

COA NO 38731-0-II

NO. 81434-1

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington Department of Licensing, Respondent

v.

Virginia Carrera-Amaro and Fernando R. Santana on behalf of all similarly situated
persons, Appellants

APPELLANTS' BRIEF

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I. Introduction

This lawsuit was brought to answer the basic question:

“When must the Department of Licensing furnish a requested abstract?”

The parties posit two answers to this question. Virginia and Fernando believe RCW 46.29.050 (1) and (2) provide the answer explicitly. “The department **shall upon request furnish** any person ... [an abstract]” (emphasis added). While it appears the department’s position is: The department may some indeterminate time in the future, perhaps never, furnish a requested abstract.

After being involved in an automobile collision with an apparent uninsured motorist, Virginia Carrera-Amaro and Fernando Santana requested a financial responsibility abstract and any records the DOL may have evidencing the uninsureds’ ability to pay for the damages. The Department has a duty to furnish the requested records upon request. It failed to furnish the records.

Virginia Carrera-Amaro and her husband Fernando Santana seek to hold the Department accountable for its failure to furnish the requested financial responsibility abstract and the requested records identified by the Financial Responsibility Act as “information of record in the department pertaining to evidence of the ability of the driver and owner to respond to damages.” RCW 46.20.050 (2). The Department argued that this request was not for an identifiable record.

Virginia and Fernando believe the Public Records Act, chapter 42.56 RCW, is the tool for holding the Department of Licensing accountable for not furnishing the requested records. The Department disagrees.

II. Assignment of Errors

No. 1 The trial court erred in finding that Virginia Carrera-Amaro and Fernando Santana's "request for an abstract was not a request for a public record in existence when requested, therefore the Public Records Act does not apply.

No. 2 The trial court erred in finding that Virginia Carrera-Amaro and Fernando Santana's "request for an abstract was not made pursuant to the Public Records Act.

No. 3 The trial court erred in denying Virginia Carrera-Amaro and Fernando Santana's Motion for Partial Summary Judgment.

No. 4 The trial court erred in granting the Department of Licensing Motion for Summary Judgment.

III. Issues

Whether the Public Records Act, RCW 42.56 applies to the Department of Licensing's admitted failure to furnish upon request 1) a Financial Responsibility Abstract and 2) all information of record in the department pertaining to evidence of the ability of the driver and owner to respond to damages as required by the Financial Responsibility Act (RCW 46.29.050).

IV. Statement of Case

A. The Department of Licensing Never Furnished Virginia Carrera-Amaro and Fernando Santana with the Public Records Requested.

Thanksgiving weekend 2005, Virginia Carrera-Amaro was injured by an uninsured motorist while driving her husband's minivan. EX 1. In an effort to discover if the motorist or owner of the vehicle were insured, Virginia and Fernando sent the Department of Licensing a letter on March 1, 2006, requesting the Department of Licensing provide them with two things: 1) a financial responsibility abstract and 2) all information of record in the department pertaining to evidence of the ability of the driver and owner to respond to damages. EX 2. Virginia and Fernando paid the department the required fee for the records. The department received the request and processed the check for the fee on March 6, 2006. Virginia and Fernando never received the requested abstract, never received any information of record in the department. Nearly two years later, after initiating this lawsuit, attached to the declaration of DOL employee Mike Martin, Virginia and Fernando received some information of record in the department pertaining to evidence of the ability of the driver and owner to respond to their damages. The Department has not yet furnished the requested abstract.

B. The Department of Licensing has a Duty to Furnish the Requested Records under the Financial Responsibility Act, RCW 46.29.050.

The Financial Responsibility Act, RCW 46.29, gives people injured in an auto collision by the uninsured a non-judicial process to recover damages. Part of the process involves requesting from the Department of Licensing records of proof of insurance for the alleged uninsured the department may maintain. Should a person wish to afford

themselves of this non-judicial remedy, they need to know within a short amount of time whether the person that hit them had insurance or the ability to pay for the damages caused. Currently, the Department of Licensing has a backlog of 1½ years in processing police collision reports in which the requested abstracts are partly based. They hope to reduce this backlog to 180 days or six months by 2010. EX 4 page 3.

C. The Department's Backlog in Processing Collision Records as Required is Due to Failed Office Automation.

In the mid to late 1990's, the Department of Licensing implemented a process of electronically transferring all collision information from paper into electronic format. EX 4 page 1. In anticipation of the cost savings and efficiencies that going paperless would create, the DOL reduced its staffing. Unfortunately, the computer technology could not read the handwritten entries on the police collision reports. With the lack of staffing, the backlog grew to three years. "During the time of development and implementation of the electronic transfer system DOL developed a backlog of approximately 61,000 collision reports yet to be processed." EX 4 page 1-2.

D. Virginia and Fernando filed this lawsuit to hold the Department of Licensing Accountable for its Failure to Furnish the Requested Records.

On May 29, 2007, nearly a year and three months after first receiving the request for records, the department sent Virginia and Fernando a notice of suspension for the responsible party. EX 3. The notice of suspension did not include a financial responsibility abstract or any information of record in the department pertaining to the

evidence of the ability of the driver and owner to respond to damages or notify Virginia and Fernando of when the department would furnish the requested records.

On December 4, 2007, Virginia Carrera-Amaro and Fernando R. Santana on behalf of themselves and all similarly situated persons filed suit against the State of Washington Department of Licensing alleging the Department violated the Public Records Act, RCW 42.56 by 1) not responding within five days of first receiving the request for records; and 2) never furnishing the requested public records as required by the Financial Responsibility Act, RCW 46.29.

Judge Chris Wickham of Thurston County Superior Court heard oral arguments on cross motions for Summary Judgment on March 7, 2008 and entered an order granting summary judgment to the Department of Licensing and denying Virginia and Fernando's summary judgment on the issues related to the Public Records Act.

The Department admits the abstract if ever created would be a public record, subject to disclosure under the Public Records Act. The records the Department uses in creating an abstract are public records. However, the Department has yet to have created the financial responsibility abstract it is required to furnish upon request, and it seeks to avoid punitive damages under the Public Records Act by never creating the abstract. The Department has offered no excuse for its failure to timely disclose the underlying records on which it creates the financial responsibility abstract.

