No. 32912-7-III

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

BENTON COUNTY

v.

DONNA ZINK

REPLY TO BENTON COUNTY

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REPLY TO STATEMENT OF ISSUES

Benton County states that Ms. Zink made a request for all special sex offender sentencing alternative (SSOSA) evaluation forms held by respondent Benton County regardless of age of the document. Benton County claims that this is a request for hundreds if not thousands of documents located in criminal files created over multiple decades that will take years to fulfill. Benton County claims that Ms. Zink, after insisting that the County locate all such documents, she then insisted the County crate electronic versions free of charge in lieu of creating paper copies.

While this is true that Ms. Zink did request all SSOSA evaluations, our legislature pursuant to RCW 9.94A.475,[1] mandated that sentencing documents, including SSOSA evaluations of those convicted of a most serious crime as defined by RCW 9.94A.030(32), are required to be "made and retained as public records" (RCW 9.94A.475). If these records must be retained as public records by law enforcement the records must be easily locatable and reproducible; needing little or no redaction.

Benton County states that Ms. Zink lists dozens of "issues pertaining to assignments of error" (Br Respondent pg. 1), but does not provide argument and citation to authority in support of "a great many of those issues" (Id.). Benton County has failed to specify or identifying any particular argument Ms. Zink has failed to make. Ms. Zink clearly identified each separate assignment of error for each finding of fact and conclusion of law she is requesting review of along with citation to the

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[1] RCW 9.94A.475 is part of the Sentencing Reform Act of 1981 (Chapter 9.94A RCW).

record. Benton County has failed to specify which assignments of error Ms. Zink failed to properly brief.

Ms. Zink identified which issues concerning the decision of the trial court she wished reviewed as well as citation to the record for each assignment of error. (Br. Appellant pgs. 4-7). Ms. Zink set out the issues pertaining to those assignments of error. Assignment 5 was argued on pgs. 15-16 of Appellants brief. Assignment 6 is an issue of relevance and an issue of whether an agency can outsource copying of public records; increasing cost and time to production. Those issues are argued on pgs. 15-22. Assignment 7 is argued on pg. 22-23, Assignment 8 is argued on pgs. 18-19 and Assignments 9-10 are argued on pgs. 13-22. Without more concerning exactly how Ms. Zink has failed to challenge the findings, conclusions and order Ms. Zink cannot argue her failure to provide argument and citation to authority in support of her assigned errors set out in section set out in section II and argued in sections IV-VI of her briefing. See RAP 10.3.

Whether Benton County choses to respond to Ms. Zink's assignments and argument is up to Benton County.

STATEMENT OF THE CASE

Appellant agrees with Benton County. The Washington Public Records Act (PRA) requires Benton County to make copies of public records available to the public if the records are not otherwise exempt. RCW

42.56.070(1)[2] and 42.56.550(4).[3] Ms. Zink requested electronic copies of records created and/or maintained in Benton County. Benton County had a duty pursuant to Chapter 42.56 RCW to provide copies of the requested public records.

Benton County implies that Ms. Zink requested public records dating back to 1905. This is far from the truth. The sentencing Reform Act was enacted in 1981 (see Session Laws of 1981 c 137 – 2SHB 440 – approved by the Governor May 14, 1981). Consequently, Benton County need not go back to its inception in 1905 in responding to Ms. Zink's request.

Further, the SSOSA sentencing alternative, enacted during the 2000 Legislative session (SB 6223)[4] did not become effective until July 1, 2001. There would be no SSOSA evaluations available to provide to Ms. Zink until after the effective date of RCW 9.94A.475. Benton County's estimate that it will take years to fulfill a request covering decades of criminal records is not reasonable or supported in fact.

Ms. Zink reincorporates her statement of facts for the remaining response to Benton County's rendition of what occurred with the exception of noting that while Benton County notified Ms. Zink that she could scan the documents herself should she wish to do so (Br Respondent pg. 3),

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[2] Each agency, in accordance with published rules, **shall make available for public** inspection and **copying** all public records... RCW 42.56.070(1)(emphasis added).

