No. 31658-1

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

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CLARENCE J. FAULKNER, Appellant,

v.

DEPARTMENT OF CORRECTIONS, Respondent.

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APPEAL FROM THE SUPERIOR COURT FOR

FRANKLIN COUNTY

The Honorable Bruce A. Spanner

No. 12-2-51010-8

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# OPENING BRIEF OF APPELLANT FAULKNER

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A. ASSIGNMENTS OF ERROR

1. Assignments of Error

1. The trial court erred in entering an order on April 19, 2013, when it ordered: Defendant Department of Corrections did not violate the Public Records Act in relation to Plaintiff's July 11, 2012, request for mail rejection disposition notice for mail rejection F-4-60 because no such record existed at the time of the request (Clerk's Papers (CP) at 3).

2. The trial court erred in entering an order on April 19, 2013, when it ordered: Defendant Department of Corrections did not act in bad faith as required by RCW 42.56.565(1) because the initial production of the incomplete log was an unfortunate mistake and Plaintiff failed to provide any evidence that the delay or denial was intentional (CP at 4).

3. The trial court erred in entering an order on April 19, 2013, when it ordered: Accordingly, Plaintiff is not entitled to penalties under RCW 42.56.550(4) (CP at 4).

2. Issues Pertaining To Assignments Of Error

1. Did Defendant Department of Corrections (DOC) violate the Public Records Act (PRA) in the processing of Plaintiff Faulkner's public records request for the Coyote Ridge Corrections Center local mail disposition form?

2. If the DOC is found to have violated the PRA in respect to Faulkner's request for the CRCC local mail disposition form, did the agency do so in bad faith?

3. Did the DOC conduct an adequate search and afford Faulkner the fullest assistance in his request for the CRCC legal mail signature sheet as required by the Public Records Act?

4. Did the DOC act in bad faith in the processing and handling of Faulkner's public records request for the one-page legal mail signature sheet by not verifying the responsive record and prematurely closing the request?

5. Once the DOC became aware of its error, did the agency act as quickly as possible to correct its error and make the requested record available to Faulkner?

6. Should Faulkner be awarded penalties for the 65 day period (10/3/12 to 12/7/12) between the time defendants came into possession of the correct complete signed legal mail signature sheet on 10/3/12, holding it until 12/7/12, and then providing it to the requestor Faulkner?

7. If Faulkner is the prevailing party on this appeal is he entitled to reimbursement from the DOC for his fees and costs in this action?

B. STATEMENT OF THE CASE

On July 8, 2012, plaintiff/appellant Faulkner (hereinafter Faulkner), submitted a public records request to the Department of Corrections (DOC) requesting a copy of two documents pertaining to his incoming personal and legal mail. Faulkner requested (1) a proof of delivery "Legal Mail Signature Sheet," and (2) the CRCC Local Disposition Form for his rejected mail (see Clerk's Papers (CP) at 201).

On July 18, 2012, Paula Terrell of the DOC Public Disclosure Unit acknowledged Faulkner's request, assigned it tracking number PDU-21017, and notified Faulkner that she would respond with an update on or before August 24, 2012 (CP at 203).

On August 29, 2012, Paula Terrell notified Faulkner the disclosure was ready and consisted of one responsive page which would be provided upon payment of $.66 (CP at 205).

On September 7, 2012, Faulkner submitted the payment request through DOC procedures and on September 18, 2012, Paula Terrell acknowledged payment, forwarded the one page, and notified Faulkner, "PDU-21017 is now closed" (CP at 207-8). Ms. Terrell did not describe the responsive document and made no mention of the second portion of his request.

On September 20, 2012, Faulkner hand wrote Paula Terrell complaining that he had been provided an incomplete form lacking the signatures and notations he had requested.

Faulkner also requested an appeal form to further document his complaint (CP at 96).

On September 23, 2012, Faulkner typed a detailed reiteration of his request and further noted that aside from providing the "blank" signature sheet rather than the completed one, no mention was made of his request for the Local Disposition Form (CP at 98).

On September 24, 2012, Faulkner submitted a formal appeal to the DOC Agency Appeals Office (CP at 210).

On October 1, 2012, Terry Pernula of the DOC Public Disclosure unit responded to Faulkner's letter of September 20, 2012 (CP at 100).

