

No. 47660-6-II

WASHINGTON STATE  
COURT OF APPEALS, DIVISION II

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DIVISION II

2015 OCT 16 PM 1:44

STATE OF WASHINGTON

BY

DEPUTY

KEVIN ANDERSON, Appellant,

v.

DEPARTMENT OF SOCIAL & HEALTH SERVICES,  
DIVISION OF CHILD SUPPORT, Respondent.

APPELLANT'S OPENING BRIEF

Kevin Anderson, pro se  
727189 MB-05  
Airway Heights Corrections Center  
P.O. Box 2049  
Airway Heights, WA 99001

*pm 10/13/15 mailed from AHC*

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## I. STATEMENT OF THE CASE

On July 1, 2013, Kevin Anderson (Anderson) submitted a public records request to the Division of Child Support (DCS) seeking records related to his own support case, records related to the DCS employee who handled his support case, and records related to DCS' service of process practices. CP 2 [Complaint, ¶4.1]. DCS responded and, eventually, produced a redacted copy of Anderson's case-comment printout and entirely withheld a specifically requested e-mail between DCS and the King County Prosecutor's Office, which pertained to Anderson's support case. CP 4 [Complaint, ¶4.4]. Twice, Anderson administratively appealed DCS' withholdings. CP 4 and 6 [Complaint, ¶'s 4.5 and 4.8]. The first appeal was summarily denied, and the request was closed; however, in an effort to obtain his requested records, Anderson filed a second appeal, but, despite promising to do so, DCS did not conduct a second review until months after Anderson had filed suit. CP 6 [Complaint, ¶4.9]. Eventually, DCS denied the second appeal as well.

On May 30, 2014, after DCS denied Anderson's administrative appeal, closed his request, and refused to produce requested public records, Anderson filed suit and alleged DCS had violated the Public Records Act (PRA) by denying

him an opportunity to inspect public records and by withholding non-exempt public records from his requested inspection. CP 8-9 [Complaint, ¶'s 5.5-5.6]. Through discovery, Anderson asked DCS about the redactions it had applied to his requested case-comment printout. CP 70 [Fifth Declaration of Kevin Anderson, no. 7].

On February 2, 2015, Anderson motioned for an order to show cause regarding his case-comment printout and DCS' redactions applied thereto. CP 11-12. Anderson argued, because DCS had cited multiple authorities for each redaction, he could not link any single redaction to a corresponding claim of exemption; thus, he could not assess the validity of DCS' withholdings, and DCS had violated the PRA.

On February 6, 2015, after receiving Anderson's discovery on the case-comment printout and his show-cause motion, but eight months after Anderson filed suit, DCS, proving the invalidity of, at least, some of its redactions, voluntarily produced a "revised" case-comment printout in which more information was released through DCS' removal of many of the original redactions: For the first time, DCS released garnishment information found in Anderson's case-comment printout, related to his support case. CP 70 [Fifth Declaration of Kevin Anderson, no. 8].

On February 13, 2015, DCS responded to Anderson's show-cause motion by cross-motioing for partial summary judgment on the case-comment printout. CP 35-47. DCS argued the entire printout, which, at this time, had been twice produced in response to Anderson's public records request, should be categorically exempted from Anderson's requested inspection pursuant to RCW 26.23.120.

On February 27, 2015, the trial court heard both parties' motions. VRP 1-16. Anderson demonstrated that the information released through DCS' production of the revised case-comment printout was, in fact, garnishment information related to his support case, and contrary to DCS' argument for categorical exemption, DCS admitted, through discovery, RCW 26.23.120 does NOT exempt this information, from Anderson, and there is no authority that authorizes DCS to withhold this information from Anderson's requested inspection. On the record, DCS conceded that the revised case-comment printout was necessary because portions of the originally provided printout were improperly withheld. VRP 12. Despite this, the trial court denied Anderson's show-cause motion; additionally, however, the court denied DCS' motion for partial summary judgment. VRP 13-14.

