70757-4

70757-4

NO. 70757-4-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

KAMAL MAHMOUD,

Respondent,

v.

SNOHOMISH COUNTY,

Appellant.

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

MARK K. ROE
Prosecuting Attorney

SARA J. DI VITTORIO
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

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I. INTRODUCTION

Snohomish County (the County) responded to Kamal Mahmoud's six public records requests by either claiming an exemption or providing a last installment of records more than one year prior to the filing of his lawsuit. As such, they are all time-barred.

This Court should affirm the superior court's dismissal of claims related to 09-05374 as time-barred. This Court should reverse the denial of summary judgment as to requests 09-05375, 10-01666, 10-05383, 10-08592, and 10-08593. If this Court determines that 10-05383 is barred by the statute of limitations, the award of attorney fees should be reversed as Mr. Mahmoud did not prevail on any claims.[1]

Should this Court conclude the statute of limitations does not bar claims regarding requests 09-05375, 10-01666, 10-08592, and 10-08593, this Court should affirm the superior court's finding that the County's response to these requests complied with the PRA and should affirm the dismissal of these claims and the amount of attorney fees awarded.

II. ARGUMENT

A. REPLY RELATED TO THE COUNTY'S CROSS-APPEAL

Between August of 2009 and December of 2010, Mr. Mahmoud submitted six PRA requests to Snohomish County. Each request was

[1] The County did not appeal the amount of the attorney's fees, only the entitlement to an award of attorney's fees.

received and assigned a tracking number. Those tracking numbers are 09-05374, 09-05375, 10-01666, 10-05383, 10-08592, and 10-08593.

The County claimed an exemption in response to 09-05374 on August 7, 2009. CP 125. The County did not respond to two follow-up inquiries regarding this request, which may be considered requests to re-open this request. These two follow-up inquiries were received on October 20, 2009, and February 11, 2010. CP 2515-16; 2518-19.

The County claimed an exemption in response to 10-05383 on August 16, 2010. CP 45.

The County produced three installments of records responsive to 09-05375, the last of which was produced on April 2, 2010. CP 45. On June 4, 2010, Mr. Mahmoud sent an email to the County and his counsel regarding this request. CP 2529-30. The County responded to this email on June 7, 2010. CP 2532-33.

The County produced five installments of records responsive to 10-01666. CP 63-64. The final installment was produced on November 22, 2010. CP 89.

The County produced an installment of records on December 9, 2010, to 10-08592. CP 120. After an appropriate search, it was determined no more responsive records existed. CP 2551. On January 19, 2011, Mr. Mahmoud was informed there were no further responsive

records and the request was closed. Id. Mr. Mahmoud sent correspondence to the County and his attorney regarding these records. Id. It is presumed that many of the emails he sought had been deleted from these accounts before Mr. Mahmoud's request was received by Snohomish County. Id. This is the only request where the County asserted potentially responsive records had been destroyed.

The County produced three installments of records responsive to 10-08593. CP 96-117. The final installment was produced on February 28, 2011.

Mr. Mahmoud's complaint was amended to include Public Records Act (PRA) allegations on August 30, 2012. As a result of this filing date, Mr. Mahmoud's claims are all time-barred pursuant to RCW 42.56.550(6). In the alternative, Mr. Mahmoud's claims regarding 09-05374, 09-05375, and 10-05383 are time-barred pursuant to RCW 4.16.130. See Johnson v. Dep't of Corrections, 164 Wn.App. 769, 265 P.3d 216 (2011).

1. Mr. Mahmoud's Claims Are Time-Barred Under the Plain Language of RCW 42.56.550(6)

The PRA requires plaintiffs to file any action within one year of the date of an agency's "claim of exemption or last production of a record on a partial or installment basis." RCW 42.56.550(6). As a statute of

limitations, RCW 42.56.550(6) acts to eliminate a plaintiff's right to maintain a cause of action, as it relates to a specific records request, beyond the time period specified within the statute.

