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NO. 90704-8

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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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ARTHUR WEST,  
Petitioner,

v.

STATE OF WASHINGTON DEPARTMENT OF LICENSING,  
Respondent.

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**ANSWER TO PETITION FOR REVIEW**

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 ORIGINAL

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## I. INTRODUCTION

Arthur West seeks review of a Court of Appeals decision that rejected his interpretation of a subsection in the Public Records Act (PRA). *West v. Dep't of Licensing*, \_\_\_ Wn. App. \_\_\_, 331 P.3d 72 (2014). West fails to show that the Court of Appeals' decision satisfies any of the criteria for granting review under RAP 13.4(b). The decision is consistent with the prior decisions of this and other courts that guide the interpretation of the Public Records Act. It involves no constitutional issue. West's disagreement with the Court of Appeals' application of well-settled principles of statutory construction does not involve an issue of substantial public interest. The Court should deny West's petition.

## II. COUNTERSTATEMENT OF THE ISSUES

The Public Records Act, chapter 42.56 RCW, requires state and local agencies to disclose all public records upon request, unless the record falls within a PRA exemption or other statutory exemption. RCW 42.56.070(1). West requested records from the Department of Licensing concerning motor vehicle fuel taxes refunded to Indian tribes under RCW 82.36.450. Tribal tax information is exempt from disclosure under RCW 82.36.450(4) and RCW 42.56.230(4)(b). If this Court accepts review, the issue will be:

Did the Department properly redact tribal tax information under RCW 42.56.230(4)(b), which exempts from disclosure information required of a taxpayer if the disclosure would violate the taxpayer's right to privacy, and under RCW 82.36.450(4), which expressly makes information from a tribe or tribal retailer personal and exempt under RCW 42.56.230(4)(b)?

### III. COUNTERSTATEMENT OF THE CASE

In January 2012, the Department received a public records request (Request #1) from West seeking copies of the following:

1. All records showing the total amounts of gas tax money given monthly to each Indian Tribe, 2008 to present.
2. All audit reports concerning the expenditure of such funds.
3. All communications concerning the disclosure or withholding of such records, or the propriety of disclosing or withholding such records, January of 2011 to present. [sic]

Clerk's Papers (CP) 77-78 (¶13), 90 (Ex. F1). The Department timely responded to West's request and asked him for clarification. CP 78 (¶14), 93 (Ex. F2). After West clarified his request, the Department estimated a date by which it would provide a response to Request #1, and informed West records would likely be produced in installments. CP 78 (¶15), 97-98 (Ex. F3).

On March 7, in response to Request #1, the Department e-mailed West a responsive record and attached an exemption log that set forth the reasons why certain records were being withheld. CP 84 (¶42, 44), 129-37 (Ex. F14). The Department also informed West that other records responsive to #1 were still being reviewed and he could expect a status

update as to these records. CP 84 (¶43), 129 (Ex. F14). The Department provided further installments for Request #1 and as of October 31, 2012, a total of 47,363 pages in 22 installments had been produced to West or accounted for in an exemption log. CP 207 (¶11), 208-1066 (Exs. 1-20). With each installment, the Department provided exemption logs setting forth the applicable exemptions for any records withheld or redacted. CP 84 (¶42-46), 87 (¶58-60), CP 205 (¶9).

In February 2012, the Department received an e-mail from West with an additional public records request (Request #2):

I am curious as to what indexes the department maintains of records related to the gas tax refunds to the tribes. Please regard this as a further request for disclosure of any indexes of public records maintained by the department that encompass the gas tax refund amounts, and any applicable retention and destruction schedules.

CP 78 (¶16), 96-97 (Ex. F3). The Department again timely responded and informed West he could expect a response to Request #2 by February 24. CP 78 (¶16), 95-96 (Ex. F3).

The Department e-mailed West on March 9 informing him there were no responsive records to the "index" portion of Request #2. CP 87 (¶58), 165-66 (Ex. F19). In the same March 9 e-mail, the Department also produced records responsive to the "retention and destruction schedule" portion of Request #2. CP 87 (¶59), 165-66, 170-75 (Ex. F19).

On March 8, 2012, West sued the Department in Thurston County Superior Court. CP 4-7. He asserted the Department failed to timely respond to Request #1, failed to adequately search for and/or produce responsive records, asserted improper exemptions, and failed to provide exemption logs. CP 6.

The parties filed cross-motions for summary judgment. The superior court granted the Department's motion, and denied West's motion. CP 1336-37. West's subsequent motion for reconsideration was denied. CP 1836, 1842. The Court of Appeals affirmed those orders. The Court held the Department properly redacted and withheld information related to the amounts of gas tax money refunded to Indian tribes because there are specific statutory exemptions prohibiting disclosure. *West*, 331 P.3d at 76. Further, the Court held the Department adequately and timely searched for, identified, and produced records related to West's public records request. *Id.* at 77.