[3] Any person who prevails against an agency in any action in the courts **seeking the right to** inspect or **copy any public record...** RCW 42.56.550(4)(emphasis added).

[4] See Session Laws of 2000 c 28 § 20 (Senate Bill 6223).

Benton County clarifies that Ms. Zink was to supply her own scanning equipment since allowing her to use agency equipment as mandated by RCW 42.56.080[5] was a disruption and would create hundreds or thousands of unwanted, useless, additional documents on the County's server. (Br. Respondent pg. 23 *fn.* 9). What Benton County fails to understand is that if scanning a document onto a computer is the creation of a new document, then redaction of a paper copy of a record is creating a new additional document. Otherwise Benton County would be free to destroy the newly created electronic document just as they would a redacted paper document.

Further Benton County has stated that Ms. Zink wanted the electronic copies for free (Br. Respondent pg. 1). This is false. Ms. Zink specifically requested to know what scanning charges were in Benton County (CP 79) pursuant to RCW 42.56.070(7)(a)(b) and (8). Benton County responded that they would only provide electronic copies using an outside vendor (Br. Respondent pgs. 4-5).

Finally, Benton County appears to argue that Ms. Zink has no right to present argument concerning interpretation of the PRA because she did not rely on those arguments at trial and Benton County was unable to present written substantive reply brief regarding the PRA in connection with its motion for summary judgment. (Br. Respondent pg. 8). First Benton County obviously did not need to present any substantive reply in order to

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[5] Agency facilities **shall be made available to any person for the copying of public records** except when and to the extent that this would unreasonably disrupt the operations of the agency. RCW 42.56.080 (emphasis added).

prevail. Secondly, Ms. Zink has right to provide evidence and legal authority (RCW 42.56.070 or .080) to refute the trial courts determination and declaratory judgment that the PRA silently or passively allows agencies to outsource copying services without reference to any legal authority allowing agencies to do so.

Finally, Benton County has not lost its opportunity to provide written substantive reply briefing regarding the PRA in connection with its motion for summary judgment on appeal.

RESPONSE TO ARGUMENT

Benton County argues that Ms. Zink refused to reimburse the agency for outside vendor costs to provide the requested records in electronic format. Benton County argues that Ms. Zink threatened suit on about six different occasions. Based on these two facts Benton County filed suit requesting a declaratory judgment in order to settle coercive litigation that was ultimately to take place. Benton County argues that pursuant to RCW 7.24.120, they had a right to seek judicial judgment in order to settle and be afforded relief from uncertainty and insecurity with respect to their rights, status and other legal relations. However, Benton County has failed to provide any legal right, status or other legal relation providing them with the relief granted by the trial court.

Benton County states that Ms. Zink's position is that Benton County cannot seek declaratory judgment because she has not sued the County (Br.

Respondent pg. 11). Benton County fails to understand the underlying issue.

Pursuant to RCW 42.56.550 any person denied the opportunity to inspect or **copy** a public record by bring an action in the courts. RCW 42.56.550 clearly states that "any person" may bring legal action against "an agency" **if they are denied the right to copy public records**. See RCW 42.56.550(1) and (4). The words "any person" are unambiguous. An agency is not "any person." Therefore an agency is not afforded the right pursuant to RCW 42.56.550 to bring an action in the courts against any person should they violate the strict mandates of the PRA by not properly providing copies of public records. Only a person denied the right to copy a record by an agency may bring an action in the courts.

In contrast to RCW 42.56.550, RCW 42.56.540 clearly states that "an agency" may bring legal action in the courts in order to have a court determine whether a claimed exemption is valid in order to decrease penalties.

> The parties have also asked us to determine whether an agency can petition for a judicial determination that records are exempt from disclosure. **We conclude that pursuant to RCW 42.56.540, a state or local government entity can seek judgment in superior court** as to whether a particular record is subject to disclosure under the Public Records Act.

Soter v. Cowles Publ'g Co., 162 Wn.2d 716, ¶3, 174 P.3d 60 (2007).

Benton County has not identified any statutory right to bring legal action to determine whether an agency may outsource copying of the "public's records," increasing costs and time to production under the PRA. There is simply no statutory provision for an agency to do so.

