

NO. 93365-1

WASHINGTON STATE SUPREME COURT

STEVEN P. KOZOL,

Plaintiff-Appellant,

v.

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS,

Defendant -Respondent.

DEPARTMENT'S
ANSWER TO KOZOL'S
MOTION TO STRIKE
SECTIONS III AND IV(B)
OF RESPONDENT'S
ANSWER TO THE
PETITION

COMES NOW the Respondent, WASHINGTON STATE DEPARTMENT OF CORRECTIONS, by and through its attorneys of record, ROBERT W. FERGUSON, Attorney General, and CANDIE M. DIBBLE, Assistant Attorney General, and files its response to Kozol's Motion to Strike.

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, obtain that information from "passers by" so they had actual grievance log identification numbers, review none of the content of the documents provided to them, and file vague complaints in multiple counties to ensure none of their cases are consolidated. CP 888-935. In another appellate case involving the same set

of facts as this appeal, in its published decision the Court of Appeals recognized that this litigation arose from “a scheme” that Kozol and a former inmate “concocted” “in prison to make money off the Public Records Act.” *Kozol v. Washington Dep’t of Corr.*, 192 Wn. App. 1, 366 P.3d 933 (2015).

Although the trial court did not utilize the emails when ruling on the Department’s summary judgment motion, it did consider the emails when it found Kozol’s case to be frivolous. In his opening brief and his Petition, Kozol did not raise the issue regarding the trial court’s consideration of the emails on appeal and therefore waived any argument against the submission of the documents to be considered as part of the appeal. Moreover, the submission of the email correspondence is relevant to the issues Kozol has raised in his Petition.

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. This issue is one of the significance in both Kozol’s appellate brief and his Petition for Review. In his Petition, Kozol asserts the Department knowingly altered or modified his request. However, the email evidence contradicts this portion as it shows Kozol clearly knew he was asking for records which would not be identified as responsive to his request. CP 888-935. The emails also detail his attempts to be purposefully evasive when drafting and filing his lawsuits. CP 924-

930. This information is significant because it shows the Department would have had no notice the boilerplate instructions were responsive to Kozol's request. Therefore, they could not have knowingly altered or modified his request as Kozol asserts through his Petition. Accordingly, the information contained in the emails is material and probative to the issues Kozol has raised in Petition for Review. His request to strike the trial court record should be denied.

II. CONCLUSION

Kozol failed to raise the issue of trial court's consideration of his email correspondence as an issue in his opening appellate brief and the Petition before the Court. Further, the record is probative and material to the appellate issues. Accordingly, Kozol's motion to strike the trial court record should be denied.

RESPECTFULLY SUBMITTED this 20th day of October, 2016.

ROBERT W. FERGUSON
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CERTIFICATE OF SERVICE

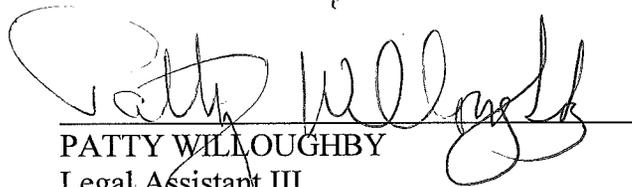
I certify that I served all parties, or their counsel of record, a true and correct copy of Department's Response to Kozol's Motion to Strike Sections III and IV(B) of Respondent's Answer to the Petition by US Mail Postage Prepaid to the following addresses:

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

DATED this 20th day of October, 2016, at Spokane, Washington.


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Transmittal Information

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- 933651_20161020125350SC414677_1837_Answer_Reply.pdf
This File Contains:
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- johnd2@atg.wa.gov
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