

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2/16/2023 3:17 PM  
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CLERK

NO. 101567-4

**SUPREME COURT  
OF THE STATE OF WASHINGTON**

John Worthington,

Appellant,

v.

WASHINGTON STATE  
LEGISLATURE, WASHINGTON  
STATE SENATE, OFFICES OF  
SENATOR BOB HASEGAWA,  
WASHINGTON STATE HOUSE  
OF REPRESENTATIVES,  
OFFICES OF: Frank Chopp-Chair,  
Dan Kristiansen-Ranking Minority  
Member, Joel Kretz-Assistant  
Ranking Minority Member, Steve  
Bergquist, Larry Haler, Mark  
Hargrove, Mark Harmsworth, Jeff  
Holy, Norm Johnson, Vicki Kraft,  
John Lovick, Joan McBride, Joyce  
McDonald, Lillian Ortiz-Self, Tina  
Orwall, Eric Pettigrew, Marcus  
Riccelli, Tana Senn, Larry  
Springer, Derek Stanford, Pat  
Sullivan, Gael Tarleton, Luanne  
Van Werven, J.T. Wilcox, Sharon  
Wylie,

Respondents.

RESPONDENTS'  
ANSWER TO  
MOTION ON THE  
MERITS

## **I. INTRODUCTION**

Mr. Worthington's motion is premature pursuant to RAP 18.14(b) and should not be considered. This Court has not accepted Mr. Worthington's matter for review, and should deny review as argued in the Answer to Petition for Review. The motion on the merits is untimely because no opening nor response brief has been filed.

Even if this Court allows the untimely motion, Mr. Worthington fails to meet the criteria of RAP 18.14(e)(2). The Legislative defendants performed adequate searches consistent with the Public Records Act. The trial court and the Court of Appeals correctly determined consistent with established law and the facts of the case that there was no PRA violation. This Court should deny Mr. Worthington's motion on the merits.

## **II. ARGUMENT**

A motion on the merits to reverse is only allowed after the respondent's brief has been filed. RAP 18.14(b). Here, no

opening brief has been filed and no response brief has been filed. This Court has not even accepted review of Mr. Worthington's appeal. Thus, Mr. Worthington's motion on the merits to reverse is premature and should not be considered.

Should this court consider the motion, it should be denied because the trial court and Court of Appeals each properly decided the matter consistent with settled law and the factual evidence presented. There was no abuse of discretion.

Mr. Worthington makes his motion on the merits pursuant to RAP 18.14(e)(2). Pursuant to RAP 18.14(e)(2) "a motion on the merits to reverse will be granted in whole or in part if the appeal or any part thereof is determined to be clearly with merit... considering... whether the issues on review (a) are clearly controlled by settled law, (b) are factual and clearly not supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly an abuse of discretion." As noted, Mr. Worthington has not met the standard required by RAP 18.14(e)(2) and his motion should be denied.

Mr. Worthington's motion is based on his incorrect allegation that 11 people were not asked for records. As argued more thoroughly in the Answer to Petition for Review, the evidence establishes that not only were people asked for records, but that centralized searches were performed by the public records officers.

The Senate sent search notices to the named individuals and aides in 2018 and again in 2020. CP 503, 513-17. The House sent search notices in 2018 and again in 2020 to the vast majority of members named in the request and the 2016 aides to those members, but excluded members and aides who no longer worked for the Legislature. CP 520-22, 537-8, 544-48.

From the time of Mr. Worthington's request in 2018 and to the present, there has been an electronic hold on all Legislative emails that prevents deletion of any emails. CP 503, 519. Thus, any emails in existence at the time of the request in 2018 were preserved and in existence at the time of the search in 2020. The House and Senate records officers conducted centralized

searches of the email, calendar, and voicemail systems.  
CP 503-4, 519-22.

This evidence establishes that Legislative defendants were asked for records, that records were being preserved during the pendency of Mr. Worthington's request, and that public records officers conducted a centralized search for the record that Mr. Worthington sought. The evidence establishes that there was no PRA violation. Mr. Worthington's motion on the merits should be denied.

### **III. CONCLUSION**

Legislative defendants respectfully request that this Court deny Mr. Worthington's Motion on the Merits because it is untimely. If the motion is allowed, the motion should nonetheless be denied because the trial court and Court of Appeals each properly decided the matter consistent with settled law and the factual evidence presented.

This document contains 624 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 16th day of February, 2023.

ROBERT W. FERGUSON  
Attorney General

/s/ Jennifer Steele  
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Attorneys for Respondents

**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at the Office of the Attorney General, over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the party listed below by the methods noted:

John Worthington  
90 S. Rhodefer Rd. #E-101  
Sequim, WA 98382  
Worthingtonjw2u@hotmail.com

- First-Class Mail,  
Postage Prepaid
- Certified Mail
- Email (Per Electronic  
Service Agreement)
- Supreme Court  
E-service

DATED this 16th day of February, 2023 at Seattle, Washington.

/s/ Jennifer Steele  
JENNIFER S. STEELE  
Public Records Counsel

**CONSUMER PROTECTION DIVISION AGO**

**February 16, 2023 - 3:17 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 101,567-4  
**Appellate Court Case Title:** John Worthington v. Washington State Legislature, et al.  
**Superior Court Case Number:** 20-2-02488-8

**The following documents have been uploaded:**

- 1015674\_Answer\_Reply\_20230216151712SC825736\_5246.pdf  
This File Contains:  
Answer/Reply - Answer to Motion  
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