Furthermore, regarding the e-mail Anderson requested and DCS entirely withheld, after DCS had denied Anderson's administrative appeal of DCS' decision to entirely withhold the e-mail (CP 5 [Complaint, ¶4.7]) and after Anderson had filed suit, he contacted DCS' Counsel, the Attorney General's Office, and requested Counsel review DCS' withholding. On January 23, 2015, Counsel notified Anderson that DCS' entirely withholding the requested e-mail was correct, so, on March 1, 2015, Anderson submitted a discovery request related to the e-mail. CP 68-69 [Fifth Declaration of Kevin Anderson, no. 3]. By this time, Anderson had repeatedly notified DCS that its identification of "Washington prosecutor" as the purported author of the e-mail must be incorrect as no such person or office exists, so, at a minimum, DCS should properly identify the author of the e-mail; additionally, given that the e-mail was written about Anderson's support case, and, by DCS' own admissions, Anderson is "entitled" to his support records, DCS should produce the e-mail; finally, given that DCS has revealed the contents of the e-mail in Anderson's case-comment printout, which is an admitted public record, seen by non-attorneys, DCS has waived any claim of attorney-client privilege, and DCS should, again, produce the e-mail

On March 6, 2015, similar to its response after receiving discovery on the case-comment printout, DCS voluntarily released the previously withheld e-mail days after receiving Anderson's discovery requests regarding the e-mail. CP 69 [Fifth Declaration of Kevin Anderson, no. 5].

On April 8, 2015, without addressing either its February 6, 2015 production of the revised case-comment printout in which admittedly improper redactions were removed, or its March 6, 2015 production of the previously withheld e-mail, DCS, again, motioned for summary judgment based on the same argument as before: Anderson's support records are categorically exempted from disclosure, to himself, pursuant to RCW 26.23.120; the provision DCS admits does not apply to the information being withheld in this case. In response, Anderson argued DCS' production of the e-mail, which had been claimed exempt under the attorney-client privilege and not RCW 26.23.120, defeats summary judgment. CP 60-67. Anderson filed a declaration and attached all the records DCS had produced subsequent to Anderson's lawsuit. CP 68-132. Finally, based on DCS' productions of requested, admittedly non-exempt public records after he filed suit, Anderson motioned to amend his complaint to more accurately reflect the facts of the

case and to narrow the issues before the Court.

On May 11, 2015, without oral argument, the trial court granted DCS' motion for summary judgment: The Court erroneously determined that Anderson's own case-comment printout, which, by this time, had been twice produced in response to Anderson's public records request and submitted, by DCS, in this open-court proceeding, is categorically exempted from public disclosure; also, the Court erroneously determined that the e-mail, which had also been produced, by this time, is also entirely exempt. From the Court's order, the Court apparently failed to consider Anderson's uncontested declaration and evidence submitted in opposition to summary judgment. CP 57-59.

On May 18, 2015, Anderson motioned for reconsideration of the Court's decision based on the Court's apparent failure to consider his filed, served, and unchallenged evidence. CP 133-136.

On May 27, 2015, the Court summarily denied reconsideration and refused to acknowledge having considered Anderson's evidence. CP 137.

On June 3, 2015, Anderson appealed. CP 138-143.

## II. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Anderson's motion to show cause.
2. The trial court erred in granting DCS summary judgment.
3. The trial court erred in refusing to acknowledge having considered Anderson's not-objected-to evidence.

## III. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Does DCS' citing multiple authorities for individual redactions made to Anderson's case-comment printout violate the PRA, and if so, does DCS' revised case-comment printout remedy this violation? (Assignments of Error No. 1 and 2)
2. Does DCS' redacting garnishment information, which it admits is not exempt and was improperly withheld, from Anderson's case-comment printout violate the PRA? (Assignments of Error No. 1 and 2)
3. Does DCS' entire withholding of Anderson's requested e-mail, until after he filed suit, violate the PRA? (Assignment of Error No. 2)

4. Based on DCS' two productions of admittedly requested, non-exempt public records subsequent to Anderson's lawsuit, must Anderson be deemed the prevailing party? (Assignments of Error No. 1 and 2)

5. Does RCW 26.23.120 categorically exempt Anderson's support records from disclosure, to himself? (Assignment of Error No. 2)

6. Did the trial court abuse its discretion by refusing to consider Anderson's not-objected-to evidence submitted in opposition to DCS' motion for summary judgment? (Assignment of Error No. 3)

#### IV. SUMMARY OF THE ARGUMENT

Despite having twice produced admittedly requested, non-exempt public records in response to Anderson's lawsuit, DCS was granted summary judgment based on an illogical, contrived legal theory: RCW 26.23.120, the provision DCS admits does "entitles" Anderson to his own support records and does not apply to the actual information withheld in this case, categorically exempts Anderson's records from his requested inspection.