Ms. Zink is not arguing that the Declaratory Judgment Act does not allow an agency to bring suit should a statute provide relief to an agency (RCW 42.56.540 for instance). Ms. Zink's argues that the Declaratory Judgment Act is not a standalone statute allowing trial courts to declare rights without another statute involved that declares a right. Benton County has failed to cite to a statute under the PRA allowing for the relief requested. While "an agency" can bring suit under RCW 42.56.540, under RCW 42.56.550 only a "person" affected by an agency's decision not to provide copies can bring suit.

The trial court decision that the PRA passively or silently allows an agency to outsource copy services in order to increase costs and delay release of the records when clearly the agency has the equipment and ability to redact electronic copies electronically and clearly has the equipment to provide either paper or electronic copies using exactly the same piece of equipment is error.

RCW 42.56.070(1) clearly states that an agency is required to allow requesters to make copies. RCW 42.56.080 clearly states requesters are to be allowed to use publically owned agency equipment. RCW 42.56.070(7)(a)(b) and (8) clearly outline the procedures an agency must follow in order to charge requesters for using publically owned agency

equipment and/or staff to make copies. RCW 42.56.550(1) clearly states that a person denied the right to **copy** a public records can bring suit against the agency to force compliance and be penalized for refusing to make copies of public records. RCW 42.56.550(4).

Next Benton County argues that the prejudice to be avoided by declaratory judgment is obvious. (Br. Respondent pg. 12). Benton County claims that Ms. Zink will wait until the records request is completed years from now, then, when the potential penalties are imposed on a per day basis will be greatly increased she will file suit (*Id.*). Benton County's logic is flawed in two ways. First both parties have acknowledged that Ms. Zink stated she would only accept electronic copies of the documents. No matter whether Benton County continued to make paper copies Ms. Zink clearly stated she would not accept them. Had Benton County now produced the records via facsimile, in electronic format, after Ms. Zink purchased a fax machine, Benton County's final response would have been to provide no copies. At that point in time the "one year" statute of limitations would have begun to accrue as no records would have been produced.[6] Therefore years of production would not have gone by increasing costs.

Second the penalties for violations of the PRA were lowered to $0 (RCW 42.56.550(4)) and must be assessed by a trial court based on the Yousoufian factors[7] and the good and bad faith of the agency in

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[6] Had Ms. Zink accepted the paper copies the request would have been satisfied.

[7] *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, ¶42-46, 229 P.3d 735 (2010)

responding. Therefore, if Benton County was acting in good faith, the per diem penalties could have been decreased to $0 per day. Meaning that even if Ms. Zink waited the decades Benton County has claimed it will take to fulfill her request for SSOSA evaluations, per diem penalties would not be "greatly increased" as argued by Benton County.

A. The Declaratory Judgment Act Is Procedural

Benton County claims that a trial court has the right to declare rights pursuant to RCW 7.24.020. However, Benton County fails to see that in order to declare rights under RCW 7.24.020 a court must identify a statute to interpret and declare. In this cause of action the trial court did not identify any statute authorizing the trial court to declare an agency can outsource copying of public records. (See Br. Appellant pgs. 24-26). Rather the trial court determined that a court has the authority to determine rights regardless of whether or not a statute allows for that relief. This is nonsensical. Our judicial system is bound by and obtains its authority to act from statutes enacted by our legislature. Our courts are not allowed to make declaratory judgments based on how they feel about the issue or to create laws. Rather courts must apply the law as enacted by our legislature; separation of power.

None-the-less, Benton County argues that our Supreme Court in *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 157 P.3d 847 (2007) determined that "no additional private right of action is necessary for parties to seek declaratory judgment whenever their rights are affected by a

statute" (Id. 187). Benton County fails to see that in *Nelson v. Appleway*, the court was asked to determine whether Nelson was entitled to declaratory judgment under Chapter 7.24 RCW based on Appleway's violation of RCW 82.04.550; a statute affecting the rights of Nelson.

