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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

VINCENT T. GRESHAM, an individual,

Appellant,

v.

Robbins GELLER RUDMAN & DOWD LLP, a limited liability
corporation, and THE STATE OF WASHINGTON, OFFICE OF THE
ATTORNEY GENERAL, Public Agencies,

Respondents.

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

Robbins clearly has a very different view of the PRA than does the Washington Legislature. At issue here are three different PRA exemptions that the Legislature carefully crafted to apply to limited and specific circumstances. Robbins' arguments, if adopted by this Court, would expand each of those carefully delineated exemptions into broad catch-all exemptions that could be used by any vendor or other person who provides generic business information to the state.

Robbins' newly created standing argument for RCW 42.56.270(1) is so broad that it would allow any person seeking to enjoin public records disclosure to assert any exemption in the PRA. (See, §III.A.1). Robbins' other exemption arguments emphasize semicolons but ignore legislative intent. (§III.A.2-3). In each instance Robbins' exemption arguments are so extreme as to eviscerate important public policies behind the PRA.

Robbins' trade secret arguments largely repeat their arguments below consisting of conclusory claims of great harm they and the state will suffer if the Disputed Information is disclosed. However, Robbins never adequately explains the *lack* of harm Robbins or any state incurred when the same types of information were previously published from their First Washington and Florida Responses. (§III.B.1-3).

Requestor, however, does explain the lack of harm Robbins suffered by demonstrating that the information Robbins characterizes as a “trade secret” is garden variety factual business information unrelated to their business methods or procedures (§III.C.1), and without any real value to competitors. (§III.C.2). Just as with their exemption arguments, Robbins’ trade secret arguments are so extreme that they could cover almost any piece of information submitted to the state by any business and, if accepted by this Court, would again eviscerate the important goals of the PRA. (§III.C.3).

Robbins’ extreme secrecy views however, pale in comparison to those of the AGO when it—for the first time on appeal—urges this court to disregard the PRA’s injunction procedures of RCW 42.56.540. In short, the AGO thinks this Court should essentially rewrite the PRA based on an argument Robbins never made, Requestor never responded to and the Superior Court never heard. Although the AGO is completely wrong (§E.1), their invention of this argument demonstrates how a state agency (while proclaiming neutrality) can lay a heavy finger on the scales of justice against public records seekers like Requestor—and why they must be held accountable for doing so. (§F).

This reply further demonstrates why Requestor is entitled to the relief he seeks: public records and fees, costs and penalties.

II. ROBBINS MISREPRESENTS THE STANDARD OF REVIEW

To avoid *de novo* review, Robbins seriously misrepresents the record by suggesting the trial court heard “oral testimony of witnesses.” By agreement no witnesses were called. (2-17-2012 RT 21:12-22). For the reasons stated (Requestor: 19-20), the standard of review is *de novo*.

III. REPLY ARGUMENTS

A. None Of The Three Specific Exemptions Robbins Seeks To Utilize Are Applicable Here

In this section each of the three PRA exemptions Robbins argues is addressed. Robbins trade secret arguments are addressed in §II.B.

1. Contrary To Robbins’ Argument RCW 42.56.540 Is Merely A Procedural Injunction Statute That Doesn’t Independently Provide Standing To Assert The Exemption In RCW 42.56.270(1)

Only state agencies have standing to assert the exemption in RCW 42.56.270(1). (Requestor: 21-26). Robbins’ response argument was never made below. They now argue that language in RCW 42.56.540 is dispositive of the scope of the exemption in RCW 42.56.270(1). (Robbins: 17-21). However, there is no reason to assume (as Robbins does) that because a party has standing to seek an injunction under 42.56.540, that same party has standing to invoke any particular exemption, be it 42.56.270(1) or any other exemption. Under Robbins’ expansive interpretation, just because a party named in a public record can seek an

injunction under RCW 42.56.540, that party is entitled to assert any and all exemptions. Robbins' newly created theory goes too far.

Robbins significantly misstates and overgeneralizes Requestor's arguments. Robbins erroneously claims that Requestor relies on *Ameriquest Mortg. v. Attorney Gen.*, 148 Wn. App. 145, 199 P.3d 468 (2009) "for the proposition that only the AGO may assert exemptions to the PRA."¹ (Robbins: 18). That is not Requestor's position. Requestor agrees that many PRA exemptions may be asserted by private parties, regardless of the state agency's position. However, when the state agency is willing to disclose the public records, the particular exemption at RCW 42.56.270(1) cannot be asserted by a private party to block disclosure.

Robbins misstates the facts of *Evergreen Freedom Found. v. Locke*, 127 Wn. App. 243, 110 P.3d 858 (2005). Requestor accurately pointed out: "In no reported case has any court applied RCW 42.56.270(1) to allow a third party to enjoin disclosure of a public record that the agency itself was willing to disclose." (Requestor: 21). In refutation Robbins states that in *Evergreen*, "the Boeing Company invoked the PRA's exemptions..." (Robbins: 20). Not so, for in *Evergreen* it was the state agency that "invoked" the RCW 42.56.270(1)

¹ Requestor cited *Ameriquest* to illustrate that if Robbins disagreed with an AGO exemption decision, Robbins had a remedy, i.e., "take legal action against the agency." (Requestor: 27-28).

exemption and refused to produce the public record to the requestor.² *Evergreen*, 127 Wash. App. at 248, 110 P.3d at 862 (“EFF argues that the Department has unlawfully withheld portions of the Agreement from public inspection, contravening the PDA. The Department responds that the redacted portions of the Agreement are exempt from disclosure....”).

While Boeing certainly agreed with the agency’s decision to assert 42.56.270(1), *Evergreen* does nothing to prove that Boeing could have independently asserted this exemption if the agency had not already done so. At most *Evergreen* merely shows that a private party was allowed to argue in support of a state agency’s assertion of the .270(1) exemption, which is a far cry from proving that a private party could have independently asserted the exemption when the agency declined to do so.

2. Robbins’ Misinterprets RCW 42.56.270(6) And Ignores The Relevant Facts Demonstrating It Does Not Apply

Robbins seeks to expansively interpret the RCW 42.56.270(6) exemption beyond its current limitation to information regarding “the investment of public... funds.” (Robbins: 35-36). This interpretation flies

²Robbins bolsters its arguments by deleting from the snippets of quotations used very material information showing the agency was asserting the exemption. Below Robbins quotation is fixed by reinserting what Robbins omitted at Robbins page 21: “[The Department and] Boeing also contend that the redacted information is exempt”; “[Finally, the Department and] Boeing assert that the PDA does not require public disclosure because the redacted portions contain ‘[t]rade secrets’ ...”.

in the face of “the thrice-repeated legislative mandate that exemptions under the public records act are to be narrowly construed.” *King County v. Sheehan*, 114 Wash.App. 325, 338, 57 P.3d 307, 314 (2002).