On October 3, 2012, Terry Pernula responded to Faulkner's letter of September 23, 2012 acknowledging Faulkner's complaint and notifying Faulkner that Paula Terrell would communicate with him on or before October 17, 2012 (CP at 101).

On October 1, 2012, Terry Pernula e-mailed Brenda Murphy at the Coyote Ridge Corrections Center (CRCC) regarding Faulkner's complaint and appeal. Ms. Pernula requested and obtained the completed "signed" legal mail signature sheet from Brenda Murphy on October 3, 2012 (CP at 106).

When Paula Terrell did not respond back to Faulkner on or before October 17, 2012 regarding the non-compliance with

his request, Faulkner submitted a civil complaint to the Franklin County Superior Court alleging violations of the Public Records Act which was subsequently filed on October 29, 2012.

On October 31, 2012, Barbara Parry acknowledged Faulkner's appeal received on September 28, 2012. Barbara Parry indicated an additional search would be conducted and that Paula Terrell would contact Faulkner on or before December 10, 2012 (CP at 212).

On December 7, 2012, Paula Terrell notified Faulkner that a copy of the record with signatures had been located and was being provided. She also stated that no copy of mail rejection disposition notice F-4-60 could be located and closed by stating, "PDU-21017 is now closed" (CP at 112-13).

On approximately December 10, 2012, after waiting five months Faulkner finally received one of the two one-page documents he requested on July 8, 2012.

After minimal discovery was conducted and a continuance granted to the defendants, a hearing on Faulkner's motion for show cause was held on February 13, 2013. The Superior Court ruled the defendants violated the PRA in respect to Faulkner's request for the legal mail signature sheet but the defendants did not violate the PRA in respect to the mail rejection disposition notice.

On March 22, 2013, a hearing for "bad faith" penalties

was held and the Superior Court ruled that Faulkner was entitled to his costs and fees as the prevailing party, but Faulkner was not entitled to any "bad faith" penalties regarding the defendant's violating the PRA in his request for the legal mail signature sheet (CP at 3-8).

On March 26, 2013, Faulkner filed a motion for reconsideration which was denied on April 3, 2013.

On April 19, 2013, the trial court's order and judgment were entered.

On May 10, 2013, Faulkner filed a timely notice of appeal and brings the matter for appellate review.

C. SUMMARY OF ARGUMENTS

1. Faulkner first challenges the trial court's ruling the defendants did not violate the PRA in respect to Faulkner's PRA request for the prison's local mail rejection disposition form.

2. Faulkner challenges the finding that the defendants, though violating the PRA, did not act in bad faith in the processing and handling of his PRA request for the proof of delivery legal mail signature sheet.

3. Finally, Faulkner argues that he is entitled to his costs and fees in bringing this appeal.

D. ARGUMENTS

1. The Defendants Violated The Public Records Act Regarding Faulkner's PRA Request For The CRCC Local Mail Disposition Form.

On July 8, 2012, Faulkner requested two one-page documents. This argument focuses on item two of Faulkner's request, "2. A copy of the CRCC Local Mail rejection Disposition Notice Mail Rejection F-4-60." CP at 201.

On July 18, 2012, Paula Terrell, Public Disclosure Specialist at the DOC Headquarters Public Disclosure Unit, acknowledged Faulkner's item two request as, "2. Coyote Ridge Corrections Center local mail rejection disposition notice mail rejection #F460." CP at 203.

Also, on July 18, 2012, Paula Terrell e-mailed Brenda Murphy at CRCC indicating that she had been assigned to locate the records. CP at 186.

On July 27, 2012, Brenda Murphy responded, "Hi Paula - Attached is the responsive document." CP at 89.

On August 29, 2012, Paula Terrell notified Faulkner the request was ready and consisted of one page. CP at 205.

Faulkner submitted payment and Paula Terrell forwarded the document to Faulkner on September 18, 2012. Paula Terrell did not describe the document but stated, "Enclosed is the document identified as being responsive to your request."

She did not mention the second requested document but ended the communication, "PDU-21017 is now closed." CP at 93-94.

On September 23, 2012, Faulkner wrote to Paula Terrell complaining that the page provided was not what he requested and that no mention was made of his request for item two, the local disposition form. CP at 98.

In addition to complaining by letter that his request had not been fulfilled, Faulkner submitted a formal appeal on September 24, 2012. CP at 210.