> Next we address whether Nelson can seek a declaratory judgment concerning his rights under RCW 82.04.500. The Uniform Declaratory Judgments Act (UDJA), chapter 7.24 RCW, grants Nelson the right to seek a declaratory judgment finding Appleway violated RCW 82.04.500.

(Id. ¶15). Benton County misunderstands the argument. Ms. Zink is not stating that a separate private right of action is necessary. Ms. Zink argues that under Chapter 7.24 RCW is merely a procedural statute providing the trial court with the ability to declare rights under an identified statute. Benton County has not identified a statute for the trial court to declare rights and the trial court's decision that RCW 7.24.010 and .020 are stand alone allowing courts to declare rights regardless of whether a statute exists is error and an abuse of the trial courts discretion.

Ms. Zink did not present any authority for her assertion that a separate cause of action is a prerequisite to a declaratory judgment because she never asserted that a separate cause of action is required. Ms. Zink asserts that a separate statute outside the Declaratory Judgment Act (i.e. RCW 42.56.540 or RCW 82.04.550 must be identified in order for a trial court to declare rights that are affected by that statute.

B. Benton County Did Not Identify a Statute Allowing Declaratory Judgment Under the PRA

Benton County uses *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 27 P.3d 1149 (2001) to argue that they have standing. Once again Benton County has missed the point of Ms. Zink's argument. Benton County has no standing because they have not identified a statute with which to request declaratory judgment. Rather Benton County argues that a claimant must simply have a stake in the outcome of a case to bring suit (Br. Respondent pg. 15).

First in *To-Ro Trade Shows*, our Supreme Court was asked to interpret the constitutionality of Chapter 46.70 RCW; a statute was identified with which to declare a judgment.

> To-Ro asserts that RCW 46.70.021 violates its First Amendment rights by prohibiting it from allowing unlicensed dealers to display their vehicles at its trade shows. But plainly, **To-Ro's interest in seeking declaratory relief lies outside the zone of interests regulated by RCW 46.70.021.** The purpose of the dealer licensing statute is to protect the public from "frauds, impositions, and other abuses" by vehicle dealers. RCW 46.70.005. **To-Ro is not a vehicle dealer, licensed or otherwise, nor is it acting in a representative capacity for any organization of consumers or vehicle dealers.** See Vovos v. Grant, 87 Wn.2d 697, 700, 555 P.2d 1343 (1976) (interest sufficient to confer standing may be shown in personal or representative capacity). The interest To-Ro is seeking to protect is its own theoretical interest in increasing the number of exhibitors participating in its trade shows. **To-Ro's potential financial interest as a show promoter clearly does not**

coincide with the statute's aim of protecting consumers from fraudulent or abusive conduct by vehicle dealers.

(*Id.* 414-15). Again a statute outside of the Declaratory Judgement Act was utilized to declare rights.

Not only has Benton County not identified a statute allowing them to seek declaratory relief, as in *To Ro Trade Shows*, Benton County cannot show an interest under the PRA allowing a trial court to grant the relief requested. RCW 42.56.550(1)[8] clearly states that "any person" being denied the right to copy can bring suit. The PRA clearly mandates that agencies provide copies of public records (RCW 42.56.070(1)(7)(8); RCW 42.56.080; RCW 42.56.120; and RCW 42.56.550(1)(4). The PRA clearly states that the requirement to provide copies is not limited to paper copies (RCW 42.56.070(7)(a)(b)). Further the PRA requires and agency to justify copy costs using factors to clearly show their charges only cover the actual cost of the copies.[9] Benton County is not the person being denied access to

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[8] Ms. Zink cites to RCW 42.56.550 because it is the only statute specific to who can bring litigation in the case of an agency's refusal to provide copies of public records. RCW 42.56.540 is specific to allowing an agency to request judicial review of a claimed exemption and does not speak to an agency seeking judicial action if they chose not to provide copies of otherwise non-exempt public records. No other statutes under the PRA have been identified by Benton County that discuss standing to bring suit.

[9] RCW 42.56.120 is specific to photocopies only. "To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page." RCW 42.56.120. RCW does not state that an agency has no obligation to use publically owned agency equipment to make other types of copies; in this case electronic copies using the same equipment used to make photocopies without the paper or ink.

copies of public records. As such Benton County is not within the "zone of interest" of a statute.

