No. 91427-3

SUPREME COURT
STATE OF WASHINGTON

JOHN F. KLINKERT,

Petitioner

v.

WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION,

Respondent

Court of Appeals, Division One, Case No. 71461-9
Appeal from Superior Court of Snohomish County

PETITIONER'S REPLY TO ANSWER

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INTRODUCTION

1. Significance of this case for the Public Records Act

This Court must grant review, because otherwise the published opinion of the Court of Appeals (Division One) will begin undermining two pillars of the Public Records Act: Rental Housing Association of Puget Sound v. City of Des Moines, 165 Wash.2d 525, 1990 P.3d 393 (2009), and Sanders v. State, 169 Wash.2d 827, 240 P.3d 120 (2010), which applies Rental Housing Association to "other statutes."

My lawsuit is based on the Washington State Criminal Justice Training Commission (the "Commission") refusal to provide me, a public records requester, with an adequate privilege log that discloses (or lists and describes) all records the Commission claimed were exempt from production under an "other statute", RCW 43.101.400(1). I have appended the Commission's inadequate one-page privilege log – taken from page CP 77 of the Clerk's Papers -- as Appendix B to this Reply. This Court can view the privilege log as the Court reads this Reply.

If this Court does not grant review and reverse the Court of Appeals opinion, thereby allowing the opinion to stand, more government agencies will be providing privilege logs like this one, because agencies simply will have no incentive to provide adequate privilege logs in situations similar to mine. An agency will be able to claim that because an

entire file is purportedly exempt from production according to an "other statute", the agency need use only one line on a privilege log to describe the contents of the file – contrary to Rental Housing Association and, in regard to claimed exemptions contained in an "other statute", Sanders v. State, which relies on Rental Housing Association. Agencies, such as the Commission, will evade the Public Records Act simply by calling the file a "record."

Moreover, it is not clear from the wording of the Court of Appeals opinion, whether treating an entire file as one "record" is to be limited to purported entire-file exemptions contained in an "other statute" outside of the Public Records Act. For example, agencies might begin to argue that an entire file, that is, all records in the file, records which they designate as exempt under a "categorical exemption" contained in the Public records Act itself (rather than in an "other statute"), should also be treated as one "record" and thereby evade Rental Housing Association's requirement to list on a privilege log each record the agency claimed was exempt from production -- and with no in camera review of the file's contents.

2. New issue addressed by this Reply

According to Washington's Rule of Appellate Procedure (RAP) 13.4(d) a petitioner can file a Reply to an Answer "only if the answering party seeks review of issues not raised in the petition for review" and this

includes "any issues that were raised [by the answering party] but not decided in the Court of Appeals..." This Reply satisfies the requirements of RAP 13.4(d).

In its Answer the Training Commission raised a new issue and used it as an argument throughout the Answer. I call it the "one record" issue or "one record" argument. The Commission builds its entire Answer around this issue. I have appended the Commission's privilege log, taken from page CP 77 in the Clerk's Papers, as Appendix B to this Reply.

The Commission's clearest statement of the "one record" issue occurs at the top of Answer page 10:

> "The contents of each investigative file is a single record for purposes of responding to a public records request submitted to the Commission."

My Corrected Petition for Review never addressed this "one record" issue, nor did the Court of Appeals opinion address the issue.

Although the Commission did make the "one record" argument in its superior court Motion to Dismiss and in its Court of Appeals Respondent's Brief – and although I opposed that argument in my superior court opposition to the Motion to Dismiss and in my Court of Appeals Reply Brief -- my arguments in the Corrected Petition for Review said nothing about the "one record" issue. My argument in the Corrected Petition for Review was only that the Commission did not describe (on the

privilege log it provided) each record in its investigative file that it claimed was exempt from production.

The Court of Appeals opinion held only that "the exemption log...was sufficient to trigger the statute of limitations [because] "It let Klinkert know that the entire 713-page investigative file was being withheld as exempt under RCW 43.101.400(1)", and "That was enough information to enable Klinkert to evaluate, and a court to review, the Commission's decision to withhold the entire file. As soon as Klinkert received the one-page exemption log...he could have brought suit asking the superior court to rule that each discrete document in the investigative file required its own separate entry in the exemption log." [Emphasis added] Opinion page 6. (The Court of Appeals opinion is attached as Appendix A to my Corrected Petition for Review.) This is not the same as ruling – as the Commission's "one record" issue claims in the short block quotation on the previous page – that "The contents of each investigative file is a single record for purposes of responding to a public records request submitted to the Commission."

