

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF FEDERAL WAY, a Washington municipal corporation,)	
)	No. 82288-3
)	
Respondent,)	En Banc
)	
v.)	
)	
DAVID KOENIG, a Washington State resident,)	
)	
)	
Appellant.)	Filed October 15, 2009
)	

Owens, J. -- Washington’s Public Records Act (PRA), chapter 42.56 RCW, gives the public access to the public records of state and local agencies, with the laudable goals of governmental transparency and accountability. This case requires us to consider the extent to which the PRA applies to the judiciary and judicial records. We previously considered this issue in *Nast v. Michels*, 107 Wn.2d 300, 730 P.2d 54 (1986), where we held that the PRA does not apply to court case files because the judiciary is not included in the PRA’s definition of “agency.” *Id.* at 305-06. We conclude that *Nast* continues to stand for the principle that the PRA does not apply to

the judiciary and that the appellant has not demonstrated a compelling reason to overturn *Nast*. Under the doctrine of stare decisis, we will overturn precedent only if it is incorrect and harmful and appellant has failed to demonstrate either. Thus, this court affirms the trial court and holds that the PRA does not apply to the judiciary.

FACTS

In February 2008, David Koenig requested all public records related to the resignation of Federal Way Municipal Court Judge Colleen Hartl, including all correspondence to and from presiding Federal Way Municipal Court Judge Michael Morgan. In response, the city of Federal Way (City) provided 183 pages of documents but it refused to provide correspondence to and from Judge Morgan, asserting that the court was not subject to the PRA under *Nast*. Koenig persisted in his requests, arguing that *Nast* was wrongly decided and did not apply in this case. In June 2008, the City filed for an injunction affirming that the municipal court was not subject to the PRA. Koenig filed a cross-motion for summary judgment, asking the trial court to find that the PRA did apply to the municipal court and that the City had violated the PRA by not releasing the requested documents.

In August 2008, Koenig made an additional public records request for a number of records, including documents related to job-related exemptions from jury duty and the appointment of pro tempore judges. Again, the City provided a number of

responsive documents but withheld those documents it classified as court documents and therefore not subject to the PRA. In September 2008, the trial court granted the City's motion and held that the municipal court is not subject to the PRA under *Nast*. Koenig appealed that decision directly to this court.

STANDARD OF REVIEW

We review issues of statutory meaning de novo. *State v. Schultz*, 146 Wn.2d 540, 544, 48 P.3d 301 (2002). We also review challenges to agency actions under the PRA de novo. *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 731, 174 P.3d 60 (2007). The PRA must be "liberally construed and its exemptions narrowly construed" to ensure that the public's interest is protected. RCW 42.56.030; *Livingston v. Cedeno*, 164 Wn.2d 46, 50, 186 P.3d 1055 (2008).

ANALYSIS

The PRA "is a strongly-worded mandate for open government" that provides the public with access to public records. *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 527, 199 P.3d 393 (2009); RCW 42.56.070. In *Nast*, this court held that the PRA did not apply to court case files. 107 Wn.2d at 305-06. In light of *Nast*, we must now determine whether the PRA applies to the requested judicial records in this case. We first examine the scope of the holding in *Nast* and then consider Koenig's argument that we should overrule *Nast* entirely.

I. Does *Nast* Apply to the Requested Judicial Records

In *Nast*, an attorney challenged a new King County court rule that required one-day notice to access court case files, alleging it violated the PRA.¹ 107 Wn.2d at 301-02. This court held that the PRA did not apply to the case files, giving three reasons: (1) the common law already provided a common law right of access to the files, (2) the PRA did not provide for exceptions to public disclosure requirements developed in the common law, and (3) the PRA did not specifically include courts or court case files. *Id.* at 307. Two subsequent Court of Appeals decisions have interpreted *Nast* to hold that the judiciary and judicial records are not subject to the PRA. *Spokane & E. Lawyer v. Tompkins*, 136 Wn. App. 616, 621-22, 150 P.3d 158 (upholding denial of public records request for correspondence from county judges to the bar association regarding local lawyers), *review denied*, 162 Wn.2d 1004 (2007); *Beuhler v. Small*, 115 Wn. App. 914, 918, 64 P.3d 78 (2003) (upholding denial of public records request for a computer file containing a judge's notes on prior sentences he had imposed).