In *Kleven v. City of Des Moines*, 111 Wn. App. 284, 290, 44 P.3d 887 (2002) Division I determined that *Kleven* had standing pursuant to RCW 42.17.340(1)[10] to bring an action in the court despite the fact that it was his attorney requesting the public records. Again the court identified a statute wherein a party bringing suit was within the "zone of interest." Benton County has not identified a statute allowing them to request declaratory judgment pursuant to RCW 7.24.010 or .020.

C. Direct and Substantial Interest

Next Benton County argues that they have direct and substantial interest because if the court affirms the declaratory judgment issued by the trial court then Benton County will not need to expend additional resources, will have complied with the PRA and won't be subject to penalties for violations. Benton County's argument is not logical Basically Benton County's argument can be equated to a City enacting a new ordinance and then suing one or more of the residents to determine whether the ordinance is legal.

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[10] Recodified at RCW 42.56.550. **Upon the motion of any person** having been denied an opportunity to inspect or **copy a public record by an agency**, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records.(Id. (1)(emphasis added).

In support of their argument, Benton County cites to *Whatcom County v State of Washington*, 99 Wn. App. 237, 993 P.2d 273 (2000) a case wherein Division I determined that Whatcom County had standing under RCW 4.96.060 and .070, statutes outside of the Declaratory Judgment Act provided standing to Whatcom County. Benton County has not identified a statutes allowing a trial court to determine Benton County does not have to produce electronic copies of public records.

Benton County next argues that Ms. Zink fails to inform the Court that the County's interest must be one that is "arguably within the zone of interests protected or regulated by a statute." (BR. Respondent pg. 17). That is Ms. Zink's point. Benton County has not identified a statute in which they are protected. The PRA is silent as to whether an agency can bring an action in the Court for a declaration that they can outsource copying of public records under the strict mandates of the PRA. *Zink v. City of Mesa*, 140 Wn. App. 328, ¶20, 166 P.3d 738 (2007).

Benton County argues that the PRA certainly regulates how Benton County expends its resource and responds to requests for records citing to yet another cause of action this time concerning the US Freedom of Information Act.

The Freedom of Information Act (FOIA) does not apply to this cause of action.

> [O]ur PRA differs from FOIA in important respects. Congress did not create a private cause of action under FOIA. Hercules, 839 F.2d at 1029. Because of this, judicial review of agency

> action alleged to be in violation of FOIA is governed by 5 U.S.C. $ 706, which allows courts to interfere with an agency's decision only if the agency's decision is arbitrary or capricious. Hercules, 839 F.2d at 1029. On the other hand, **the voters of Washington State created a privately enforceable cause of action under the PRA and expressly directed courts to review de novo agency action taken or challenged under the PRA. RCW 42.56.540, .550. These substantial differences evidence a conscious choice of the voters of our state to constrain agency discretion and empower private parties to enforce the provisions of the PRA, including the exemptions therein.** Because the PRA includes an express provision giving interested parties the right to seek judicial determination that records are exempt and an injunction preventing their disclosure, Robbins Geller is not barred from asserting the exemption or its public loss component. See RCW 42.56.540.

Robbins, Geller, Rudman & Dowd, LLP v. Office of the Attorney General, 179 Wn. App. 711, ¶29, 328 P. 3d 905 (2014). Further, as previously discussed, pursuant to RCW 42.56.540 "an agency" can intiate an action in the courts requesting declaratory judgment concerning claimed exemptions. Agencies are within the zone of interest under RCW 42.56.540. The same language is not in RCW 42.56.550. Only a "person" can bring suit for declaratory relief under RCW 42.56.550 if an agency refuses to provide copies of records regardless of exemption status of the records at issue.

D. Creation of Copies of Public Records

Benton County argues that they are entitled to a declaration that the PRA does not require them to create additional records, does not require the County to use its own staff and facilities and that RCW 42.56.120 allows Benton County to recover the actual costs charged by a third party to create new records. Again Benton County has not provided any legal authority allowing for such a declaration.

