State's high court rules on Jefferson County public records case

Belenski to file for reconsideration

By Nicholas Johnson
The Port Townsend Leader
Sep 14, 2016

A Poulsbo man plans to ask the state Supreme Court to reconsider its Sept. 1 ruling in his Public Records Act (PRA) case against Jefferson County.

Otherwise, Mike Belenski, 59, formerly of Jefferson County, declined to comment. Belenski, who in May stood before the state's high court to argue his case, has until Sept. 20 to file for reconsideration.

If the court takes it up, Michele Earl-Hubbard of the Allied Law Group won't be far behind, joining Belenski as a friend of the court to argue on behalf of individual newspapers around the state as well as the Coalition for Open Government, Allied Daily Newspapers of Washington and the Washington Newspaper Publishers Association, of which the Port Townsend & Jefferson County Leader is a member.

Belenski is best known for his prolific history of requesting public records, suing elected and public officials, and getting under the skin of the county's civil deputy prosecutor, David Alvarez.

Alvarez, who left Jefferson County in July to join the Clallam County Prosecutor's Office, appeared in court in May, but let Olympia-based attorney Jeffrey Myers of Law, Lyman, Daniel, Kamerrer & Bogdanovich argue on behalf of the county.

BACKGROUND

In September 2010, Belenski requested Internet access logs – or metadata about the websites county employees visit while on the job – from the prior eight months. Days later, the county responded saying there were “no responsive records.”

In August 2012, Belenski discovered through another records request that the logs did exist, but an Information Services employee had decided not to disclose them due to concern over Belenski's ability to understand the metadata.

In November 2012, nearly 26 months after making his 2010 request, Belenski sued the county in Clallam County Superior Court. The county won on summary judgement, arguing it did not provide the logs because it decided they were not public records.

On appeal, the logs were found to be public records, but the court still dismissed Belenski's claim because not only had the PRA's one-year statute of limitations to bring a lawsuit expired, but so too had a generic two-year statute usually applied when no other is provided. Belenski had waited too long to sue, the appeals court ruled.

LATEST DECISION

In a 7-2 vote, the state Supreme Court ruled that the appellate court incorrectly applied the generic two-year statute of limitations rather than the one-year statute provided in the PRA.

That's what Belenski and Earl-Hubbard had argued for in May, but they also argued that the county's “no responsive records” response did not trigger the statute of limitations. A requester must sue within one year of an agency's claim of exemption or last production of a record on a partial or installment basis, according to the PRA.

Invoking the doctrine of equitable tolling, Belenski argued that he could not have been expected to sue within one year because he did not know the county had lied in its initial response until nearly two years later, after which he sued promptly.

In its Sept. 1 decision, the court remanded to Clallam County Superior Court the question of whether the county's response triggered the statute and whether Belenski's claim should be barred as untimely.

In its majority opinion, the court said Belenski should have sued within a year whether he knew the county was lying or not, but it also said such a precedent “could incentivize agencies to intentionally withhold information and then avoid liability due to the expiration of the statute of limitations.”

The court acknowledged such an incentive “could be contrary to the broad disclosure mandates of the PRA and may be fundamentally unfair in certain circumstances.”

REACTION

The court's decision “drove a sword through the heart” of the PRA, Earl-Hubbard wrote on Facebook the day it was published.

“The rule the seven [justices] fashioned applies to everyone, in all circumstances, including all those where it will be 'fundamentally unfair,' which would be most of them,” Earl-Hubbard wrote to the Leader in an email. “The public is the loser in this one. Agencies will know they can get away with being less diligent, less thorough, rushing to close a request, and there is now far less chance anyone will sue in time if something is not produced.”

Myers, who has represented the county in this case, said the court's decision is consistent with the Legislature's intent in crafting the PRA and benefits the public interest.

“It forces everyone to be diligent and cooperative in responding to Public Records Requests,” Myers told the Leader. “I think agencies will be forthright. A person can always make another records request and agencies know that.”

The decision clarifies when a requester must file suit, Myers said

“People can't delay bringing their claims to the court,” he said. “I think there is public benefit to that. It minimizes the time period that people can seek financial penalties.”

Court costs and penalties aside, Myers said the financial burden on agencies of filling PRA requests is too great, citing the state Auditor's August 2016 report on the effect of PRA requests on state and local government agencies. Some 39 percent of agencies responded, with the greatest participation from counties, which responded at a rate of 82 percent.

That report found that the responding agencies spent more than $60 million – mostly on staff time – to fill more than 285,000 requests last year. That averages to $210.50 per request. They also spent more than $10 million on litigation, the report found.

Earl-Hubbard said those court costs could increase if requesters take the court's advice and sue any time they suspect an agency is lying and withholding information.

“A lot of requestors will be forced in to court on the suspicion records are being withheld,” she said. “Lawsuits that would not need to be brought will be forced into court because of the majority’s decision in this case.”

Justices Charles Johnson and Debra Stephens dissented, saying Belenski was denied the two rights the PRA guarantees all state citizens – the right to inspect public records and the right to receive an adequate response.

“The majority rewrites the statute, placing the burden on a public records requester to somehow know when the government's response is false and bring suit to prove it – a fact a requester can rarely establish.”