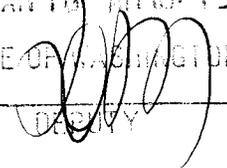


COURT OF APPEALS
DIVISION II

NO. 41249-7-II

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STATE OF WASHINGTON

BY  DEPUTY

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

SHAWN D. GREENHALGH,
Appellant,

V.

OFFICE OF THE ATTORNEY GENERAL,
Respondent.

APPELLANT'S BRIEF

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ORIGINAL

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ASSIGNMENTS OF ERROR

A. The trial court erred in its orders dated August 20, 2010 and September 10, 2010, finding at summary judgment that the investigative search for public records requested under Washington's Public Records Act by Shawn Greenhalgh was a reasonable search as a matter of law.

B. The trial court erred in finding that the Office of the Attorney General was not required to provide the requestor Greenhalgh with the metadata associated with the public records requested by him.

C. The trial court erred in finding that the copying fees charged the requestor Greenhalgh were not excessive fees under Washington's Public Records Act.

D. The Appellant is entitled to reasonable attorney fees at trial and on appeal as a prevailing party in his Public Records Act lawsuit.

ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

A. Did the trial court err in its orders dated August 20, 2010 and September 10, 2010, finding at summary judgment that the investigative search for public records requested under Washington's Public Records Act by Shawn Greenhalgh was a reasonable search as a matter of law?

B. Did the trial court err in finding that the Office of the Attorney General was not required to provide the requestor Greenhalgh with the metadata associated with the public records requested by him?

C. Did the trial court err in finding that the copying fees charged the requestor Greenhalgh were not excessive fees under Washington's Public Records Act?

D. Is the Appellant entitled to reasonable attorney fees at trial and on appeal as a prevailing party in his Public Records Act lawsuit?

STATEMENT OF THE CASE

The case is a Public Records Act (PRA) case, governed by Chapter 42.56 RCW. It was commenced by Mr. Greenhalgh, pro se, as an incarcerated inmate in the custody of the Washington State Department of Corrections. The primary issue on appeal addresses the question of whether the defendant Office of the Attorney General established at summary judgment that it had conducted a reasonable search of its own records for that Office's records of settlements with Public Records Act claims made by prison inmates. There was no issue of the vagueness of the request. The Office simply claimed that it could not find its records created and utilized by that Office in prisoner Public Records Act cases.

On August 20, 2010, the Honorable Thomas McPhee, Judge of the Thurston County Superior Court, granted the Office of the Attorney General's motion for summary judgment. CP. 246-247. Mr. Greenhalgh filed a motion for reconsideration of the order granting summary judgment. CP. 248-256. The Office of the Attorney General responded

and submitted additional evidence, a “Second Declaration of K.P. Bodnar” providing more description of the manner in which that Office searched and found, the records requested by Mr. Greenhalgh. CP 257-272. Mr. Greenhalgh objected to the use of new evidence after summary judgment had already been granted. CP 275-277. On September 10, 2010, the trial court overruled the objection and incorporated the new evidence into an order denying the motion for reconsideration of the summary judgment order. CP. 273-274.

Shawn Greenhalgh was an inmate at a Washington correctional facility institution. CP. 208-210. He was a tier representative for inmates at the Washington State Reformatory. (CP. 208). On December 6, 2007, he made a public records request, pursuant to Chapter 42.56 RCW, in efforts to learn the extent of involvement of the Office of the Attorney General in proposals to change, and reduce, the existing sweep of the Public Records Act. (CP. 54, 208)

Mr. Greenhalgh suspected that the Attorney General’s Office was aggressively seeking to curtail access of prisoners to public records through the Act. His suspicions were heightened by an email which was provided to Mr. Greenhalgh in which John Scott Blonien, an Assistant Attorney General, solicited from his Office staff anecdotal evidence of what that staff considered burdensome records requests made by inmates. CP 180. Mr.

Blonien's request was made to a coterie of individuals whose email addresses were not contained in that documents provided to Mr. Greenhalgh. CP 180.