Anderson will show that DCS' response to his public records request violates the PRA. Also, fully expecting

DCS to, again, argue how hypothetically confidential some unnamed and totally irrelevant records may or may not be, Anderson will show that RCW 26.23.120, the provision that does not categorically exempt records, but authorizes the Department of Social and Health Services (DSHS) to promulgate rules, with the PRA's redaction requirement in mind, which must allow for the subject of the records to access his or her own records, cannot be used to bar Anderson from obtaining his own support records.

## V. ARGUMENT

### A. STANDARD OF REVIEW

Under the PRA, courts review challenges to agency actions de novo. City of Federal Way v. Koenig, 167 Wn.2d 341, 217 P.3d 1172 (2009). Where a trial court bases its decision regarding whether or not an agency has violated the PRA solely upon documentary evidence, without live testimony, the appellate court engages in de novo review of violations. Ames v. City of Fircrest, 71 Wn.App. 284, 857 P.2d 1083 (Div. II, 1993). When a PRA case is decided on summary judgment, the appellate court stands in the same position as the trial court. West v. Dept. of Licensing, 182 Wn.App. 500, 331 P.3d 72 (Div. I, 2014).

Finally, a defendant should only be granted summary judgment "when a plaintiff fails to produce sufficient evidence of an essential element of his or her case; that failure renders all other facts immaterial." Pope v. Douglas County PUD No. 1, 158 Wn.App. 23, 241 P.3d 797, 800 (Div. III, 2010).

B. DCS' RESPONSE TO ANDERSON'S REQUEST VIOLATES THE PRA.

1. DCS' Citing Multiple Authorities For Individual Redactions It Applied To Anderson's Requested Case-Comment Printout Violates The PRA.

In response to Anderson's request for a copy of the case-comment printout from his support case, DCS produced a 19-page document, which contained redactions throughout. CP 13 [First Declaration of Kevin Anderson, no. 2]. Purportedly to explain the redactions, DCS provided Anderson with a 1-page "Common Redactions and to [sic] Division of Child Support Case File Records" (list of redactions). CP 14 [First Declaration of Kevin Anderson, no. 3]. The list of redactions consists of eleven enumerated sections with each section citing multiple authorities: Where DCS redacted a portion of the printout, it referenced one or more sections from the list of redactions.

Under the PRA, an agency must identify a specific claim of exemption for each redaction it applies to a public

record; in addition, it must explain how the exemption applies to the information being withheld. RCW 42.56.210(3) provides:

Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

DCS' failure to connect each redaction to a specific claim of exemption left Anderson and the Court with no way to assess the validity of the redaction; this failure violates the PRA: City of Lakewood v. Koenig, 182 Wn.2d 87, 343 P.3d 335 (2014) (Under the PRA, it is improper and a violation for an agency to shift its burden onto a requestor by citing multiple claims of exemption, for a withholding, and leaving the requestor to sift through the statutes in an attempt to determine which, if any, apply); see also, Gronquist v. Washington State Dept. of Licensing, 175 Wn.App. 729, 309 P.3d 538 (Div. II, 2013) (An agency's withholding of a public record or a portion of a public record without providing the required link to a specific claim of exemption violates the PRA).

Here, all the essential elements are admitted-to verities: (1) DCS is an "agency" as defined in the PRA,

as such, it is subject to requirements thereof (CP 2 [Complaint, ¶3.2]); (2) Anderson requested a copy of his case-comment printout in his July 1, 2013 public records request (CP 70 [Fifth Declaration of Kevin Anderson, no.7, Request for Admission, no. 4]); (3) Anderson's requested case-comment printout is a public record (CP 70 [Fifth Declaration of Kevin Anderson, no. 7, Request for Admission, no. 6]); and (4) DCS cited multiple statutes for individual redactions it made to Anderson's requested case-comment printout (CP 70 [Fifth Declaration of Kevin Anderson, no. 7, Request for Admission, no. 18]). And DCS' revised printout, produced as a result of this lawsuit, does not remedy this violation.