In fact, in my quotation above from the Court of Appeals opinion, the court actually distinguished between "a discrete document" -- that is, a record, as the term is ordinarily used – and the Commission's " entire file", thereby implying that the two are not the same thing, contrary to the

gist of the Commission's "one record" argument. Opinion, page 6, last paragraph.

ARGUMENT

A. Review should be granted because the Court of Appeals decision does conflict with prior decisions of the Washington Supreme Court interpreting the Public Records Act – because the Commission's "one record" argument fails.

The Answer's three subarguments A.1, A.2, A.3 attempt to support the Commission's major argument A which claims that the Court of Appeals opinion does not conflict with any decision of this Court. In particular, the Commission claims that the Court of Appeals opinion does not conflict with three of the Washington Supreme Court cases that my Corrected Petition for Review cited: Progressive Animal Welfare Society v. University of Washington, 125 Wash.2d 243, 884 P.2d 592 (1994) (PAWS II); Sanders v. State, 169 Wash.2d 827, 240 P.3d 120 (2010); and Rental Housing Association of Puget Sound v. City of Des Moines, 165 Wash.2d 525, 199 P.3d 393 (2009). I deal with each of the Commission's three subarguments A.1, A.2, and A.3 in sequence below.

1. The Court of Appeals decision does conflict with PAWS II because the Commission's "one record" argument fails.

a. The Commission's arguments that legislative intent and plain meaning support its "one record" argument fail.

The Commission's subargument A.1 uses the "one record"

argument to support its claim that the Commission's "other statute" – RCW 43.101.400(1) – does not conflict with the Public Records Act. Answer, page 9. The Commission claims more than once that by enacting RCW 43.101.400(1) the Legislature intended the Commission's investigative file "to be one record for PRA purposes." Answer, page 9. But the Commission's claims are not supported by any citation to legal authority.

First, the Commission asserts that the Legislature made this decision in 2001 by enacting RCW 43.101.400(1), but the Commission never cites any authority showing that the statute was enacted in the year 2001.

Second, the Commission claims that the "plain language" of the statute makes it clear that the Legislature intended it to be an "other statute" that exempts specific records from production." Answer, page 9. But the Commission never cites any legal authority as to what constitutes "plain language" or how to discern a statute's plain meaning.

Third, the Commission never cites any legal authority as to how one is to derive legislative intent, or why the language which the Commission quoted from RCW 43.101.400(1) demonstrates legislative intent. Answer, pages 8-10. The Commission merely states, at the top of Answer page 10, based on its immediately preceding claim of plain

language and legislative intent, that "[t]he content of each investigative file is a single record for purposes of responding to a public records request submitted to the Commission."

Fourth, even if one were to concede the Commission's claim in the first full paragraph on Answer page 9 that the Legislature enacted RCW 43.101.400(1) in 2001 to be an "other statute" that exempts public records from public inspection, that exemption in the "other statute" openly conflicts with the Public Records Act's own requirement that all public records must be produced.

Fifth, the Public Records Act in RCW 42.56.030 states that "[i]n the event of conflict between the provisions of this chapter [Chapter 42.56 RCW, which constitutes the Public Records Act] and any other act, the provisions of this chapter shall govern." Thus, the requirement of the Public Records Act -- rather than the Commission's "other statute" RCW 43.101.400(1) -- "governs", i.e., prevails over the other statute, and thereby I, too, prevail over the Training Commission.

Sixth, even granting the Commission's unsupported claim that RCW 43.101.400(1) was enacted in the year 2001, the conflict provision of RCW 42.56.030 which I cited above was added by the Legislature in 2007, six years later. See Appendix A to this Reply, where I have included a photocopy of the 2007 Washington session laws that amended

RCW 42.56.030 by adding the sentence at the end of RCW 42.56.030 about "conflicts" of other statutes with the Public Records Act. A relevant traditional canon of statutory interpretation states that the Legislature is presumed to know its own prior legislation. In particular, this Court has said, quoting its prior case of Graffell v. Honeysuckle, 30 Wash.2d 390, 191 P.2d 858 (1945):

> "'In enacting legislation upon a particular subject, the lawmaking body is presumed to be familiar not only with its own prior legislation relating to that subject, but also with the court decisions construing such former legislation.'" [Citation omitted] In re Bale, 63 Wash.2d 83, 385 P.2d 545 (1963).