The focus of Mr. Greenhalgh's complaint of non-compliance with the Act's requirements was three-fold: he claimed that the Office did not honor his request for the first page of that Office's records documenting Public Records Act settlements with inmates; he claimed that he was billed by the Office of the Attorney General for electronic reproduction of the records at a figure exceeding the statutorily required "actual cost" of copying and transmission of public records; and he submitted also that the records provided him were not wholly duplicative of the original relevant electronic product generated by the Office of the Attorney General. On June 5, 2008, he had requested the materials in their "original format" rather than a scanned format of a paper copy which, to him, include metadata, a word then unknown to him and a word of fairly recent origin and lingering controversy. CP. 70, 183.

After Mr. Greenhalgh filed this lawsuit, the Office of the Attorney General located those records, records of its own creation, which Mr. Lord had previously reported as being non-existent. A copy of the elusive form appears in the Office's summary judgment materials. CP. 94.

Mr. Greenhalgh's attempts to secure public records relating to anticipated curtailment of Public Records Act provision began on December 6, 2007, when he made a written request of the Office of the Attorney General for public records pertaining to that Office's involvement in attempts to revise Public Records Act legislation. CP 54, 165. Later, he narrowed his request to records surrounding that Office's handling of claims and litigation involving inmate efforts to utilize the Act's provisions. CP 57, 168.

On January 14, 2008, Mr. Greenhalgh sent a letter to the Office of the Attorney General asking for copies of each and every Washington State Attorney General's Office "Certificate and Public Records Act claims/litigation" involving Washington's Department of Corrections and inmate petitioners, the same generated between the dates January 1, 2005 and January 2008. CP. 88, 181. On January 25, 2008, Jerome Lord, a Public Records officer for the Office of the Attorney General, indicated that there were no such documents and that the request was considered closed. CP. 182. He eventually received copies of what he had requested on March 13, 2009. CP 52.

He was informed by Mr. Lord by letter dated January 17, 2008 that a "first batch" of responsive records should be ready for mailing by January 28, 2008. CP. 58. On January 23, 2008, Mr. Lord stated the cost for the

records of \$0.10 per page for photocopying 181 pages, \$4.60 for postage, totaling \$22.70 and that he was requiring prepayment.

On February 26, 2008, Mr. Greenhalgh asked to receive the emails in an electronic format, on a CDR. CP. 65. He was informed on March 3, 2008, that the prepayment cost would be \$ 27.90, including a \$ \$12.50 “set up” fee. CP. 66.

On June 5, 2008, Mr. Greenhalgh’s letter asked for 132 pages of email in their original format rather than scanned onto a CDR. CP 70. On July 15, 2008, Mr. Lord indicated to Mr. Greenhalgh that because the emails were provided to Mr. Lord in hardcopy format only, he could only provide an electronically scanned CDR. Prepayment of \$ 22.80 was required. CP. 189.

On August 13, 2008, Mr. Greenhalgh asked Mr. Lord if the original emails had been destroyed. CP. 96. On September 12, 2008, Mr. Lord replied that the emails could be provided in hardcopy format, or scanned. He did not mention whether or not the original format of the emails had been destroyed. CP. 78. Thereafter, Mr. Greenhalgh sent a letter dated September 27, 2008, challenging the copying costs. CP. 79.

Offered in defendant’s motion for summary judgment were the declarations of Jerome Lord and his supervisor, K.P. Bodnar. CP 44-52; 103-112. They described their records search as a search of the Office’s

“electronic mail vault” and the its Case Management System. CP 51, 52;109-112. They stated that after another inmate made requests similar to Mr. Greenhalgh’s, and when that inmate provided a sample of what he was requesting, the records, including a record relating to Mr. Greenhalgh, were provided to that other inmate.CP. 51, 52, 110. They did not at that time send copies to Mr. Greenhalgh

The elusive records turned out to be forms created by and utilized by the Office of Attorney General; and they were readily retrieved and sent to that other inmate from that Office’s Department of Corrections division, the unit assigned to management of prisoner claims. CP 269-272.

Mr. Greenhalgh had designated his answer filed pro se as part of his request for the Clerk’s Papers. It appears that the answer was not made a part of those papers. Mr. Greenhalgh is making efforts to supplement that record to provide the Answer originally requested as part of his designation.