The plain language of RCW 42.56.550(6) identifies two triggers for the statute of limitations: (1) the claim of an exemption; or (2) the production of records on a partial or installment basis. For a claim of exemption to trigger the statute of limitations, the agency must provide a requestor with "enough information … to make a threshold determination of whether the claimed exemption is proper." Rental Housing Ass'n of Puget Sound v. City of Des Moines (Rental Housing), 165 Wn. 2d 525, 199 P.3d 393 (2009), citing, WAC 44–14–04004(4)(b)(ii). The claimed exemption must identify what records are being claimed as exempt, what exemption is claimed, and how that exemption applies to the records. Id. at 538. For a production of records on a partial or installment basis to trigger the statute of limitations, the records must be produced as part of a larger set of requested records. Tobin v. Worden, 156 Wn. App. 507, 514, 233 P.3d 906 (2010). The plain language of the statute establishes that the County triggered the statute of limitations in responding to each of Mr. Mahmoud's requests.

The County does not advocate for an application of the statute of limitations inconsistent with this statute, as Mr. Mahmoud asserts. The

County is not asserting that the "administrative closure of the request would trigger the SOL despite the agency's failure to produce or identify in any manner all the responsive records." Appellant's Reply Brief at 11. The County is advocating that the plain language of RCW 42.56.550(6) applies here; the statute of limitations began to run when an exemption is claimed or records were produced on a partial or installment basis. Mr. Mahmoud's assertion that "the PRA requires all responsive records to be produced or properly claimed as exempt" before the statute of limitations begins to run adds words and meaning to the statute that do not exist. See Appellant's Reply Brief at 11. As Mr. Mahmoud correctly notes on page 10 of his brief, "[t]he second way an agency triggers the PRA SOL is by actually producing the responsive record(s) on a partial or installment basis." To suggest that the statute of limitations does not begin to run until "all responsive records are produced" while at the same time arguing that the statute of limitations is triggered with a "partial" production is nonsensical. As this Court noted in Tobin, "[w]hen the meaning of statutory language is plain on its face, courts must give effect to that plain meaning as an expression of legislative intent." Tobin v. Worden, 156 Wn. App. 507, 512-13, 233 P.3d 906 (2010), citing Rental Housing Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 199 P.3d 393 (2009). Here, the statute plainly says the statute of limitations begins to

run upon a claim of exemption or a last production of a record on a partial or installment basis. The County had one of these two triggering events in response to each of Mr. Mahmoud's requests.

a. The County's claims of exemption triggered RCW 42.56.550(6)

The County properly and sufficiently claimed an exemption, RCW 42.56.250(5), in response to 09-05374. RCW 42.56.250(5) exempts "[i]nvestigative records compiled by an employing agency conducting an active and ongoing investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment." Mr. Mahmoud sought the investigative records related to his complaint of discrimination. CP 129-30. The investigation was open and on-going at the time of his request. CP 986-87. The records were exempt and the County notified Mr. Mahmoud of the claim of exemption and how the exemption applied to the records. In his response, Mr. Mahmoud vaguely states that the County's failure to address the Washington State Supreme Court's decision in Sargent v. City of Seattle, 179 Wn.2d 376, 314 P.3d 1093 (2013), somehow contradicts the County's argument. See Appellant's Reply Brief at 16. Not only does Sargent not conflict with the County's argument regarding RCW 42.56.250(1), it does not apply to the County's

argument. Sargent considered the application of RCW 42.56.240(1) and upheld Newman v. King County, 133 Wn.2d 565, 947 P.2d 712 (1997), and the categorical application of the exemption when a law enforcement investigation is active and on-going and has not been referred to the prosecuting attorney. The plain language of the exemption, RCW 42.56.250(5), should be applied categorically to records in an active and on-going investigation into employment discrimination.[2] The County claimed the exemption on August 7, 2009, accordingly the statute of limitations ran on August 7, 2010.

Even if this Court considered the two follow-up letters Mr. Mahmoud's attorneys sent, to which the County did not respond, as a re-opening of 09-05374, the statute of limitations found in RCW 4.16.130 bars any claims. RCW 4.16.130 applies in PRA cases where the statute of limitations in RCW 42.56.550(6) is not triggered. Johnson v. Dep't of Corrections 164 Wn.App. 769, 265 P.3d 779-80. Mr. Mahmoud