Thus, using this canon, the Public Records Act requirement to produce the contents of the Commission's investigative file prevails over the other statute exemption in RCW 43.101.400(1) because the Legislature was aware of RCW 43.101.400(1) -- and its conflict with the Public Records Act -- when it amended RCW 42.56.030 by adding the conflict rule.

b. Any "other statute" claim of confidentiality for records in the Commission's investigative files fails because that claim conflicts with the Public Records Act.

As part of its subargument A.1, the Commission claims, in the first full paragraph on Answer page 10, that use of the word "confidential" in RCW 43.101.400(1) is further evidence of the legislature's "intent that the entire investigative file is a single record for

PRA purposes." The Commission argues that the fact that the Legislature in RCW 43.101.400(1) directed the Commission to keep all investigative files confidential means that "the entire contents of the file is confidential and accordingly may be considered by the Commission as one record for PRA purposes." [Emphasis added] Answer, page 10. But the Commission never shows what justifies its use of the word "accordingly." That is, the Commission never shows how the statute's designating all investigative files as confidential" creates a logical inference that the contents of such files may be "considered by the Commission as one record for PRA purposes." More damaging to the Commission's claim, however, is that the claim of confidentiality conflicts with the Public Records Act's requirement to produce all public records contained in the file, and because of this conflict the Public Records Act prevails again pursuant to the later-enacted conflict rule in RCW 42.56.030. And thereby I prevail as well.

c. The Commission's "other statute" – RCW 43.101.400(1) – conflicts, and does not "mesh," with the Public Records Act, and the Court of Appeals did not accept the Commission's "one record" argument.

The Commission claims that its "other statute" RCW 43.101.400(1) "serves to mesh with the PRA by explicitly exempting certain records – to include 'the investigative files' – from public

disclosure", yet the Commission never defines what "mesh" means. Answer page 10, last paragraph. But I have already shown in my own subargument 1 above that RCW 43.101.400(1) does conflict, rather than "mesh" – whatever "mesh" means -- with the Public Records Act. So the Public Records Act requirement to produce the records prevails.

Next, the Commission argues that "nothing in RCW 43.101.400(1) exempts the Commission from sufficiently identifying records it withholds from a public records requestor and accordingly does not conflict with the PRA." Yet the Commission's refusal to identify on a privilege log all records in its investigative file is precisely what caused me to file my lawsuit, so the only way the Commission's statement makes any sense is if one interprets the Commission as (silently) arguing -- by executing a slight-of-hand -- that the line on the privilege log designating the investigative file as a "record" was a sufficient identifying, and that this is why there is no "conflict" with the Public Records Act. My interpretation here is supported by the Commission's last sentence in the first full paragraph on the very next page, Answer page 11: "Under these circumstances, PAWS II allowed withholding of the entirety of the record." That is, according to the Commission, "record" here means "file", but the Commission does not point this out. Thus there is a conflict between the Commission's "other statute" and PAWS II as well as with

the Public Records Act, and again PAWS II and the Public Records Act prevail, as do I.

Finally, note that Commission's last paragraph on Answer page 11in subargument A.1, where the Commission implies that the Court of Appeals accepted the Commission's "one record" argument, and the Commission quotes language from the Court of Appeals opinion as justification for the Commission's claim. According to the Commission's quotation from the, the privilege log "'let Klinkert know that the entire 713-page investigative file was being withheld as exempt under RCW 43.101.400(1).' Published Opinion at 6. The Court of Appeals decision does not conflict with PAWS II." However, I have already shown above in the Introduction, on page 6, that the Court of Appeals opinion was not an acceptance of the Commission's "one record" argument, so there is a conflict between the Court of Appeals opinion and the Washington Supreme Court case PAWS II.

But even if the Court of Appeals had accepted the Commission's argument, the opinion would still have conflicted with PAWS II because the "one record" argument itself conflicts with PAWS II, as I showed two paragraphs above on page 13 of this Reply. And, as I show below, the Court of Appeals opinion conflicts also with Sanders v. State and Rental Housing Association.

2. The Court of Appeals decision does conflict with Sanders v. State, and the Commission's "one record" argument fails.

The Commission's boldface subtitle for its subargument A.2 on Answer page 11claims that the Court of Appeals opinion does not conflict with Sanders v. State because the Commission "disclosed" the withheld "record" to me. Note the unusual meaning of "record."