ARGUMENT

A. Standard of review for the motion for summary judgment.

The standard of review of a summary judgment is de novo review. Morris v. McNicol, 83 Wn.2d 491,519 P.2d 7 (1974). RCW 42.56.550 (3); Spokane Research and Defense Fund v. City of Spokane, 155 Wn.2d 89, 97, 117 P.3d 1117 (2005). In this case, that review is to a degree

complicated by the fact that after summary judgment was entered, and in the course of the hearing on Mr. Greenhalgh's motion for reconsideration, the trial court considered new evidence. CP 273-274. The range of material subject to review in this case would be either the original evidence produced at summary judgment, or the aggregate of evidence attending the order denying reconsideration of the summary judgment.

In the summary judgment context, the movant bears the burden of establishing the absence of a genuine dispute regarding any material fact. Folsom v. Burger King, 135 Wn. 2d 658, 958 P. 2d 301(1998).

In assessing a motion for summary judgment the Court must view the facts in a light most favorable to the non-moving party, in this instance, Mr. Greenhalgh.. Homeowners Association v. Tydings, 72 Wn. App. 139, 864 P.2d 392 (1993). All reasonable inferences from the evidence must be drawn in favor of the non-moving party. Tabak v. State, 73 Wn.App. 691, 870 P.2d 1014 (1994). A summary judgment of dismissal of this lawsuit is sustainable only if there are no genuine issues of material fact.

Homeowners, *supra* at 154. The party resisting summary judgment must present some evidence, even inconsistent evidence, which will support the existence of a material issue of fact. Yuan v. Chow, 92 Wn. App. 137, 960 P.2d 1003 (1998); Barnes v. McLennod, 128 Wn.2d 563, 810 P.2d 469 (1996).

The burden lies with the moving party to show the absence of material facts as to the various claims. Safeco Insurance v. Butler, 118 Wn.2d 383, 823 P.2d 499 (1992); Nicholson v. Deal, 52 Wn.App 814, 764 P.2d 1007 (1988). Where issues of fact are presented, a court may not decide a factual issue unless reasonable minds can reach only one conclusion from the evidence presented. Hooper v. Yakima County, 79 Wn. App. 770, 904 P.2d 1183 (1995).

A movant for summary judgment may not raise new issues in rebuttal. White v. Kent Medical Center, Inc. P.S., 61 Wn.App 163, 810 P.2d (1991).

Washington courts have established that inmates, for Public Records Act purposes, are members of the public, and are entitled to the same access to the public records as are other members of the public. Livingston v. Cedeno, 164 Wn.2d 57, 186 P.3d 1055 (2008). Additionally, Washington courts, and the Act itself, counsel that the purposes for which public records are sought, with limited exceptions inapplicable to this case, must not impair the energies or scope of a search for public records or their disclosure. RCW 42.56.080.

The generalized structure for viewing summary judgments seems clear. The Office of the Attorney General, as movant, had the burden, with regard to the facts and the law, to establish the absence of a genuine issue of

material fact. And it also had the burden of proving justification for any refusal to permit copying of a public record. RCW 42.56.550 (1).

B. Principles applicable to Public Records Act requests.

The mandates of the Public Records Disclosure Act counsel the broadest effort at making public records available. RCW 42.56.030. The definition of identifiable and disclosable “public records” includes any “writing”; and “writing” includes electronically- stored material. RCW 42.56.010 (2) and (3) ; O’Neill v. City of Shoreline, 145 Wn. App. 913, 187 P.3d 822 (2008); affirmed Washington Slip Note 82397-9 Wn. 2d. 240 P.3d 1149 (2010). Although production of records in an electronic format is not addressed in the Act itself, the requestee has a statutory duty to provide the “fullest assistance” to the requestor and a legal duty to demonstrate why production in that less expensive format is not “reasonable and feasible” Mechling v. City of Monroe, 152 Wn. App. 830, 814, 222 P.3d 808 (2009) citing former RCW 42.17.260 (1), now RCW 42.56.070 (1) and citing WAC 44-14-05001 of the model rules on providing access to electronic records.

