents were maintained by Washington Corrections Center for Women (WCCW) staff, Specialist Rivera asked the WCCW public disclosure coordinator to gather the responsive records. CP 752. WCCW's public disclosure coordinator then forwarded the request to the WCCW Intelligence and Investigation Unit, Hearings Unit and an additional staff member who could reasonably be in possession of the documents. CP 752, 2288. Once all staff members responded to the request, WCCW's production coordinator gathered the documents and sent them to Specialist Rivera. CP 752, 2288, 2291-2294.

On August 29, 2019, three months after the Department received the original request, the responsive records were produced to Mr. Miller, Williams' attorney. CP 866-919.

4. PRA Request P-7712

On July 24, 2019, the Department received another request from Mr. Miller. This request sought:

- All letters, emails, or other written communications from or to Superintendent Woffard regarding Corrections Officer Alice Kaleopa, including any and all complaints about her conduct by prisoners and the documents in any resulting investigations.
- All emails or texts to or from Superintendent Woffard which contain Corrections Officer Alice Kaleopa's name and any of the following terms: abuse; misconduct; complaint; discipline; and or transfer, and including both emails or texts on DOC accounts or devices and emails and texts on personal accounts or devices.
- All letters, emails, or other written communications from or to any past or current superintendent of Stafford Creek regarding Corrections Officer Alice Kaleopa, including all complaints about her conduct by prisoners and the documents in any resulting investigations.
- All emails or texts to or from past or current superintendent of Stafford Creek which contain Corrections Officer Alice Kaleopa's name and any of the following terms: abuse; misconduct; complaint; discipline; and or transfer.
- Any reports or memos written for or by WCCW personnel regarding any allegation of misconduct by Corrections Officer Alice Kaleopa.

- Any reports or memos written for or by Stafford Creek personnel regarding any allegation of misconduct by Corrections Officer Alice Kaleopa.

CP 1935-1936.

This request was given tracking number P-7712 and assigned to Specialist Rivera. Five business days later, the Department sent a response acknowledging the request and seeking clarification of the timeframe for which Williams was requesting the records. CP 1934.

On August 14, 2019, the Department received Williams' clarification. CP 1930-1932. Specialist Rivera acknowledged receipt of the clarification but inadvertently forgot to include the date by which Williams could expect an updated status of the request, indicating it would be provided "within business days, on or before, 2019." CP 1929.

On September 11, 2019, Specialist Rivera asked WCCW's public records coordinator to search for records responsive to P-7712. CP 921-982. After reviewing the request, the public records coordinator forwarded it to certain staff members who

could reasonably be in possession of responsive documents. CP 753, 2288.

The request was also forwarded to human resources, which maintains all personnel files for Department employees. CP 2288-2289. Human Resources determined that there were no disciplinary records for CO Kaleopa located in her personnel file at the time of Williams' public records requests. Employee disciplinary records would not be reasonably maintained in another location. CP 753, 2288-2289.

Once all staff members responded to the request, the documents were gathered and sent to Specialist Rivera. CP 753, 2296-2306. Due to the language of the request, Specialist Rivera asked the Department's Information Technology unit to search for "live" emails that may be responsive to the request. CP 753, 926. This search produced a large number of emails that needed to be reviewed for responsiveness, possible redaction, and exemptions. CP 753, 926.

Throughout the process, Specialist Rivera continued to provide Williams with updated status information on P-7712. CP 1916-1926. On March 10, 2020, seven and a half months after receiving the initial request, the first installment of 403 pages of responsive records was produced to Mr. Miller. CP 985-1390. Specialist Rivera continued to update Mr. Miller on the progress of the second installment of records. This included informing Mr. Miller that the records had been gathered and were undergoing a review. CP 1193-1194. Six months later, on September 22, 2020, the second and final installment of records (515 pages) was produced to Mr. Miller. CP-1394-1909.

5. PRA Request P-8646

On August 14, 2019, the PRU received Mr. Miller's clarification of P-7712. CP 1930-1937. Mr. Miller indicated that he was expanding the timeframe for the request to include additional records beyond the date P-7712 was received. CP 1930-1931. The response also indicated that he was seeking records regarding all WCCW Superintendents from 2014-2020,

not just the current Superintendent. CP 1930-1931. Because Mr. Miller expanded his original request in P-7712 to include a longer time frame and additional Superintendents, the clarification was considered a new request and assigned tracking number P-8646. CP 754, 2282-2283.