Robbins cites no case interpreting this exemption as expansively as Robbins, because none exist. Robbins cites no fact showing that Robbins’ information was used to make decisions regarding “investments,” because it wasn’t. Robbins simply ignores law and fact contrary to their position: (a) the AGO is statutorily responsible for contracting with private law firms for the WSIB (RCW 43.10.065); and (b) “none of the information provided by Robbins Geller in response to the RFQQ was ever provided to the WSIB” (AGO: 12), and thus couldn’t have been used by the WSIB.

3. Robbins’ Semicolon Argument Is Refuted By The Legislative Intent Behind RCW 42.56.270(11) Which Confirms This Exemption Is Limited To Healthcare Information

For the first time on appeal Robbins argues that the placement of the semicolons in RCW 42.56.270(11) reads-out the part of the exemption limiting the information exempted to that “submitted by any vendor to the department of social and health services...”. RCW 42.56.270(11). Through their semicolon argument Robbins seeks to transform this limited health care subsection into a broad catch-all exemption for any vendor.

When the interpretation of a statute is in dispute, the key is legislative intent, not semicolons. *Anfinson v. FedEx Ground Package*

Sys., Inc., 174 Wash. 2d 851, 866, 281 P.3d 289, 297 (2012) (“The court's fundamental objective when interpreting a statute is to discern and implement the intent of the legislature.” (citations and quotations omitted)). The exemption in RCW 42.56.270(11), originated in House Bill 1444 (“HB 1444”)³ which stated its purpose as “[r]elating to protection of proprietary or confidential information acquired through state health services purchasing...” (H.B. 1444, 58th Legis. (2003)).

House and Senate Bill Reports for HB 1444 clearly state intent:

- “Proprietary data, trade secrets or other information relating to state purchased health care submitted by any vendor to the Department of Social and Health Services (DSHS) is also exempt from disclosure.” (House Bill Report).
- “Certain proprietary or confidential information obtained by the Health Care Authority or the Department of Social and Health Services related to the development, acquisition, or implementation of state purchased health care services is exempt from public disclosure.” (Senate Bill Report).

Legislative intent behind the exemption, not semicolons, controls this Court’s interpretation of RCW 42.56.270(11). Legislative materials show the legislature intended a narrow exemption for information submitted by vendors to the department of social and health services, not the broad catch all exemption that Robbins now argues.

³This exemption was originally enacted RCW 42.17.310(fff), which was recodified as RCW 42.56.270 (11) in 2006.

B. Robbins Allowed The Same Type Of Disputed Information At Issue Here To Be Previously Published And Neither Robbins Nor Any State Suffered Harm As A Result

Even if Robbins had an applicable exemption it could assert, Robbins is still not entitled to an injunction because Robbins allowed the same type of information to be published in the past and suffered no harm.

1. Robbins Fails To Refute Requestor's Proof That The Same Type Of Disputed Information From The First Washington And Florida Responses Was Published Without Robbins' Seeking To Protect It

Robbins does not dispute that it previously filed another injunction lawsuit against competitors who requested Robbins' First Washington Response which "published the same types of information as the Disputed Information at issue here..." (Requestor: 6-7). In the previous PRA lawsuit "Robbins sought to enjoin production *only* of 118 PMP Names that had not previously been published," and Judge Wickham's 2005 order protected *only* those unpublished PRA Names. (*Id.*). Requestor's current PRA request sought only the information that neither Robbins nor the Superior Court protected in 2005.⁴ Robbins does not contest that the First Washington Response was provided to competitors who made a PRA request without Robbins objecting to publication of any of the fee, malpractice, and reference information therein.

⁴ Requestor had originally sought production of all PMP Names, but modified his request to just those names that had been previously published so as to match the result in the 2005 PRA lawsuit. (CP 1260).

Similarly, Robbins does not contest that in 2010 Robbins' Florida Response was published by a national legal magazine, **The American Lawyer**, was discussed in a series of newspaper articles and is still freely available on the internet. (Requestor: 8-10). Robbins does not contest that its discovery responses failed to identify any harm of any type from the publication of either the First Washington or Florida Responses. (Requestor 8-9). Evidence of publication of the Disputed Information undermines Robbins' arguments because publication of information destroys trade secret status.⁵ *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002 (1984) ("Because of the intangible nature of a trade secret, the extent of the property right therein is defined by the extent to which the owner of the secret protects his interest from disclosure..." (citations omitted)).

Robbins does not contest that the 189 page (CP 102-291) Florida Response was published, but claims the Court must take into consideration that its Florida Response "specifically identifies a 'Trade Secret

⁵Robbins' cites *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 409, 259 P.3d 190 (2011) for the proposition that the PRA "does not provide for waiver of a claimed exemption." (Robbins: 32) *Bainbridge's* holding is not that broad, but rather only holds that the right of privacy of an individual cannot be waived. Nothing in *Bainbridge* holds that none of the PRA exemptions can be waived. Moreover, one of the requirements of a trade secret is that the information is "subject of efforts... to maintain its secrecy." RCW 19.108.010(4). Even if publication doesn't result in "waiver," information that Robbins allows to be published is not "subject to efforts.. to maintain its secrecy" and therefore does not fit in the statutory definition of trade secret.

Information' portion of the document which was segregated" and which "has never been publicly disclosed..." (Robbins: 31). Neither Requestor nor this Court knows what was included in the "trade secret" information, but what is undisputed is that Robbins did not include in its alleged "trade secret" document most of the Disputed Information at issue here.

Not included in the "trade secret" information was the: (a) "Fee and Handling of Cost Proposal" (CP 290-291), (b) list of client references (CP 130-131), and (c) complete list of PMP participants (CP 219-234). All of this information was included in the main response and not in the Trade Secret section of the Florida Response. The only Disputed Information allegedly included in the Trade Secret document was limited information about Robbins' malpractice insurance. (*See*, CP 133).⁶ That Robbins did not treat any of the other Disputed Information in the Florida Response as a "Trade Secret" is conclusive that it is not.