Washington’s Public Records Disclosure Act provisions, as amended from time to time, constitute a “strongly worded mandate for broad disclosure of public records.” Hearst Corp., v. Hoppe, 90 Wn. 2d 120, 123, 127, 580 P.2d 246 (1978). The public records statutes place the onus on the governmental agency which is responding to a public records request to

provide those records “unless those records fall within the specific exemptions of ... this chapter or other statutes which prevents or prohibits disclosure specific information or records.” RCW 42.56.070 (1); Mechling, supra at 814. Washington courts are instructed to construe liberally the disclosure provisions of the Act and to construe narrowly its exemptions. Progressive Animal Welfare Society v. University of Washington (PAWS), 125 Wn. 2d 243, 25, 884 P.2d 594, 92 (1994). Under the Public Records Act, email communications are a part of the public record which must be disclosed. O’Neill v. City of Shoreline, 145 Wn. App. 913, 187 P.3d 822 (2008); affirmed Washington Slip Note 82397-9 Wn. 2d. 240 P.3d 1149 (2010).

A public record is statutorily defined as:

“Any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, retained by and State or local agency regardless of physical form or characteristics.”

RCW 42.56.010.

The Act defines a “writing” as:

“handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including

existing date compilations from which information may be obtained or translated.”

RCW 42.56.020 (3).

The Court in O’Neill determined that metadata associated with the email falls within the broad definition of a writing and public record .
O’Neill, supra .

When a request for public records is made, the recipient agency has few options: provide the records, acknowledge receipt of the request and provide a reasonable estimate of the time it would take to provide the records, or deny the request. RCW 42.56.520.

C. The trial court erred in finding that the investigative search for public records requested by Shawn Greenhalgh under Washington’s Public Records Act was a reasonable search as a matter of law.

The parties are in rough agreement that on January 14, 2008, Mr. Greenhalgh made a public records request for documents created and utilized by the Office of the Attorney General. He requested the following: “The first page of each and every Washington State “Attorney General’s Office certificate on Public Records Act claim/litigation (settlements)”, involving the Washington State Department of Corrections and inmate-petitioners, dated between January 1, 2005 and January 2008. “ CP 182. There was no request for clarification of the request.

Although in its summary judgment motion, the Office of the Attorney General faulted Mr. Greenhalgh for not calling to Mr. Lord's attention the site of the records, placing that burden upon the requestor is not evident in the wording of the Public Records Disclosure Act. Mr. Greenhalgh had the burden only of requesting "identifiable public records." RCW 42.56.080. Hangartner v. City of Seattle, 151 Wn.2d 439, 447, 448, 90 P. 3d 26 (2004) This has been described as "a reasonable description enabling the governmental employee to locate the requested records." Bonamy v. City of Seattle, 92 Wn. App. 403, 410, 960 P. 2d 447 (1998); Hangartner, supra at 448; Wood v. Lowe, 102 Wn. App. 872, 878, 10 P.3d 494 (2000). The public entity has the burden of conducting a reasonable investigation for identifiable public records. If a request is too vague, the agency can request clarification. Hangartner, supra at 447,448. In this case, there was no argument of confusion or vagueness over the description of records requested. What was at issue in the case was whether or not Mr. Lord and his supervisor conducted a reasonably sufficient search for identified public records.

The bone of contention reduced to the question of whether for purposes of summary judgment, the movant, the legal Office of the State of Washington and the custodian of that Office's public records, sustained its burden of establishing that its search for its own records was "reasonable

beyond a material doubt”. Neighborhood Alliance of Spokane County v. County of Spokane, 153 Wn. App. 241, 257, 224 P.3d775 (2009); review granted 168 Wn. 2d 1036-43, 233 P.3d 889 (2010).

Based on the initial declarations, the trial court concluded that a search of an “electronic Case Management System” of the Attorney General’s Office and an “electronic mail vault”, constituted a sufficiently and reasonable search. CP. 246, 247. It is Mr. Greenhalgh’s position, however, that the reasonableness of the search is not defined by the quantum of energy expended or the subjective opinion by the government agency of what was reasonable, so much as an assessment of the wisdom in determining how and where to search among the records and the records sites of the Attorney General’s Office, and whether that Office has kept a coherent record system such that a reasonably thorough search of its records could be accomplished. There does seem to be a duty incumbent on a public agency to keep track of its own records. Indexing of an entity’s files and records is an obligation under the Public Records Act, RCW 42.56.070(3). If clarification of a request is needed, that initiative rests with the recipient of the request: “An applicant need not exhaust his or her own ingenuity to ferret out records through some combination of intuition and diligent research.” Daines v. Spokane County, 111 Wn. App.342, 349, 44 p.3d 909 (2002).

