71425-2

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No. 71425-2

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION I

ANNE BLOCK,

Appellant,

v.

CITY OF GOLD BAR,

Respondent.

BRIEF OF AMICUS CURIAE CITIZENS OF THE CITY OF GOLD BAR AND THE UPPER SKY VALLEY

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I. IDENTITY AND INTEREST OF AMICI

All of the filers are current tax-payers of the City of Gold Bar or residents of the Upper Sky Valley. They include previous office holders, community volunteers, and citizens given awards for their participation in improving the community. See Declaration of Joe Beavers. The Court's decision will directly impact the Amici, who rely upon the City for supplementary services. The Citizens include residents of the City of Gold Bar whose taxes are absorbed by the costs of responding to public records requests, primarily the costs of litigation threatened and filed by Petitioner Anne Block.

The list of Citizens supporting this brief is in Beavers Declaration, Exhibit A.

II. STATEMENT OF THE CASE

The Citizens rely on the facts set forth in the Trial Court transcript, the Brief of Appellant, Brief of Respondent, Reply Brief of Appellant, and the Washington State Coalition for Open Government Amicus Brief.

III. ARGUMENT

A. THE TRIAL COURT CORRECTLY UTILIZED *NEIGHBORHOOD ALLIANCE* TO FIND THE CITY CONDUCTED A REASONABLY ADEQUATE SEARCH.

The Trial Court's decision on the reasonableness of the search was:

> *"And given the tools they had at the time, their search for records was quick enough, accurate enough, and they did not delay unnecessarily."*

Transcript at 6:2-4.

The Court also described the City of Gold Bar's retrieval system as *"archaic"* that the City took steps to fix . Id. at 4:18-20. As noted by *Neighborhood Alliance v. Spokane County,* 172 Wn.2nd 702, 261 P.3d 119 (2011), the reasonableness of an agency's search is fact dependent considering the circumstances of each case.

The Court's analysis is supported by the specific facts of this case and notably, the financial history of the City. A spreadsheet of the City's financial condition from 1997 to 2013 is in Beavers Declaration, Exhibit B. While the City was in solid financial shape until 2001, it suffered a reversal in income starting in 2002, recovered somewhat in 2006, and then saw a decrease afterwards. In addition, the City staffing went from 9.5 Full Time Equivalents (FTE) in 2001 to 5.0 FTE in 2006

to 4.8 FTE today. The depth of the City's financial problem is illustrated by a $243 starting balance in the General Fund in 2005.

The City still had basic services to provide and with a loss of approximately half of the staff, services would be expected to decline to "archaic" in several areas. When funds allowed in 2010, an updated sophisticated documentation system was installed.

WCOG fails to identify anything that the City could have done to look for records that was not actually done. This distinguishes the *Neighborhood Alliance* where the county ignored the very location where the records were likely to be. Here neither Block nor WCOG identifies any search activities should have been undertaken, but were not. Instead, WCOG suggests that Gold Bar, should be forced to impose additional costs on its taxpayers by present testimony of expert and to have hired these experts to conduct a forensic search at tax payer expense. This taxpayer financed wild goose chase is based on nothing more than the mere accusation that records were not produced by the plaintiff. This burden in the WCOG's view, can be imposed by any disgruntled requester, who would have no corresponding burden to support such claims with even a scintilla of evidence.

The standard suggested by WCOG is that the PRA forces the City, at taxpayer expense, to prove a negative. The City would have to

prove that no records exist merely based upon the unfounded and unsupported accusation of a Plaintiff in a public records case. Such a McCarthy-like system offends the most basic notions of due process and fundamental fairness. The Trial Court correctly applied the burdens to decide the reasonableness of the City's search based on competent statements from the records custodians and those who had first-hand knowledge of the search.

B. WCOG'S CONTENTION THAT THE COURT AND CITY IMPROPERLY CONSIDERED THE IDENTITY OF THE REQUESTER IS BASED ON FALSE ASSUMPTIONS AND LACKS SUPPORT IN THE RECORD.

WCOG starts with the random observation that:

> *"Not only is it inappropriate for an agency to condition its proper response to a records request based on who made the request, ..."*

WCOG Brief at 5.

This is a strange comment as there was never any statement by the trial Court or from the City "...conditioning its response..." based on the fact that the requests were coming from Block. Block's own exhibit of Laura Kelly's deposition shows the thoroughness and the even handed nature of how Block's requests were treated.

WCOG then claims that the City's characterization of Block's activities:

"...imply that Ms. Block is somehow less entitled to public records than another requestor..."

WCOG Brief at 6.

This is pure speculation and does not have any basis in fact. As noted in Beavers Declaration, at 2, Block's PRA requests were voluminous and overwhelming. WCOG admits her attitude towards the City was "contentious". WCOG Brief at 6. The Court should consider the history between the requester and the agency in deciding the reasonableness of the agency's search and what rule to articulate in deciding this case. WCOG would have this court ignore the burdensome conduct of requesters in determining whether an agency satisfies the requirements of the PRA and acts reasonably. Such willful ignorance is not in the public interest and would lead to harsh results.

The Court should consider the specific acts of the parties which relate to the reasonableness of the search and response, including the voluminous and obstructionist tactics of the requester, which were designed to overwhelm the resources of a small local government. The volume of requests clearly demonstrates that this was the requesters' aim, but also demonstrates the high degree of responsiveness in satisfying the requests of Block and her associates. These statistics do not show any trend of restricting Block's access to public records.