Robbins argues without proof⁷ publication was "without the Firm's knowledge or authorization..." (Robbins: 31), However, clearly Robbins

⁶Robbins publicly disclosed the name and rating of the malpractice carrier but then said: "Please find additional responsive insurance information submitted as part of the Firm's "Trade Secret Information" submission." This was the only referral to the "trade secret information section" in the Disputed Information published in the Florida Response.

⁷ In lieu of evidence, Robbins cites Superior Court's findings that are unpersuasive where the standard of review is *de novo*. See, §D(1).

learned that its information was on the American Lawyer's web site, and Robbins doesn't explain why they never asked it be taken down.

Robbins does not dispute that the same *types* of information was previously published in the First Washington and Florida Responses, but makes a technical argument that because the information is not *exactly the same* as the Second Washington Response information, then prior publication is irrelevant. Under Robbins' theory, if a widget vendor voluntarily discloses its price of \$10.15 per widget, then the vendor can subsequently transform pricing information into a "trade secret" or "intellectual property" by changing the widget price to the now secret price of \$10.14 per widget. Robbins theory also requires this Court to assume that publication of the new \$10.14 price will cause the vendor harm, even where the publication of the old \$10.15 price did not.

Robbins' argument that prior publication "doesn't count" unless the information is exactly the same is unduly technical, and gives a broad meaning to exemptions contrary to "the thrice-repeated legislative mandate that exemptions under the public records act are to be narrowly construed." *Sheehan*, 114 Wash.App. at 338, 57 P.3d at 314.

The more reasonable view is that a vendor by voluntarily publishing a \$10.15 widget price which did not cause the vendor any harm has demonstrated that the widget pricing information is neither a trade

secret nor intellectual property. Moreover, because the past publication of the \$10.15 widget price caused no harm, it is reasonable to assume absent changed circumstances (which Robbins does not prove) that publication of the current \$10.14 price will cause no harm.

In conclusion, Robbins allowed the same type of the information Requestor seeks here to be provided to competitors in the First Washington Response. With respect to the Florida Response, Robbins did not include in their separate "Trade Secret Information" any of the information sought here, except limited malpractice information. It is indisputable that Robbins did not and does not treat the fee, references or PMP name information Requestor seeks here as a trade secret.

2. Robbins Fails To Refute Requestor's Proof That The Same Type Of Disputed Information In The First Washington And Florida Responses Was Published Without Causing Robbins Any Harm

Requestor emphasized that due to prior publication of the same type of information in the First Washington and Florida Responses, "Robbins should be in a position to prove with concrete actual examples the 'substantial and irreparable' harm it has already suffered from previous disclosures" but had never done so. (Requestor: 34)

Robbins' response still fails to point to one instance where a competitor actually used any of the previously published fee proposal information, malpractice insurance information, client references or PMP

participant lists, much less where a competitor had used such information to cause Robbins harm. Instead, Robbins recites the same conclusory claims made in their declarations below, i.e., that disclosure “would substantially and irreparably damage” Robbins. Robbins ignores the undisputed fact that this information was previously published from the earlier responses, and past publications of the same type of information caused Robbins no harm whatsoever. Robbins’ *the-sky-will-fall* arguments are mere speculation discredited by actual experience.

Importantly, acceptance of Robbins’ arguments would effectively close the door to public scrutiny of the process by which the state selects vendors. Robbins generic harm arguments would be equally applicable to any seeker of state business. As Robbins demonstrates, it is easy to file a declaration speculating that a “competitor could threaten... client relationships” if some piece of business information is disclosed.

3. Robbins Fails To Show Publication Will Cause “Public Loss” Or “Substantial And Irreparable Damage To Government Functions”

The impact of disclosure on the State is relevant to the satisfaction of two different PRA requirements: (1) the “public loss” requirement of RCW 42.56.270(1), and (2) the requirement that disclosure “would substantially and irreparably damage vital government functions” under

RCW 42.56.540. Robbins' proof of both requirements is the latter two of the following four sentences uttered by Mr. Dietrich:

I'm here testifying as a fact witness and I'm not prepared to state ... the State's legal position in the litigation. I don't intend to be stating that. And in an effort to answer your question, I'm aware that some of these law firms have pointed out that they may be less likely to participate in the State's procurement process and may be if we are unable to protect or-if they are unable to protect the information that they deem proprietary and important. So, to the extent that is a factor, it could clearly reduce the State's ability to procure the best legal services. (CP 1180-81.)

Mr. Dietrich's comments fall far short of proof of "public loss" much less "irreparable harm to vital government functions" that Robbins is required to establish. *First*, Mr. Dietrich was not stating the "State's legal position in the litigation." *Second*, he merely stated he was "aware" of Robbins' argument. *Third*, he doubly qualified his statement by including "to the extent that is a factor" that it "could" have an impact. This equivocal testimony does not support Robbins' claim that disclosure would "irreparably damage vital government functions." (Robbins: 39).

Robbins fails to address Requestor's proof that the State will suffer no harm. Robbins ignores the undisputed fact that the AGO was able to successfully conduct the 2010 RFQQ process despite publication of Robbins' First Washington Response to competitors.

Prior to the 2010 RFQQ the AGO warned all responders that if a request for claimed proprietary information was made the AGO would not

assert an exemption but would turn over the information unless a court order was obtained. (CP 1762-63.). Despite knowing that the Disputed Information was not protected by the AGO, Robbins and 24 other law firms submitted responses to the 2010 RFQQ. Requestor pointed out “that the AGO was able to conduct its 2010 selection process, despite disclosing Robbins’ First Washington Response to nine competitors in 2005, shows that disclosure does not cause any ‘public loss’ or ‘damage’ due to chilled bidding.” (Requestor: 49). Robbins has no answer.

Likewise, Robbins has no answer for the undisputed fact that 23 of 25 responders in 2010 did not object to disclosure of their RFQQ responses.⁸ This widespread apathy regarding disclosure proves attorney applicants don’t view disclosure as harmful or a deterrent to participating in future Washington RFQQs. *See also, Racal–Milgo Gov’t Sys. v. Small Bus. Admin.*, 559 F.Supp. 4, 6 (D.D.C.1981) (“It is unlikely that companies will stop competing for Government contracts if the prices contracted for are disclosed”); *Badhwar v. United States Dep’t of the Air Force*, 622 F.Supp. 1364, 1377 (D.D.C.1985) (no impairment from disclosure because contractors are unlikely to give up financial rewards of government contracts in order to shield documents from public view).