In this case, the trial court used as its compass the case of Neighborhood Alliance of Spokane County v. County of Spokane, 153 Wn. App. 241, 224 P.3d 775 (2009); review granted 168 Wn. 2d 1036-43, 233 P.3d 889 (2010). Relying for assistance upon federal case law interpreting analogous federal legislation, the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1970), the Washington court held that a PRA search must be “judged by a standard of reasonableness in construing the facts in the light most favorable to the requestor.” Ibid., at 257, citing Citizens Comm’n on Human Rights v. Food and Drug Admin., 25 F.3d 1325, 1328 (9th Cir. 1995).

The standard at summary judgment was stated by the court: “An agency fulfills its obligations under the PRA if it can demonstrate beyond a material doubt that its search was ‘reasonably calculated to uncover all relevant documents.’ ” Neighborhood Alliance, supra., at 257, citing Weisberg v. U.S. Dep’t of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984), quoting Weisberg v. U.S. Dep’t of Justice, 705 F.2d 1344, 1350-1351 (D.C. Cir. 1983). The Neighborhood Alliance court noted also that the methods used in conducting a search must be “reasonably expected to produce the information requested.” Ibid at 257, citing Oglesby v. U.S. Dep’t of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990). The methodology employed in this case, as well as the contours of the search protocol are challenged by Mr. Greenhagh.

The Neighborhood Alliance court noted also that a governmental agency “must show a good faith effort to conduct a search for the requested records using methods which can be reasonably expected to produce the information requested.” Ibid., citing Oglesby v. US Department of the Army, 920 F.2d 57, 68, (D.C. Cir. 1990).

Of particular significance for these purposes is the observation in Neighborhood Alliance that affidavits supporting a claim of reasonableness:

“such affidavits must set forth the search terms and the type of search performed, and aver that all files likely to contain responsive materials, if such records exist , have been searched.”

Ibid at 257, citing Valencia-Lucena v. US Coast Guard, 180 F. 3d 321, 326 (D.C. Cir. 1990). The record in this case is devoid of any averment that all sites likely to contain responsive material have been searched. The declarations produced at summary judgment establish that the site most likely to contain the requested and existent material, the records of the Corrections Division , was not searched for Mr. Greenhalgh, despite its apparent accessibility and fecundity, until after he filed his lawsuit CP 269-272.

In Neighborhood Alliance of Spokane County, the granting of a summary judgment on the issue of the reasonableness of the public

entity's search was reversed, with the caution that review of a search's reasonableness must be based on what the agency has come to know at the conclusion of the search rather than what the agency speculated at its inception. Neighborhood Alliance of Spokane County, supra at 259 citing Campbell v. United States Department of Justice, 164 F.3d 20, 28-29 (D.C. Cir. 1998).

In Mr. Greenhagh's case, the declaration of Mr. Lord and the first declaration of K.P. Bodnar indicated a description of the search actually performed without assertion that all sites reasonably expected to be productive were searched. CP 44-52; 103-112. The second declaration of KP Bodnar refuted any such assumption: when contact was made with the appropriate unit which handled prisoner cases, the Corrections division, the records were readily located. CP. 270 It is submitted that in these circumstances there existed at least a genuine issue of material fact as to the reasonableness of the investigation when the investigation, when the evidence affirmatively demonstrated an investigative oversight: the investigators simply didn't interrogate an existing, accessible and appropriate location for the records.

D. The trial court erred in finding that the response to the request for electronic records was sufficient

On June 5, 2008, Mr. Greenhalgh requested that all emails responsive to his disclosure request of December 6, 2007, should be in their “original format, not the electronic format previously offered.” CP. He did so because he expected that the original format would include the email metadata, without using that term, which in turn would provide the identity of the email correspondents, who might be additional sources of discoverable data. In his request he did not use the term “metadata.” As noted above, email including metadata is a form of public record under the Act. O’Neill, supra. That Court indicates that a request for metadata should refer to that description.

Compliance with the request for requested email in electronic format was not accomplished until July 23, 2009. That date, not the date of satisfaction of the request but the date when Mr. Lord communicated to Mr. Greenhalgh that what he had sought no longer existed, should be the date germane to a penalty assessment.