The Commission's subargument A.2 again relies on the "one record" issue. At the bottom of Answer page 11 the Commission says I make "the erroneous assumption that the investigative file is comprised of multiple records and does not itself constitute just one record." I agree that this is an assumption I make, but this is a justifiable ordinary common sense assumption.

a. Legislative intent to exempt the contents of an entire file from production is not the same as calling a file a "record."

At the top of Answer page 12 the Commission says that "[t]he plain language of RCW 43.101.400(1) contradicts this assumption." The Commission further claims that this statute identifies "'all investigative files' as records that are confidential and exempt from public disclosure. Yet the statute nowhere says that investigative files constitute "records." The Commission tries to support this claim by saying that the statute's wording -- "all investigative files" and "confidential" -- "evidence [the

Legislature's] intent to exclude the entirety of all investigative files obtained or complied by the Commission regardless of the number of pages or discrete documents within the file." Even though I have disproved this claim of legislative intent above on pages 9-10 of this Reply, I will agree for purposes of this claim here by the Commission, that the Legislature did so intend. But this legislative intent is not the same as a legislature's calling a file "one record", and a simple reading of the statute reveals that the statute does not do so. So there was no "disclosure" of records in Sanders' sense of an agency's disclosing on a privilege log the existence of all records claimed to be exempt from production – something the Commission refused to do.

b. The Commission executes a slight-of-hand when it argues that it disclosed "the record."

In the last full paragraph on Answer page 12 the Commission claims that the Court of Appeals decision does not conflict with Sanders v. State because the Commission disclosed "the existence of the file as required by Sanders by sufficiently describing it in a privilege log." But then throughout the remainder of this paragraph the Commission refers three times to the "file" as a "record" – but without drawing attention to the changed linguistic usage. This is sleight-of-hand.

Sanders v. State required – as I showed on pages 20-23 of my Corrected Petition for Review – that records claimed as exempt from production under an "other statute" must nonetheless be disclosed on a privilege log. In Sanders the "other statute" was the Washington statute RCW 5.60.060(2), which contains the attorney-client privilege; in my lawsuit the "other statute" is RCW 43.101.400(1). The Court of Appeals opinion never even mentioned Sanders, and the court's failure to rule that the Commission must list on a privilege log all records claimed as exempt under RCW 43.101.400(1) does conflict with Sanders' requirement to do so. The Commission's subargument A.2 depends entirely on the "one record" argument, and thereby fails. The Court of Appeals opinion conflicts with the Washington Supreme Court's case Sanders v. State, because the Commission's "one record" argument fails.

3. The Court of Appeals decision does conflict with Rental Housing Association of Puget Sound; and because the Commission's "one record" argument fails, the one-year statute of limitations has never been triggered.

The Commission's subargument A.3 uses the "one record" argument by using the word "record" in the boldface subtitle for subargument A.3 and then later trying to show in the body of subargument A.3, that the Commission complied with Rental Housing Association's requirement to identify on a privilege log all withheld records claimed as

exempt from production. Again the common sense distinction between a file and a record is crucial, because if the Commission satisfied Rental Housing Association's requirement, then the Public Records Act's one-year statute of limitations in RCW 42.56.550(6) was triggered – and that would mean that I filed my initial Complaint in this lawsuit after the one-year statute of limitations had expired.

a. The Commission executes a sleight-of-hand when it tries to contrast its own actions with those of the City of Des Moines

After the Commission's use of its unusual meaning for the word "record" in the boldface subtitle of subargument A.3, all subsequent Commission uses of the word "record" on Answer page 13 have the common-sense meaning. The second paragraph on Answer page 13 contains two occurrences of the word "records" but those two occurrences mean "documents", a word also used by the Commission in the same paragraph. Note here again the Commission's slight-of-hand: The Commission's purpose in this second paragraph on Answer page 13 is to contrast what the defendant agency, the City of Des Moines, did in the Rental Housing Association case with what the Commission has done in my situation, and to show that the Commission, compared to the City of Des Moines, was blame-free.