V. Standard of Review and Burden of Proof

A. Public Records Act Requests are Reviewed De Novo by Appellate Courts.

RCW 42.56.550(3) provides judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. While agencies have some discretion in establishing procedures for making public information available, the provision for de novo review confirms that courts owe no deference to agency interpretations of the Public Records Act (PRA), but are charged with determining when a duty to disclose exists and whether a statutory exemption applies. *See Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 130, 580 P.2d 246 (1978). When a record request is subject to the Public Records Act, the burden of proof is on the agency to establish the applicability of a specific exemption. *Id.*

B. DOL Cannot Meet Its Burden of Proving Compliance with the Public Records Act.

The Public Records Act "is a strongly worded mandate for broad disclosure of public records". *PAWS v. UW*, 125 Wn.2d 243, 251, 884 P.2d 592, (1994), citing *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). The Act's disclosure provisions must be liberally construed, and its exemptions narrowly construed. RCW 42.17.010 (11); RCW 42.56.030; RCW 42.17.920. "The Legislature takes the trouble to repeat three times that exemptions under the [PRA] should be construed narrowly...The Legislature leaves no room for doubt about its intent." *PAWS v. UW*, 125 Wn.2d at 260 (*PAWS II*). Courts are to take into account the Act's policy "that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others". RCW 42.56.550 (3).

The Department of Licensing bears the burden of proving that refusing to disclose "is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records". RCW 42.56.550 (1) and (2). The DOL has not met its burden. DOL does not claim a statute exempts or prohibits the disclosure of the requested information. In fact, the Department has an affirmative duty to disclose "certified abstracts of driving records" and "abstracts of all information of record in the department pertaining to the evidence of the ability of any driver or owner of any motor vehicle to respond in damages." RCW 46.29.050 (1) and (2) respectively. The DOL has a duty to provide "the fullest assistance to inquirers and the most timely possible action on requests for information". RCW 42.56.100.

VI. Summary of Argument

Full and timely access by the public to financial responsibility abstracts and the records on which the abstracts are based assures our citizens that the Department of Licensing is efficiently administered. The requested abstracts and records are urgently needed because the collision information they contain becomes stale. Also the DOL has a duty to furnish requested abstracts under the Financial Responsibility Act and Public Records Act. The proper administering of Financial Responsibility Act requires the DOL to create and use a number of public records in a short amount of time of receiving an auto collision report.

The Department failed to respond to Virginia's and Fernando's request within 5 days as required the Public Records Act and instead first responded almost a year and three months after the request was made. A request for records under the Public Records

Act requires no magic words or special incantations. The Department's response must either provide the requested records, give an estimate of the amount of time to provide the records or deny the request explaining the denial. The Department's late response did none of these.

The Department's penalty for failing to timely produce requested public records should be one hundred dollars per day per request.

VII. Argument

A. **Full and Timely Access by the Public to Financial Responsibility Abstracts and the Records on which the Abstracts are Based Assures Our Citizens that the Department of Licensing is Efficiently Administered.**

The Public Records Act declares in RCW 42.17.010(11):

"That, mindful of the right of individuals to privacy and of the desirability of the **efficient administration of government**, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society."

One of the basic functions of the Department of Licensing is to process collision reports as required and furnish upon request financial responsibility abstracts and records the Department maintains pursuant to the Financial Responsibility Act RCW 46.29. A necessary precondition to the sound governance of our free society and the efficient administration of the Financial Responsibility Act requires as much.

The Public Records Act's purpose is "to keep public officials and institutions accountable to the people." *Daines v. Spokane County*, 111 Wn.App. 342, 347, 44 P.3d 909 (2002). For "no matter how strong a mandate or how clear a directive may be, it amounts to nothing more than words on paper unless it is vigorously enforced by an

independent judiciary.” *Yousoufian v. Office of King County Executive*, 155 Wn.2d 421, 443, 98 P.3d 463 (2004) (Dissent of Justice Sanders).

Without tools such as the Public Records Act, government of the people, by the people, for the people, risks becoming government of the people, by the bureaucrats, for the special interests. In the famous words of James Madison, "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both." *Daines*, 111 Wn.App. at 347, citing Letter to W.T. Barry, Aug. 4, 1822, 9 *The Writings of James Madison* 103 (Gaillard Hunt ed., 1910).

The Financial Responsibility Act’s mandate that “The department **shall upon request furnish** any person ... [an abstract]” amounts to nothing more than words on paper without the Public Records Act penalties. See RCW 46.29.050 (1) and (2).

B. The requested records are urgently needed because the information they contain becomes stale.

The requested records are time sensitive, as the decision to seek a non-judicial remedy must occur before the three year Statute of Limitation has run on the underlying auto collisions.

The department admits it “continu[es] to have unacceptable levels of backlog and resulting delays in providing critical services to Washington citizens.” EX 4 page 3. The uninsured in Washington cause approximately eighty million dollars annually in property damage, medical expenses and lost wages. With the current backlog, the department was only able to assist in recovering five million dollars for Washington citizens from 2001 through 2003. EX 4 page 2.

An authoritative decision will provide future guidance to the Department of Licensing on their duties under the Public Records Act and Financial Responsibility Act and guidance on the public's rights of access to records maintained by the DOL. "With the current backlog, the damaged/injured party is receiving a request from DOL for the amount of damages so far beyond the date of the collision that they have long since sold the vehicle involved and often forgotten the details of the collision. Many collision reports are nearing three years from the collision date which prevents DOL from taking any suspension action against the uninsured. Unless DOL takes action, the only option available for the driver property owner is to file civil suit within three years of the date of the accident and try to recover their loss through the judicial system." EX 4 page 2

Each additional day before an ultimate determination is another day the department fails to provide critical services to Washington citizens and another day the department may have to pay \$5 to \$100 dollars to each person denied access to the requested public records. The issues present a continuing public question which has occurred in the past, is occurring now and will again reoccur in the future.

C. DOL has a duty to furnish requested abstracts under the Financial Responsibility Act and Public Records Act.

The Financial Responsibility Act affirmatively requires the Department to furnish abstracts of driving records and evidence of ability to respond to damages. Both RCW 46.29.050 (1) and (2) begin with the same language: "The department **shall upon request furnish** any person ...[an abstract]." (emphasis added) The abstract and the records it is based on are public records within the meaning of the Public Records Act. A

“Public record” includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” RCW 42.56.010 (2). Under the definition, the electronic data that the Department of Licensing maintains and uses as part of its failed office automation are “public records” even if the Department no longer maintains the paper records.

1. The proper administering of Financial Responsibility Act requires the DOL to create and use a number of public records in a short amount of time of receiving an auto collision report.

“The department, not less than twenty days after receipt of a report of an accident ... shall determine the amount of security.” RCW 46.29.070 (1)¹. This determination is in writing, as the department is required to send out written notice to at-fault drivers and vehicle owners. RCW 46.29.070 (3) The written notice requires the at-fault drivers and vehicle owners to within 20 to 40 days deposit the security amount with the department or show cause why they are exempt from depositing the security amount. RCW 46.29.070 (3). Any information sent to the Department in reply to the DOL’s written notice would be public records of the type requested by Virginia and Fernando. The DOL’s requirement to timely determine the security amount is independent of whether the Department ever receives a request to furnish that information.