#### **IV. REASONS WHY REVIEW SHOULD BE DENIED**

Under RAP 13.4(b), the Court grants review only:

- (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) if the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or
- (3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

West fails to demonstrate any of these criteria and review is unwarranted. The court correctly applied the PRA, the tribal fuel tax statute, and case law analyzing compliance with the PRA. The decision does not conflict with any other decision of the Supreme Court or Court of Appeals. Further, the opinion raises neither a constitutional issue nor an issue of substantial public interest. West's Petition consists primarily of argument with little or no reference to the record, nor does the record support his arguments. Accordingly, the Court should deny review.

**A. Consistent with the Public Records Act and Precedent, the Court of Appeals Properly Held the Department's Asserted Exemptions Were Correct and West Fails to Establish Any Conflict Justifying Review**

West claims the Court of Appeals' decision conflicts with the PRA's mandate in RCW 42.56.030 that the chapter must be liberally construed and exemptions narrowly construed and with prior case law regarding this mandate. Pet. for Review at 1-2, 5-6. He is incorrect.

The Court of Appeals' decision was a straightforward application of the PRA's exemption for personal taxpayer information to tribal fuel tax records. *See* RCW 42.56.230(4)(b), RCW 82.36.450(4). RCW 42.56.230(4) exempts from disclosure information that would violate a taxpayer's right to privacy:

The following personal information is exempt from public inspection and copying under this chapter:

- (4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would:
- (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or
  - (b) *violate the taxpayer's right to privacy* or result in unfair competitive disadvantage to the taxpayer;

(emphasis added). RCW 82.36.450 governs motor vehicle fuel tax agreements between the State and any federally recognized Indian tribe located on a reservation within Washington State. Subsection 4 of this statute provides:

*Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement shall be deemed to be personal information under RCW 42.56.230(3)(b) and exempt from public inspection and copying.*<sup>1</sup>

RCW 82.36.450(4) (emphasis added). The Court of Appeals held that under the plain language of these statutes, records containing tribal fuel tax information were exempt. *West*, 331 P.3d at 75. It is not just a particular *record* that is exempt from public inspection, but the *information* itself is exempt. The court agreed that the Department's redactions were necessary to protect the information it received from tribes as required by RCW 82.36.450 and RCW 42.56.230(4)(b).

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<sup>1</sup> RCW 42.56.230 was amended by 2011 c 173 § 1, changing subsection (3)(b) to subsection (4)(b).

In so holding, the Court explained that a more restrictive meaning of the words “from the tribe” in RCW 82.36.450, to mean only information the Department *received* from the tribe, was not proper. *West*, 331 P.3d at 75. Because the amount of gas tax money given or refunded to the tribe contains “information required of [the tribe],” RCW 42.56.230(4), and “information from the tribe,” RCW 82.36.450(4), “[d]isclosure of such information would be contrary to the plain words of the statute.” *Id.* As the Court stated, the application of RCW 82.36.450 does not “turn on whether the individual’s right to privacy would be violated by disclosure.” *Id.* at 76. So long as the information is “information from the tribe,” it is statutorily defined as personal information and exempt from disclosure. *Id.*

West baldly claims, without analysis, that the Court of Appeals’ application of the plain language of the relevant statutes contradicts three Supreme Court cases regarding the PRA’s liberal construction and its remedial intent.<sup>2</sup> Pet. for Review at 6. But, the cases West cite do not conflict with the decision below.

To the contrary, all three cases support the principles the Court of Appeals applied here: that the PRA is liberally construed to promote full

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<sup>2</sup> *Progressive Animal Welfare Soc. v. Univ. of Washington*, 114 Wn.2d 677, 790 P.2d 604 (1990), *Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004), *Koenig v. City of Des Moines*, 158 Wn.2d 173, 142 P.3d 162 (2006).

access to public records and that any exemption be narrowly construed. RCW 42.56.030. The Court here reiterated the importance of this statutory mandate. *West*, 331 P.3d. at 74. But, that courts are required to construe any exception narrowly, does not mean the exception's plain language can be ignored. Rather here, the Court appropriately applied the plain language of the relevant exceptions to hold the Department's redactions were proper. *West* does not explain how the Court of Appeals decision here contradicts any prior case law. There is no such conflict.

The Court of Appeals below properly analyzed the Department's asserted exemptions and followed precedent in concluding that it properly redacted records. *West* presents no conflict justifying review, and his petition for review should be denied.

