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SC No. 99266-5
COA No. 80894-0-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOEL ZELLMER,

Appellant/Petitioner,

v.

KING COUNTY DEPARTMENT OF
ADULT AND JUVENILE DETENTION,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Janice E. Ellis, Judge

PETITION FOR REVIEW

JOEL ZELLMER
Pro Se

Washington State Penitentiary
1313 N. 13th Avenue
Walla Walla, WA 99362-8817

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1. IDENTITY OF MOVING PARTY

Joel Zellmer, Appellant/Petitioner, files this petition for review.

2. STATEMENT OF RELIEF SOUGHT

Petitioner seeks review of the Court of Appeals decision filed on October 5, 2020. An order denying separate motions for reconsideration and to publish were denied on October 29, 2020. The opinion and order is attached as Appendix A.

3. ISSUES PRESENTED FOR REVIEW

1. When a public record contains both exempt and nonexempt information, does the PRA allow the agency to withhold the record from public inspection and copying where the agency discloses the nonexempt information on its exemption log?

2. Does an agency act in bad faith when it refuses to produce a redacted version of a requested record for public inspection and copying?

4. STATEMENT OF THE CASE

1. Substantive Facts

In 2010, Joel Zellmer filed a federal civil rights lawsuit against King County and some Department of Adult and Juvenile Detention (DAJD) officers for using excessive use of force on Zellmer. Zellmer v. Dow Constantine, et al, U.S. Dist. Ct., No. C10-1288-MJP-JPD (W.D. Wash). After a dismissal and appellate remand, (Zellmer v. Constantine, 520 Fed.App. 564, 2013 U.S. LEXIS 10346 (9th Cir. 2013)), four DAJD officers,

including Kenneth Potts, Robert Lofink, Norman Colbert, and Vernetta Stowers, committed "fraud on the court" by knowingly filing sworn affidavits with false information to the court. Zellmer v. Nakatsu, 2014 U.S. Dist. LEXIS 181509 (W.D. Wash. 2014) (Report & Recomm.); Zellmer v. Constantine, 2015 U.S. Dist. LEXIS 11993 (W.D. Wash. 2015) (Order Adopting R&R). The case was ultimately settled to Zellmer's favor.

On February 14, 2017, Zellmer submitted a public record request to DAJD seeking emails between the DAJD officers and two law firms who represented the County and the officers in the federal litigation. Specifically, Zellmer had requested: (1) all emails between four named DAJD employees and staff from Mills Meyers Swartling for a certain time period; and (2) all emails between the four named DAJD employees and staff from Gosselin Law Office for a certain time period. CP 159

As an agency subject to the Public Records Act (PRA), DAJD abides by King County record policies and internal DAJD policies, which were formulated from the Revised Code of Washington (RCW) chapter 42.56, Washington Administrative Code (WAC) chapter 44-14, King County Code (KCC) 2.12, and King County Executive PRA procedures. CP 40-41.

Zellmer's request was assigned to Andrea Williams, a Records and Information Systems Manager, and DAJD's public records officer since 2006. CP 39, 87. As DAJD's records officer, it is Ms. Williams' statutory duty to oversee DAJD's

compliance with the PRA. CP 69. To accomplish this, Ms. Williams attends periodic training, maintains contact with and receives updates from the King County Public Records Officer and legal counsel for DAJD, and ensures that employees of the DAJD records unit receive appropriate training. CP 69. Ms. Williams had received at least 30 hours of formal PRA-specific training. CP 89.

After receipt of Zellmer's request, but before officially responding to Zellmer, Ms. Williams sent a February 21, 2017 email to DAJD Director William Hayes and two other persons informing them of the "new request from former inmate Joel Zellmer", that she had sent a copy of the request to deputy prosecuting attorneys "John [Gerberding] and Pascal [Herzer]" (of the King County Prosecuting Attorney's Office) and would "be working with them on the best approach to a response." CP 72-79 (Feb 21, 2017 email), 82-83. Mr. Williams knew at the time that the content of the emails contained information related to Zellmer's lawsuit against King County and DAJD officers. CP 37, 67-68.