¹ RCW 46.29.070 is not artfully written, apparently requiring the Department of Licensing to do nothing and sit on their collective hands for at least the first twenty days and allowing the Department to wait till the End of Days before determining the amount of security. In order to prevent such an absurd result, courts in interpreting similar “not less than so many days” language have uniformly corrected such obvious errors holding 28U.S.C. § 1454(c) application for appeal must be made “not less than 7 days after entry of the order” means “not more than 7 days.” *Bush v. Cheaptickets, Inc.*, 425 F.3d 683, 685 (9th Cir. 2005); *Pritchett v. Office Depot Inc.*, 420 F.3d 1090, 1093 n.2 (10th Cir. 2005); *Morgan v. Gay*, 466 F.3d 276 (3rd Cir. 2006). “The Department interprets RCW 46.29.070 (1) to mean it must wait twenty days after receiving and accident report to determine the amount of security.” Declaration of Mike Martin paragraph 21. Under any reading of the statute twenty days is permissible and Appellants calculated their remedy based on twenty days.

The Department received the Ms. Carrera-Amaro collision report on December 28, 2005. Between February 28, 2006 and March 18, 2006, the Department was required under RCW 46.29.070 to have determined whether the responsible driver and vehicle owner were able to respond to Ms. Carrera-Amaro's and Mr. Santana's damages. As part of this determination the Department would have prepared, used, owned or retained writings responsive to the Ms. Carrera-Amaro's request which the Department received March 6, 2006. Not until May 29, 2007 did the Department respond to Ms. Carrera-Amaro's request in anyway.

The Department violated the Financial Responsibility Act when it chose to not even process collision reports for a year and three months to three years after receiving the collision reports. Even if an agency is required to release information under another statute or rule, the request for information is still subject to the Public Records Act. See *O'Conner v. DSHS*, 143 Wn.2d 895, 25 P.3d 426 (2001) holding "that public records from a public agency available to litigants against the agency by discovery under the Civil Rules are not exempt from the Public Records Act [because t]he Civil Rules do not conflict with the Public Records Act. The Court of Appeals pointed out in *Smith v. Okanogan County*, 100 Wn.App. 7, 13-14, 994 P.2d 857 (Div. III 2000):

No Washington case has decided whether a duty to create an **otherwise** non-existent document exists under RCW [42.56]. But there is federal law on the issue. The Washington public disclosure act closely parallels the federal Freedom of Information Act, 5 U.S.C. § 552 (1970 and Supp. V 1975), and judicial interpretations of that Act are therefore particularly helpful in construing our own. (emphasis added)

“The [Freedom of Information] Act does not compel agencies to write opinions **in cases which they would not otherwise be required to do so**. It only requires disclosure of certain documents which **the law requires the agency to prepare** or which the agency has decided for its own reasons to create.” *National Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-162, 95 S.Ct. 1504, 44 L.Ed.2d 29 (1975). The DOL is required to furnish abstracts under RCW 46.29, and that duty to furnish the abstracts is subject to the Public Records Act. Since the law requires the agency to prepare the abstracts, those abstracts are subject to the Public Records Act. See *NLRB v. Sears*, 421 U.S. at 161-162 (1975).

2. **The Department failed to respond to Virginia’s and Fernando’s Request within 5 days as required the Public Records Act and instead first responded almost a year and three months after the request was made.**

The Financial Responsibility Act is clear, “The department **shall upon request furnish** any person ...[an abstract].” (emphasis added) RCW 46.29.050 (1) and (2). This is consistent with the Public Records Act’s mandate “Responses to requests for public records shall be made promptly by agencies.” RCW 42.56.520.

Under the Public Records Act, the Department must respond within 5 days by either providing the requested records, giving an estimate of the time to provide the records or giving reasons for denying the request. RCW 42.56.520. The Department first responded to Ms. Carerra-Amaro’s March 1, 2006 request on May 29, 2007, nearly a year and three months after receiving the request. By that time, any evidence on the uninsureds’ ability to respond to Virginia’s and Fernando’s damages the Department of Licensing had was stale and of little use to them.

According the Department of Licensing 2007-09 Decision Package (Exhibit 4, middle of page 2):

With the current backlog, the damaged/injured party is receiving a request from DOL for the amount of damages so far beyond the date of collision that they have long since sold the vehicle involved and often forgotten the details of the collision. Many collision reports are nearing three years from the collision date, which prevents DOL from taking any suspension action against the uninsured. Unless DOL takes action, the only option available for the driver/property owner is to file a civil suit within three years of the date of the accident and try to recover their loss through the judicial system.

Ms. Carrera-Amaro and Mr. Santana did exactly that and went to the effort to obtain a judgment for and collect on that judgment through the judicial system before the Department of Licensing even responded to their request for evidence of the responsible driver's ability to pay for damages. The Department's response violated RCW 42.56.520 because the response was not prompt. Additionally the Department's May 29, 2007 response does not include any of the requested "information of record pertaining to evidence of the ability of any driver or owner of any motor vehicle to respond to damages" as required by RCW 46.29.050. Even though Virginia and Fernando requested both the abstracts and any information of record pertaining to evidence of the ability of the driver and owner to respond to damages, they never received the requested records.

D. A Request for Records Under the Public Records Act Requires No Magic Words or Special Incantations.

There is no requirement that magic words be used when requesting public records pursuant to the Public Records Act (PRA). "Mindful of the [PRA]'s broad mandate favoring disclosure, we will not require a requester to specifically cite the act. We fear

such a requirement may raise a hypertechnical barrier behind which agencies can justify denial of otherwise legitimate requests for public records.” *Wood v. Lowe*, 102 Wn.App. 872, 878, 10 P.3d 494 (2000)². See also WAC 44-14-04002(1).

If the Department was unclear as to what information in their record is being requested, the Department has an affirmative duty to provide the requester the “fullest assistance” in locating the records. RCW 42.56.100.³ However, it is highly unlikely the Department is unfamiliar or ignorant of the Financial Responsibility Act since the Director of the DOL is charged with its proper administration. RCW 46.29.030.

Judge Chris Wickham was unclear as to whether the request for “information of record in the department pertaining to evidence of the ability of the driver and owner to respond to damages” was a request for identifiable records. Judge Wickham cited *Wood v. Lowe*, 102 Wn.App. 872, 878, 10 P.3d 494 (2000) and *Bonamy v. City of Seattle*, 92 Wn.App. 403, 409, 960 P.2d 447 (1998), *review denied*, 137 Wn.2d 1012, 978 P.2d 1099 (1999) in granting the DOL summary judgment and denying Virginia and Fernando summary judgment. Judge Chris Wickham stated,

Although the plaintiff in the *Lowe* case asked for her personnel file, it’s the other request that she made that I think is dispositive here.