Again, WCCW was assigned to conduct a search for records responsive to P-8646. CP 754, 1940-1949. After reviewing the request, WCCW's production coordinator forwarded P-8646 to certain staff members who could reasonably be in possession of responsive documents. CP 754, 2288. P-7712 and P-8646 were also forwarded to human resources, which maintains all personnel files for Department employees. CP 754, 2288-2299. Human Resources indicated that there were no disciplinary records for CO Kaleopa located in her personnel file at the time of the requests and staff disciplinary records would not be reasonably maintained in another location. CP 754, 2288-2289. Once all staff responded to the request, WCCW's public

records coordinator gathered the documents and sent them to Specialist Rivera. CP 1940-1949, 2308-2313.

Due to the language of the request, and because it was similar to P-7712, Specialist Rivera asked the Department's Information Technology unit to search "live" emails for responsive documents. CP 754, 1946-1949. This search produced a large number of emails that required review for responsiveness, redactions, and exemptions. CP 754. Throughout the process, Specialist Rivera continued to provide status updates to Mr. Miller. CP 1540-1543. On March 9, 2020, 309 pages of responsive records were produced to Mr. Miller. CP 1952-2270.

Finally, despite Williams' allegations that DOC delayed production of records responsive to her requests, the PRU was not involved in Williams' petition nor would its staff members be aware of any deadlines associated with the case. CP 755. Reasonable timeframes determined by the Specialist were based on the criteria stated above. CP 755. This included the

complexity of the request itself, the Specialist's and other staff members' workload and in the case of P-7712 and P-8646, the volume of data and documents that required review. CP 755.

B. Procedural Facts

Williams filed a complaint alleging PRA violations for the Department's responses to her requests for records in P-6581, P-7712, and P-8646. CP 485-556. She asked the trial court to find the Department violated the PRA by failing to timely provide the responsive records for all of her requests. CP 563-575. After considering the evidence provided by the parties, the trial court dismissed Williams' claims. CP 2317-2330. The court held that an agency has no duty to prioritize a records request based solely on the demand of the requestor and that the reasonableness of the agency's estimated time frame for a response is considered in light of the agency's workload and resources. CP 2317-2330.

Williams appealed the trial court's dismissal. CP 2321-2327. The Court of Appeals, affirmed the reasonableness of the Department's production time, holding that the Department

"acted with reasonable thoroughness and diligence with respect to all three of Williams' PRA requests."

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. The Court of Appeals' Decision Is Well Reasoned and Applied Well-Establish Principles Regarding the Requirement That Agencies Must Act with Reasonable Thoroughness and Diligence in Response to a PRA Request

In large part, Williams centers her request for discretionary review on the notion that the decision in *Cantu v. Yakima School District* conflicts with the Court of Appeals decision in this case. This argument fails for two reasons. First, facts of *Cantu* distinguish it from this case and other well established case law. *Cantu* merely applied the well-established case law requiring a reasonably prompt response to that distinct set of facts. The Court of Appeals in this case applied the same case law and concluded the Department's response timeframes were reasonable based on the facts in this case.

Second, *Cantu* did not reject the idea that the reasonableness of the agency's response is viewed in light of the

particular agency and the agency's workload in terms of other requests. It simply rejected that the facts supported that conclusion in that case. Again, based on the different facts present in this case, the Court of Appeals concluded that the Department's timeframes were reasonable.

Finally, *Cantu* did not establish a bright-line rule that any response that takes longer than 174 days violates the PRA. Indeed, in *Cantu*, the Court recognized that the reasonableness standard is objective and "will depend on the circumstances of each case." As such, the Court of Appeals opinion in this case does not conflict with *Cantu*.

1. The *Cantu* decision was based on the specific facts of that case and did not reject the rule of reasonable promptness applied by the Court of Appeals in this case

In *Cantu*, the requestor made three PRA requests to the Yakima School District for records relating to her daughter's complaints of bullying and harassment. *Cantu v. Yakima School District No. 7*, 23 Wn. App. 2d 57, 514 P.3d 661 (2022). After receiving no records for 172 days, the requestor filed a lawsuit

arguing that the District had constructively denied her request. *Cantu*, 23 Wn. App. 2d at 88.