The Commission continues its attempted contrast, in the first paragraph on the next page, Answer page 14, when the Commission describes the Washington Supreme Court's holding in Rental Housing Association. In this paragraph the Commission quotes an excerpt from the Rental Housing Association holding in which quotation the word "record" or "records" is used three times, again with the ordinary common sense meaning of "document(s)" In all, the Commission uses the word "record" or "records" four times on page 14 (not counting the three occurrences inside the quotation) with the ordinary common sense meaning. So, on both Answer page 13 and Answer page 14 all occurrences of "record "or "records" use the ordinary common sense meaning, yet in the boldface subtitle for subargument A.3 on Answer page 13 the word "record" had the Commission's unusual meaning.

b. The Commission executes a sleight-of-hand when it claims the Court of Appeals opinion does not contradict Rental Housing Association.

At the bottom of Answer page 14 the Commission prepares for the long argument it makes on Answer page 15. In the last paragraph on page 14 the Commission correctly states that my Corrected Petition for Review argued that the Court of Appeals opinion conflicts with Rental Housing Association. I certainly did argue in my Corrected Petition, as the Commission claims on Answer page 14 in the last paragraph, that the

Commission did not provide me with an "'adequate privilege log for each record....". Note again the Commission's ordinary usage of "record."

On Answer page 15, the Commission devotes the entire page to an elaboration of its argument that "the Court of Appeals decision does not contradict Rental Housing" by executing a sleight-of-hand switch to using its "one record" argument – that is, a switch to using the word "record" to mean "file" without pointing out that it is doing so.

The Commission claims on Answer page 15, line 3, that "[t]he Court of Appeals noted that the Commission 'disclosed' the record on November 18, 2009 when it identified them as (2) a one-page 'Notice of Termination' for Deputy Schene, and (2) King County's investigative file for Deputy Schene, which was comprised of 713 pages. [Emphasis added] Appendix A (CP 77)." But notice the following:

1) The Commission's citation to "Appendix A (CP 77)" is confusing. I conjecture that what the Commission's citation means is that the portion of the Court of Appeals opinion which the Commission has summarized (from the last paragraph on Opinion page 2 to the end of the first paragraph at the top of Opinion page 3) is contained in Appendix A of my Corrected Petition for Review, and that the Commission's one-page privilege log is located at page CP 77 in the Clerk's Papers.

2) The Court of Appeals did not "note" that the Commission

"disclosed" anything. The word "disclosed" in the paragraph above is the Commission's characterization its own actions; it is not the Court of Appeals' characterization. The Court of Appeals opinion does use the word "disclosure" but uses it only twice – as part of the term "public disclosure" and without referring at all to the Commission's actions in this case. Opinion, pages 1 and 2.

3) On Answer page 15 the Commission has without notice switched the meaning in every occurrence of the words "record" and "records" to designate a file -- not a record as that word is used in ordinary common sense usage.

c. The Commission mischaracterizes the Court of Appeals opinion, and the one-year statute of limitations has never been triggered.

Finally, in the last paragraph on Answer page 15 the Commission claims that the Court of Appeals decision followed (!) Rental Housing Association "in holding that the statute of limitations began to run in November 2009 when the Commission used a privilege log to sufficiently disclose to Klinkert the identity of the withheld record and the reasons for its non-disclosure." (And, incidentally, note here that I the Commission would have Court of Appeals saying both that the Commission "sufficiently disclose[d]" and "non-disclos[ed].") The Court of Appeals opinion nowhere says the Commission's privilege log "sufficiently

disclose[d] to [me] the identity of the withheld record...." The Commission has executed a sleight-of-hand switch to its own unusual meaning of "record." What the Court of Appeals opinion actually said was this:

> "The exemption log provided by the Commission on November 18, 2009 was sufficient to trigger the statute of limitations. It let Klinkert know that the entire 713-page investigative file was being withheld as exempt under RCW 32.101.400(1). That was enough information to enable Klinkert to evaluate, and a court to review, the Commission's decision to withhold the entire file. As soon as Klinkert received the one-page exemption log in November 2009, he could have brought suit asking the superior court to rule that each discrete document in the investigative file required its own separate entry in the exemption log. [Emphasis added] Opinion, page 6.

That quotation does not agree with what the Training Commission claimed -- in the last paragraph of Answer page 15 -- the Court of Appeals opinion said. The block quotation which I have excerpted above is not equivalent to saying, as the Training Commission claims on Answer page 15, that "the Commission used a privilege log to sufficiently disclose to Klinkert the identity of the withheld record and the reasons for its non-disclosure."