Two of the four officers who had committed fraud on the court, Robert Lofink and Kenneth Potts, responded to Williams' request to search their own emails. CP 72-79. Their emails were created between the officers and the attorneys who represented them after their fraud was exposed in 2014. CP 37. Both officers expressed concern about DAJD releasing their

emails to Zellmer. CP 72-79.

In its first official response to Zellmer, Ms. Williams acknowledged receipt of the request, notified him that DAJD would begin searching for records, and gave an estimated date of production. CP 161.

In its second response on March 24, 2017, Ms. Williams informed Zellmer that "of the 228 emails collected and reviewed to date, all were protected from disclosure under attorney-client privilege." She further indicated that once review was complete, she would contact him with the final results. CP 163.

In its final response on April 18, 2017, Ms. Williams notified Zellmer that DAJD had identified 122 records. She further stated the records were being withheld pursuant to RCW 5.60.060(2)(a), RCW 42.56.290, and *Limstrom v. Ladenburg*, 136 Wn.2d 595 (1998). CP 165. Ms. Williams enclosed a 9-page exemption log. CP 167-175. Of the 122 records withheld, 115 are emails and 7 are attachments. Id.

Ms. Williams did not expressly review policies and/or legal authorities before withholding the records from Zellmer. CP 66, 88-89. Conversely, in prior requests from other citizens for emails containing privileged material, she did not withhold the emails in their entirety. CP 66-67.

The DAJD exemption log lists certain information. This includes the type of record (e.g., "email"), date, author, subject line of email, intended recipient, and the statutory

exemption and brief explanation of how the exemption applies. CP 167-175.

The emails also contained nonexempt material. DAJD's exemption log only disclosed some of the nonexempt information, including the date of email, its author, the subject line, and names of intended recipients. CP 167-175. The log did not contain the other nonexempt information from the withheld emails, such as the time of email transmission, greetings and salutations, signature block, addresses, website addresses, and other nonexempt information. See Respondent's Brief at 12-13 (DAJD's appellate brief showing example of withheld email with its nonexempt portions showing). These facts are critical to this review.

In a separate later expanded request by Zellmer, DAJD produced emails containing privileged information in redacted form; 25 of those emails later produced by DAJD (some were completely unredacted) are the same exact emails withheld here by DAJD. CP 36 (¶¶ 7-8), 96-110 (install 8), 112-119 (install 11), 132 (index), 165-175 (exempt log). Those 25 other emails show the nonexempt information from the emails withheld here by DAJD that is not listed on their exemption log. Id.

2. Procedural Facts

Mr. Zellmer filed suit against DAJD on April 12, 2018 for violations of the public records act. CP 235-239. After appearance by King County, DAJD filed its Answer. CP 231-243.

DAJD moved to dismiss the case on June 11, 2019. CP 212-230. DAJD submitted two declarations supporting its summary judgment motion, including one from Andrea Williams. CP 153-175, 176-211. DAJD claimed it did not violate the PRA when it provided the nonexempt information from the emails on its exemption log. CP 212-230. Zellmer filed an opposition brief and supporting declaration arguing that the PRA required DAJD to produce a redacted copy for inspection and copying and that it acted in bad faith. CP 35-132, 133-152. DAJD filed a reply. CP 28-34.

A hearing was held on July 12, 2019 before the Honorable Janice E. Ellis. CP 26-27. The trial court ruled that DAJD was not required to produce a redacted copy of the emails where DAJD had disclosed nonexempt information on its exemption log, and that Zellmer was unable to establish bad faith. Judge Ellis granted DAJD's motion for summary judgment as to all of Zellmer's PRA claims and dismissed the case with prejudice. CP 24-25, 26-27.

Zellmer timely moved the superior court to reconsider under CR 59(a) arguing that the court's decision was contrary to law based on the facts. CP 13-23. After opposition by DAJD, CP 10-12, Judge Ellis denied Zellmer's motion by a letter decision and companion order. CP 6-7, 8-9. Zellmer appealed to the Court of Appeals. CP 1-5.