[2] In Newman, the Court noted the policy reasons supporting the application of RCW 42.56.240(1) categorically to an open and on-going investigation. The Court stated, "[t]he ongoing nature of the investigation naturally provides no basis to decide what is important. Requiring a law enforcement agency to segregate documents before a case is solved could result in the disclosure of sensitive information. The determination of sensitive or nonsensitive documents often cannot be made until the case has been solved. This exemption allows the law enforcement agency, not the courts, to determine what information, if any, is essential to solve a case. The language used in the statute protects law enforcement agencies from disclosure of the contents of their investigatory files." Newman, 133 Wn.2d at 574-75. These same policy reasons support the application of RCW 42.56.250(5) categorically, especially when the plain language of this statute applies to active and on-going investigations.

incorrectly asserts that Division II held in Bartz v. Dep't of Corrections, 173 Wn.App. 522, 297 P.3d 737 (2013), that RCW 4.16.130 does not apply to PRA cases. This was not the holding in Bartz; indeed it was not even an issue considered by the Court because Mr. Bartz's claim was filed less than two years after the production of the record. Bartz, 173 Wn.App. at 536. RCW 4.16.130 acts as an alternate statute of limitations when, as in the case of the two letters from Mr. Mahmoud's attorneys, the statute of limitations in RCW 42.56.550(6) is not triggered. Therefore, the superior court correctly ruled that all of Mr. Mahmoud's claims regarding 09-05374 are time-barred as a matter of law. The superior court's decision should be affirmed.

Similarly, the County properly and sufficiently claimed an exemption, RCW 5.60.060(2)(a), in response to 10-05383. The exemption cited notified Mr. Mahmoud of the type of record (a memo from Max Phan to his attorney, Steve Bladek, concerning Mr. Mahmoud), what exemption applied (RCW 5.60.060(2)(a) which exempts attorney-client privileged communications), and why that exemption applied (the memo contained attorney-client privileged communications). CP 56; Rental Housing, 165 Wn. 2d at 538. The County identified that a memo between a client and his attorney was being withheld, under RCW 5.60.060(2)(a), because it contained attorney-client privileged communications. The

County is not required to provide an "exemption log" in order to trigger the statute of limitations. Greenhalgh v. Dep't of Corrections, 170 Wn. App. 137, 282 P.3d 1175, 1180 (2012) (citation to RCW 5.60.060(2)(a) in a letter triggers the statute of limitations). Providing Mr. Mahmoud with information about the records withheld and why the exemption applied satisfied Rental Housing and triggered the one-year statute of limitations.

In his reply, Mr. Mahmoud also claims that a claim of exemption for one portion of a request does not trigger the statute of limitations for the whole request. Mr. Mahmoud is simply incorrect. Greenhalgh v. Dep't of Corrections explicitly holds that when a single written request for records is submitted to an agency, even when that request seeks multiple types of records, it is one single request. Greenhalgh, 170 Wn.App. at 150. Greenhalgh also holds that when the agency claims an exemption in response to such a request, RCW 42.56.550(6) is triggered. Id. Mr. Mahmoud's request, like Mr. Greenhalgh's, sought multiple types of records in one written request. Thus, the claim of exemption for one of those records triggered the statute of limitations for the entirety of 10-05383. The superior court's ruling otherwise should be reversed.

b. The County's production of records on a partial or installment basis triggered RCW 42.56.550(6)

The question to be answered in determining if production of the records triggers RCW 42.56.550(6) is whether or not the records were produced as part of a larger set of requested records. Tobin v. Worden, 156 Wn. App. 507, 514, 233 P.3d 906 (2010). In this case, Mr. Mahmoud's requests 09-05375, 10-01666, 10-08592, and 10-08593 were produced in installments, as part of a larger set of requested records. The statute of limitations was triggered by the last production of records in response to those four requests on April 2, 2010, November 22, 2010, December 9, 2010, and February 28, 2011. Claims related to each request are barred by the one-year statute of limitations.

The PRA case that has considered a scenario like the one presented by this case is Johnson v. Dep't of Corr., 164 Wn.App. 769, 265 P.3d 216 (2011), review denied, 173 Wn.2d 1032, 277 P.3d 668 (2012). In Johnson, the relevant facts were analogous to the scenario presented here: a PRA request was responded to by the agency, the request was closed, and more than one year later, the plaintiff learned of the existence of additional responsive records that were not provided to him in response to his PRA request. Johnson, 164 Wn.App. at 771-73 and 775. The existence of additional potentially responsive records was irrelevant to the

Court's analysis of whether the agency's response triggered the statute of limitations under RCW 42.56.550(6) or RCW 4.16.130 because some records had been provided. Id. at 774-75. After considering the agency's dispositive motion, the Court concluded Mr. Johnson's claim was time-barred.