Faulkner never received the local disposition form. The identity of the "disposition notice" was never brought into question until Faulkner filed a motion to show cause. Then in responding defendants claimed no such form exists.

Faulkner challenges that the defendants knew the form he was referencing was the form actually titled, "OPTIONS FOR REJECTED MAIL," and even produced it in discovery. CP at 186.

In an e-mail chain of July 18, 2012, Michael True of the CRCC mailroom stated, "Here is a scan of the Legal signature sheet for 7/2/2012. the Rejection was appealed and the whole packet (rejection disposition sheet, rejection notice and rejected item) are at Headquarters, Mike Watkins." CP at 104. Here the requested form is called "rejection disposition sheet."

Even on November 1, 2012, during the appeal generated second search, and long after Faulkner was informed his

request was closed, Randall D. Smith, CRCC Mailroom Supervisor, does not question the title of the form, rather he relays, "... the entire packet was sent to HQ on April 30, 2012." CP at 108-109. Yet, in his declaration of February 7, 2013, Randall Smith, the CRCC Mailroom Supervisor, makes a strict interpretation, "There is no mail disposition notice, nor is there a need for this notice, as the offenders opt to have their rejected mail sent out of the facility....." CP at 124. It is on the local CRCC "OPTIONS" form that the offender chooses a disposition; one of the choices being whether or not the offender desires to appeal the rejection. Faulkner asserts that his request had been interpreted to mean the "OPTIONS" form, and that it was unreasonable to wait seven months to claim no such form existed.

A CRCC mail rejection appeal packet submitted for HQ review consists of a Mail Rejection Notice (sample at CP 149), the Options For Rejected Mail form (CP at 186), the prisoner's appeal statement, and the rejected mail item(s). It was clear that Faulkner was requesting the "OPTIONS FOR REJECTED MAIL" form.

The entire packet was apparently lost. In a separate tort claim action Faulkner was reimbursed $20.00 for the lost historical postcards. The copy of the "OPTIONS" form surfaced through production of documents pertaining to Faulkner's tort claim. CP at 186. Faulkner asserts that the settling of the

tort claim has no bearing on his public records request.

Faulkner made a concise request for two one-page identifiable public records. An identifiable public record is, "one for which the requestor has given a reasonable description enabling the government employee to locate the requested record." Beal v. City of Seattle, 150 Wn. App. 865, 872, 209 P.3d 872 (2009); see also WAC 44-14-04002(2)(an "identifiable record" is one agency staff can "reasonably locate"). The "identifiable record" requirement is satisfied when there is a "reasonable description" of the record "enabling the government employee to locate the requested records." Bonamy v. City of Seattle, 92 Wn. App. 403, 960 P.2d 447 (1998). However, a requestor is not required to identify the exact record he or she seeks. Volante v. King County Fire Dist. No. 20, 114 Wn. App. 565, 571, n.4, 59 P.3d 109 (2002). Faulkner made a clear request and the agency sought no clarification.

The Supreme Court in PAWS II emphasized that "[agencies have a duty to provide 'the fullest assistance to inquirers and the most timely possible action on requests for information.'" Progressive Animal Welfare Society v. University of Washington (PAWS II), 125 Wn.2d at 252 (quoting RCW 42.56.100, 42.56.520). Further codified in the PRA, this duty exists, despite the fact that "such examination may cause inconvenience or embarrassment to public officials or

others." RCW 42.56.550(3).

Faulkner alleges rather than giving him the fullest assistance possible and a prompt response, or even a modicum of cooperation, the agency closed his request and shuffled him into the agency appeals process, and they did so without even desk-checking their work.

A closing letter stating that the disposition form has apparently been lost along with the mail rejection appeal packet would have complemented the spirit of cooperation required by the PRA. Even the Washington Attorney General's Office issues a close-out letter stating, "Please contact me at the Office of the Attorney General if you have any questions. Thank you for allowing us to assist you." CP at 44-45. The DOC closes the door with a curt, "PDU-XXXXX is now closed." CP at 34-37.

For these reasons and arguments, Faulkner asserts that the Defendants violated the PRA in respect to his request for the disposition notice. The agency was not adhering to the principles of the PRA and working cooperatively with him in an effort to satisfy his request.