² The department cites to *Hangartner v. City of Seattle*, 151 Wn.2d 439, 447, 90 P.3d 26 (2004) to support a contention that the PDA requires a hypertechnical barrier. Defendant’s reliance on *Hangartner* is misplaced. The entire quote from *Hangartner* is: “While there is no official format for a valid PDA request, a party seeking documents must, at a minimum, provide notice that the request is made pursuant to the PDA and identify the documents with reasonable clarity to allow the agency to locate them. *Wood v. Lowe*, 102 Wn. App. 872, 878, 10 P.3d 494 (2000). The PDA requires agencies to produce only “identifiable public records.” RCW 42.17.270. If a request is too vague, an agency can request a clarification. RCW 42.17.320. Here, it cannot be said that the request was vague. Rather, the issue is whether the request was overbroad.” Ms. Carrera-Amaro’s request was neither vague nor overbroad.

³ See also *Violante v. King County Fire District No. 20*, 114 Wn.App 565, 571, 59 P.3d 109 (2002), (Holding when an agency had a 2000-2002 budget covering two years, the agency should have produced the latest budget (2000-2002) in response to a request for the agency’s “2001 budget” despite the fact that technically it did not have a record titled “2001 budget.”)

She asked for a full copy of her personnel file and, “any other information or documentation that you may have in your custody or under your control that relates to Ms. Wood et cetera.”

The Court of Appeals in this case said, “Ms. Wood’s request for information is not a request for an identifiable public record.” So at the time this request was made, there was no identifiable public record.

It’s true, as plaintiff’s counsel alleges, the Department has a statutory responsibility to respond to such a request not in providing the document but in creating the document, and it’s really that responsibility that plaintiff is complaining about here.

So, I think it’s clear that the Public Records Act doesn’t apply. Verbatim Record of Proceedings for March 7, 2008, p. 21-22.

Virginia and Fernando did not request that the Department **create** an abstract and “information of record in the department pertaining to evidence of the ability of the driver and owner to respond to damages,” but rather the Department **provide** 1) “abstract pursuant to RCW 46.29.050 (2)” and 2) requested “all information of record in the department pertaining to the evidence of ability of the driver and owner ... to respond to damages.” The “information of record” language is verbatim from RCW 46.29.050 (2).

In interpreting the FOIA, courts have held that such requests are for identifiable records. “If an agency has previously identified a class or category of documents in the normal course of business, it must produce them in response to a request phrased in those terms or categories. *Zanger v. Chinlund*, 430 NYS.2d 1002, 106 Misc.2d 86 (NY Sup. 1980); *see also National Cable Television Ass’n, Inc. v. FCC*, 479 F.2d 183, 156 U.S. App. DC 91 (DC 1973). Virginia and Fernando termed their request using the identical language contained in the Financial Responsibility Act.

E. The Department's Response Must either Provide the Requested Records, Give an Estimate of the Amount of Time to Provide the Records or Deny the Request explaining the Denial

Having established that the PRA applies to the abstracts requested under the Financial Responsibility Act, the Department must respond within 5 days to a request for the abstract. RCW 42.56.520.

Within five business days of receiving a public record request, an agency ... must respond by either (1) providing the record; (2) 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; or (3) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. RCW 42.56.520.

The Department's May 29, 2007 letter to plaintiff's (Exhibit 3) does not respond by either providing the record or denying the public record request. At best this is an acknowledgment that the Department received Ms. Carrera-Amaro's request, providing an estimate of when the Department will respond. The problem is the estimate is for July 28, 2007, nearly a year and six months after the request for the abstract was made.

The Department is entitled to additional time to respond to a request for an abstract to locate and assemble the information and notify third persons affected by the request as provided by RCW 42.56.520. The amount of time necessary and required by the Financial Responsibility Act is 40 to 80 days. See RCW 46.29.070. Up to an

additional 180 days from when the Department first received the collision report are allowable if the Department does not have enough information to determine to amount of security required pursuant to RCW 46.29.070 (2). Any more time and the Department violates the PRA. RCW 42.56.550 (2). The Department did not request additional time to gather the requested documents within 5 days of receiving the request. Ms. Carrera-Amaro and Mr. Santana never received the requested abstracts or records.

F. Penalty for Failure to Timely Produce Requested Public Records

In addition to a mandatory award of plaintiffs' attorney fees and costs, the Court has discretion to award the plaintiff "an amount not less than five dollars and not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record." RCW 42.56.550 (4). The statutory award is in the nature of a penalty rather than damages. See *Yacobellis v. City of Bellingham (Yacobellis II)*, 64 Wn.App. 295, 825 P.2d 324 (1992). The Public Records Act and case law provide some guidance to the Court in arriving at the per diem penalty.

The penalty should at a minimum serve the purpose of the Public Records Act "to keep public officials and institutions accountable to the people." *Daines v. Spokane County*, 111 Wn.App. 342, 347, 44 P.3d 909 (2002). For "no matter how strong a mandate or how clear a directive may be, it amounts to nothing more than words on paper unless it is vigorously enforced by an independent judiciary." *Yousoufian v. Office of King County Executive*, 155 Wn.2d 421, 443 (2004) (Dissent of Justice Sanders). "As such, the default penalty from which the trial court should use its discretion is the half-way point of the legislatively established range: \$52.50 per day." *Id.*, 446

“Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.” RCW 42.56.550(3). The penalty should be adjusted high enough as to cause actual inconvenience or embarrassment to the Department of Licensing.

The stated purpose of the Public Records Act is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions. RCW [42.56.030]. Without tools such as the Public Records Act, government of the people, by the people, for the people, risks becoming government of the people, by the bureaucrats, for the special interests. In the famous words of James Madison, "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both." *Daines*, 111 Wn.App. at 347, citing Letter to W.T. Barry, Aug. 4, 1822, 9 The Writings of James Madison 103 (Gaillard Hunt ed., 1910).

PRA's purpose to promote access to public records is served by increasing the default penalty based on an agency's culpability and bad faith. *Yousoufian*, 155 Wn.2d at 437. “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.” RCW 42.56.030. Pursuant to RCW 42.56.550 (4) plaintiffs respectfully request an award of \$100 per day the department failed to furnish the requested abstracts.