Mr. Mahmoud misstates the facts in Johnson v. Dep't of Corrections, 164 Wn.App. 769, 265 P.3d 216 (2011), when he asserts there were no additional responsive records and that the request was responded to in its entirety. See Appellant's Brief at 22. To the contrary, the basis of Mr. Johnson's claim was that there were additional responsive records that had been provided to a subsequent requestor, some of which were responsive to his request. Johnson, 164 Wn.App. at 776-77. Division II concluded that the existence of additional responsive records was not only irrelevant to the Court's analysis, but actually served to bolster the application of RCW 42.56.550(6) because Mr. Johnson's belief that additional records existed suggested the first production was on a "partial or installment basis." Id. at fn. 12.

Tobin, Bartz, and Johnson all support the County's position that the statute of limitations was triggered for requests 09-05375, 10-01666, 10-08592, and 10-08593 by the production of records on a partial or installment basis. In light of the plain language of the statute and the

rulings in these cases, it is clear that Mr. Mahmoud's claims are time-barred. The County triggered the statute of limitations by producing records on an installment basis in response to requests 09-05375, 10-01666, 10-08592, and 10-08593. The superior court's ruling otherwise should be reversed.

2. RCW 4.16.130 bars Mr. Mahmoud's claims regarding 09-05375 and 10-05383.

As argued above in Section I(A)(1)(a), RCW 4.16.130's two-year statute of limitations applies to PRA cases where the statute of limitations in RCW 42.56.550(6) is not triggered. Johnson, 164 Wn.App. 769. Assuming, arguendo, that the County's action in producing records on an installment basis did not trigger the statute of limitations under RCW 42.56.550(6), claims regarding 09-05375 are time-barred pursuant to RCW 4.16.130. The County responded by last producing responsive records on April 2, 2010. Mr. Mahmoud's claims regarding the sufficiency of this production accrued the date they were produced. Thus, the two-year, "catch-all" statute of limitations acted to bar his claim as of April 2, 2012 -- four months before the filing of his amended complaint in this case.

Additionally, assuming, arguendo, that the County's actions in claiming an exemption did not trigger the statute of limitations under

RCW 42.56.560, claims regarding 10-05383 are time-barred pursuant to RCW 4.16.130. The County responded by claiming an exemption on August 16, 2010. Assuming the claim of exemption was either invalid or not properly made, Plaintiff's cause of action accrued when the County cited the exemption. Thus, the two-year "catch-all" statute of limitations acted to bar his claim as of August 16, 2012 -- two weeks before the filing of his amended complaint in this case.

3. No Washington state court has applied the discovery rule to PRA cases and this case does not support such an application

Statutes of limitations are strictly applied, and courts are reluctant to find an exception unless one is clearly articulated by the legislature. See, e.g., Huff v. Roach, 125 Wn. App. 724, 732, 106 P.3d 268 (2005); Bennett v. Dalton, 120 Wn. App. 74, 85-86, 84 P.2d 265 (2004) Janicki Logging & Construction Co. v. Schwabe, Williamson & Wyatt, 109 Wn. App. 655, 662, 37 P.3d 309 (2001). This is particularly true in cases governed by explicit statutory directives such as the PRA and not by the common law. See Elliott v. Dep't of Labor and Indus., 151 Wn. App. 442, 447, 213 P.3d 44 (2009). In Elliott, this Court declined to apply the discovery rule to a cause of action with a statute of limitations explicitly addressed by statute. This Court noted that the plaintiff was in the "wrong forum" for arguing that his claim should be permitted to proceed as the

legislature had "clearly expressed its intent" by passing legislation governing the timeliness for filing the claim he attempted to file. Elliott, at 446-47. In Elliott, as here, the appellant asserted that the act was "to be liberally construed" as a basis for his argument that the discovery rule should apply. This argument was rejected noting that "...it is fundamental that, when the intent of the legislature is clear from a reading of a statute, there is no room for construction." Elliott, at 447-48, citing, Johnson v. Dep't of Labor and Indus., 33 Wn.2d 399, 402, 205 P.2d 896 (1949).