⁸The AGO noted of “more than two dozen law firms that responded to the 2010 RFQQ, one other law firm, Murray Frank and Sailer LLP, also filed suit...” (AGO: 6, fn.20).

Finally, Robbins has no answer to the undisputed fact that the AGO is not asserting any public harm.⁹ Robbins argues the AGO's notification was an implicit recognition of the merits of their exemption arguments (Robbins: 22); however, the AGO was contractually obligated to notify Robbins if anything that Robbins had designated as "proprietary information" was requested.¹⁰ (AGO: 3-4). Robbins alternatively argues "what is important is that the AGO did not argue against application of the PRA's exemptions to disclosure." (Robbins: 23). That has no importance because the AGO didn't assert any exemptions.

Robbins' failure to acknowledge, much less address, the substantial evidence showing that disclosure will not cause any public loss whatsoever, is fatal to their ability to enjoin under 42.56.540 and their claim of exemption under 42.56.270(1).¹¹

⁹ Robbins also has no contra-authority for the cases Requestor cited that "government harm" cannot be asserted by a mere vendor when the state agency does not do so. *See, Hercules, Inc. v. Marsh*, 839 F.2d 1027, 1030 (4th Cir. 1988) (submitter not allowed to argue government "impairment" on the government's behalf); *Orion Research Inc. v. EPA*, 615 F.2d 551, 554 (1st Cir. 1980) ("[t]he agency is in the best position to determine the effect of disclosure..."). (Requestor: 28).

¹⁰ "If a public records request is made for the information that the Respondent has marked as 'Proprietary Information,' the AGO will notify the Respondent of the request..." (CP 1762-1763).

¹¹ Although Robbins never addresses Requestor's arguments that no public loss occurred, Robbins harps on the non-issue of private gain, which was never at issue. (Robbins: 13-15).

C. The Disputed Information Is Unprotected Garden Variety Business Information Rather Than Protected Information Regarding Business Methods, Intellectual Property Or Trade Secrets

1. The Disputed Information Does Not Disclose Robbins' Business Methods For Practicing Law Or Monitoring Portfolios

Robbins repeatedly makes conclusory arguments that the Disputed Information consists of their "business methods." (Robbins: 34-35). However, providing business information is not the same as providing information regarding "business methods." For example, while a vendor's internal discussions and reasons for setting prices might be a "trade secret," the end result such as a price list or price formula is not. While a vendor can keep secret the reasons why they chose to price a service as they did, they cannot keep secret the price of the service.

Although Requestor has not seen it, the Disputed Information seems to be factual business information. Robbins, however, raises the specter of "innovative procedures [] laid bare for public scrutiny to the detriment of the State and its vendors" (Robbins: 15-16) but Robbins fails to show the information here consists of "innovative procedures."

Requestor seeks only (a) price, (b) insurance, (c) references, and (d) previously published names of PMP participants. None of the Disputed Information relates to Robbins' procedures for practicing law or monitoring clients' portfolios. However, Robbins characterizes the

Disputed Information as “innovative procedures” and extensively speaks of the need to keep secret the details of its Portfolio Monitoring Program (“PMP”) (Robbins: 3-4), but Robbins offers no evidence other than its own conclusory statements. For example, without citation to the record, Robbins claims that the Disputed Information “was compiled, developed and refined over many years by the Firm's in-house professionals, relates to, and forms an integral part of, the unique way in which the Firm conducts business and attracts clients through its proprietary PMP.” (Robbins: 24). Regardless of whether this is true, none of the Disputed Information has anything to do with Robbins’ PMP program except the request for the previously published names of the PMP participants. Disclosure of this limited information is exactly the result Robbins sought and received from Judge Wickham in their 2005 PRA action.

Robbins argues, “each plaintiffs securities law firm differs in its approach to evaluating and setting potential fees.” (Robbins: 27). Even if true, the Disputed Information consists only of the end result—a fee proposal of percentage fees sought based on the recovered amount and timing of recovery—not the whys and hows of “evaluating and setting potential fees.” A fee grid or sliding fee scale is commonly used when

proposing fees. All other responders to the RFQQ used grids CP 708-715), and such fee grids or sliding scales are also used by courts.¹²

Moreover, Robbins fails to articulate a relevant difference between the situation here and that of any vendor seeking to do business with the state. Robbins simply states that their RFQQ response “hardly involves a simple commercial contract for the sale of widgets...” (Robbins: 38) but nothing more. A review of Robbins’ appellate arguments discloses that almost all of them could be asserted by any widget manufacturer.

For example, assume a widget manufacturer offers the following price structure:

“1-10 widgets \$5.15 per widget, 11-50 widgets \$4.25 per widget, 51-100/ \$3.05 per widget, 100+ widgets \$2.10 per widget. 5% discount for payments within 30 days after receipt, 5% surcharge for payments 90 days after receipt.”

If Robbins’ fee proposal is a trade secret or intellectual property, then the widget manufacturer’s pricing schedule would be similarly protected.¹³

¹² See, e.g., *Sherleigh Associates LLC v. Windmere-Durable Holdings, Inc.*, 184 F.R.D. 688 (S.D. Fla. 1999) (fee grid at opinion’s Appendix A); *In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 43 (D.N.H. 2006). Other courts use sliding scales based only on size of fund. See, e.g., *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 464-65 (S.D.N.Y. 2004); *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 852, 862 (W.D. Pa. 1995). Robbins has previously used and publicly disclosed both grids and sliding scales. (CP 572 ¶¶34, 699-700).

¹³ Many different types of vendors have variable price lists depending on amount and timing, for example, a hotel price list might adjust the price of a room depending on the size of room and time of year.

Robbins' conclusory and generic arguments could be asserted by any vendor for any product or service. All vendors could claim that disclosure of proposed prices or insurance would enable competitors to underbid them. All vendors could say that they spent a lot of time developing their price list. Because any vendor could make the same claims as Robbins, acceptance by this Court will enable state purchase decisions to avoid public scrutiny.

Robbins also argues that this situation is different than the analogous ones of an offer for a contract. (Robbins: 24-25); however, Robbins' argument suffers from three problems. *First*, Robbins ignores that the RFQQ did result in a contract—the Master Services Agreement. *Second*, even under Robbins' view, the RFQQ is the first of a two-step contractual process, see §E.2, below. *Finally*, the key point of *Spokane Research & Def. Fund v. City of Spokane*, 96 Wn.App. 568, 576, 983 P.2d 676 (1999) is that information regarding proposed contractual terms, such as price or insurance, is factual information not “intellectual property.”