VIII. Conclusion

For the foregoing reasons, Virginia Carrera-Amaro and Fernando Santana request the Court grant the following relief:

1. For a finding that the Department of Licensing violated the Public Records Act by failing to allow inspection or copying of the requested public records or class of records requested pursuant to RCW 42.56.550 (1);
2. For a finding that the Department of Licensing violated the Public Records Act by not responding to the request within five days its receipt;
3. For a finding that the Department of Licensing violated the Public Records Act by not furnishing upon request a Financial Responsibility Abstract and all information of record in the department pertaining to evidence of the ability of the driver and owner to respond to damages as required by the Financial Responsibility Act, RCW 46.29.050;
4. For injunctive and declarative relief requiring the Department of Licensing to provide current driving and financial responsibility abstracts as defined by RCW 46.29 within a reasonable amount of time not more than five days from receiving said request or providing a reasonable estimate of time to send the requested records no more than eighty days of receiving the related police collision report.
5. For return of the fees paid by appellants for the requested records not timely provided plus interest.
6. For one hundred dollars per day for each person who was denied the right to a copy of the requested records;

7. For remand to the trial court to determine issues related to class certification and calculation of damages.
8. For attorney fees and costs pursuant to statute, court rule and equity; and
9. For such and further relief as the court deems just and equitable.

Dated: September 22, 2008

Respectfully submitted,

//s//

Russell M. Odell, WSBA #31287
Attorney for Appellants

**FILED AS
ATTACHMENT TO EMAIL**

EXHIBIT 1



STATE OF WASHINGTON
POLICE TRAFFIC
COLLISION REPORT



1591971

REPORT NO. 2063507

CASE # DD05T-26045T

LOCAL AGENCY BOXING

TOTAL # OF UNITS 03 OBJECT STRUCK

INTERSTATE CITY STREET

STATE ROUTE OTHER

COUNTY RD PRIVATE WAY

FIRE RESULTED

STOLEN VEHICLE

HIT & RUN

DATE OF COLLISION 11-28-2005 TIME (2400) 1709 COUNTY # 31 MILES

N E IN S W OF 0420

ON (PRIMARY TRAFFIC WAY) INTERSECTION NON-INTERSECTION

EVERGREEN WAY BLOCK NO. 8600

MILE POST

DISTANCE 03 MILES N E OF (REFERENCE OR CROSS STREET) CASINO

FEET S W

UNIT 01 MOTOR VEHICLE TRAILER DAMAGE THRESHOLD MET PHONE 425-290-1782

LAST NAME FABIAH

FIRST NAME ANGELICA MIDDLE INITIAL M

STREET (NO. & LETTERS) 12221 AIRPORT RD-305

CITY EVERETT ST WA ZIP 98204

DRIVERS LICENSE # [REDACTED] STATE WA SEX F DOB 08-19-1971

ON DUTY STATUS AIRBAG 9 RESTA 9 EJECT 1 HELMET USE INJURY CLASS 1 NATURE OF INJURIES

LICENSE PLATE # 879KH6 STATE WA VIN 1B3ES47C6WD560518

TRAILER PLATE # STATE TRAILER PLATE # STATE

VEH. YEAR 1998 MAKE DOODGE MODEL NEON STYLE 40 TOWED BY

REGISTERED OWNER INFO LAPINI JOSE 12221 AIRPORT RD #D-305, EVERETT WA 98204

LIABILITY INSURANCE IN EFFECT INSURANCE CO & POLICY #

VEHICLE LEGALLY TITLED CITATION # 5H 0072741 CHARGE No Insurance/NOVUL/Unit to View

UNIT 02 MOTOR VEHICLE TRAILER DAMAGE THRESHOLD MET PHONE 425-353-6099

LAST NAME CARRERA AMARO

FIRST NAME VIRGINIA MIDDLE INITIAL

STREET (NO. & LETTERS) 9900 12TH AVE W #M-104

CITY EVERETT ST WA ZIP 98204

DRIVERS LICENSE # CARREVA*193K1 STATE WA SEX F DOB 05-21-1981

ON DUTY STATUS AIRBAG 9 RESTA 9 EJECT 1 HELMET USE INJURY CLASS 7 NATURE OF INJURIES 11/24 + 11/25

LICENSE PLATE # 7Z5MJM STATE WA VIN 2C4GP44381R22691B

TRAILER PLATE # STATE TRAILER PLATE # STATE

VEH. YEAR 2001 MAKE Ply MODEL TOW SW STYLE Mini Van TOWED BY

REGISTERED OWNER INFO SANTANA VERNAHO 2 W. CASINO RD # 1193, EVERETT WA 98205

LIABILITY INSURANCE IN EFFECT INSURANCE CO & POLICY #

VEHICLE LEGALLY TITLED CITATION # 5H 0072742 CHARGE NOVUL/No Insurance

OFFICER'S NAME (PRINT) SALEBORAL BADGE OR ID # 236 AGENCY EVERETT P.D.

1 23 27
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6 04 29
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STATE OF WASHINGTON
POLICE TRAFFIC
COLLISION REPORT



1591972

CORRECTION

REPORT NO.

2063507
2013344

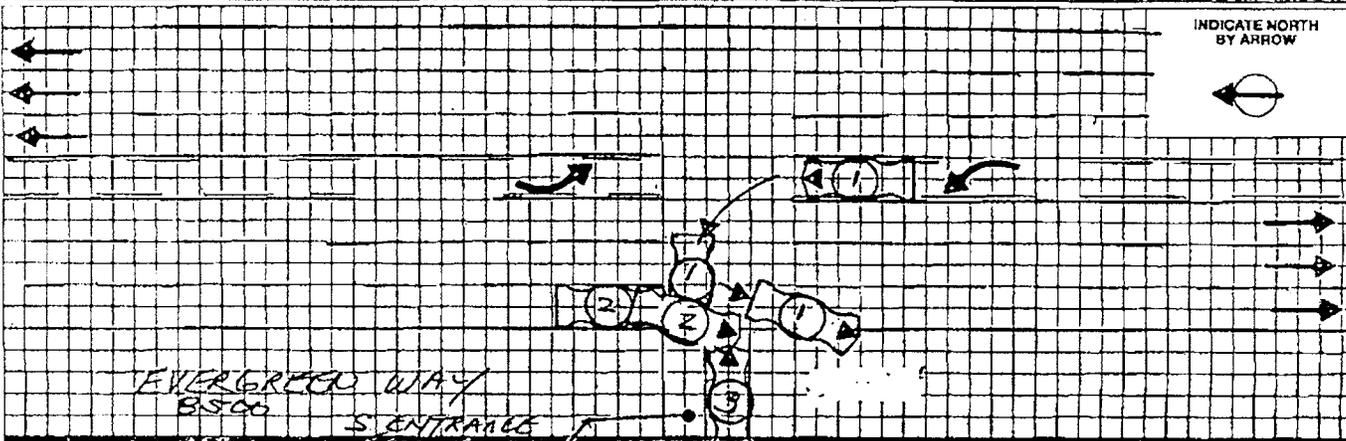
CASE #

DD05-26045

ADDITIONAL PERSONS INVOLVED (PASSENGERS AND/OR WITNESSES ONLY)