In support of its decision affirming that the school district constructively denied Cantu's request, the court pointed to the school district's failure to effectively communicate with the requestor, including its failure to provide a reasonable estimate of time for its response. *Cantu*, 23 Wn. App. 2d at 93. Without a time estimate to evaluate for reasonableness, the Court analyzed whether the school district had made diligent efforts to promptly provide the requested records. *Cantu*, 23 Wn. App. 2d at 93. After applying an objective standard of review to all of the facts, the Court held that the school district's efforts were far from diligent. *Cantu*, 23 Wn. App. 2d at 94. The school district failed to respond to the request within five days; provided no communication after it missed its initial estimated time frame, even after inquiries from Cantu; provided false information that it was closed for the summer; provided Cantu with an email link to an empty Google directory; and made no apparent efforts to

actually work on the request. *Cantu*, 23 Wn. App. 2d at 93-95. The Court declined to find that the school district was busy working on two other voluminous requests because the records specialist indicated that her ability to focus on her public records duties was limited by other responsibilities, including coordinating staff training and excursions, and finding housing for visiting students from China. *Cantu*, 23 Wn. App. 2d at 95.

Because the school district's actions amounted to a constructive denial, the court held that providing the records later did not cure the violation and Cantu was entitled to penalties. *Cantu*, 23 Wn. App. 2d at 96-97. The court remanded the case back to the trial court to determine the number of days of the constructive withholding and to assess a per diem penalty. *Cantu*, 23 Wn. App. 2d at 97.

Unlike the school district in *Cantu*, DOC acted conscientiously and diligently. In *Cantu*, the school district staff member failed to send a five-day acknowledgement letter, failed to provide a reasonable estimate of time to produce responsive

records, and utterly failed in its obligation to communicate with the requestor. Conversely, here, Specialist Rivera sent out five-day letters, including an estimate as to when the responsive documents would be produced. She also provided updates on the process, including document gathering, review, and third-party notifications. These efforts were done at the same time Specialist Rivera was balancing an active workload of 120 other requests. Additionally, multiple staff at the prison conducted searches for responsive records and IT conducted electronic searches to ensure it looked in all reasonable locations where the records would be maintained. The Department's actions here are the exact opposite of the district's actions in *Cantu*. Thus, *Cantu* is not analogous.

2. The Court's consideration of the Department's resources, including workload, is consistent with the *Cantu* decision that the reasonable standard depends on the circumstances of the case and that an agency's ongoing actions are evidence of diligence

Setting aside that the facts are distinguishable, the Court of Appeals' decision here is in harmony with *Cantu*. In making

its decision that the Department was diligent in its efforts, the Court of Appeals relied on the undisputed facts of the Department's large workload, the complexity of the requests, the volume of responsive records requiring review, and the Department's continued efforts to inform Williams of the progress.

Williams argues that *Cantu* "expressly rejected" an agency's defense of not having enough resources and an inability to prioritize. That is not the holding in *Cantu.* In determining diligence, the *Cantu* court specifically held that an agency's response before producing records can show diligence when facts support reasonable time estimates based on its workload and volume of responsive records. Citing *Andrews v. Washington State Patrol*, 183. Wn. App. 644, 334 P.3d 94 (2014), *Cantu* noted that dismissal is proper when an agency acted with diligence, even if it missed its internal deadlines for production. *Cantu*, 23 Wn. App. 2d at 95-96. Moreover, in its discussion of *Andrews*, the court in *Cantu* pointed out that the

Washington State Patrol's diligence was supported by facts showing it had 2,000 other requests pending and that it maintained consistent contact with the requestor by providing updated estimated time frames based on the number of responsive records to review and redact. *Cantu*, 23 Wn. App. 2d at 106-107 citing *Andrews*, 183 Wn.App.at 651. The *Cantu* court then properly noted that the diligence exhibited by the Washington State Patrol in *Andrews* was not applicable to the facts before it. *Cantu*, 23 Wn. App. 2d at 96.

Nowhere in its decision does *Cantu* reject a court's consideration of a responding agency's overall workload and/or resources in determining its diligence. Indeed, as discussed above, it recognized that the reasonableness of the agency's response "will depend on the circumstances of each case." *Cantu*, 23 Wn. App. 2d at 88.

Additionally, *Cantu* is devoid of any requirement that an agency must prioritize a request simply because the requestor says that the request is urgent. As the Court of Appeals decision

notes, Williams "fails to support her argument with any citation to authority" for the proposition that an agency must prioritize the requestor's claim of urgency.

Here, the Court of Appeals' decision, supported by facts concerning DOC's resources and workload, its diligence in gathering responsive documents, and its ongoing communication with the requestor, is entirely consistent with the *Cantu* holding.