On Appeal, Division One of the Court of Appeals affirmed

the trial court's dismissal by an unpublished opinion. Appendix A (Slip Op.). In so holding, the appellate court disagreed with Zellmer that the PRA required DAJD to redact exempt information and provide the remaining record for inspection and copying. Appendix A (Slip Op. at 3). In coming to that conclusion, the appellate court reasoned that "[t]he information that was provided to Zellmer in the exemption log is the same information that would have been provided to Zellmer had DAJD individually redacted each of the responsive records[;] [t]he only difference is the format in which it was provided." Appendix A (Slip Op. at 5).

Mr. Zellmer moved Division One to reconsider its decision based on its misapprehension of material facts, and that it had overlooked other judicial opinions and authority. At the same time, Zellmer moved to have the decision published arguing that it reversed an established principle of law by now changing the production standard thereby allowing public agencies to withhold records from inspection and copying in a way that benefits the agency rather than the citizen requestor. Division One denied both motions. Appendix A. This petition for review follows.

5. ARGUMENT

This Honorable Court is asked to decide under the public records act if disclosing nonexempt information from a record on an agency-created exemption log satisfies the PRA's mandate to produce the requested record for inspection and copying?

This is an important question that needs to be answered. Although this Court has generally asserted that records with both exempt and nonexempt material should be redacted and provided to the requestor under the PRA, this Court has not squarely addressed the issue of whether the PRA requires it, nor whether an agency may withhold the entire record if it discloses the nonexempt information on its exemption log. This is a novel question that should be reviewed by this Court. And further, whether a failure or refusal to redact and produce a record under RCW 42.56.210(1) constitutes bad faith.

For example, in the case at bar, DAJD elected to withhold the responsive emails in their entirety while disclosing some (but not all) of the nonexempt information on its exemption log. This does not appear to be allowed under the PRA; and further, appears to conflict with past decisions from this Court and Court of Appeals with regard to redaction of records. This issue is one of substantial public interest because the ruling from this Court will affect all public agencies across the state, and by extension, citizen requestors.

1. Conflict With Decisions Of The Supreme Court.

Under the state Act, "the exemptions of [the PRA] are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital government interests, can be deleted from the specific records sought." RCW 42.56.210(1) [former RCW 42.17.310(2) (1977)]. That

statutory provision would seem to impose a requirement that the agency redact any exempt information and produce the remaining record. See e.g., Benton County v. Zink, 191 Wn.App. 269, 280, 361 P.3d 801 (2015) (noting PRA requires strict compliance with all its procedural mandates).

In a number of previous cases, this Court has generally interpreted the PRA's redaction provision and stated that it requires agencies to redact exempt information and produce the remaining record.

For example, in Resident Council v. Housing Authority, 177 Wn.2d 417, 300 P.3d 600 (2013), this Court engaged in a detailed discussion of PRA procedures and how agencies were to respond under the PRA when statutory exemptions were at issue. This Court held that welfare recipients' personal information in grievance hearing decisions were exempt under the PRA, but that the PRA "requires redaction and disclosure of public records insofar as all exempt material can be removed." Id. at 426. In so deciding, this Court noted its own prior interpretation of the PRA's redaction provision "to mean that an agency must produce otherwise exempt records insofar as redaction renders any and all exemptions inapplicable." Id. at 432-33.

Later in its opinion, this Court gave direction to agencies facing a request for disclosure under the PRA. This Court instructed that if an "exemption applies only to certain information, then the agency must consider whether the exempted

information can be redacted from the records such that no exemption applies (and some modicum of information remains)", and that "[i]f effective redaction is possible, records must be so redacted and disclosed." Id. at 437.

Likewise, other cases from this Court indicate that redaction + production has been the norm. See e.g., Hearst Corp. v. Hoppe, 90 Wn.2d 123, 132, 580 P.2d 246 (1978) (noting that exemptions are "inapplicable to the extent that exempt materials in the record can be deleted"); PAWS v. University of Wash., 125 Wn.2d 243, 261, 884 P.2d 592 (1994) ("Portions of records which do not come under a specific exemption must be disclosed"); Amren v. City of Kalama, 131 Wn.2d 25, 32, 929 P.2d 389 (1997) ("if the requested material contains both exempt and non-exempt material, the exempt material may be redacted but the remaining material must be disclosed"); Newman v. King County, 133 Wn.2d 565, 582-83, 947 P.2d 712 (1997) (quoting and reaffirming Amren); and Predisik v. Spokane Sch. Dist. No. 81, 182 Wn.2d 896, 903, 346 P.3d 737 (2015) (stating that exemptions are narrow "and we apply them in favor of partial disclosure where possible since the PRA's purpose of open government remains paramount").