Initially, DCS redacted portions of the printout by referencing "1,2" from the list of redactions. CP 13 [First Declaration of Kevin Anderson, no. 2, case-comment printout, pg. 11]. In the list of redactions, under sections "1" and "2", six different authorities are identified as justification for DCS' withholding: WAC 388-14A-2107; RCW 26.23.120; WAC 388-14A-2105; RCW 74.04.060; WAC 388-14A-2135; and RCW 74.04.062. CP 14.

After Anderson had filed suit, began asking questions, in discovery, about the withheld information, and motioned

for an order directing DCS to identify a specific claim of exemption for each redaction made to his case-comment printout, DCS miserably attempted to address this violation by revamping how it claimed withholdings exempt: Besides removing some of the redactions, which it admits were improperly applied, DCS re-numbered the remaining redactions and provided Anderson with an additional explanation for redactions. CP 70 [Fifth Declaration of Kevin Anderson, no. 8]. Whereas before, DCS claimed a redaction exempt under "1,2" of the list of redactions and the six authorities identified there, DCS' revised case-comment printout claims the same redaction exempt under "2" of the additional explanation for redactions where five authorities are identified: RCW 26.23.120(4); RCW 74.04.060(1)(a); RCW 26.23.120; RCW 42.56.230(1); and WAC 388-14A-2105. Obviously, citing to five different authorities for a single redaction is little better than citing to six; neither, however, comply with the PRA.

Instead of attempting to recast the inarguable facts of the case, DCS absurdly argues the law: RCW 42.56.210(3)'s mandate cannot serve as a basis for challenging any withholding or claim of exemption applied to Anderson's admittedly requested and admittedly non-exempt public record.

CP 44 [Def's Resp to Plntf's Motion to Show Cause, pg. 10, lines 21-24].

DCS' incessant argument, which does not even attempt to address RCW 26.23.120(7), fails miserably. RCW 26.23.120(7) provides:

Nothing in this section shall be construed as limiting or restricting the effect of 42.56.070(9). NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT THE DISCLOSURE OF INFORMATION AND RECORDS IF ALL DETAILS IDENTIFYING AN INDIVIDUAL ARE DELETED OR THE INDIVIDUAL CONSENTS TO THE DISCLOSURE. (emphasis added)

This is not the language of a categorical exemption, and Anderson, by requesting his own records, clearly "CONSENTS TO THE DISCLOSURE". DCS' multi-year misrepresentation of this authority should be revisited at the appropriate time: A hearing on bad faith.

This Court should: (1) Reverse the trial court's erroneous order on summary judgment; (2) Find DCS' failure to link each redaction applied to Anderson's requested case-comment printout with a specific claim of exemption an ongoing violation of the PRA; (3) Order DCS to comply with RCW 42.56.210(3)'s mandate and individually identify a specific statutory claim of exemption for each redaction it applied to Anderson's case-comment printout; and (4) Remand the case for further proceedings: Twice, DCS has responded to Anderson's discovery like a sick person

responds to ipecac; instead of facing more discovery and the inevitable involuntary, spasmodic production of requested, non-exempt public records, DCS moved for summary judgment months before the discovery cutoff; Anderson needs to continue discovery and, eventually, request in camera review of the case-comment printout AFTER DCS properly identifies a specific claim of exemption applicable to each redaction applied thereto.

2. DCS' Withholding Of Admittedly Non-Exempt Garnishment Information, Until After Anderson Had Filed Suit, Violates the PRA.

DCS has served garnishment orders in Anderson's support case; in doing so, it has recorded the orders in his case comments. CP 70 [Fifth Declaration of Kevin Anderson, no. 8, case-comment printout, pgs. 10-11]. After Anderson realized that he had not received notice of any garnishment actions in his case, but in an apparently, by the fact that no action was ever taken, rebuked effort to collect on not-responded-to garnishment orders, DCS had communicated with a prosecutor regarding Anderson's support case, Anderson requested a complete printout of his case comments. DCS, in response to Anderson's request, withheld the garnishment information found in Anderson's case comments

by redacting the related entries. CP 13 [First Declaration of Kevin Anderson, no. 2, case-comment printout, pg. 11]. However, after Anderson had filed suit, through discovery, DCS admitted that the withheld garnishment information is NOT exempted from disclosure, to himself. CP 70 [Fifth Declaration of Kevin Anderson, no. 7, Request for Admission, no. 14]. Consequently, from July 1, 2013 until February 6, 2015, when DCS produced the revised printout and released the previously withheld garnishment information, DCS violated the PRA by denying Anderson's requested access to non-exempt public information: Without his lawsuit, Anderson would have not been able to access this requested information.