3. ***Cantu* did not hold that 174 days itself is an unreasonable time frame. It held that the school district's failure to act with diligence within those 174 days amounted to a constructive denial**

Williams asserts that the Court of Appeal's decision conflicts with *Cantu* because the Department's final production of responsive records took longer than 174 days. But *Cantu* does not stand for the blanket proposition that 174 days between request and production is a per se violation of the PRA. To the contrary, *Cantu* carefully analyzed the school district's actions—and inactions—during those 174 days. The court then held, based on the facts before it, that the school district's conduct was not diligent and did not support a 174 day delay in production of

records. *Cantu*, 23 Wn. App. 2d at 93-96. Again, the district admitted that it had "dropped the ball" and forgotten about the request.

Here, the Court of Appeals used the same factors considered in *Cantu* and previous decisions, in determining whether the Department's response time was reasonable. In making that determination, and consistent with other case law, the court viewed the agency's response in light of the agency's workload and resources. *See Forbes v. City of Gold Bar*, 171 Wn. App. 857, 864-66, 288 P.3d 384 (2012); *Freedom Foundation v. Department of Health and Social Services*, 9 Wn. App. 2d 654, 659-660, 445 P.3d 971 (2019); *Rufin v. City of Seattle*, 199 Wn. App. 348, 357-58, 398 P.3d 1237 (2017). The Court of Appeals then appropriately based its decision affirming dismissal on the Department's large workload, the complexity of Williams' requests, the volume of responsive records, and other factors evidencing that the Department was making all efforts to move forward with providing responsive records. This analysis

is consistent with the *Cantu* decision and other case law evaluating the reasonableness of agency time estimates. Accordingly, review here is not warranted.

B. The Court of Appeals Decision Neither Conflicts With Nor Provides An Exemption for the PRA's Requirement of Prompt Review

As discussed above, the Court of Appeals analyzed the promptness of the Department's response and determined that it was reasonably prompt. For the reasons discussed above, that decision was correct. The Court of Appeals did not hold—and the Department did not argue—that it was somehow exempt from the requirement that its response must be reasonably prompt. As such, this issue does not present a basis for discretionary review.

Williams argues that the Court must grant review because the Court of Appeals decision here conflicts with or exempts DOC from the PRA's "prompt production" requirement. However, other than broad assertions that Court of Appeals' decision conflicts with the PRA, and that DOC is a large agency

and must be deterred from "bad acts," Williams provides no authority to support her argument. The Court of Appeals did not reach such a conclusion.

The Court of Appeals decision here is well-supported and well-reasoned. It bases its decision on a "fact-specific inquiry" into whether the Department's response "was thorough and diligent." *Freedom Found*., 9 Wn. App. 2d at 673. That inquiry included facts that in the year that Williams filed her requests, DOC received a total of 13,892 public records requests. CP 749, 759. Even considering only Level 3 (complex) requests like Williams', the Department that year produced more than 610,000 pages of records under the PRA. CP 760-761. Moreover, each Specialist in the PRU had an average of 120 requests on their workload, and Department staff spent 36,640 hours responding to PRA requests in TOTAL, which included more than 1,200 hours on just five pending requests. CP 763, 768, 777. The Court of Appeals also considered the complexity of requests P-7712

and P-8646 and the volume of data that was produced by an IT search of email records. CP 754-755.

Considering all of the facts, the Court of Appeals ruled "there was no unreasonable delay." That holding does not conflict with holdings requiring an agency to provide the "most timely possible action on requests for information." *Freedom Found.,* 9 Wn. App. 2d at 673. Nor does it create an exemption from timely action for the Department. Instead, the Court, using established case law as its guide, correctly determined that the DOC responded diligently to Williams' requests. Review of the Court of Appeals decision is not warranted.[2]

V. CONCLUSION

The Court of Appeals decision in this case is carefully reasoned and consistent with case law. Petitioner Williams has

[2] Williams includes additional "issues presented for review." However, in the Petition, she makes no actual substantive arguments addressing these issues. The Court will not consider arguments that are not developed in the briefs; therefore, the Department does not address the issues. *McKee v. American Home Products, Corp*., 113 Wn. 2d 701, 782 P.2d 701 (1989).

failed to show that any of the RAP 13.4 criteria for acceptance of review are satisfied. Therefore, this Court should deny review.

VI. CERTIFICATION

This document contains 4,484 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 9th day of December, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing Department's Answer to Petition for Review with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participants:

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I certify under the laws of the state of Washington that the foregoing is true and correct.

DATED this 9th day of December, 2022, at Spokane, Washington.

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CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

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