While the above cases demonstrate the apparent conflict here of the Court of Appeals' decision where it expressly allowed DAJD to withhold records containing both exempt and nonexempt information, the prior cases from this Court say

nothing as to whether an agency is allowed to provide the nonexempt information in an exemption log as opposed to redacting and producing the record. Or, if an agency's refusal or failure to adhere to RCW 42.56.210(1) in this circumstance would constitute bad faith culpability for penalty purposes. Review of this issue is necessary for both public agencies and citizen requestors alike.

2. Conflict With Decisions Of The Court Of Appeals.

Division One's decision here appears to conflict with other prior appellate decisions.

In Mechling v. City of Monroe, 152 Wn.App. 830, 222 P.3d 808 (2009), Division One itself held that if a record contained both exempt and nonexempt information, the agency is required to produce the portion of a document not covered by a privilege for inspection and copying. Id. at 852-53.

Likewise, in Tacoma Pub. Library v. Woessner, 90 Wn.App. 205, 951 P.2d 357 (1998), Division Two stated the the PRA "does not allow an agency to withhold records in their entirety[;] [r]ather, agencies must withhold only those portions of individual records which come under a specific exemption and disclose the rest." Id. at 224.

And Division One earlier held in Seattle Fire Fighter's Union Local No. 27 v. Hollister that withholding an entire record where only a portion of it is exempt violates the act. 48 Wn.App. 129, 132, 737 P.2d 1302 (1987).

Presently, Division One's decision here where it allowed DAJD to withhold a record without the need for redaction of the exempt portions conflicts with the above cited appellate decisions. Had they been applied accordingly, DAJD would have been required to redact the emails and provide the nonexempt portions to Zellmer. But while that aspect is clear, the appellate decisions say nothing as to whether the agency is allowed to simply "disclose" the nonexempt material on its exemption log rather than redact and produce the record. Review of this issue is warranted.

3. This Is An Issue Of Substantial Public Interest.

The issues presented by this petition are issues of substantial public interest that should be determined by this Court because it will affect how every state and local public governmental agency is required to respond to a public record request under the PRA--in that it will either allow or disallow agency discretion as to how it discloses information and produces records. And further, it will ultimately affect whether violations of the PRA have occurred and to what level of culpability (i.e., bad faith), and what response a citizen can expect from an agency, that is, whether he or she can expect to receive the records requested or some pseudo version of the information sought.

The PRA's production mandate is simple. A citizen makes a request for an identifiable public record. RCW 42.56.080(1).

The agency, upon the request for an identifiable public record, makes it promptly available to the citizen. RCW 42.56.080(2); RCW 42.56.520(1)(a). This is required unless the record or part of the record is exempt. RCW 42.56.070(1). In that case, one of two responses must occur based on the record itself. One, the agency will withhold the entire record (if the entire record is exempt) and create an exemption log. RCW 42.56.210(3). Or two, the agency will redact the exempt portions (if only part of the record is exempt), and produce the remaining record along with an exemption log. RCW 42.56.070(1); RCW 42.56.210(1), (3); RCW 42.56.520(1)(a).

But here, the Court of Appeals has allowed DAJD to use discretion as to whether it wanted to produce the records or not. Division One has ruled that DAJD did not violate the PRA when it provided information on an exemption log in lieu of providing the requested records for inspection and copying. This is disconcerting. Nowhere does the PRA authorize or require an agency to simply provide some nonexempt information from a record (which is only exempt in part) on an exemption log it created, while at the same time withholding the record in its entirety thereby precluding "public inspection and copying" of the record. RCW 42.56.070(1). So is an agency allowed to do that? And was DAJD allowed to do that here? The Court of Appeals thought so.