Upon request, DCS, as an admitted agency under the PRA, must produce all requested, non-exempt public records. RCW 42.56.080 provides:

Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person.... Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter.

The PRA, in the clearest of terms, mandates disclosure of all requested, identifiable, and non-exempt public records: "Agencies must parse individual records and must withhold only portions which come under specific exemption.

Portions of records which do not come under a specific exemption must be disclosed." Progressive Animal Welfare Society v. University of Washington, 125 Wn.2d 243, 884 P.2d 592 (1995).

Here too, the facts are established by DCS' admissions:

- (1) Initially, DCS redacted garnishment information from Anderson's requested case-comment printout (CP 70 [Fifth Declaration of Kevin Anderson, no. 7, Request for Admission no. 17]);
- (2) RCW 26.23.120(3)(b) entitles Anderson to his own support records (CP 45 [Def's Resp to Plntf's Motion to Show Cause, pg. 11, lines 10-12]);
- RCW 26.23.120 does not exempt the garnishment information DCS withheld (CP 70, [Fifth Declaration of Kevin Anderson, no. 7, Request for Admission, no. 14]);
- (4) In open court, DCS, through Counsel, conceded that the redactions applied to the originally produced case-comment printout were "improper" (VRP 12);
- and (5) After Anderson sued, DCS "mailed a new copy of the case comment history, in which the [garnishment information] is not redacted" (CP 70 [Fifth Declaration of Kevin Anderson, no. 7, Request for Admission, no. 17]).

Requested public records that are not exempt must be produced upon request. DCS cannot be allowed to continue to argue contrary to its own admissions.

This Court should: (1) Reverse the trial court's erroneous order on summary judgment; (2) Find DCS' withholding of admittedly non-exempt garnishment information a violation of the PRA; and (3) Remand the case for further proceedings.

3. DCS' Entire Withholding, Until After Anderson Had Filed Suit, Of The E-Mail He Requested, Violates The PRA.

In his request, Anderson specifically sought an e-mail between DCS and the King County Prosecutor's Office, which Anderson knew pertained to his support case and which he believed had something to do with the garnishment orders that he was not receiving notice of. CP 3 [Complaint, ¶4.1]. In response, DCS, initially, withheld the e-mail in its entirety, under the attorney-client privilege, RCW 5.60.060. CP 69 [Fifth Declaration of Kevin Anderson, no. 4]. After Anderson's administrative appeal of DCS' withholding was denied, he filed suit, and on March 1, 2015, Anderson served DCS with a discovery demand related to the withheld e-mail. CP 68-69 [Fifth Declaration of Kevin Anderson, no. 3]. Similar to its actions in producing the revised case-comment printout shortly after receiving a discovery demand related to that record, on March 6, 2015, DCS produced the requested e-mail. CP 69 [Fifth

Declaration of Kevin Anderson, no. 5].

As demonstrated above, DCS, as an admitted agency under the PRA, must produce requested, non-exempt public records. RCW 42.56.080, supra.

Yet again, the facts are uncontestable admissions: (1) Anderson requested the e-mail in his July 1, 2013 request (CP 68-69 [Fifth Declaration of Kevin Anderson, no. 3, Request for Admission, no. 1]); (2) The requested e-mail is a public record (CP 68-69 [Fifth Declaration of Kevin Anderson, no. 3, Request for Admission, no. 3]); (3) Initially, DCS entirely withheld the requested e-mail (CP 68-69 [Fifth Declaration of Kevin Anderson, no. 3, Request for Admission, no. 2]); and (4) Anderson's administrative appeal of DCS' withholding of the e-mail was denied (CP 5 [Complaint, ¶4.7]); and (5) After Anderson sued, DCS produced the requested e-mail with redactions (CP 69 [Fifth Declaration of Kevin Anderson, no. 5]).