Robbins also fails to rebut the reasoning in *Spokane Research* that, in the context of information created to assist in a public decision (i.e., the AGO's selection of counsel), it is “illogical” for Robbins to claim “trade secret” protection for information they produced to give to the AGO. (*Spokane Research*, 96 Wn. App. at 578 , 983 P.2d at 682; Requestor:

37). As stated by the court: “The City, not the Developers, requested the credit and financial studies... It is illogical for the Developers to claim the studies were at the outset trade secrets in this context because the studies were produced for the City, not the Developers.” *Id.* The same is true here. The fee proposal was created by Robbins to give to the AGO to assist the AGO with its decision making; it is illogical for Robbins to assert that it has “trade secret” protection over information it created for the purpose of giving to a state agency to assist a state agency’s decision.¹⁴

2. The Disputed Information Has No Proven Value To Competitors

To justify protection as a trade secret, the Disputed Information must have value to competitors. RCW 19.108.010(4) (“Trade secret” means information...that: (a) Derives independent economic value, actual or potential, from not being generally known...”). Robbins briefly reiterates their conclusory arguments that the Disputed Information has “value to competitors.” (Robbins: 36). However, Robbins does not address that the First Washington and Florida Responses were both published, and they cannot cite where any firm in the country used any of the information. Moreover, 23 of the 25 firms submitting responses to the RFQQ did not even bother objecting to full disclosure. While Robbins

¹⁴ If the information was valuable to the agency, then the agency could always assert 42.56.270(1), but the AGO did not do so here.

speculates about harm it *might* suffer and value competitors *might* gain, it does not cite one example where it *actually* suffered any harm or a competitor *actually* benefitted from previously published information.

3. Robbins' Broad Interpretations Of All The Disputed Information As Trade Secrets Or Intellectual Property Render Superfluous Many Specific Exemptions In The PRA

It is common for state agencies to seek financial and commercial information from applicants for licenses or grants, or from vendors seeking state business. The legislature carved out numerous specific exemptions in RCW 42.56.270 for certain bidders or applicants. For example, the legislature provided exemptions for financial and commercial information submitted by (a) bidders in ferry system construction or highway construction .270(2), (b) loan applicants .270(4), (c) health care vendors .270(11) and (d) grant applications .270(14, 21).

As the numerous specific exemptions for financial and commercial data indicate, the legislature clearly knew how to craft a specific exemption for attorney bidders who provide information to the AGO in hopes of being hired, but did not do so. Legislative intent is clear and controlling. *State v. J.P.*, 149 Wn.2d 444, 450 (2003) (When interpreting a statute, court's primary duty is to give effect to legislative intent.). Also, Robbins' interpretation of trade secret and intellectual property to include the same types of "financial" and "commercial" information specifically

exempted in numerous sections of RCW 42.56.270 would improperly render those sections superfluous. *Lutheran Day Care v. Snohomish Cy.*, 119 Wash.2d 91, 829 P.2d 746 (1992) (statutes should not be interpreted to render any portion meaningless, superfluous, or questionable).

D. Robbins Primarily Supports Its Arguments Not With Citations To Evidence In The Record, But Rather By Citing Opinions In The Record Which Prove Nothing

Whether attempting to “prove” their own facts or refute Requestor’s facts, Robbins rarely cites to *evidence* in the record but rather cites to *opinions* by (1) Robbins, (2) the Superior Court, or (3) the AGO.

1. Robbins’ Declarations And Statements Are Vague And Conclusory

Robbins cites to their own opinions; however, Robbins’ declarations and statements simply recite the arguments they are trying to prove, and are not evidence. In the PRA context, declarations and testimony with far more detail and concrete examples than Robbins provided have been rejected as too conclusory. In *Woo v. Fireman's Fund Ins. Co.*, 137 Wn. App. 480, 154 P.3d 236 (2007) an insurance company asserting their claims manuals were “trade secrets” submitted declarations stating the manuals:

took several thousand people hours to produce and have evolved over several years.” There would be “a serious loss of our property interest” if they were made public. The manuals contained “claims handling philosophies and strategies believed to be unique to Fireman's Fund.” The company believed that allowing a competitor to

gain access to the materials “would result in economic value to the competitor and place it in a competitive advantage.” Smaller insurance companies in particular would gain a competitive advantage “if they could simply copy the materials it took thousands of hours for Fireman's Fund to prepare.”

(footnotes omitted) *Woo v. Fireman's Fund Ins. Co.*, 137 Wash. App. 480, 488, 154 P.3d 236, 239-40 (2007). These are also Robbins’ arguments.

The *Woo* court found these declarations were “too conclusory” and did “not supply any concrete examples to illustrate how the strategies or philosophies of Fireman's Fund claims handling procedures differ materially from the strategies or philosophies of other insurers.” *Woo*, 137 Wash. App. at 489, 154 P.3d at 240 (2007).

Similarly in *McCallum v. Allstate Prop. & Cas. Ins. Co.*, 149 Wash. App. 412, 424-27, 204 P.3d 944, 950-51 *review denied*, 166 Wash. 2d 1037, 217 P.3d 783 (2009), the court found inadequate declarations that “consist of conclusory statements that should its competitors gain access to its national policies, the competitors will gain an unfair advantage. And similarly...conclusory statements that Allstate devoted considerable time, manpower, and finances in developing the documents. Again, the declarations include no specific examples to support these conclusions.” The *Woo* and *McCallum* declarations contained far more detail and concrete examples than the conclusory and generic statements Robbins submitted. Robbins has failed to carry their burden of proof.

Robbins' self-serving statements are also undercut by Robbins' successful efforts to stonewall Requestor's discovery into Robbins' claims that it " 'has taken reasonable efforts to maintain the secrecy of this information.' [and] disclosure to Requestor 'would cause substantial and irreparable harm to both the Firm and its clients.' " (Requestor: 17) Requestor detailed (with pinpoint citations to the record) the interrogatories and requests to admit that sought specific information concerning trade secret arguments Robbins was asserting but that Robbins failed to provide requested information regarding its own arguments. (Requestor: 17-18).¹⁵ Robbins should not be allowed to assert conclusory arguments about its own alleged efforts to keep information secret and alleged harm it has suffered from past publication while simultaneously shielding facts relevant to its arguments from legitimate discovery.