The gravamen of Division One's unpublished opinion is

this: while not binding, it does create an incentive (or an allowance, if you will) for all public agencies across the state to withhold records as long as the agency provides the nonexempt information on its exemption log. This will engender two direct results. One, an exclusion of the record from inspection and copying by the citizen requester. Two, an insulation of the agency from penalties for PRA violations because it can claim it disclosed the nonexempt information to the citizen even though it did not provide the requested record for inspection and copying.

On appeal, DAJD appeared to argue it had the discretion to provide the nonexempt information from a record in whatever format it chose. See Appellant's Brief at 10 and 12 (providing nonexempt information on exemption log is a different "format" of the emails). Division One agreed, stating "[t]he information that was provided to Zellmer in the exemption log is the same information that would have been provided to Zellmer had DAJD individually redacted each of the responsive records[;] [t]he only difference is the format in which it was provided."

Appendix A (Slip Op. at 5).

But the conflict arises when you consider the PRA's procedural mandates. The Act required Zellmer to request an identifiable public record, which he did. RCW 42.56.080(1). DAJD then, was required to promptly produce that identified record for public inspection and copying. RCW 42.56.070(1); RCW

42.56.080(2). By his request, Mr. Zellmer did not request the exemption log that did not exist at the time of his request. Instead, he specifically requested certain identifiable emails. See CP 159. Compare WAC 44-14-04002(2) ("An 'identifiable record' is one that is existing at the time of the request").

To say that providing nonexempt information on an unrequested and later-created exemption log is just a different "format" of the requested emails is to also say that the PRA no longer requires inspection and copying of redacted records. By that, Division One has now reversed course and sanctioned a subjective discretion of the PRA's redaction requirement rather than requiring DAJD to follow an objective procedure. The PRA, however, does not allow discretion; rather, it requires strict adherence to procedural provisions. Zink, 191 Wn.App. at 280.

Review of this issue is necessary. The public importance of this issue is evident when you consider the amount of public agencies across the state, some of which process many thousands of public record requests each year. The PRA is silent on the specific issue of whether an agency is allowed to provide nonexempt information from a record on an exemption log to satisfy the Act's "inspection and copying" provision. But the legislative statement in RCW 42.56.210(1) (redaction provision), would seem to disallow agencies from simply disclosing nonexempt information on an exemption log while withholding the record. It is for this Court to interpret the PRA as a whole and decide

whether DAJD violated the PRA in this case, and by extension, whether any public agency can do what DAJD has done here.

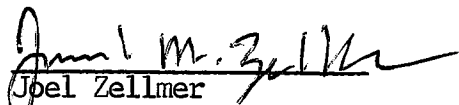
This Court is respectfully asked to accept review of the novel issue presented by this case in order to establish the standard a public agency must follow when it responds to a request for public records under the PRA, namely, whether it can disclose the nonexempt information from a requested record on an exemption log, or, if it must redact and produce the record in light of the PRA's mandate of "full public access to public records." RCW 42.56.100. And, if the latter, whether a failure to do so would result in culpability rising to the level of bad faith. RCW 42.56.565(1) (incarcerated requestor must show bad faith before penalties are awarded); Yousoufian v. Office of Ron Sims, 168 Wn.2d 444, 460-63, 229 P.3d 735 (2010) (bad faith one of several mitigating factors for penalties).

6. CONCLUSION

The unfortunate consequence of DAJD's actions, and Division One's ruling, has been to deprive Mr. Zellmer, a citizen no different than any other, his right to "inspection and copying" of the requested emails. RCW 42.56.070(1).

The decision of the Court of Appeals should be reversed and this case remanded back to the superior court for further proceedings, to include the issue of an award of costs and penalties, including those incurred on review. RAP 12.1(c); RAP 14.1 et seq.

Dated this 23 day of November, 2020.