The statute of limitations in PRA cases is governed by statute, not by common law. Mr. Mahmoud's assertion that the discovery rule should apply based on common law is without merit. See Appellant's Reply Brief at 23. Similarly his assertion that the discovery rule should apply because Washington courts have previously expanded the rule to apply to situations involving special relationships is without merit. Id. No special relationship exists between a PRA requestor and a responding agency.[3] In this case, just as an Elliott, the legislature clearly expressed its intent that claims must be filed within one year of the agency's claim of exemption or production on a partial or installment basis. The legislature did not

[3] Mr. Mahmoud suggests that because he was an employee of Snohomish County at the time of his requests, some sort of heightened responsibility existed in the PRA context. There is no legal support for this theory. Indeed, the PRA specifically requires agencies to not consider the identity of a requestor when responding to a request. RCW 42.56.080.

state that the installment must be the "final" installment. The legislature similarly did not require that "all of the records" be produced before the statute of limitations is triggered. Finally, the legislature did not conclude that the statute of limitations did not begin to run until the plaintiff "discovered" the potential violation. The legislature was clear in enacting a one year statute of limitations based on two triggering events and this Court should not read a discovery rule exception into the plain language of RCW 42.56.550(6).

Additionally, the application of the discovery rule is particularly inappropriate in this case. The records that were provided to Mr. Mahmoud in the discovery phase of his employment lawsuit were located in his own email account and email archives. Mr. Mahmoud knew, or should have known, of their existence as he was the author or recipient of these records. His correspondence with the County, with cc's to his attorney, also demonstrated his belief that additional records potentially existed. CP 2515-16; 2518-19; 2529-30. The County did, in response to 09-05375 and 10-08592, indicate that records had been deleted, but those records were not the records that were subsequently produced in discovery.[4] There is no evidence to rebut the County's assertion on this

[4] In the communications related to this issue, Mr. Mahmoud and the County were discussing the existence of emails in the accounts of County employees, not the emails in Mr. Mahmoud's own email account. CP 2529-2533; CP 2551-2552.

point. There was no fraud, misrepresentation, or violation of a quasi-fiduciary duty on the part of the County which would make the application of the discovery rule appropriate. See Crisman v. Crisman, 85 Wn. App. 15, 20-22, 931 P.2d 163, 166-67 (1997) (discovery rule applied in cases where the defendant fraudulently conceals a material fact); Favors v. Matzke, 53 Wn. App. 789, 796, 770 P.2d 686, 690 (1989) (discovery rule applied where there was a duty to disclose the existence of a material fact rising from the quasi-fiduciary relationship between the plaintiff and defendant). Additionally, with due diligence, Mr. Mahmoud could have discovered the additional records that came from Mr. Mahmoud's own email account – they were records he received or records he himself created. He knew of their existence and could have simply asked for them, at which point they would have been provided. There is no evidence anywhere in the record of this case that the County purposefully or maliciously withheld these records; rather they did not understand Mr. Mahmoud's requests to be seeking his own emails.

This Court should conclude Mr. Mahmoud's claims are time-barred and dismiss his action in its entirety.

B. REPLY RELATED TO MR. MAHMOUD'S APPEAL

1. The County Conducted a Reasonable Search for Records Responsive to Mr. Mahmoud's Public Records Requests 09-05375, 10-01666, 10-08592, and 10-08593

In PRA cases, the burden is on the agency to prove it conducted an adequate search for public records in response to a request. Neighborhood Alliance of Spokane v. County of Spokane, 172 Wn.2d 702, 261 P.3d 119 (2011). "[T]he focus of the inquiry is not whether responsive documents do in fact exist, but whether the search itself was adequate." Id. at 719-20. The focus is "the search process not the result of that process." Forbes v. City of Gold Bar, 171 Wn.App. 857, 288 P.3d 384, 388 (2012). The County need not search "*every* possible place a record may conceivably be stored, but only those places where it is *reasonably likely* to be found." Neighborhood Alliance, 172 Wn.2d at 720 (emphasis in original). Under this standard, the County conducted a reasonable search.