The State Supreme Court has called DCS' actions here, "the mootness argument in another garb." Spokane Research & Defense Fund v. City of Spokane, 155 Wn.2d 89, 117 P.3d 1117 (2005) (Allowing agencies to resist disclosure of requested, non-exempt records until after a lawsuit is

filed, in an attempt to avoid paying, flouts the purpose of the PRA); see also, Coalition on Government Spying v. King County Dept. of Public Safety, 59 Wn.App. 856, 801 P.2d 1099 (Div. I, 1991) (Voluntary disclosure of requested, non-exempt records subsequent to the filing of a lawsuit does not shield an agency from liability).

Without question, DCS produced the requested, non-exempt e-mail as a result of Anderson's lawsuit. The trial court's determination that this admitted public record that was admittedly produced in response to Anderson's public records request is, after the fact, exempt cannot be allowed to stand.

This Court should: (1) Reverse the trial court's erroneous order on summary judgment; (2) Find DCS' withholding of the requested e-mail, until after Anderson filed suit, a violation of the PRA; and (3) Remand the case for further proceedings: DCS produced the e-mail days before filing its second summary judgment motion, and no discovery has been had on the portions still being withheld from Anderson's requested inspection; however, according to Mechling v. City of Monroe, 152 Wn.App. 830, 227 P.3d 808 (Div. I, 2009); review denied, 169 Wn.2d 1007, 236 P.3d 206 (2010) (Attorney-client privilege found non-applicable

where, otherwise, protected communication was referenced in other, non-protected, public records), DCS' revealing the contents of the e-mail in Anderson's case-comment printout (CP 13 [First Declaration of Kevin Anderson, no. 2, case-comment printout, pg. 11]; compare, CP 70 [Fifth Declaration of Kevin Anderson, no. 8, case-comment printout, pg. 11]), meant to be seen by non-attorneys, must be construed as a waiver of the privilege; thus, discovery and in camera review of the e-mail are needed.

C. ALL DCS RECORDS ARE NOT CATEGORICALLY EXEMPTED FROM DISCLOSURE UNDER THE PRA.

In the proceedings below, DCS successfully, but incorrectly, argued that RCW 26.23.120 categorically exempts DCS records from public disclosure. However, when this authority is read in its entirety and in context with DCS' actions, RCW 26.23.120 clearly cannot be used to deny Anderson's requested access to his own records. RCW 26.23.120(1) provides:

Any information or records concerning individuals who owe a support obligation or for whom support enforcement services are being provided which are obtained or maintained by [DCS] shall be private and confidential AND SHALL ONLY BE SUBJECT TO PUBLIC DISCLOSURE AS PROVIDED IN SUBSECTION (2) OF THIS SECTION. (emphasis added)

Very clearly, as set forth in subsection (2), DCS records may be subject to public disclosure; thus, they cannot be categorically exempted by this authority alone. Subsection (2) goes on to empower the Secretary of DSHS to promulgate rules regarding what DCS information is confidential and to whom DCS records may be disclosed; accordingly, WAC 388-14A-2105(3)(a) authorizes DCS to disclose Anderson's records to himself; WAC 388-14A-2110(1) instructs Anderson to request public records from DCS via a written public disclosure request; and, DSHS Policy 5.02 (CP 69 [Fifth Declaration of Kevin Anderson, no. 6]) identifies Anderson's "client" records as public records, being fully disclosable, to himself.

RCW 26.23.120(3)(b) mandates that any rule created under subsection (2) must allow the subject of DCS records access to his or her own records; on this reading of this specific provision, DCS agrees. CP 45 [Def's Resp to Plntf's Motion to Show Cause, pg. 11, lines 6-12]. The records at issue in this, i.e., Anderson's own support records, must fall under RCW 26.23.120(3)(b).

Also, as previously shown, RCW 26.23.120(7) incorporates DCS records into the PRA; it does not exclude DCS records from the PRA. In relevant part, RCW 26.23.120(7) provides:

... Nothing in this section shall be construed to prevent the disclosure of information and records if all details identifying and individual are deleted or the individual consents to the disclosure.

Therefore, according to the rules created under RCW 26.23.120(2), the agreed-upon mandate of RCW 26.23.120(3)(b), and the explicit language found in RCW 26.23.120(7), Anderson's own DCS records are not exempted from his requested inspection.