Thus, the Court of Appeals opinion does conflict with the Washington Supreme Court's Rental Housing Association case– by not requiring the Commission to provide me with a privilege log that discloses the existence of all records ["records" in the ordinary common sense

meaning of the word] claimed as exempt from production. Had the Commission actually disclosed the existence of all records claimed as exempt, the Public Records Act's one-year statute of limitations in RCW 42.56.550(6) would have begun to run.

Because the Court of Appeals opinion conflicts with the Public Record Act's requirement in RCW 42.56.210(3) as interpreted by this Court's holding in Rental Housing Association, that case and the Public Record Act prevail over the Commission's "other statute" because Supreme Court cases prevail over Court of Appeals opinions and because of the conflict rule in RCW 42.56.030, and I thereby prevail over the Commission as well. And the significance of this is that the one-year statute of limitations has never been triggered in my lawsuit.

CONCLUSION

The Commission's entire argument A fails because each of the Commission's subarguments A.1, A.2, and A.3 has failed.

I respectfully request this Court to grant my Corrected Petition for Review.

Dated this 15th day of June, 2015

Respectfully submitted,

John F. Klinkert

John F. Klinkert
Petitioner Pro Se

Appendix A

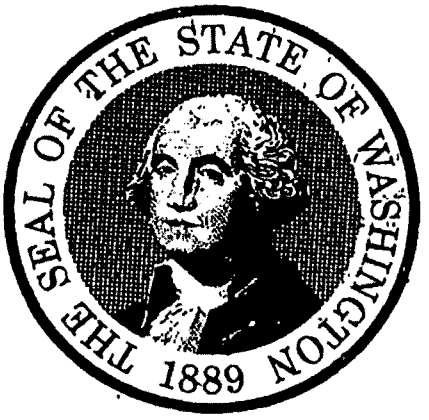
2007

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
SIXTIETH LEGISLATURE
Convened January 8, 2007. Adjourned April 22, 2007.



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K. KYLE THIESSEN
Code Reviser

http://www1.leg.wa.gov/codereviser

WASHINGTON SESSION LAWS
GENERAL INFORMATION

1. EDITIONS AVALIABLE.

   (a) *General Information.* The session laws are printed in a permanent softbound edition containing the accumulation of all laws adopted in the legislative session. The edition contains a subject index and tables indicating Revised Code of Washington sections affected.

   (b) *Where and how obtained - price.* The permanent session laws may be ordered from the Statute Law Committee, Pritchard Building, P.O. Box 40552, Olympia, Washington 98504-0552. The edition costs $32.10 per volume ($25.00 plus $2.10 for state and local sales tax at 8.4% and $5.00 shipping and handling). All orders must be accompanied by payment.

2. PRINTING STYLE - INDICATION OF NEW OR DELETED MATTER.

   The session laws are presented in the form in which they were enacted by the legislature. This style quickly and graphically portrays the current changes to existing law as follows:

   (a) In amendatory sections

   (i) underlined matter is new matter.

   (ii) deleted matter is ((~~lined out and bracketed between double parentheses~~)).

   (b) Complete new sections are prefaced by the words NEW SECTION.

3. PARTIAL VETOES.

   (a) Vetoed matter is ***printed in bold italics.***

   (b) Pertinent excerpts of the governor's explanation of partial vetoes are printed at the end of the chapter concerned.

4. EDITORIAL CORRECTIONS. Words and clauses inserted in the session laws under the authority of RCW 44.20.060 are enclosed in [brackets].

5. EFFECTIVE DATE OF LAWS.

   (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 2007 regular session to be July 22, 2007 (midnight July 21st).

   (b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.

   (c) Laws that prescribe an effective date take effect upon that date.

6. INDEX AND TABLES.

   A cumulative index and tables of all 2007 laws may be found at the back of the final volume.

information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution;

(b) Any person who is or has been an employee, agent, or independent contractor of any entity listed in (a) of this subsection, who is or has been engaged in bona fide news gathering for such entity, and who obtained or prepared the news or information that is sought while serving in that capacity; or

(c) Any parent, subsidiary, or affiliate of the entities listed in (a) or (b) of this subsection to the extent that the subpoena or other compulsory process seeks news or information described in subsection (1) of this section.

(6) In all matters adjudicated pursuant to this section, a court of competent jurisdiction may exercise its inherent powers to conduct all appropriate proceedings required in order to make necessary findings of fact and enter conclusions of law.

NEW SECTION. **Sec. 2.** Section 1 of this act constitutes a new chapter in Title 5 RCW.