Mr. Mahmoud spends his reply arguing Freedom of Information Act cases, while failing to address this Court's holding in Forbes. FOIA cases are instructive, but hold no precedential value, particularly when there are Washington state cases addressing Washington law, as there are here. Mr. Mahmoud's requests sought "all emails to and from" specific County employees. He specifically directed the County to locate those emails on specific employees' "C drive, P drive or any other County

network drive." In accordance with Mr. Mahmoud's requests those named individuals' email accounts and other network drives were searched, gathered, and produced to him. Mr. Mahmoud did not ask the County to search the "C Drive, P drive or any other County network drive of Kamal Mahmoud." If he had, the County would have done so. Given the wording of the requests, it was reasonable for the County to comply by accessing the accounts of the individuals he identified, copying all emails, and providing the records for the time period(s) Mr. Mahmoud requested.

The County conducted a search into the locations where the emails of Max Phan, Bruce Duvall, Art Louie, Julie Petersen, Steve Thomsen, Debbie Terwilleger, Craig Ladiser, Greg Morgan, Tom Rowe, Heather Coleman, and Larry Adamson were "*reasonable likely*" to be located – their own email accounts and email archives on the County's network drives. Although Mr. Mahmoud repeatedly incorrectly argues the County informed him additional responsive records were deleted, those communications with the County related only to the email accounts of Max Phan, Bruce Duvall, and Art Louie. CP 2529-2533; 2551-2552. Even if there were, those communications involved only requests 09-05375 and 10-08592. There is no evidence in the record to refute those assertions by the County. Mr. Mahmoud's assertion that, as a result, he could not know there were additional potentially responsive records in his

own email account is without merit. The County's search for the requested records was reasonable and the fact that records existed in Mr. Mahmoud's email account does not refute that fact.

2. The County's Exemption Logs Complied with the PRA

In order to trigger the statute of limitations, a claim of exemption must provide a requestor with "enough information ... to make a threshold determination of whether the claimed exemption is proper." Rental Housing, 165 Wn. 2d at 539. The claimed exemption must indicate what records are being claimed as exempt, which exemption is claimed, and how the exemption applies to the records. Id. at 538. The County is not required to provide a formal exemption log in order to trigger the statute of limitations. Greenhalgh v. Dep't of Corrections, 170 Wn.2d. 137, 147, 282 P.3d 1175 (2012) (citation to RCW 5.60.060(2)(a) in a letter is sufficient to trigger the statute of limitations).

The County claimed exemptions in response to five of Mr. Mahmoud's requests. Consistent with the requirements of the law, each claim of exemption indicated to Mr. Mahmoud what records were being claimed as exempt, which exemption applied, and how the exemption applied. CP 2540-42; CP 2525; CP 2560-61; Rental Housing, 165 Wn.2d at 538. In sum, the County complied with RCW 42.56.210(3), the holding of Rental Housing, and WAC 44–14–04004(4)(b)(ii) in claiming

exemptions to Mr. Mahmoud's requests. The superior court's ruling on the adequacy of the County's claims of exemption should be affirmed.

3. The County's Estimates of Time Were Reasonable

The PRA explicitly allows the County to make an estimate of time of when it will produce records based on a number of statutory factors and additional non-statutory factors. RCW 42.56.520; Public Records Act Deskbook: Washington's Public Disclosure and Open Public Meetings Laws (Greg Overstreet, et al. eds., 2006) at 5-12. In light of these factors, the fact that it took the Department of Public Works eight months to respond to request 09-05375 by gathering and processing all emails for six employees over a 20 month period, is reasonable. In 2009, when 09-05375 was received, the Department of Public Works had 103 pending requests and two staff members were tasked with the responsibility of responding to all PRA requests. CP 1779. It is also reasonable that it took Planning and Development Services four months to gather and process records responsive to 10-01666. In 2010, when 10-01666 was received, the Department of Planning and Development Services had 2,404 pending requests and two to three staff members were tasked with the responsibility of responding to all PRA requests during this time period. CP 1781-82. During the processing of each request, the County was in constant communication with Mr. Mahmoud regarding the length of time

that was needed to produce records. CP 48-52; CP 67-78. Mr. Mahmoud also received installments of responsive records throughout these two periods, in accordance with RCW 42.56.080. Id. The County's time estimates and the length of time it took to provide records for 09-05375 and 10-01666 were reasonable.

