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NO. 92792-8

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**IN THE COURT WASHINGTON STATE SUPREME COURT**

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STEVEN P. KOZOL,

Plaintiff-Appellant,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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**RESPONDENT'S ANSWER TO PETITIONER'S MOTION TO  
STRIKE §§ III AND IV(D) OF RESPONDENT'S BRIEF**

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 **ORIGINAL**

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## I. RESPONSE

Kozol requests the Court strike portions of the Department's brief which include citations to the trial court record. In the email correspondence, Kozol and a former offender have candid discussions about setting up their "avalanche of lawsuits" by ensuring they only request grievances written on new forms (CP 482), obtain that information from "passers by" so they had actual grievance log identification numbers (CP 493-494), review none of the content of the documents provided to them (CP 497-513), and file vague complaints in multiple counties to ensure none of their cases are consolidated (CP 517-522). CP 481-528.

Although the trial court did not consider the email correspondence when making its determination dismissing Kozol's claims, the trial court did not grant Kozol's request to strike the emails from the pleadings.

The appellate court's review of Kozol's claim of improper withholding under the PRA was reviewed *de novo*. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009). Therefore, the Department made the same arguments it made in trial court, asserting the Department reasonably believe the instructional form on the back page the grievance form was not responsive to his request. In support of its position, the Department provided emails showing even Kozol knew the back page of the grievance would not be considered an identifiable record in response

to his request. Kozol filed no motion to strike the use of the emails in the appellate court briefing. Instead, and as he has done through his petition for review, Kozol argued the email communications should not be considered by the court in making its determination. However, the submission of the email correspondence is relevant to the issues Kozol has raised in his brief and should not be stricken.

While RCW 42.56.080 does not require a requestor provide the purpose of his public disclosure request, it does require an agency produce records which are identifiable. There is no evidence, and Kozol has never made the argument, the Department considered his email correspondence when responding to his request for the grievance record. The email evidence was solely submitted to show Kozol clearly knew he was asking for records which would not be identified as responsive to his request. Such information is probative regarding whether the records Kozol sought were identifiable records.

An identifiable public record is “one for which the requestor has given a reasonable description enabling the government employee to locate the requested record.” *Beal v. City of Seattle*, 150 Wn. App. 865, 872, 209 P.3d 872 (2009); *see also* WAC 44-14-04002(2) (an “identifiable record” is one agency staff can “reasonably locate”). In this regard, the PRA does not require “agencies to be mind readers”, or to

produce records that have not been requested. *Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998). To hold otherwise would put agencies in an untenable position. *Id.*

The email evidence submitted clearly shows Kozol sought to trick the Department and misuse the PRA by ensuring his requests were evasive, only included the “new” forms which would contain a front and back page and “recruiting passers-by” to obtain their grievance number information. CP 481-528. Such information is probative regarding whether the records Kozol sought were identifiable records.

In addition, Kozol raised his “reason” for requesting the records in his response to the Show Cause Motion contending that he needed the grievances as “evidence” to file a civil rights claim alleging mismanagement of the grievance system<sup>1</sup>. CP 218. However, the correspondence shows Kozol only requested the grievances in order to file an “avalanche” of PRA lawsuits. CP 501. He had no intention of even reviewing the records which is evidenced by his request to see if the documents arrived with “no need to print any the content.” CP 512. Kozol then moved forward with filing his lawsuits by being purposely evasive and filing in multiple counties to ensure his cases would not be considered duplicative and consolidated. Accordingly, the information contained in

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<sup>1</sup> A lawsuit which was never filed.

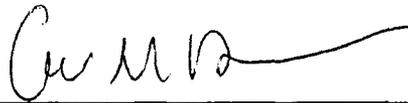
the emails is material and probative to the issue of whether Kozol requested an identifiable record and to respond to his assertion as to why he “needed” the grievance information.

## II. CONCLUSION

Kozol’s emails detailing his attempts to create PRA claims against the Department are probative and material to the issues he raised in his appellate brief. Therefore, Kozol’s motion to strike the trial court record should be denied.

RESPECTFULLY SUBMITTED this <sup>5<sup>th</sup></sup> day of May, 2016.

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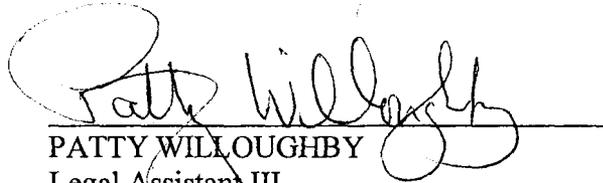
**CERTIFICATE OF SERVICE**

I certify that I served all parties, or their counsel of record, a true and correct copy of the Respondent's Answer to Petitioner's Motion to Strike §§ III and IV(D) of Respondent's Brief by US Mail Postage Prepaid to the following addresses:

STEVEN P. KOZOL, DOC #974691  
STAFFORD CREEK CORRECTIONS CENTER  
191 CONSTANTINE WAY  
ABERDEEN WA 98520

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

DATED this 24 day of May, 2016, at Spokane, Washington.



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Attached for filing is Respondent's Answer to Petitioner's Motion to Strike §§ III and IV(D) of Respondent's Brief.

Thank you.

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