NAME (LAST, FIRST, MIDDLE INITIAL)	ADDRESS & PHONE #	SEX	DOB	PASSENGER <input type="checkbox"/>	WITNESS <input type="checkbox"/>	UNIT <input type="checkbox"/>	SEAT POS	AIRBAG	RESTRA	ELBET	HELMET USE	GLASS	NATURE OF INJURIES
NAME (LAST, FIRST, MIDDLE INITIAL)	ADDRESS & PHONE #	SEX	DOB	PASSENGER <input type="checkbox"/>	WITNESS <input type="checkbox"/>	UNIT <input type="checkbox"/>	SEAT POS	AIRBAG	RESTRA	ELBET	HELMET USE	GLASS	NATURE OF INJURIES
NAME (LAST, FIRST, MIDDLE INITIAL)	ADDRESS & PHONE #	SEX	DOB	PASSENGER <input type="checkbox"/>	WITNESS <input type="checkbox"/>	UNIT <input type="checkbox"/>	SEAT POS	AIRBAG	RESTRA	ELBET	HELMET USE	GLASS	NATURE OF INJURIES
NAME (LAST, FIRST, MIDDLE INITIAL)	ADDRESS & PHONE #	SEX	DOB	PASSENGER <input type="checkbox"/>	WITNESS <input type="checkbox"/>	UNIT <input type="checkbox"/>	SEAT POS	AIRBAG	RESTRA	ELBET	HELMET USE	GLASS	NATURE OF INJURIES

DIAGRAM



NARRATIVE

VEH * MAKE LEFT TURN FROM N/B EVERGREEN WAY INTO SOUTHERN ENTRANCE TO FRED MEYER, 8530 EVERGREEN WAY - VEH * 2 S/B EVERGREEN WAY IN LANE #1. VEH * 1 FAILED TO YIELD RIGHT OF WAY TO S/B VEHICLE * 2. VEH * 2 COLLIDED WITH VEH * 1. VEH * 2 THEN VEERED RIGHT AND COLLIDED WITH VEH * 3 WHO WAS STOPPED WAITING FOR TRAFFIC SIGNAL. VEH * 1 WAS SPUN AND STOPPED ON THE SIDEWALK

I CERTIFY (DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT. (RCW 9A.72.085)

INVESTIGATING OFFICER'S SIGNATURE 134 UNIT OR DIST. DET 11-28-05 DATED EVERETT WA PLACE SIGNED

APPROVED BY M. Garcia 240 DATE 12-03-05

RANGE OF P.O. 236 CH. D. WA0310300 TIME TO BE DISPATCHED 1709 TIME TO BE ARRIVED 1709



STATE OF WASHINGTON
POLICE TRAFFIC
COLLISION REPORT



1591972

CORRECTION

REPORT NO.

2063507

2013347

CASE # DD05-26045

ADDITIONAL PERSONS INVOLVED (PASSENGERS AND/OR WITNESSES ONLY)

NAME: GAUDALOPE, MARIA

ADDRESS & PHONE # SAME AS DRIVER #1 SEX: F DOB: 09-23-1949

PASSENGER WITNESS INFO SEAT POS: 01 AHEAD: 03 SEAT: 4 SEAT USE: 1 INJURY CLASS: 6 NATURE OF INJURIES:

NAME: FABIAN, ROSA

ADDRESS & PHONE # SAA SEX: F DOB: 03-09-1996

PASSENGER WITNESS INFO SEAT POS: 01 AHEAD: 06 SEAT: 4 SEAT USE: 1 INJURY CLASS: 1 NATURE OF INJURIES:

NAME: FABIAN, DIANA

ADDRESS & PHONE # SAA SEX: F DOB: 12-10-2002

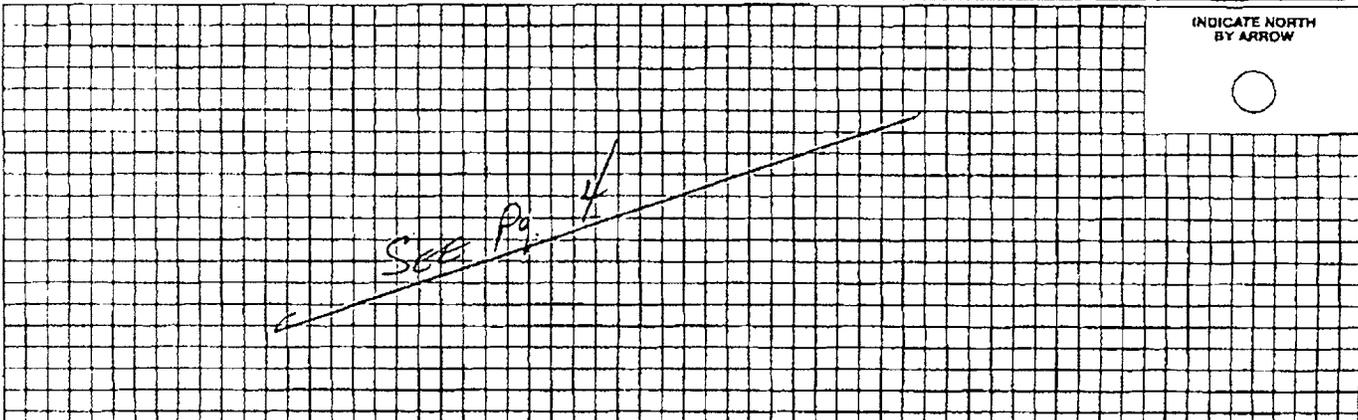
PASSENGER WITNESS INFO SEAT POS: 01 AHEAD: 04 SEAT: 4 SEAT USE: 1 INJURY CLASS: 1 NATURE OF INJURIES:

NAME:

ADDRESS & PHONE #

PASSENGER WITNESS INFO SEAT POS: AHEAD: SEAT: SEAT USE: INJURY CLASS: NATURE OF INJURIES:

DIAGRAM



NARRATIVE

Blank lines for narrative text.