Year	Number Total	Number by Block	Number by Block Associates	Number by Others
2009	139	58	46	35
2010	109	39	52	18
2011	94	46	36	12
2012	126	91	25	10.

WCOG then shows their support for "blatantly abusing the PRA" by quoting from *DeLong v Parmelee,* 157 Wn.App. 119, 236 P.3d 936 (2010), review granted and remanded by *DeLong v. Parmelee* 171 Wn.2d 100400322 (2011) (remanding to consider prisoner injunction statute). That case referred to a proposed injunction limiting access to public records for an inmate whose conduct threatened the subjects of the records. .See RCW 42.56.565. The court rejected a blanket argument that inmates should not be allowed to request records. *Id.,* at 146. None of these factors are the case here and no party seeks to deny Block the right to request records, no matter how "contentious" her conduct may be.

To address the administrative burden created by Block's voluminous requests, the City did implement a policy adopted pursuant to RCW 42.56.100 "to prevent excessive interference with other essential functions of the agency". Gold Bar Resolution 10-14. Again referring to Beavers Declaration, Exhibit B, it can be seen that

previously to 2008, the costs were incidental and the City could concentrate on providing services to all of its citizens. Starting in 2008, the PRA costs grew dramatically, all in response to Block and her associates. The drop in the costs of responding in 2011 was due to the City's implementation Resolution 10-14 in November 2013. Since then, Kirkland passed Ordinance 4414 in July 2013 which is analogous legislation appropriate to their situation.

WCOG goes on to accuse the City of ignoring the legal issues in their brief. WCOG Brief at 6. Yet it is WCOG who seeks to preclude the court from considering the burdens that Block would place upon the taxpayer and the enormous efforts required to respond to her requests. WCOG's briefing ignores the detailed analysis in the City's brief which was very specific on the application of the case law.

WCOG argues that the City's commentary about the history of Block's interactions with the City of Gold Bar may have affected the Trial Court's decision.[1] However, they only offer speculation, admitting that it may have had no impact on this decision. WCOG

[1] WCOG fails to show that Block objected to the City's evidence. As such, there was no error by the trial court. A party may object to an affidavit filed in support of a motion for summary judgment if it sets forth facts that would not be admissible, but if the party fails to object or bring a motion to strike deficiencies in affidavits or other documents in support of a motion for summary judgment, the party waives any defects. *Bonneville v. Pierce County*, 148 Wn. App. 500, 202 P.3d 309 (2008)

Brief at 7. In the actual decision, Block's efforts were treated as positive in the statement:

> *"And had she [Ms. Block] not made those requests, the City would have been stuck with another archaic system into whom those went. So I have to indicate that that is a positive result of what was happening here."*

WCOG implied that Block's "use of the PRA" was the source of the City's "worsened financial circumstances". The damage to the community from Block's continuing program is not from PRA requests. Implementation of policies adopted pursuant to RCW 42.56.100 has brought the response costs to public records into a proportionate level considering the other services a City is to provide to all of its citizens.[2] The "worsened financial circumstances" are not from the records request processing, it is from the continuing litigation stream coming from Block and her associates.

As noted in Beavers Declaration, Exhibit C, there has been continuous litigation and claims made by Block and her associates.[3] All of those decided to date have been for the City and many resulted in

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[2] RCW 42.56.100 provides in part: "Agencies...shall adopt and enforce reasonable rules and regulations .... to prevent excessive interference with other essential functions of the agency..."

[3] In this barrage of lawsuits, Block either personally acted as plaintiff or appeared as the attorney for cases brought by her associates. See e.g. *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 288 P.3d 384 (2012) review denied, 177 Wn. 2d 1002, 300 P.3d 415 (2013)

judgments against the plaintiffs. The City has a duty to defend itself against such lawsuits with the resulting cost impacts which are largely not recoverable even if the City prevails.

While the City can control its processing costs by adopting rules and policies under RCW 42.56.100, it is powerless to control excessive interference with essential functions from a flood of baseless legal actions, supported only by speculation and conjecture. That is all that Block offered to respond to the City's summary judgment and all she has to defend her ongoing accusations against the City.

C. RAMIFICATIONS OF THE COURT'S DECISION

Finally, WCOG argues that agencies should not use private e-mail for public business and that it creates problems and expense for requesters and agencies alike. WCOG then suggests that:

> *"The ramifications of upholding the trial court's decision in this matter will extend far beyond the City of Gold Bar."*

WCOG Brief at 12.

This is absurd. The Trial Court applied well established principles for deciding summary judgment motions and determining the reasonableness of an agency's search for records under the facts at hand. This is a narrow decision of reasonableness based on the specific situation at hand, exactly as specified in *Neighborhood Alliance*. The

reasonableness of a six year old search in a small agency will have no effect on the availability of records to requesters.

Agencies are becoming more educated about the dangers of using personal email accounts for public business. They continue to pay penalties and attorney fees when they cannot search and locate public records. The potential liability is why long ago, the City of Gold Bar moved from its "archaic" records system to a centralized system that does not utilize internet based e-mail.

III. CONCLUSION

None of the arguments raised by Block are sufficient to reverse the decision on reasonableness made by the Trial Court or otherwise reverse its decision. This Court should affirm the Trial Court's ruling.

DATED this 7th day of November, 2014.

Respectfully submitted,

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