2. The DOC acted in bad faith in the processing Faulkner's request for the CRCC Local Mail Disposition Form.

While the PRA does not specifically define "bad faith"

it is listed among the nine aggravating factors in Yousoufian v. The Office of Ron Sims, King County Executive et al., 168 Wn.2d 444, 229 P.3d 735 (2010) Wash. Bad faith is listed in the 16 Factor Test among aggravating factor Five, "5. Negligent, reckless, wanton, bad faith (emphasis added), or intentional noncompliance with the act by the agency."

When the 2011 Washington State Legislature amended the PRA adding RCW 42.56.565(1) which states that a court shall not award penalties under 42.56.550(4) to a person who is incarcerated, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record, the Legislature did not define the "bad faith" requirement in any specific terms, and did not emphasize it with "high," "heightened," or "raised level."

Black's Law Dictionary defines "bad faith" as "Dishonesty of belief or purpose. 'A complete catalog of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance." Black's Law Dictionary, Ninth Edition, 2009.

Application of this recognized legal definition would find that the agency acted in bad faith in processing

Faulkner's request for the local mail disposition notice. The agency acted evasively, with a lack of diligency, and rendered a poor performance regarding a simple request for one document. The actions reflect bad faith.

3. The DOC did not conduct an adequate search, afford Faulkner the fullest assistance, and process his request for the CRCC legal mail signature sheet in compliance with the PRA.

In this item, on July 8, 2012, Faulkner made a clear and concise request for the equivalent of a "proof of delivery" confirmation as one would obtain a signed delivery confirmation from a commercial carrier. CP at 201. Things appeared to be on track and in order when on July 18, 2012 Faulkner's request was acknowledged. However, as time progressed and Faulkner paid for and received the responsive document, this simple request for two one-page documents began to go awry.

Though Faulkner clearly requested a completed and signed document verifying the delivery of the 7/2/2012 legal mail, he received an uncompleted "blank" computer generated version of the form. CP at 208.

On September 20, 2012, hoping to swiftly solve the problem, Faulkner brought the error to the attention of the agency and followed up with an additional letter and a formal appeal. CP at 96, 98, and 210.

On October 3, 2012, Terry Pernula, Public Disclosure Specialist, acknowledged Faulkner's letter and advised him that Specialist Paula Terrell would contact him upon her return and on or before October 17, 2012. CP at 101.

Upon becoming aware of the problem, and that Faulkner was "going to appeal," Terry Pernula obtained from CRCC employee Brenda Murphy, the correct signed version of the form Faulkner had requested. CP at 106. Providing that form to Faulkner would have promptly resolved the issue and prevented litigation including this appeal.

However, Terry Pernula did not provide the requested document to Faulkner and Paula Terrell did not respond back to Faulkner by October 17, 2012.

Barbara Parry of the Agency Appeals Office did not acknowledge Faulkner's formal agency appeal of September 24, 2012, until October 31, 2012. WAC 44-06-120 provides review is final when the agency renders a decision on the appeal, or the close of the second business day after it receives the appeal (emphasis added), "whichever occurs first".

Though required by WAC 44-14-080, to wait only two business days from the initial denial, or submission of an appeal, Faulkner did not seek judicial review until October 29, 2012, almost a month after submitting the agency appeal.

Ultimately, Faulkner did not receive the document he requested on July 7, 2012, until December 10, 2012.

The aforementioned chronology and review of the record shows that the agency performed only a perfunctory search for responsive records, and did not diligently coordinate resolution of their claimed "inadvertent error" in limiting the search query. The failure to perform an adequate search precludes an adequate response and production. The PRA "treats a failure to properly respond as a denial." Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 750, 174 P.3d 60 (2007)(citing RCW 42.56.550(2). The adequacy of a search for records under the Public Records Act is the same as exists under the federal Freedom of Information Act. The adequacy of a search is judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents, Neighborhood Alliance of Spokane County v. County of Spokane, 172 Wn.2d 702, 261 P.3d 119 (2011).

Rather than verifying the response, the agency responded that there were no other documents and closed Faulkner's request. DOC POLICY 450.100 MAIL FOR OFFENDERS Section X. Mail Records subsection C shows that the legal mail signature log sheets are, "...maintained in the mailroom, living unit office, or mail sorting area by staff designated by the Superintendent to handle mail delivery, receipt , and control." CP at 140. Brenda Murphy alludes that on October 3, 2012, she obtained the correct requested document from the "unit OA3." CP at 106.