Contrary to Benton County's assertion that the PRA does not require an agency to use its facilities and staff, RCW 42.56.070(7) and (8) are specific to use of agency facilities and staff for making copies, RCW 42.56.080 mandates that agencies allow use of their facilities to make copies[11] and RCW 42.56.120 limits an agency to recovering only fifteen cents per page for photocopies if the agency has not established the factors used to determine costs. Each of those statutes make clear that the legislature mandated that an agency use its staff and facilities to make copies of public records if requested. Electronic copies are no different than paper copies except there is no paper involved. RCW 42.56.120 clearly does not state that an agency can outsource copying of public records and Benton County has not provided any evidence or legal authority otherwise.

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[11] A public agencies equipment is public equipment bought through use of public funds. The requirements that an agency allow use of its facilities is most likely due to the fact that public documents must not be protected (RCW 42.56.100), should not be removed from the public agency by those seeking to make copies and most persons do not have copy equipment readily available to make copies.

Benton County continues to argue that they have an injury despite the fact that they have not identified any statute stating that Benton County has a right to outsource copying of public records or that they can be reimbursed vendor fees. RCW 42.56.120 clearly states a reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment (RCW 42.56.120) if the agency has established and published the factors and manner used to determine copy costs (RCW 42.56.070(7)(a)(b)(8)). Otherwise agencies can charge no more the fifteen cents per page for photocopies. There is no statute under the PRA and Benton County has not identified any statute under the PRA that allows an agency to use an outside vendor and charge twenty-five cents per page to make electronic copies.

As previously argued, use of an outside vendor to make electronic copies is in violation of the legislative mandate that agencies shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information RCW 42.56.120. Each of the cases listed by Benton County had an identified statute, rule, code, ordinance, constitutional issue in conjecture with the Declaratory Judgment Act in order to seek judicial review. Benton County has not identified any legal right imparted on them by a statute under the PRA for their requested relief.

While Benton County may have a "stake" in the outcome, they do not have any statutory right to bring this action.

E. Issues Raised on Appeal

Benton County appears to argue that a party is not entitled to submit argument concerning the decisions of a trial court even if the trial courts decision is in error. Neither Benton County nor the trial court has identified any statute under the PRA allowing for the declaratory judgment issued. Ms. Zink has the right to appeal a trial court decision. In order to prove that the trial court was in error Ms. Zink must show the court that the PRA states exactly the opposite of what the trial court declared. As Ms. Zink is not asking for penalties and is only asking that the trial court's declaration be reversed, Ms. Zink has right to brief an erroneous decision of a trial court.

Benton County claims that because Ms. Zink did not provide any argument concerning the language of RCW 42.56.070 and .080 she should be precluded from making that argument now. However, Benton County did not provide any argument concerning any statute providing the trial court with the authority to determine an agency can outsource copying of public records to increase costs and time to access records. None-the-less, the trial court still determined Benton County had that right without any arguments concerning statutes under the PRA. It is unfortunate that Benton County cannot understand Ms. Zink's argument. However, failure to comprehend is not a legitimate reason to disregard an argument clearly showing the error of the trial court.

F. The PRA Does Not Authorize Agencies to Use Outside Vendors

Benton County again argues that because RCW 42.56.120 simply states a "reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment...." Benton County does not identify the portion of RCW 42.56.120 allowing agencies to outsource copying of public records. See previous discussion.

Benton County next claims that in 2006 the Benton County Code was adopted with an eye towards allowing access to records while preventing excessive interference with County operations. (Br. Respondent pg. 25). Benton County's rules for copying of public records must be consonant with the mandatory requirements of the PRA (RCW 42.56.120). Ms. Zink agrees with Benton County that whether Benton County's code allows for outside use of a vendor if Benton County cannot make the copies is irrelevant to this issue. Nothing in the PRA allows for an agency to outsource the copying of public records and Benton County has failed to identify any legal authority allowing for vendor use.