**B. West Fails to Establish A Significant Constitutional Question Justifying Review**

In his petition to this Court, *West* argues that the Court of Appeals' decision raises a significant constitutional issue warranting review under RAP 13.4(b)(3) because it repealed RCW 42.56.030 in violation of Article II, Section 1(a) of the Washington Constitution. Pet. for Review at 6-7. *West* is incorrect. As set forth above, the Court of Appeals' decision affirming the summary judgment order in the Department's favor was a straightforward application of a statutory exemption to the PRA. It did not

repeal RCW 42.56.030, but rather appropriately applied it. While West frames this as constitutional question, it is simply a reiteration of his argument regarding the requirement in RCW 42.56.030 that exceptions to the PRA be narrowly construed.

Further, West cites no authority for this argument. Courts may disregard arguments unsupported by any legal authority or reasoned argument. *See, e.g., Wash. State Dep't of Natural Res. v Browning*, 148 Wn. App. 8, 199 P.3d 430 (2009) (Court refused to consider constitutional and standing arguments for lack of cogent argument and legal authority). Even if this constitutional argument were properly presented, which it is not, it is meritless. Article II, Section 1(a) of the state constitution addresses the people's initiative power. West does not explain how the Court of Appeal's decision here, about whether the Department timely and properly responded to a PRA request, raises a significant constitutional issue regarding the initiative power. It does not and West's petition should be denied.

**C. The Court of Appeals' Application of Well-Settled Principles of Statutory Construction Does Not Involve an Issue of Substantial Public Interest**

Citing RAP 13.4(b)(4), West asserts his petition involves an issue of substantial public interest since it addresses the liberal construction of the PRA and the narrow construction given to exemptions. Pet. for Review

at 4-5. However, he fails to show the issue addressed in his petition “should be determined by the Supreme Court.” RAP 13.4(b)(4). The published opinion of the Court of Appeals, the plain language of RCW 42.56.230(4)(b) and RCW 82.36.450(4), and consistent prior case law provide sufficient guidance to the public on the issues raised by West’s petition. Accordingly, further review by this court of this issue is unnecessary as it is a well-settled area of the law and not an issue of substantial public interest.

The Court of Appeals decision in *West* does not alter the analysis for how the PRA must be construed. *See* RCW 42.56.030. To the contrary, the Court expressly reiterated that it is to be construed liberally and exemptions narrowly. *West*, 331 P.3d. at 74. It then went on to apply the plain language of RCW 42.56.230(4)(b) and RCW 82.36.450(4) to conclude the Department’s asserted exemptions were proper and reject West’s reading of the statutes. *Id.* at 75. At most, West shows his disappointment in and disagreement with the Court of Appeals opinion, which does not meet the criteria for this Court’s review under RAP 13.4(b)(4).

## V. CONCLUSION

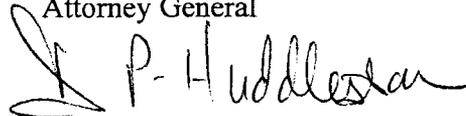
The Court of Appeals’ unanimous decision affirming the superior court’s summary judgment in favor of the Department correctly interprets

and applies RCW 42.56.230(4)(b) and RCW 82.36.450(4) under the precedents of this Court. West fails to demonstrate any of the criteria for accepting review under RAP 13.4(b). Therefore, the Department asks the Court to deny review.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of November, 2014.

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## PROOF OF SERVICE

I, ROXANNE IMMEL, hereby state and declare as follows:

1. That I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-entitled action.

2. That on the 4th day of November 2014, I caused to be served a true and correct copy of **Answer to Petition for Review** as follows:

E-mail

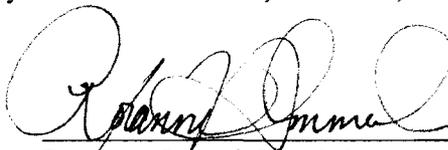
Arthur West  
awestaa@gmail.com

E-filed

Washington State Supreme Court  
supreme@courts.wa.gov

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON that the foregoing is true and correct.

DATED this 4th day of November 2014, in Seattle, Washington.

  
\_\_\_\_\_  
Roxanne Immel, Legal Assistant

## OFFICE RECEPTIONIST, CLERK

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**To:** Immel, Roxanne (ATG)  
**Cc:** awestaa@gmail.com; Padilla-Huddleston, Dionne (ATG); St. John, Judith (ATG)  
**Subject:** RE: Arthur West v. State of Washington Department of Licensing; No. 90704-8 -- Answer to Petition for Review

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**Subject:** Arthur West v. State of Washington Department of Licensing; No. 90704-8 -- Answer to Petition for Review

Dear Clerk,

Attached for filing is Answer to Petition for Review by the Department of Licensing in *Arthur West v. State of Washington Department of Licensing*; No. 90704-8

Mr. West is receiving a copy of the Answer via this email per the parties' agreement.

Sincerely,

*Roxanne Immel*

Legal Assistant for Eric D. Peterson, Jeremy Gelms, and Marya Colignon

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