Moreover, DCS' misinterpretation of RCW 26.23.120 leaves its "most wanted" internet site completely unexplainable: Pursuant to WAC 388-14A-4600, DCS operates an internet site whereby it releases supposedly exempt "... information or records concerning individuals who owe a support obligation..." (RCW 26.23.120(1)). So, according to DCS' flawed logic, DCS has authority to upload exempt information from Anderson's support case to the internet for the entire world to see, but, when Anderson requested his own records, DCS had no legal obligation to produce them because of the inherent confidentiality of ALL DCS records. DCS' argument for the categorical exemption of all its records

fails miserably: "Not all public records, however, are available to the public..." CP 40 [Def's Resp to Plntf's Motion to Show Cause, pg. 6, lines 17-18].

In addition, when the legislatively chosen language of RCW 26.23.120 is compared with other categorical exemptions, it becomes clear that RCW 26.23.120 is not meant to be used as a mechanism for denying DCS records to the subject of the information. In relevant part, RCW 26.23.120(1) provides:

[DCS records] shall only be subject to public disclosure as provided...

In stark contrast, RCW 42.56.310, the library records exemption, provides in relevant part:

Any library record... is exempt from disclosure under this chapter....

Likewise, RCW 42.56.320, the educational information exemption, provides in relevant part:

The following educational information is exempt from disclosure under this chapter....

This Court must reject DCS' proposed reading of RCW 26.23.120: "Shall be subject to public disclosure" is not the same as "is exempt from [public] disclosure." And any uncertainty regarding whether or not RCW 26.23.120 can act as a categorical exemption is resolved by the

explicit, deliberately chosen language of RCW 26.23.120(7), which incorporates the redaction requirement of the PRA:

... Nothing in this section shall be construed to prevent the disclosure of information and records if all details identifying an individual are deleted or the individual consents to the disclosure.

This Court should: (1) Reverse the trial court's erroneous order on summary judgment; (2) Find RCW 26.23.120, in itself, does not categorically exempt Anderson's DCS records from his requested inspection or the PRA; and (3) Remand the case for further proceedings.

D. ANDERSON IS ENTITLED TO COSTS AND ATTORNEY FEES.

If this Court finds that DCS violated the PRA, Anderson requests an award of costs and reasonable attorney fees. RAP 18.1 permits costs and attorney fees on appeal if the applicable law grants this right for an appeal. The Washington State Supreme Court has determined that, under the PRA, an individual who prevails against an agency for the right to inspect a public record is entitled to all costs, including reasonable attorney fees. Progressive Animal Welfare Society v. University of Washington, 125 Wn.2d 243, 884 P.2d 592 (1995); see also, RCW 42.56.550(4).

VI. CONCLUSION

In a different case with different facts, the protection of information held by DCS may be necessary; however, this is simply not the case here, and DCS has failed to present one shred of evidence showing otherwise. In fact, under WAC 388-14A-2114, DCS was to give the custodial parent, Anderson's ex-wife, 30-days notice of the pending release of her information to give her an opportunity to object. DCS cannot continue to deny Anderson access to his own DCS records through the incantation of RCW 26.23.120 and this Court must intercede and order DCS to comply with the PRA.

DATED this 12th day of October, 2015.

A handwritten signature in cursive script, appearing to read "Kevin Anderson", is written over a horizontal line.

Kevin Anderson  
Appellant, pro se

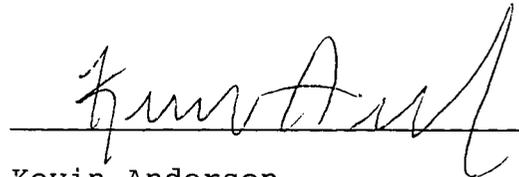
CERTIFICATE OF MAILING

I, Kevin Anderson, hereby swear under the penalty of perjury of the laws of the State of Washington that on this day I mailed, via U.S. mail, postage prepaid, a true and correct copy of the foregoing document, addressed as follows:

AAG Anne Miller  
Attorney General of Washington  
PO Box 40124  
Olympia, WA 98504

DATED this 12th day of October, 2015.

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Kevin Anderson  
Appellant, pro se