Koenig argues that the *Nast* holding should be limited to court case files accessible through the common law, but this interpretation has no basis in the *Nast* opinion. In *Nast*, this court looked to the language in the PRA to determine whether

¹ *Nast* interpreted the public disclosure act (PDA), former chapter 42.17 RCW, which was later recodified as the current PRA. The definitions at issue are identical. For the sake of consistency, references to the PDA have been changed to the PRA.

the court case files were considered “public records.” 107 Wn.2d at 304-05. The PRA defines a “[p]ublic record” as a “writing containing information relating to the conduct of government . . . [that is] prepared, owned, used, or retained by any state or local agency.” RCW 42.56.010(2). “State agency” is defined as a “state office, department, division, bureau, board, commission, or other state agency.” RCW 42.56.010(1). “Local agency” is defined as a “county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.” *Id.*

The records in *Nast* and the records at issue here clearly meet the first part of the PRA’s definition of public records—both sets of records are writings that contain information relating to the conduct of government. The only question is whether the entity that created the records (here, the judiciary) is a “state or local agency.” The *Nast* court resolved this question, holding that the PRA definitions do not include “either courts or case files.” 107 Wn.2d at 306. Because the records met the other elements of the PRA’s definition of public records, *Nast* necessarily held that the judiciary is not a “state or local agency.” We find it unreasonable to now twist this holding to sometimes include the courts in the definition of agency. Either the entity maintaining a record is an agency under the PRA or it is not. Under *Nast*, the courts

are not included in the definition of agency, and thus, the PRA does not apply to the judiciary. As a result, the court records requested by Koenig are not subject to disclosure under the PRA.

II. The *Nast* Decision

Koenig contends that this court should reconsider *Nast* entirely because its analysis was erroneous and because a recent amendment to the PRA has incorporated common law exceptions to public disclosure requirements. The principle of stare decisis “requires a clear showing that an established rule is incorrect and harmful before it is abandoned.” *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970)). This respect for precedent “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991).

Koenig argues that the *Nast* analysis erred because it failed to liberally construe the terms “agency” and “public records.” First, this argument was considered by the court in *Nast*, as evidenced by Justice Durham’s dissent on this very issue. *Nast*, 107 Wn.2d at 311-12 (Durham, J., dissenting). Making the same arguments that the original court thoroughly considered and decided does not constitute a showing of

“incorrect and harmful.” *Brutsche v. City of Kent*, 164 Wn.2d 664, 682, 193 P.3d 110 (2008). Second, the *Nast* court considered the full definition of agency and found that the judiciary was not included. *Nast*, 107 Wn.2d at 305. Indeed, the PRA definition of agency does not include any language referring to courts or the judiciary. The *Nast* court reasonably concluded that the legislature did not intend to include the judiciary, basing its ruling on a “reading of the entire public records section of the [PRA].” *Id.* at 306. Koenig has failed to demonstrate that this holding was incorrect and harmful. Without such a showing, we will not overturn precedent.

Koenig also points out that the third basis for *Nast* (that the PRA did not include the statutory exemptions honed under the common law right of access to court files) no longer applies because the PRA now incorporates such statutory exemptions. *See* RCW 42.56.070(1). While Koenig is correct that the third basis for *Nast* no longer applies, the broader holding remains. As noted above, the fundamental basis for *Nast*—that the PRA’s definition of agency does not include the judiciary—is sufficient to support *Nast*’s holding. The fact that the third basis no longer applies is not enough to overturn *Nast*.

More notably, the legislature has declined to modify the PRA’s definitions of agency and public records in the 23 years since the *Nast* decision. This court presumes that the legislature is aware of judicial interpretations of its enactments and

takes its failure to amend a statute following a judicial decision interpreting that statute to indicate legislative acquiescence in that decision. *Soproni v. Polygon Apartment Partners*, 137 Wn.2d 319, 327 n.3, 971 P.2d 500 (1999). By not modifying the PRA's definition of agency to include the judiciary, the legislature has implicitly assented to our holding in *Nast* that the PRA does not apply to the judiciary and judicial records.²

This court has already ruled on the issue of whether the judiciary is subject to the PRA, and Koenig has not demonstrated that the established rule is incorrect and harmful. Therefore, we affirm the trial court's holding that the PRA does not require the City to release the requested judicial records because the PRA does not apply to the judiciary.³

CONCLUSION

This court previously held that the PRA does not apply to the judiciary and the legislature acquiesced to that decision by not modifying the PRA. We see no reason to violate the doctrine of stare decisis here. The trial court correctly held that the PRA does not require the City to release the judicial records requested by Koenig, and we affirm.

² We make no comment as to whether such a modification would implicate the separation of powers.

³ The PRA requires any agency withholding a public record to identify the specific exemption authorizing the withholding and how it relates to the record—essentially a log of withheld documents. RCW 42.56.210(3). Because the withheld documents are not public records under the PRA, they are not subject to the log requirement.

AUTHOR:

Justice Susan Owens

WE CONCUR:

Justice Charles W. Johnson

Justice Mary E. Fairhurst

Justice James M. Johnson

Joel M. Penoyar, Justice Pro Tem.

Justice Tom Chambers