Joel Zellmer
Appellant/Petitioner

CERTIFICATE OF SERVICE/FILING

(Pursuant to GR 3.1)


I, Joel Zellmer, certify that on the date below I deposited the foregoing document in the internal Legal Mail system of Washington State Penitentiary, 1313 N. 13th Avenue, Walla Walla, WA 99362 pursuant to GR 3.1, and made arrangements for postage, addressed to:

Clerk, Court of Appeals
Division One
600 University Street
Seattle, WA 98101-4170

King County Prosecuting Attorney
516 Third Avenue, W400
Seattle, WA 98104

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

Dated at Walla Walla, Washington this 23 day of November, 2020.


Joel Zellmer

Appendix A

Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOEL ZELLMER,)	No. 80894-0-I
)	
Appellant,)	
)	
v.)	ORDER DENYING MOTION
)	FOR RECONSIDERATION AND
)	MOTION TO PUBLISH
KING COUNTY DEPARTMENT)	
OF ADULT AND JUVENILE)	
DETENTION,)	
)	
Respondent.)	

Appellant Joel Zellmer moves to reconsider and publish the court's opinion filed on October 5, 2020. The panel has determined that the motions should be denied.

Therefore, it is

ORDERED that the motion for reconsideration and the motion to publish are denied.

FOR THE COURT:



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOEL ZELLMER,)	No. 80894-0-1
)	
Appellant,)	
)	DIVISION ONE
v.)	
)	
KING COUNTY DEPARTMENT)	
OF ADULT AND JUVENILE)	
DETENTION,)	
)	UNPUBLISHED OPINION
Respondent.)	
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MANN, C.J. — Joel Zellmer appeals the trial court’s grant of summary judgment dismissal in his Public Records Act (PRA) proceeding. Zellmer argues that the King County Department of Adult and Juvenile Detention (DAJD) acted in bad faith in responding to his public records requests. We affirm.

I.

Zellmer has been incarcerated in Washington State since 2007, after being convicted of murder in the second degree. In August 2010 Zellmer filed a federal civil rights suit against various DAJD staff, alleging excessive use of force. Mills Meyers

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Swartling, P.S. represented DAJD staff defendants. Gosselin Law Office, PLLC, represented DAJD Director William Hayes and King County.

In February 2017 Zellmer submitted a public records request to DAJD seeking e-mails between DAJD defendants and staff from Mills Meyers Swartling between April 30, 2014, and May 31, 2016. He also requested the e-mails between DAJD defendants and staff from Gosselin Law Office between April 29, 2015, and April 26, 2016.

On February 24, 2017, three days after receiving Zellmer's request, DAJD's records and information systems manager, Andrea Williams, acknowledged receipt of the request. She informed Zellmer that she anticipated a first installment would be available to him on March 24, 2017. On March 24, 2017, Williams informed Zellmer:

I am continuing to review the email you have requested. Of the 228 email collected and reviewed to date, all are protected from disclosure under attorney-client privilege. Once I have completed reviewing all remaining email, I will contact you again with final results of my search and review. I anticipate this will be no later than April 18, 2017.

On April 18, 2017, Williams informed Zellmer that she identified 122 records responsive¹ to his request, all of which were withheld from disclosure as attorney-client communications.² Williams included an exemption log with the letter that provided: (1) the type of record, (2) date, (3) author, (4) subject matter, (5) page numbers, (6) recipients, both "to and CC's," (7) applicable exemptions; (8) action taken, and (9) a brief explanation of how the exemption applies.

¹ Searching for responsive records is done by using search terms. Search results often include records that contain the applicable search term but are not responsive to a particular records request. The 228 e-mails that were reviewed in Zellmer's case included 115 e-mails that were responsive and 113 e-mails that were nonresponsive.

² Williams cited to RCW 5.60.060(2); RCW 42.56.290; and Limstrom v. Ladenburg, 136 Wn.2d 595, 605, 963 P.2d 869 (1998) (attorney work product which is relevant to a controversy is exempted under the attorney work product exemption of the Public Records Act).

In April 2018, Zellmer filed a pro se public records complaint against DAJD. Zellmer alleged that the DAJD violated the PRA by providing an exemption log, instead of a physical copy of each e-mail with the body and communications redacted. Zellmer asked the court to require DAJD to provide him with copies of each e-mail with the relevant portions redacted, to impose statutory penalties, and to award his costs and attorney fees.