2. The Findings Of The Superior Court Are Irrelevant

Robbins, in lieu of evidence, attempts to prove factual assertions by citing to the Superior Court's opinions. However, the standard of review is *de novo* and therefore the Superior Court's findings of fact and

¹⁵ Robbins only response to Requestor's detailed arguments demonstrating specific instances where Robbins failed to respond to highly relevant discovery was to claim Requestor "issued irrelevant discovery requests..." supported only by a blanket cite to a pleading filed below. (Robbins: 14) Robbins' vague response to such as specific and important issue demonstrates that Robbins' position is meritless.

opinions are largely irrelevant. *Dawson v. Marshall*, 561 F.3d 930, 933 (9th Cir. 2009) (“De novo review means that the reviewing court does not defer to the lower court’s ruling but freely considers the matter anew, as if no decision had been rendered below.” (quotations and citations omitted)).

3. The AGO As An Entity Did Not Support Robbins

Requestor’s Second enumeration of error is that it was error for a Superior Court to determine whether “public loss” was shown under RCW 42.56.270(1) by ignoring the official state agency’s position in favor of the private opinions of its agents. Requestor proved that “the AGO as an entity had no objection to disclosure, and was willing to produce Robbins Second Washington Response in its entirety.” (Requestor: 11).

Robbins does not dispute the legal point about judicial error thus conceding that the AGO’s opinion, rather than the private views of one employee, controls. Rather, Robbins attempts to argue that the AGO *really* agreed with Robbins citing a potpourri of negative inferences (i.e., the AGO agreed with Robbins because it did not expressly “dispute” or “oppose” certain specific arguments Robbins made¹⁶). What is important

¹⁶See, e.g., “The AGO does not dispute that these exemptions apply here...” (Robbins: 12). “[T]he AGO... ‘does not oppose Robbins Geller’s motion for permanent injunctive relief.’” (Robbins: 22). “[T]he AGO gave the Firm notice that it could seek an injunction to prevent disclosure of the information – thus accepting that a private party has

is the AGO's clearly stated official position is: "the AGO as an agency did not oppose the release of any public record requested by Mr.

Gresham." Robbins uses *the-AGO-agrees-with-me* argument to support virtually every argument; however, the AGO (as an agency) did not.

E. The Standards Of RCW 42.56.540 Are Relevant And Arguments For Secrecy Offend Public Policy

Enumeration of Error #5 urges the Court to rule it is error in a PRA case to use the general injunction standards "rather than applying the higher standards required by RCW 42.56.540 which is the specific injunction statute applicable when a private party seeks to enjoin disclosure of public records." (Requestor: 4). Robbins does not contest that 42.56.540 should apply in PRA cases. Rather Robbins argues that the Superior Court did apply RCW 42.56.540. Robbins' arguments are addressed in §§2 & 3 below. But first Requestor addresses a completely new argument that the AGO created for Robbins on appeal. Unlike Robbins, the AGO now believes that 42.56.540 is not applicable when a public record contains a trade secret. Although the AGO's argument is completely misguided, see §E.1, Requestor is again having to expend extra time and money addressing yet another AGO created obstruction to obtaining the public records he requested so long ago. (See, §F, below).

standing..." (Robbins: 22) "[T]he AGO... did not oppose the Firm's motion to enjoin disclosure..." (Robbins: 34).

1. The AGO Creates A New Appellate Argument Urging This Court To Completely Change The Structure Of The PRA's "Other Statute" Exemption

In what might best be described as chutzpa, the AGO chastises Requestor who they say “overlooks and fails to address the independent injunction remedy provided by the UTSA at RCW 19.108.020” which the AGO now says controls. (AGO: 29-32). The AGO studiously ignores that this is a theory the AGO first cooked up on appeal and was never mentioned below. Arguments made for the first time on appeal are waived.¹⁷ *Washburn v. Beatt Equip. Co.*, 120 Wash. 2d 246, 290, 840 P.2d 860, 884 (1992) (Because “[a]rguments or theories not presented to the trial court will generally not be considered on appeal.”).

For the first time on appeal the AGO--seeking to breathe life into Robbins' moribund arguments--claims RCW 42.56.540 is not the proper statute. The AGO seeks to have this Court completely change the way the PRA has been interpreted by making an argument that the plaintiff never asserted, defendant never responded to and the court never heard.¹⁸

¹⁷Throughout their brief the AGO repeatedly argues that arguments made for the first time on appeal are waived. (AGO: 34, fn.69) (questioning why alleged “new argument should be considered under RAP 2.5 or RAP 9.12.”).

¹⁸ It is undisputed Robbins' lawsuit sought an injunction only pursuant to RCW 42.56.540: “Plaintiff files this action under RCW 42.56.540...” (CP 6). The Court entered the injunction only pursuant to

Essentially the AGO's argument is that in the context of a public record containing a trade secret, both the PRA and USTA can apply but the USTA's injunction provision rather than the PRA's should control. Although the AGO claims their newly created theory is supported by "[c]ase law, common sense, and sound policy..." this is mere hyperbole. No court has ruled that in the event of a conflict between injunction provisions of the USTA and PRA that the USTA's should control.¹⁹

Not having any cases supporting their theory, the AGO relies on their opinions of "common sense, and sound policy" which (in their view) is that "[p]resumably, because 'other statutes' such as the UTSA often protect important or fundamental rights, the remedial provisions of those statutes are available without the moving party additionally proving the PRA's [injunction] requirement..." (AGO: 30). Although the AGO

RCW 42.56.540. ("Judgment should be entered under RCW 42.56.540 in favor of plaintiff Robbins..." (CP 1343, line 24).