I CERTIFY (DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT. (RCW 9A.72.085)

INVESTIGATING OFFICER'S SIGNATURE: *[Signature]* UNIT OR DIST. DET: 134 DATED: 11-28-05 PLACE SIGNED: EVERETT WA

APPROVED BY: M. GARCIA 240 DATE: 12-03-05

STATE OF WA 236 OR: WA0310300 WRECK OF LICENSE: 1709 POLY. NO. GRABBER: 1709



SUPPLEMENTAL
POLICE TRAFFIC
COLLISION REPORT



CORRECTION REPORT NO. 2063507

CASE # DD05-26045

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2 **COMMERCIAL MOTOR CARRIER** ANY VEHICLE TOWED? INTERSTATE INTRASTATE

2 **UNIT #** **LESDOT** **REG ID** **VEHICLE TYPE** **CARGO BODY W/E**

3 **CARRIER NAME**

3 **CARRIER ADDRESS**

4 **CITY** **ST** **ZIP**

4 **NAME** **OR** **UWA** **PLACED** **+** **NAME IF NO NUMBER**

5 **ADDITIONAL UNITS**

5 **UNIT #** 03 **MOTOR VEHICLE** **PEDESTRIAN** **PROPERTY OWNER** **DAMAGE THRESHOLD MET** **PHONE** 425-355-0163

6 **LAST NAME** DLSEN

6 **FIRST NAME** DEAN **MIDDLE INITIAL** C

7 **STREET ADDRESS** 604 TAMARACK

7 **CITY** EVERETT **ST** WA **ZIP** 98203

8 **DRIVER'S LICENSE** **STATE** WA **SEX** M **DOB** 11-29-1942

8 **ON DUTY** **STATUS** **AIRBAG** 2 **RESTR.** 4 **EJECT** 1 **HELMET USE** **INJURY GLASS** 1 **NATURE OF INJURIES**

9 **LICENSE PLATE** 397SYT **STATE** WA **VIN** 1J4G2Z8525CS23104

10 **TRAILER PLATE** **STATE** **TRAILER PLATE** **STATE**

11 **VEH. YEAR** 1995 **MAKE** Jeep **MODEL** SPCH **STYLE** SUV **TOWED BY**

12 **REGISTERED OWNER INFO** DLSEN, DEAN 604 TAMARACK, EVERETT WA 98201

12 **LIABILITY INSURANCE IN EFFECT** **INSURANCE CO & POLICY #** Mutual of Everwa * 7941013615

13 **VEHICLE LICENSED** **YES** **NO** **CITATION #** **CHARGE**

14 **UNIT #** **MOTOR VEHICLE** **PEDESTRIAN** **PROPERTY OWNER** **DAMAGE THRESHOLD MET** **PHONE**

15 **LAST NAME**

16 **FIRST NAME** **MIDDLE INITIAL**

17 **STREET ADDRESS**

18 **CITY** **ST** **ZIP**

19 **DRIVER'S LICENSE** **STATE** **SEX** **DOB**

19 **ON DUTY** **STATUS** **AIRBAG** **RESTR.** **EJECT** **HELMET USE** **INJURY GLASS** **NATURE OF INJURIES**

20 **LICENSE PLATE** **STATE** **VIN**

21 **TRAILER PLATE** **STATE** **TRAILER PLATE** **STATE**

22 **VEH. YEAR** **MAKE** **MODEL** **STYLE** **TOWED BY**

23 **REGISTERED OWNER INFO**

23 **LIABILITY INSURANCE IN EFFECT** **INSURANCE CO & POLICY #**

24 **VEHICLE LICENSED** **YES** **NO** **CITATION #** **CHARGE**

I CERTIFY (DECLARED UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT. (RCW 9A.72.085)

23 **INVESTIGATING OFFICER'S SIGNATURE** 134 **UNIT OR DIST DET** **DATED:** 11-28-05 **PLACE SIGNED** EVERETT WA

25 **BADGE OR ID** 236 **ORI** WA0310300 **APPROVED BY** M GARCIA **DATE** 12-3-05 **PAGE** 04 **OF** 04

View Indexing Information

Indexing Information

Accident Date:	11/28/2005	Incident Folder ID:	200511282063507
PIC:	FABIAAM293NR	Form Type:	OFFR
Name:	FABIAN ANGELICA M	Officer Report #:	2063507
Date of Birth:	8/19/1971	Court Cause #:	
FR Case #:			
Received Date:	12/28/2005		

Close

EXHIBIT 2

Russell M. Odell, Attorney at Law
251 153rd Place Southeast
Bellevue, WA 98007
(425) 653-3693

2013344

March 1, 2006

Department of Licensing
Financial Responsibility Division
P.O. Box 9030
Olympia, WA 98507

Our Client: Virginia Carrera
— Accident Date: 11-28-2005
— Uninsured Driver: Angelica Fabian WA License # FABIAAM293NR
Uninsured Vehicle WA Plate #: 879KMG VIN# 1B3ES47C6WD560518
Registered Owner of Uninsured Vehicle: Jose F. Fabian

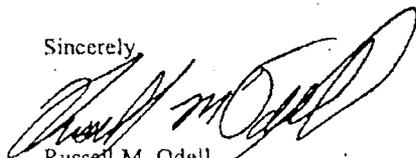
Pursuant to RCW 46.29.050 (2) counsel for client named above requests all information of record in the department pertaining to the evidence of ability of the driver and owner listed above to respond to damages. Based on attached Collision Report the driver or owner was uninsured and responsible for the damage to our client as a direct and proximate result of the accident.

An estimate of damage to our client's person and property is outlined below:

Estimate of costs to repair the vehicle	\$ 8,753.71
Cost of towing	\$ 260.00
Medical Expenses to date	\$ 238.00
General Damages to date	\$ 714.00
Estimated legal costs to date	<u>\$ 3,986.29</u>
TOTAL	\$13,952.00

Please determine amount of security required if any pursuant to RCW 46.29.070 and provide counsel with abstract pursuant to RCW 46.29.050 (2).

Sincerely,


Russell M. Odell
Attorney at Law
WSBA # 31287

RECEIVED
MAR 06 2006
ACCIDENT PROCESSING
UNIT

Enclosures: Collision Report
\$5.00 Fee

EXHIBIT 3



STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9030 • Olympia, Washington 98507-9030

May 29, 2007

jmr

RUSSELL M. ODELL
ATTORNEY AT LAW
251 153RD PL SE
BELLEVUE, WA 98007

AP

Collision Date: November 28, 2005
Client Name: Virginia Carrera
Claim Number:
Other Party: Angelica Fabian
Report Number: 2013344W
Our Case No: 0511-28-0037

This is in response to your request for information regarding the above referenced collision.

- An order of suspension for the above referenced case has been issued. The suspension will take effect if compliance with the financial responsibility law has not been received by July 28, 2007.

If you have other questions, contact our Customer Service Unit at (360) 902-3900; write to Accident Processing, PO Box 9030, Olympia, WA 98507-9030; or visit our website at www.dol.wa.gov.