This chronological record dilutes defendants excuse of inadvertent error and contradicts any claim of giving Faulkner the fullest of assistance in fulfilling his request. Rather, it demonstrates a dispirited lack of diligence. Though Terry Pernula obtained the requested document on October 3, 2012, Defendants submitted to the trial court, "Moreover, throughout October and November, the Department worked to provide Plaintiff the requested documents," then further exclaimed, "Here, not only was the Defendant not acting in bad faith, but upon learning of the mistake, took steps to correct the mistake and ultimately provided the requested document on December 7, 2012." CP at 58.

Holding the one document that would complete Faulkner's request is evidence of a severe problem with the agency's processes and communication regarding PRA requests.

The DOC did not afford Faulkner anywhere near the fullest assistance and prompt disclosure of the record, and further violated the PRA by not providing the document promptly upon obtaining the correct requested document.

4. The DOC acted in bad faith in the processing and handling of Faulkner's public records request for the one page legal mail signature sheet.

In 2011, the Washington Legislature passed a statute regarding prisoner plaintiffs in PRA actions.

> [a[ court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.
>
> This act applies to all actions brought under RCW 42.56.550 in which final judgment has not been entered as of the effective date of this section.

RCW 42.56.565 (as amended by Laws of 2011, ch. 300, §§1,2). This law went into effect on July 25, 2011.

Pursuant to RCW 42.56.565(1), a prisoner requestor is only entitled to a penalty upon a finding of "bad faith."

Testimony before the Legislature in support of the amendment outlined that prisoner PRA litigation comprises two-thirds of the PRA cases the DOC must defend, litigation that is motivated not by a need or desire for records, but by money (emphasis added). S.B. Rep. on SB 5025, at 2, 62nd Leg., Reg. Sess.(Wash. Jan. 14, 2011). This intent to deter profit-oriented prisoner requests was corroborated by the fact that the amendment did not remove the requirement that an agency provide responsive records.

Defendants testified that the DOC responded to 14,226 requests in 2012 and that they received 1000 requests per month. CP at 61.

Defendant's production of their agency's public disclosure log for the period July through December 2012, shows that they recieved 2461 requests for an average of 410

per month, far shy of the reported 1000 per month. CP at 17-24 and 61. While the agency may have been processing a back-log of requests the record shows there has been a significant reduction in the number of requests.

Faulkner's request for two documents personal to him can hardly be described as unneeded, or motivated by a profit motive, as Faulkner did not recover all of his prepaid filing fees and expenses, and is presently over $400.00 in the red. In sum, Faulkner's personal mail claim is not one the legislature intended to deter.

While a court has yet to specifically define bad faith relative to the PRA prisoner litigant amendment, bad faith is listed in the 16 Factor Test of aggravating and mitigating factors suggested for use in penalty calculations in the often cited Yousoufian cases. The factors are:

> Aggravating factors that may support increasing the penalty are:
>
> (1) a delayed response by the agency, especially in circumstances making time of the essence,
>
> (2) a lack of strict compliance by the agency with all the Public Records Act procedural requirements and exceptions,
>
> (3) lack of proper training and supervision of the agency's personnel,
>
> (4) unreasonableness of any explanation for noncompliance by the agency,
>
> (5) negligent, reckless, wanton, bad faith (emphasis added), or intentional noncompliance with the Act by the agency,

(6) agency dishonesty,

(7) the public importance of the issue to which the request is related, where the importance was foreseeable to the agency,

(8) any actual personal economic loss to the requestor resulting from the agency's misconduct, where the loss was foreseeable to the agency, and

(9) a penalty amount necessary to deter future misconduct conduct by the agency considering the size of the agency and the facts of the case.

Mitigating factors that may serve to decrease the penalty are:

(1) a lack of clarity in the Public Records Act request,

(2) the agency's prompt response or legitimate follow-up inquiry for clarification,

(3) the agency's good faith, honesty, timely, and strict compliance with all Act procedural requirements and exceptions,

(4) proper training and supervision of the agency's personnel,

(5) the reasonableness of any explanation for noncompliance by the agency,

(6) the helpfulness of the agency to the requestor, and

(7) the existence of agency systems to track and retrieve public records.