¹⁹Although the AGO claims their new theory is supported by "[c]ase law," it isn't. The language on which the AGO relies from *PAWs* is dicta because it was discussing the "other statute" relating to harassment of animal researchers in the context of a case where the researchers' names had already been disclosed. *PAWs*, 125 Wash. 2d at 263-64, 884 P.2d at 603-04. *Yakima v. Yakima Herald-Republic*, 170 Wn.2d 775, 246 P.3d 768 (2011) did not involve trade secrets. *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38,63-64, 738 P.2d 665 (1987) discussed trade secrets but is not a PRA case. None of these cases is authority for the applicability of 42.56.540 in a trade secret situation. None support the AGO's notion that when there are trade secrets in public records the PRA's injunction provisions do not apply.

ignores that the PRA also protects “important or fundamental rights,” the legislature did not. Its views are *exactly the opposite* of the AGO’s and it firmly rejected the AGO’s misguided views on “common sense and sound policy” through enactment of RCW 42.56.030 which states:

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. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. **In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.**

(emphasis added) RCW 42.56.030. Thus, if the AGO is correct and there is a conflict between the USTA’s and PRA’s injunction procedures, the PRA’s injunction procedures control as per RCW 42.56.030.²⁰

Finally, although the AGO’s new theory requires this Court to find a conflict between the PRA and USTA so as to avoid the PRA’s injunction statute, the Court should not strive to find conflict. *City of Spokane v. Rothwell*, 166 Wash. 2d 872, 877, 215 P.3d 162, 164 (2009) (“[W]here

²⁰ The AGO’s new theory also disregards a well-settled rule of statutory construction that a specific statute will take precedence over a more general one. *Flight Options, LLC v. State, Dept. of Revenue*, 172 Wash. 2d 487, 504, 259 P.3d 234, 243 (2011) (“It is well settled that a more specific statute prevails over a general one should an apparent conflict exist.”). The USTA generally addresses trade secrets, the PRA more specifically addresses trade secrets that are in public records.

potentially conflicting acts can be harmonized, we construe each to maintain the integrity of the other.”). The Supreme Court in *PAWS* clearly interprets the two acts to be in harmony by treating both the specifically listed exemptions under the PRA and prohibitions in “other statutes” as both being subject to the PRA’s injunction provision:

[W]e start with the proposition that the act establishes an affirmative duty to disclose public records unless the records fall within *specific statutory exemptions or prohibitions*. It follows that in an action brought pursuant to the injunction statute (RCW 42.[56.540²¹]), the initial determination will ordinarily be whether the information involved is in fact within one of the act's exemptions or within some other statute which exempts or prohibits disclosure of specific information or records.

PAWs, 125 Wash. 2d at 258, 884 P.2d at 601 (citation omitted, italics supplied by Supreme Court.). If the AGO were correct, the Supreme Court in *PAWs* would not have examined the “other statutes” through the prism of RCW 42.56.540.

The AGO interprets *PAWs* as holding that if the “other statute” exemption applies to a public record, then that “other statute” essentially takes the public records out of the purview of the PRA. However, the Supreme Court interpreted *PAWs* differently: “[a]s *PAWS* explained, the ‘other statutes exemption’ applies only to exemptions which are explicitly

²¹ This case was decided before the renumbering of the PRA and the statute number at that time was 42.17.330, which was changed in 2006 to 42.56.540.

set forth in another statute.” *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wash. 2d 734, 750, 958 P.2d 260, 267 (1998). The Supreme Court refers to the “other statutes” provision as an “exemption.” *Id.* at 746, 753, 958 P.2d at 265, 269. Because the Supreme Court views the “other statute” provision as another exemption, the statutory conflict which the AGO seeks to create disappears.²²

The AGO seeks to have this Court completely change the way the PRA has been interpreted by making an argument that the plaintiff never asserted, defendant never responded to and the trial court never heard. Requestor has responded as best he can in the very limited context of a reply brief demonstrating this Court should not take the radical step of reinterpreting the PRA on such a sparse record.

2. Robbins’ Argument That The Public Policies Behind The PRA Can Be Avoided If An Agency Uses A Two-Step Procurement Procedure Rather Than A One Step Procedure Is Meritless

Robbins does not dispute that the AGO used the Second Washington Response in making government decisions. (Requestor: 10). Robbins doesn’t seriously contest that if the state had utilized a one-step RFQQ procedure whereby it immediately entered a contract with a vendor

²²The statutes work in harmony. First, the substantive provisions of the USTA are used to determine what is or is not a trade secret. If a public record is a trade secret under the USTA, then the PRA’s “other statute” exemption applies and injunctions are controlled by the PRA.

based on the responses to the RFQQ, then the responses would be public. However, Robbins argues the situation here is different because the AGO utilizes a two-step procedure. First, the AGO uses the RFQQ information to winnow 25 firms down to 5, which all enter into “Master Securities Litigation Agreement.” It is not until Step-2 that the AGO signs a retainer agreement with the one “winning” firm.

Robbins argues that the “Master Securities Litigation Agreement” is “not a contract for litigation services.” (Robbins: 4-5). However, Robbins’ hair-splitting argument misses the point which is that, whether a one or two-step process is used, the RFQQ responses are a central part of the process by which state vendors are selected. If a vendor is not initially selected for the “short-list” of firms entering the Master Securities Litigation Agreement, then that vendor is shut out from state business.

Both Robbins and the AGO argue that it is only step-2, the actual signing of the contract that matters.²³ However, the PRA doesn’t make that distinction, and it subjects all government actions to public scrutiny—including Step-1 of a two-step purchase decision. RCW 42.56.010

²³ The AGO makes much of the fact that it offered two completed contracts with Robbins and argues that because it is willing to show Requestor the final results of an RFQQ process, the process itself may remain shrouded in secrecy. (AGO p.9 fn. 32). The AGO’s argument effectively removes public oversight from one of the most important and common decisions state agencies make—using taxpayer money to buy goods and services.

(defining “Public record” to “include[] any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function....”).

Under Robbins’ view, a state agency could avoid disclosure by using a two-step purchase procedure. If adopted by this Court, then every agency in the state will begin to use two-step processes. The PRA (and public oversight) should not be so easily avoided.

3. Robbins Fails To Dispute That Their Still Secret Fee Information In The Second Washington Response Is Inconsistent With Their Representations Made To Federal Judges

Federal judges are charged with the difficult task of awarding “reasonable fees.” As Requestor demonstrated fee awards are supposed to emulate fees in the marketplace and Robbins frequently represents to federal judges that marketplace fees for securities cases are 30-40%. (Requestor: 12-13). Requestor believes (but does not know because Robbins’ fee grid²⁴ is still secret) that Robbins is severely exaggerating market fees, and that disclosure of Robbins’ fee grid will demonstrate that market fees are far lower than the 30-40% that Robbins represents to

²⁴Fee grids show the fees to be charged (expressed as a percentage of the recovery) based on both the size of the recovery and the stage of the case. Fee grids are a typical pricing format and are used by both clients and courts. (All other law firms responding to the RFQQ submitted a fee grid, CP 708-715). This is similar to a price list for products which might adjust price based on the number of units ordered or the timing and promptness of payment.

federal judges. Requestor repeats his invitation to this Court to compare Robbins' still secret fee grid percentages to Robbins' "30-40%" representation. (Requestor: 46).

