

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
12/2/2019 4:20 PM  
BY SUSAN L. CARLSON  
CLERK

Supreme Court No. 97775-5

SUPREME COURT OF THE STATE OF WASHINGTON

---

HEALTH PROS NW, INC., a Washington Corporation,

APPELLANT,

v.

WASHINGTON STATE, AND ITS DEPARTMENT OF CORRECTIONS,

RESPONDENTS.

---

**APPELLANT HEALTH PROS NW, INC.'S REPLY TO DEPARTMENT'S MOTION  
FOR CROSS-REVIEW**

---

OWENS DAVIES, P.S.  
Matthew B. Edwards  
1115 West Bay Drive, Suite 302  
Olympia, Washington 98502  
(360) 943-8320  
WSBA No. 18332

**TABLE OF CONTENTS**

**I. ARGUMENT..... 2**

**II. CONCLUSION ..... 6**

**DECLARATION OF MATTHEW EDWARDS..... 7**

**Cases**

*Hobbs v. State*, 183 Wn.App. 925, 335 P.3d 1004 (2014)..... 5

**Statutes**

RCW 42.56.030 ..... 2

RCW 42.56.520 ..... 4

RCW 42.56.520(3)..... 4, 5, 6

RCW 42.56.550(2)..... 2, 3, 6

**Other Authorities**

*Public Records Act Deskbook: Washington's Public Disclosure and Open Public Meeting Laws* at §6.5 at p. 6-22 (2d ed., 2014) ..... 5

Comes now Health Pros Northwest, Inc. (hereinafter "Health Pros") and submits this reply to the Washington State Department of Corrections' (hereinafter "Department") Petition for Cross-Review.

## I. ARGUMENT

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. [The Public Records Act] 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.

RCW 42.56.030.

To further these purposes, RCW 42.56.550(2)—the statute authorizing judicial review of agency action prior to the date the agency "fully responds" to a Public Records Act request by providing all the records the agency intends to provide in response to the request—provides:

Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request or a reasonable estimate of the charges to produce copies of public records, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

The Department had consistently refused to provide **any** estimate of the time the Department requires to respond to Health Pros' public records request. However, the Department is producing records at a pace at which it will take it at least 12 years to produce all responsive documents.<sup>1</sup>

Health Pros filed this lawsuit seeking to compel the Department to provide the reasonable estimate that RCW 42.56.550(2) plainly requires, so that the superior court could hold the hearing—at which the burden of justifying the reasonableness of its estimate would be on the Department—that RCW 42.56.550(2) also plainly requires. Although the Department cannot point to a single case in which any Washington court has ever held that an agency acted reasonably by taking even one year to produce documents, the superior court, and then Division II, denied Health Pros this relief that the statute plainly requires. Instead, Division II held that the Public Records Act does not empower superior courts to either compel, or review, agency estimates of the time the agency will take to fully respond to a public records request.

---

<sup>1</sup> Since Division II issued its decision in this case, the pace at which the Department is producing documents responsive to Health Pros' Public Records Act request has slowed to a crawl. Its most recent production of documents consisted of only 88 pages. See Annexed Declaration of Matthew Edwards. If the Department continues to produce records at this now-reduced pace, the Department may not produce all the records responsive to Health Pros' Public Records Act request for approximately 600 years!

Contrary to the expressly stated purpose of the Public Records Act, this ruling gives agencies the discretion to effectively delay responding to a public records request. Division II's ruling makes agencies, not the people, sovereign.

This is the issue that Health Pros has raised in its petition for review. It is worthy of Supreme Court review.

The Department, in contrast, raises a much less consequential issue.

RCW 42.56.520 provides, in pertinent part:

Responses to requests for public records shall be made promptly by agencies . . . within five business days of receiving a public records request, an agency . . . must respond by . . . (3) acknowledging that the agency . . . has received the request, and providing a reasonable estimate of the time the agency . . . will require to respond to the request.

Here, the Department's initial response to Health Pros' public records request did not provide Health Pros an estimate of **the date** on which it would begin to produce its first installment of records. Therefore, the Department plainly violated this statute. Based on its failure to provide such a date, both the trial court, and the Court of Appeals, held that the Department's fifth-day response violated RCW 42.56.520(3).

The Department claims that this construction of RCW 42.56.520(3) does not provide the Department with a "clear and workable

guideline." This is patently incorrect. In order to comply with this construction of RCW 42.56.520(3), an agency need only provide an estimate of the date by which it expects to produce records. Under the interpretation of the Public Records Act that was in place prior to the Court of Appeals' 2014 decision in *Hobbs*, an agency must provide the date on which it estimates it will produce all responsive records. Under the construction of the Public Records Act first adopted by Division II in 2014 in *Hobbs*,<sup>2</sup> an agency must, in its fifth-day response, provide the date it estimates it will produce its *first installment* of records.<sup>3</sup> Either way, the standard is clear: the agency's fifth-day response must contain a *date* on which the agency estimates it will produce responsive records.

In sum, there is absolutely no reason for the Court to consider changing the clear rule that has been in place ever since the Public Records Act was first passed by the voters: the agency must provide an estimate of the date on which the agency will produce records. Because the agency's response did not contain such a date, the trial court correctly resolved this issue against the Department and awarded Health Pros a

---

<sup>2</sup> *Hobbs v. State*, 183 Wn.App. 925, 335 P.3d 1004 (2014).

<sup>3</sup> *Public Records Act Deskbook: Washington's Public Disclosure and Open Public Meeting Laws* at §6.5 at p. 6-22 (2d ed., 2014). Prior to Division II's 2014 decision in *Hobbs*, agencies were entitled to update the estimated date on which they would completely respond to a request when they learned of additional information justifying revising the estimated date. *Id.*

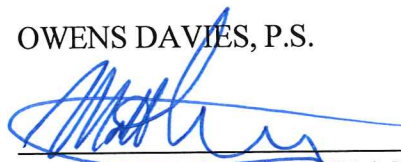
small amount of fees stipulated to by the parties. This distinctly ancillary issue does not warrant Supreme Court review.