Ms. Zink has identified numerous statutes under the PRA specifically stating that an agency is to use their facilities, equipment and staff to make copies of public records. While Benton County argues there is nothing in the PRA that precludes and agency from outsourcing copying. With the amount of equipment Benton County owns allowing for electronic redaction and scanning it is an absurdity that Benton County believes they do not have to use the "public's" equipment to make copies of the "public's" records. Benton County has not identified any legal authority

allowing them to charge twenty-five cents per page for electronic copies; especially when our legislature has mandated that fifteen cents is adequate for paper copies. RCW 42.56.120.

Benton County argues that the Public Records Officer for Benton County does not have any redaction software even though Benton County has fifty-nine (59) other employees with the ability to redact copies of electronic records electronically (CP 193: Interrogatory 8).

Benton County argues that they are providing the records via fax. Faxing paper copies of records is no different than scanning paper copies or printing paper copies. The documents are put into a sheet feeder and either scanned, faxed, or printed.

Benton County cites to the *Mechling* and *Mitchell* cases. It is unknown how the Courts in *Mechling* and *Mitchell* came to their conclusions. The PRA most certainly does require agencies to provide copies of redacted documents whether they are printed, scanned, or faxed. Redaction of electronic records without use of redacting software requires an agency to print the record, redact the record (making a new record) and then copy/scan the document back into an electronic format or a paper format. The only difference between scanning, faxing or printing is the paper and ink.

If an agency must redact a public record whether that record is maintain in paper hard copy or electronically, then the agency is creating a new and

different document and should maintain a copy of the redacted document either in electronic or hard copy format.[12]

> Mesa also contends some of the requested records--correspondence from the Zinks to Mesa--were already held by the Zinks before they were requested. This contention is without merit. **As the Zinks note, they requested conformed copies of the correspondence in order to show that Mesa received the correspondence and the date of receipt**. Date-stamped copies of correspondence from the Zinks were within Mesa's records and were properly subject to a public record request. Former RCW 42.17.020(36) (definition of a "public record").

Zink v. City of Mesa, 162 Wn. App. 688, ¶92, 256 P.3d 384 (2011). If Benton County is not required to maintain a redacted copy of a document under the PRA, then the agency need only delete the electronic copy once it is transmitted to a requester. This would be the same as disposing of the redacted paper copies once paper copies were made and provided to the requester by throwing them in the trash.

While the agency is not creating a new document, a different document is created when an agency redacts information in an existing record in order to release the record to a requester.

Benton County has failed to meet is burden that it is entitled to the relief requested.

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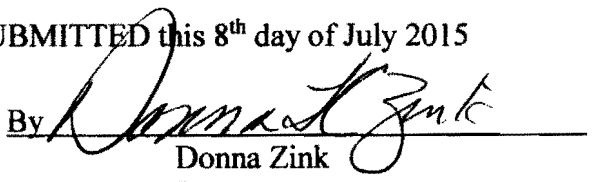
[12] Conformed documents are altered from the original form.

CONCLUSION

Benton County has not met their burden of proof that the PRA allows for Declaratory Judgment other than that specified in RCW 42.56.540 as argued in this brief. Benton County has failed to provide any legal authority stating that an agency has the right to outsource copying of public records; increasing copy costs and time to fulfillment of the request. Ms. Zink has provided this court with legal authority and citation to statutes specifically stating that agencies are to use their facilities, equipment and staff to make copies of public records.

Ms. Zink respectfully requests this Court to reverse the trial courts declaratory judgement and order that Benton County can outsource copying of public records for distribution to the public.

RESPECTFULLY SUBMITTED this 8th day of July 2015

By 

Donna Zink
Pro se

CERTIFICATE OF MAILING

I declare that on the 8th day of July, 2015, I did personally deliver, a true and correct hard copy of Appellant's Brief in "Reply To Benton County" to the following address:

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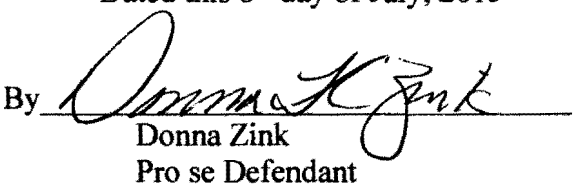
Dated this 8th day of July, 2015

By 

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