Mr. Greenhalgh, then, sought an assessment of penalty for nondisclosure at least during the period of time running from June 5, 2008 to July 23, 2009. The mandatory range for a daily penalty is from \$5.00 to \$4100.00 proscribed by statute. RCW 42.56.550(4).

E. The trial court erred in finding that the records charges represented actual costs of copying the records requested.

Mr. Greenhalgh contends that the \$ 12.50 “set up” fee to which Mr. Lord alluded in his response to Mr. Greenhalgh’s December 6, 2007 records request, was not authorized by statute and constituted a deterrent to access by that inmate to requested public records. It may be reasonably inferred that inmates with little or no income would be more affected by a \$ 12.50 “set up” fee than would be a regular wage-earner.

Charges for copying public records are proscribed by statute. RCW 42.56.120. That statute does not specifically mention authorization for prepayment billing. That statute also limits billing to the cost of actual copying, prohibiting charges greater than \$ 0.15 per page.

The “set-up” fee was not a copying charge. It was in effect a billing, however supportable, for use of borrowed technology and was not a cost of actual copying. Because the billing exceeded the actual per page cost charged by the agency, the billing, a cost more aspirational than actual, constituted a violation of RCW 42.56.120.

F. Appellant is entitled to attorney’s fees.

In a Public Records Act case the prevailing party is entitled to attorney fees and costs by statute. RCW 42.56.550 (4); Spokane Research and Defense Fund v. City of Spokane, 155 Wn. 2d 89, 117 P.3d 1117 (2005). Assessment of attorney’s fees is mandatory for the prevailing party. The amount, however, is discretionary. A question exists as to

which forum, the trial court or the appellate court, should determine reasonable attorney fees.

Attorney fees are awarded on appeal pursuant to RAP 18.1 (a). Those fees and costs are requested by Mr. Greenhalgh. The appellate court may award those fees and costs unless a statute specifies that the request is to be directed to the trial court. RAP 18.1 (a).

An additional issue may relate to the question of whether how many of Mr. Greenhalgh's claims establish him as prevailing party. As noted in the appellant's brief, the major thrust of his claims lies with his contention that the Office of the Attorney General failed to conduct a reasonable investigation of its own records for its own forms.

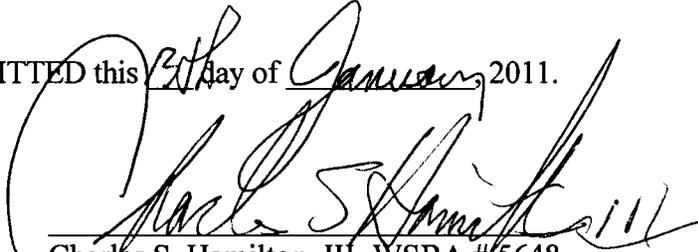
CONCLUSION

The Public Records Act and case law interpreting that Act provide clear direction that cognizable public records shall be made available to a requestor who makes a request for identifiable record. The Act does not allow for inquiry into the motive for the request. The Act does not require that the requestor take the lead in locating the records requested. In the present case, Mr. Greenhalgh provided what information was necessary to effective a reasonable and comprehensive search of the records of the Office of the Attorney General. What emerged in this case was evidence that the Defendant failed to search an available and

accessible site for existing documents requested by Mr. Greenhalgh and documents crafted by the Office of the Attorney General. When the Office did search the appropriate office site it found the forms identified by Mr. Greenhalgh with no discernible difficulty.

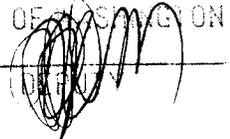
For the reasons set forth above, including the reasons relating to claims of excessive fee and incomplete revelation of requested material, Mr. Greenhalgh respectfully urges that summary judgment was improvidently granted in this case and that this matter should be remanded to the trial court for further proceedings.

RESPECTFULLY SUBMITTED this 27th day of January 2011.


Charles S. Hamilton, III, WSBA #5648
Attorney for Appellant

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY 

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SHAWN D. GREENHALGH,

Appellant,

vs.

OFFICE OF THE ATTORNEY GENERAL,

Respondent.

NO. 41249-7-II

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I sent a copy of Appellant's Brief to Respondent's counsel via United States Postage, first-class postage prepaid on January 14, 2011 and I sent a copy via United State Post to the Court of Appeals Division II.

DATED this 14th day of January, 2011.



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