4. The Court's Award of $18,055.00 in Attorney Fees and Costs Was Not An Abuse of Discretion

Under the PRA, a prevailing party is entitled to costs and "*reasonable attorneys' fees*." RCW 42.56.550(4) (emphasis added). Washington courts apply the "lodestar" method for determining reasonable fees; a reasonable hourly rate multiplied by number of hours reasonably expended on the litigation. Sanders v. State, 169 Wn.2d 827, 869, 240 P.3d 120 (2010); West v. Port of Olympia, 146 Wn. App. 108, 122, 192 P.2d 986 (2008), rev. denied, 165 Wn.2d 1050 (2009). Under "lodestar," a court must first determine that counsel expended a reasonable number of hours in securing a successful recovery for the client, which requires the court to exclude any hours that are wasteful, duplicative, or that pertain to unsuccessful claims. Mahler v. Szucs, 135 Wn. 2d 398, 433-34, 957 P.2d 632, 651 (1998) order corrected on denial of reconsideration, 966 P.2d 305 (Wn. 1998) citing, Scott Fetzer Co. v. Weeks, 122 Wn.2d, 109, 859 P.2d 1210 (1990). A party seeking fees has

the burden to prove the reasonableness of the fees. Fetzer, 114 Wn.2d at 151.

When PRA litigation involves several disputed issues, the court should only award fees for work on successful issues. Sanders v. State, 169 Wn.2d 827, 868, 240 P.3d 120 (2010) Here, Mr. Mahmoud prevailed on only 1 of 7, or 14%, of his claims. Despite having an opportunity to segregate their attorney fees by claim, Mr. Mahmoud's attorneys refused to do so. The superior court, therefore, reduced Mr. Mahmoud's attorney fees by 86%. The superior court properly applied the law and made a reasonable decision in reducing the fee amount. As such, the superior court did not abuse its discretion in making a fee award of $18,055.00. This Court should affirm the attorney fee award if it affirms the ruling that Mr. Mahmoud's claims are not time-barred.

III. CONCLUSION

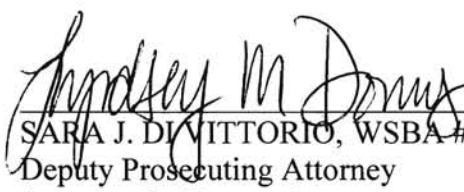
For all of the foregoing reasons, the County respectfully requests that this Court affirm the superior court's dismissal of Mr. Mahmoud's claims regarding request 09-05374 as time-barred and should reverse the superior court's denial of summary judgment as to the remainder of Mr. Mahmoud's claims. As a consequence, this Court should reverse the award of attorney fees.

Should this Court conclude the statute of limitations does not bar Mr. Mahmoud's claims, the County respectfully requests that this Court affirm the superior court's finding that the County's responses to Mr. Mahmoud's requests 09-05375, 10-01666, 10-08592, and 10-08593 complied with the PRA and affirm the dismissal of these claims.

Mr. Mahmoud's appeal should be denied, the County's cross-appeal should be granted, and this case should be dismissed in its entirety as a matter of law.

Respectfully submitted on April 1, 2014.

MARK K. ROE
Snohomish County Prosecuting Attorney

By:  WSBA 37453 for

SARA J. DI VITTORIO, WSBA #33003
Deputy Prosecuting Attorney
Attorney for Respondent

DECLARATION OF SERVICE

I, R. Lynne Jardine, hereby certify that on April 1, 2014, I served a true and correct copy of the foregoing Reply Brief of Respondent/Cross-Appellant upon the person/persons listed herein by the following means:

Hardeep S. Rekhi 1411 Fourth Avenue, Suite 1101 Seattle, WA 98101 206-388-5887/phone 206-577-3924 /fax hsrekhi@rekhiwolk.com /email	[X] Electronic Filing/Eservice [ ] Facsimile [ ] Express Mail [ ] U.S. Mail [ ] Hand Delivery [ ] Via ABC Messenger Service for Service by 4:30 p.m. on ____
Greg Wolk Greg Wolk, P.S. 1411 Fourth Avenue, Suite 1101 Seattle, WA 98101 206-965-9998 206-965-9911 /fax greg@rekhiwolk.com /email	[X] Electronic Filing/Eservice [ ] Facsimile [ ] Email [ ] U.S. Mail [ ] Hand Delivery [ ] Via ABC Messenger Service for Service by 4:30 p.m. on ____

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 1nd day of April, 2014.

Print: R. Lynne Jardine
Legal Assistant