Passed by the House April 16, 2007.
Passed by the Senate April 9, 2007.
Approved by the Governor April 27, 2007.
Filed in Office of Secretary of State April 30, 2007.

CHAPTER 197

[Substitute House Bill 1445]

PUBLIC RECORDS

AN ACT Relating to making adjustments to the recodification of the public records act; amending RCW 42.56.010, 42.56.030, 42.56.330, and 42.56.590; reenacting and amending RCW 42.56.270, 42.56.270, 42.56.400, and 42.56.570; adding a new section to chapter 42.56 RCW; providing an effective date; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.56.010 and 2005 c 274 s 101 are each amended to read as follows:

The definitions in ((~~RCW 42.17.020~~)) this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions;

reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

Sec. 2. RCW 42.56.030 and 2005 c 274 s 283 are each amended to read as follows:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

Sec. 3. RCW 42.56.270 and 2006 c 369 s 2, 2006 c 341 s 6, 2006 c 338 s 5, 2006 c 302 s 12, 2006 c 209 s 7, 2006 c 183 s 37, and 2006 c 171 s 8 are each reenacted and amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 15.110, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public

Appendix B

Exemption Log – November 18, 2009
John F. Klinkert
PDR- October 27, 2009

Document Title	Document Date	Author	Recipient(s) (cc's: underneath)	Document Type	Exemption	Explanation of How Exemption Applies
Notice of Hire/Termination on Deputy Paul Schene 1 page	9/24/09	Robin Fenton, King County Sheriffs Office	Sonja Hirsch, Washington State Criminal Justice Training Commission (WSCJTC)	Personnel Action Report for Paul Schene	**Exempt – RCW 42.56.070(1), 42.56.510, 43.101.400 (1), 43.101.135**	**This is a personnel action report and such reports are confidential and exempt from public disclosure under 43.101.400 (1).**
King County Sheriff's Office Investigative File on Deputy Schene 713 pages including a Cover Letter of 1 page	Cover Letter transmitting and summarizing investigative file dated 9/30/09	Robin Fenton, King County Sheriffs Office	Addressed to Doug Blair, Washington State Criminal Justice Training Commission Received by Sonja Hirsch, Washington State Criminal Justice Training Commission	This is an Investigative File transmitted to WSCJTC pertaining to the termination of Paul Schene	**Exempt RCW 42.56.070(1), 42.56.510, 43.101.400 (1), 43.101.135**	**The Commission received additional documentation or information related to the personnel action report regarding the termination of Deputy Schene by King County Sheriff's Office; these are records that may be used by the WSCJTC in an investigation of his certification. These documents cannot be disclosed under RCW 43.101.400 (1).**

SUPREME COURT
STATE OF WASHINGTON

JOHN F. KLINKERT, Petitioner vs. WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION, Respondent	NO. 91427-3 DECLARATION OF MAILING

I certify that I am over 18 years of age, that I am not a party to this action, and that I served a copy of the Petitioner's Reply to Answer on the party named below on the date below by depositing it in the US mail, postage prepaid, in Lynnwood, Washington.

John Hillman, Asst. Attorney General
Attorney General's Office
Criminal Justice Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

DATED this 15th day of June, 2015 at Lynnwood, Washington.

Caron C Curry-Klinkert

Caron C. Curry-Klinkert

JOHN F. KLINKERT
14316 11TH PLACE W
LYNNWOOD, WASHINGTON 98087
(425) 771-7195
PETITIONER PRO SE

OFFICE RECEPTIONIST, CLERK

To: johncar3@comcast.net
Cc: 'Hillman, John (ATG)'; 'Logo, Daisy (ATG)'
Subject: RE: 91427-3 John F. Klinkert v. Washington State Criminal Justice Training Commission

Received 6-16-15

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: johncar3@comcast.net [mailto:johncar3@comcast.net]
Sent: Tuesday, June 16, 2015 1:35 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'Hillman, John (ATG)'; 'Logo, Daisy (ATG)'
Subject: 91427-3 John F. Klinkert v. Washington State Criminal Justice Training Commission

Dear Supreme Court Clerk,

I have attached, for filing, my "Petitioner's Reply to Answer" in the above-captioned case. I mailed it to opposing counsel yesterday.

Thank you.

Yours truly,

John F. Klinkert
(425) 771-7195
Johncar3@comcast.net