## II. CONCLUSION

The Court should grant Health Pros' petition for review. Interpreting RCW 42.56.550(2) according to its plain language, the Court should accept review of the issue raised by Health Pros, follow the plain language of that statute, hold that agencies must provide a reasonable estimate of the time they expect to take to produce all records responsive to a public records request, and hold that a requestor is entitled to have a court review the reasonableness of that estimate at a hearing in which the burden of proving the reasonableness is upon the agency.

RCW 42.56.520(3) requires an agency to provide the date by which it estimates it will produce records in response to a public records request. Because the Department does not establish that that statute is in any way unclear, or incorrect, the Court should deny the Department's petition for cross-review.

OWENS DAVIES, P.S.



---

Matthew B. Edwards, WSBA No. 18332  
Attorney for Appellant Health Pros NW, Inc.

**DECLARATION OF MATTHEW EDWARDS**

1. My name is Matthew Edwards. I am over 18 years of age and competent to testify as to all matters set forth herein. I am an attorney representing Health Pros in this matter.

2. In the pleadings it submitted to the trial court, the Department of Corrections estimated that it had approximately 350,000 pages of records that it would need to review and either produce or withhold in response to the Public Records Act request Health Pros' originally submitted on February 10, 2017. CP 221.

3. The Department has produced the following records in response to Health Pros' Public Records Act request:

<b>Installment</b>	<b>Date of Notification-- Records Available</b>	<b>Date Records Received</b>	<b>No. of Pages Produced</b>
1	4/11/2017	4/19/2017	673
2	5/22/2017	6/1/2017	1,633
3	6/27/2017	7/5/2017	9,119
4	8/16/2017	8/24/2017	4,306
5	10/26/2017	11/7/2017	6,592
6	1/16/2018	1/25/2018	6,363
7	4/11/2018	4/19/2018	4,539
8	7/9/2018	7/20/2018	22,116
9	10/3/2018	10/10/2018	3,438
10	12/31/2018	1/9/2019	2,414
11	3/4/2019	3/11/2019	2,005
12	5/28/2019	5/28/2019	59
13	7/30/2019	8/8/2019	302
14	10/31/2019	11/7/2019	88
<b>Total</b>			<b>63,647</b>



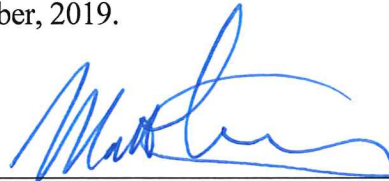
4. Division II issued its decision in this matter on September 17, 2019.

5. On November 4, 2019, the Department produced the only installment of records that it has produced since the issuance of Division II's decision. The Department produced 88 pages of records. A true copy of the Department's November 4, 2019, letter accompanying its production of these records, is attached to this declaration as Exhibit A.

6. If the Department were to continue producing records at the rate of 88 pages every 70 days, it appears the Department would not fully respond to Health Pros' public records request by reviewing and producing all the records responsive to the request for approximately 624 years.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2<sup>nd</sup> day of December, 2019.



---

Matthew B. Edwards

# EXHIBIT A



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
P.O. Box 41118 • Olympia, Washington 98504-1101

November 4, 2019

Mr. Matthew Edwards  
Owens Davies P.S.  
1115 West Bay Drive, Ste 302  
Olympia, WA 98502

Dear Mr. Edwards:

A check in the amount of \$1.77 for costs associated with PRU-45925 has been received.

Enclosed are 88 pages identified as responsive to your request for the **14<sup>th</sup> installment**. These records are provided to you in accordance with the Public Records Act. By making agency documents available to you, the Department is not responsible for your use of the information or for any claims or liabilities that may result from your use or further dissemination.

We will now proceed with the **15<sup>th</sup> installment** of your request. I will correspond with you regarding the status of PRU-45925 within 70 business days, on or before March 12, 2020.

Sincerely,

*Emma Pryor*

Emma Pryor, Public Records Specialist  
Public Records Unit  
Department of Corrections  
P.O. Box 41118  
Olympia, WA 98504-1118

EP: PRU-45925

*"Working Together for SAFE Communities"*

I certify that on the 2<sup>nd</sup> day of December, 2019, I caused a true and correct copy of *Appellant Health Pros NW, Inc.'s Reply to Department's Motion for Cross-Review* to be served in the manner indicated below:

*via email through Washington State Appellate Court's upload portal; and via U.S. mail*

By: 

Matthew B. Edwards

**OWENS DAVIES P. S.**

**December 02, 2019 - 4:20 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97775-5  
**Appellate Court Case Title:** Health Pros Northwest, Inc. v. State of Washington, et al.  
**Superior Court Case Number:** 17-2-02480-2

**The following documents have been uploaded:**

- 977755\_Answer\_Reply\_20191202161929SC827334\_1807.pdf  
This File Contains:  
Answer/Reply - Reply to Answer to Petition for Review  
*The Original File Name was 97775 5 Health Pros Reply to Department of Corrections Motion for Cross Review.pdf*

**A copy of the uploaded files will be sent to:**

- TimF1@atg.wa.gov
- correader@atg.wa.gov

**Comments:**

Includes affidavit of service

---

Sender Name: Matthew Edwards - Email: medwards@owensdavies.com

Address:

1115 W BAY DR NW STE 302

OLYMPIA, WA, 98502-4658

Phone: 360-943-8320

**Note: The Filing Id is 20191202161929SC827334**