Yousoufian v. Office of Ron Sims, King County Executive, 168 Wn.2d 444, 229 P.3d 735 (2010). Bad faith exists when the State knows it has records that should be disclosed, but intentionally and without justification fails to disclose them. Yousoufian v. Office of Ron Sims, 114 Wn. App. 836, 853, 60 P.3d 667 (2003).

Black's Law Dictionary defines bad faith as, "Dishonesty of belief or purpose. 'A complete catalog of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.'" Black's Law Dictionary, Ninth Edition, 2009.

This legal definition of bad faith lists many of the Yousoufian nine aggravating factors as constituting types of bad faith recognized in judicial decisions.

Faulkner asserts that the strongest indicator of bad faith in the handling of his request was the agency's failure to promptly provide the correct document once they came into possession of it. The delayed response showed evasiveness, a lack of diligence, and willful rendering of poor performance, and meets the legal definition of bad faith. The delay and resulting explanation that the agency worked through October, November, (and into December), to provide the one page document they already possessed on October 3, 2012, is violative of aggravating factors (1), (2), (3), (4), and (5). Faulkner also asserts that the Defendants can not validly claim any of the mitigating factors in their defense.

Another example of bad faith in this argument is

that the agency willingly created a "blank" document and proffered it as responsive rather than providing a copy of an existing record. Review of the blank document (CP at 94 and 208) shows that it was generated from computer software at 11:40 on 07/18/2102, and did not exist at the time of Faulkner's request of July 8, 2012. In an e-mail of 10/01/12 from Terry Pernula to Brenda Murphy at CRCC, Terry Pernula states, "The one provided appears to be a "blank" computer generated one." CP at 106. The act of creating this document violates the PRA as aggravating factors (2), (3), (5), and (6) - lack of compliance with the PRA, lack of training, negligence, and agency dishonesty, and, constitutes "bad faith."

5. At minimum, Faulkner should be awarded penalties for the 65-day period between October 3, 2012, when Terry Pernula obtained the requested document created on 7/2/12, and utilized for delivery of the legal mail, until the ultimate production of it to Faulkner on December 7, 2012.

The purposes of the penalty authorized by RCW 42.56.550(4) when an agency violates the Public Records Act, chapter 42.56 RCW are to discourage improper denial of access to public records and to encourage adherence to the goals and procedures dictated by the act. Despite Faulkner's status as a state prisoner, the actions of the agency in this matter

warrant a "bad faith" penalty to discourage future noncompliance by the agency, and a liberal construction of the PRA authorizes such a penalty.

6. If Faulkner prevails on this appeal he is entitled entitled to his fees and costs.

Under both the old and new codification of the Public Records Act, individual who prevails against the agency is entitled to all costs, including reasonable attorney's fees. RCW 42.56.550(4); The Public Records Act's authorization of attorney fees include fees on appeal. Progressive Animal Soc'y v. University of Washington., 114 Wn.2d, 677, 690, 790 P.2d 604 (1990). While a pro se litigant is not entitled to attorney fees, Faulkner asks this Court to order the Department of Corrections to pay all costs if he should prevail on his appeal.

E. CONCLUSION

For the reasons set forth above, appellant Clarence J. Faulkner respectfully asks this Court to reverse the trial court's finding that the agency did not violate the PRA in respect to the disposition notice, reverse the finding that the agency did not act in "bad faith" regarding the violation of the PRA in respect to the legal mail signature sheet, and

remand the matter back to the superior court for a determination of penalties, or in the alternative assess a penalty this Court deems appropriate.

Finally, Mr. Faulkner asks this Court to order the Department of Corrections to pay all cost of this appeal.

Respectfully submitted this 10th day of July, 2013.

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CERTIFICATE OF SERVICE

I certify that I served the original and a copy of the foregoing Appellant's Opening Brief, Court of Appeals Division III No. 31658-1, with the Clerk of the Division III Court of Appeals, and I served a copy on Respondent's counsel of record by mailing it through the "Legal Mail" process of the Washington State Reformatory Unit, U.S. Mail postage prepaid on this the 10th day of July, 2013, addressed to:

Clerk, Court of Appeals
Division III
500 N. Cedar Street
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and to Respondent's counsel:

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I certify under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of July, 2013 at Monroe, Washington.

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