DAJD sought summary judgment dismissal, alleging that the Zellmer failed to state a claim against a proper party, that the evidence demonstrates that DAJD did not violate the PRA, and that alternatively, DAJD did not act in bad faith when responding to Zellmer's request. The court granted DAJD's motion and dismissed the complaint. After unsuccessfully seeking reconsideration, Zellmer appeals.

II.

Zellmer argues that the trial court erred in granting summary judgment because the PRA requires the agency to redact the exempt information and provide the remaining information to the requestor for inspection and copying. We disagree.

We review summary judgment decisions de novo. Int'l Marine Underwriters v. ABCD Marine, LLC, 179 Wn.2d 274, 281, 313 P.3d 395 (2013). "Summary judgment is proper only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Int'l Marine Underwriters, 179 Wn.2d at 281. On review, we consider the material in the light most favorable to the nonmoving party, and the motion may be granted only if reasonable people could reach but one conclusion. Hash by Hash v. Children's Ortho. Hosp. & Med. Ctr., 110 Wn.2d 912, 915-16, 757 P.2d 507 (1988).

No. 80894-0-1/4

Under the PRA, agencies “shall make available for public inspection and copying all public records, unless the record falls within a specific exemption.” RCW 42.56.070. Attorney-client communications are privileged communications that are exempt from PRA disclosure. RCW 5.60.060(2)(a). The PRA’s disclosure provisions are liberally construed and its exemptions are narrowly construed. Progressive Animal Welfare Soc. v. Univ. of Washington, 125 Wn.2d 243, 251, 884 P.2d 592 (1994).

Zellmer contends that because the DAJD provided him with an exemption log, rather than redacted versions of all the e-mails, he was denied his opportunity for inspection and copying under the PRA. He relies on a series of cases that state that the agencies must withhold only the exempted portions of certain documents and disclose the rest. See Animal Welfare Soc., 125 Wn.2d at 255; Seattle Firefighters Union Local No. 27 v. Hollister, 48 Wn. App. 129, 132, 737 P.2d 1302 (1987) (personal information may be deleted from records so that they can be released under the PRA); Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 433, 327 P.3d 600 (2013) (“an agency must produce otherwise exempt records insofar as redaction renders any and all exemptions inapplicable.”).

While Zellmer is correct that the PRA has been interpreted to require that the portion of records not covered by an exemption must be disclosed to the requester, he ignores that the entirety of the e-mails identified by DAJD, absent the subject line, were covered by an exemption to the PRA here. There were no nonexempt portions of the e-mails that the DAJD withheld from disclosure.

In Block v. City of Gold Bar, 189 Wn. App. 262, 280, 355 P.3d 266 (2015), the City withheld 66 pages of documents and disclosed them in an exemption log. The log

specified the date, author, recipient, and subject matter of each document claimed to be exempt. The log also cites authority for its claimed exemptions—the attorney-client privilege and work product doctrines. Block, 189 Wn. App. at 280. This court held that the exemption log was sufficient and rejected the appellant’s argument that the City was required to provide redacted copies of the withheld records in their entirety to satisfy the PRA. Block, 189 Wn. App. at 281.

Zellmer’s argument that the DAJD was required to provide a redacted version of each e-mail is almost identical to the argument rejected in Block. The e-mails Zellmer requested are attorney-client communication and exempt from PRA disclosure. RCW 5.60.060(2)(a). DAJD’s exemption log identified each e-mail, and included the date of the e-mail, the sender and recipient, the subject line of the e-mail, and the applicable attorney-client communication exemption. The information that was provided to Zellmer in the exemption log is the same information that would have been provided to Zellmer had DAJD individually redacted each of the responsive records. The only difference is the format in which it was provided.

Affirmed.

Mann, C.J.

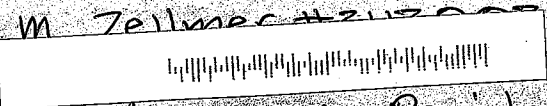
WE CONCUR:

[Signature]

Andrus, A.C.J.

Joel M Zellmer #215000

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