It is strongly against public policy to allow the State of Washington's injunctive power to keep secret public records relevant to showing that Robbins is successfully exaggerating market fees to induce federal judges into awarding it excessive fees paid by class members.

Robbins does not refute any of the Requestors' facts or legal citations but rather resorts to name-calling. (Robbins: 37, calling the issue "ludicrous"). Then Robbins tries to confuse the issue by claiming that class action awards are publicly available. (Robbins: 37). However, Requestor's argument focuses not on court fee *awards* that Robbins discusses, but rather what the fees are in the *market*.

While court fee award orders are readily available, market information is not. The prices at which Robbins voluntarily offers to perform legal services to entities like the State of Washington is relevant to showing market prices. While federal courts know about their own fee awards, they (and litigants before them) should also have access to market rate information contained in public records, such as those at issue here.

F. The AGO's Summary Judgment Should Not Have Been Granted Because The Issue Was Moot

Requestors' cross-claims detail where the AGO's written pleadings took Robbins' side regarding hotly contested factual issues by agreeing with the contested factual assertions underlying Robbins exemption claims. (CP 435 ¶7). Also the cross-claims detail how the AGO made exemption arguments that Robbins had not thought of, but that Robbins quickly adopted as their own. (CP 435-436 ¶12-14). The AGO opines that "the AGO's pleadings cannot reasonably be read to assert that any responsive record or portion thereof was exempt from disclosure." (AGO: 23). However, Robbins repeatedly cites to the AGO's pleadings in support of its positions, e.g.: "The AGO thus, at least implicitly, accepted that those provisions applied here to prevent disclosure..." (Robbins: 22).

The AGO's claims ring particularly hollow in light of the new injunction argument they concocted to assist Robbins in this appeal. (See, §E.1). The effect of the AGO's efforts is that Requestor incurs additional time, expense and risks responding to the AGO's pro-secrecy arguments.²⁵

²⁵ The AGO, points out that for some exemptions they agreed with Requestor. (AGO: 11-14). However, those who work at the AGO are clever enough to realize that it only takes one exemption to block disclosure. Armed with this knowledge, an agency attempting to block disclosure will always make one argument in favor of a requestor just to try to protect itself from liability for all the other pro-secrecy arguments they make. The AGO's stratagem is too clever.

The AGO repeatedly states Requestor refused to dismiss the cross claim (AGO: 25-26); however, it was a *merits* dismissal that Requestor objected to. Requestor affirmatively sought to have the cross claim dismissed based on *mootness*. (CP 1442, Proposed Order dismissing cross claims as moot). However, the AGO refused and instead demanded that Requestor complete (now meaningless) discovery and engage in (now meaningless) summary judgment proceedings.

The AGO is trying to take advantage of a procedural quirk caused by the Superior Court instance on scheduling a trial before case was at issue. (CP 420). Consequently a hearing on requestor's cross claims was never scheduled, (CP 441-442). The AGO first tried to take advantage of this at trial when it sought to litigate the cross-claims; however, Requestor pointed out that they were neither scheduled nor briefed. (2-17-2012 RT 17:4-18:10). At trial the court ruled that Requestor would get no documents, thus mooting Requestor's cross-claims.

The AGO makes much of Requestor's failure to take discovery to support arguments in the summary judgment papers. Requestor didn't take more discovery because taking more discovery on a moot claim is a waste of money. Thus, discovery on the AGO fee/penalty issue has not been completed and that is why (as the AGO notes) Requestor's Opening Brief's lacks of detail to refute the summary judgment. (AGO: 7, fn. 28).

However, as the AGO acknowledged, Requestor “made only procedural arguments in opposition to the AGO's motion.” (AGO: 21). The fee information in Requestor’s Opening brief is to support the required fee request in the Opening Brief, not to address the summary judgment issues.

Requestor acknowledges that if this Court rules in his favor, then remand may be necessary to complete discovery on the issue of Requestor’s entitlement to fees and penalties so that Requestor’s and the AGO’s arguments can be addressed in the context of a complete record.

The AGO mischaracterizes Requestor’s argument as “Judge Dixon should not have ruled on the AGO's summary judgment motion at the April hearing because Judge Pomeroy had already effectively ruled on his cross claim...” (AGO: 25). Having set up the straw argument the AGO knocks it down “Judge Pomeroy made no such ruling and the permanent injunction order does not even address Mr. Gresham's cross claim or the prevailing party issue.” (AGO: 25). Requestor’s argument is not based on an assertion that Judge Pomeroy “ruled on his cross claim,” but rather it is that Judge Pomeroy’s ruling mooted the cross claim.

The doctrine of mootness is a jurisdictional issue because courts only have jurisdiction to hear “cases and controversies.” *Burman v. State*, 50 Wash. App. 433, 439, 749 P.2d 708, 712 (1988). (“To enable a trial court to assume jurisdiction and render a declaratory judgment, it must be

presented with a justiciable controversy.”). A justiciable controversy did not exist at the time the AGO requested summary judgment on the issue because, as a result of the trial court’s granting of the injunction, Requestor no longer had an existing right to or interest in receiving attorney’s fees. *Id.* (“A justiciable controversy requires that parties have existing and genuine, not theoretical, rights or interests.”). Thus, without a justiciable controversy before it, the trial court lacked jurisdiction make a judgment regarding the AGO’s liability for attorney’s fees.

IV. CONCLUSION

For the reasons above and in his opening brief, Requestor respectfully requests he Court reverse the trial court’s permanent injunction and summary judgment orders, instruct the AGO to provide the Disputed Information and award Requestor fees, costs and a statutory penalty as the prevailing party.

RESPECTFULLY SUBMITTED this 30th day of November, 2012.



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CERTIFICATE OF SERVICE

I, Michele Earl-Hubbard, certify that on November 30, 2012, I served on the following a copy of the foregoing Reply Brief of Appellant by email pursuant to agreement and by first class mail:

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DATED this 30th day of November, 2012.

By:



Michele Earl-Hubbard

OFFICE RECEPTIONIST, CLERK

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Subject: RE: Gresham v. Robbins Geller, et al, No. 87393-3, attached filings with Supreme Court

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Attached for filing is the Appellant's Reply Brief and certificate of service.

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