Accident Processing Unit
Driver Responsibility Division

EXHIBIT 4

**State of Washington
Decision Package**

**240 Department of Licensing
ML-DE Suspension Backlog
2007-09**

Agency Recommendation Summary Text:

Four temporary FTEs are requested to eliminate a backlog of approximately 61,000 collision reports: (Highway Safety Fund)

Agency Total

Fiscal Detail

Operating Expenditures	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
106 Highway Safety Fund	\$266,000	\$227,000	\$493,000
Total Cost	\$266,000	\$227,000	\$493,000

Staffing

	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
FTEs	4.4	4.3	4.4

Revenue Detail

<u>Fund</u> <u>Source</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>Total</u>
Total Revenue	\$0	\$0	\$0

Package Description:

Background

The Department of Licensing receives approximately 140,000 vehicle collision reports each year. Of these, approximately 30 percent involve an uninsured motorist. These reports may be received up to 180 days after a collision. Under the financial responsibility statute (RCW 46.29.070) the department is required to establish an estimated dollar amount (security) sufficient to satisfy any judgement/s for damages resulting from the accident and recoverable from each driver or owner. In order to determine the amount of security required, the department must contact the damaged/injured driver/property owner and request the amount of loss they suffered. They are allowed 30 days to submit that information. The uninsured driver/owner is then given a minimum of 20 days (60 maximum) to deposit that amount of security or their driving privilege is suspended. Uninsured motorists are required by law to deposit security with DOL if there is a reasonable possibility of a judgment resulting from the accident. If the uninsured motorist fails to deposit security, or make payment for damages, DOL is required to suspend the person's driving privileges.

Current Status

The process of electronically transferring collision information from the Department of Transportation to the department to automatically update the driver record has been implemented. However, throughout implementation, the existing suspension action continued to be a labor-intensive and time-consuming process. During the time of development and implementation of the electronic transfer system, DOL developed a backlog of approximately

**State of Washington
Decision Package**

61,000 collision reports yet to be processed. The backlog, in addition to approximately 140,000 new collision reports each year, has overwhelmed current staffing levels.

Proposed Solution

The department reviewed the time it takes a staff person to process a collision report. This review showed that it requires 31 minutes to process each report. Assuming 31 minutes processing time per report, and approximately 42,000 collision reports that require processing per year, the department needs 14.75 of the current FTEs just to maintain the current workload. Several new operational processes have been implemented to reduce the time required to process a collision report resulting in measurable improvement. Despite these changes, a backlog of nearly 1.5 years' collision reports requires additional resources focused on its elimination. Supplementing the current staff with 4.0 temporary FTEs focused on the backlog for a three-year period will allow the staff to eliminate the backlog while maintaining the current workload.

Narrative Justification and Impact Statement

Long term measure: *Strengthen fiscal effectiveness*

The uninsured can have their license suspended by DOL for three years from the date of collision unless they sign an agreement or otherwise make restitution with the injured party. Actions taken by DOL for collisions which occurred in 2001, 2002, and 2003 resulted in Washington citizens recovering over \$5 million dollars.

With the current backlog, the damaged/injured party is receiving a request from DOL for the amount of damages so far beyond the date of collision that they have long since sold the vehicle involved and often forgotten the details of the collision. Many collision reports are nearing three years from the collision date, which prevents DOL from taking any suspension action against the uninsured. Unless DOL takes action, the only option available for the driver/property owner is to file a civil suit within three years of the date of the accident and try to recover their loss through the judicial system.

Performance Measure Detail

Activity:

Activity, POG or State Result(s)

This proposal supports the Driver Responsibility activity.

	<u>FY 2008</u>	<u>FY 2009</u>	<u>Incremental Changes</u>		<u>FY 2012</u>	<u>FY 2013</u>
			<u>FY 2010</u>	<u>FY 2011</u>		
Outcome Measures						
Output Measures						
Backlogged collision reports	20,333	20,333	20,333			
Efficiency Measures						

Reason for change:

The current workload contains a backlog of 1.5 years and exceeds our capacity to accomplish the total workload requirement. Consequently, we require four (4.0) additional FTEs for a period of three years to eliminate the backlog, process newly received collision reports, and prevent development of additional backlogs.

**State of Washington
Decision Package**

Impact on clients and services:

The stakeholders affected by this problem are: the driving public, insurance companies, business and property owners, attorneys, and courts. Failing to address this issue potentially results in:

- Increased costs to financially responsible drivers and insurance companies.
- Increased number of civil court judgments filed.

Impact on other state programs:

None

Relationship to capital budget:

None

Required changes to existing RCW, WAC, contract, or plan:

None

Alternatives explored by agency:

None

Budget impacts in future biennia:

The requested level of resources will be required through Fiscal Year 2010.

Distinction between one-time and ongoing costs:

Expenditures related to equipping new staff, including workstations, computers and phones would be one time. Expenditures related to staffing, including salaries, benefits, etc, would continue through 2010.

Effects of non-funding:

Non-funding of this package will result in the department continuing to have unacceptable levels of backlog and resulting delays in providing critical services to Washington citizens. DOL can only help a driver retrieve restitution for damages within three years of the collision date. After that period, the driver's only option is to file a civil suit through the judicial system.

Revenue Calculations and Assumptions:

None

Expenditure Calculations and Assumptions:

Approximately 31 minutes processing time per collision report and approximately 42,000 collision reports (140,000 X 30 percent) per year that need action, requires 14.75 FTEs just to keep current. Despite implementation of several new processes to reduce the time required per collision report, a backlog of nearly 61,000 reports (1.5 years) exists. It would require an additional 10.7 FTEs for a biennium to eliminate the backlog. However, the addition of 4.0 temporary FTEs can significantly reduce the overall processing time to about 18 minutes per collision report. (61,000 X 18 minutes each divided by 88,290 minutes per year is equal to about 12.5 FTEs divided by three years is 4.1 FTEs) With this staffing level the department expects to eliminate the backlogged collision reports within three years.

4.0 Office Assistant 3 positions at Range/Step 31/K for three years.

PROOF OF SERVICE

I, Russell M. Odell, certify that I caused a copy of the Appellants' Brief and Exhibits in Department of Licensing v. Carrera-Amaro No. 81434-1 to be served on all parties or their counsel of record by U.S. Mail postage prepaid on September 22, 2008 pursuant to RAP 5.4(b). I certify that I caused a copy of the Appellants' Brief and Exhibits to be filed via emailed to Supreme@courts.wa.gov Cc: JodyC@atg.wa.gov and also served via U.S. Mail postage prepaid a copy of the same to the address below on September 22, 2008.

Jody Lee Campbell, Assistant Attorney General
and Jerald Anderson, Sr. Assistant Attorney General
P.O. Box 40110
Olympia, WA 98504-0110

DATED this 22nd day of September 2008.

RUSSELL M. ODELL, ATTORNEY AT LAW

By: //s// _____
Russell M. Odell, WSBA No. 31287
Counsel for Appellants'

**FILED AS
ATTACHMENT TO EMAIL**

CLERK
2008 SEP 22 A 10:11
CLERK OF COURT
SUPERIOR COURT OF WASHINGTON
OLYMPIA, WA