

FILED

JUN 20 2013

**COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____**

No. 310396
COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

CHRISTOPHER JACK REID,

PETITIONER,

V.

PULLMAN POLICE DEPARTMENT,

RESPONDANT.

REPLY BRIEF OF PETITIONER

CHRISTOPHER JACK REID, pro se
H-5-A-87 #324543
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	1
ARGUMENT AND AUTHORITIES.....	2
I. Waiver of Affidavit's Presumption of Good Faith.....	2
A. Pullman Police violated all affidavit requirements.....	2
1. Pullman Police failed to show it did not receive the LED records.....	3
2. Pullman Police failed to show the LED records were transmitted via Whitcom radio dispatch.....	4
3. Pullman Police failed to show the LED records were never put into Reid's criminal case file.....	5
4. Pullman Police failed to show the LED records were removed from Reid's criminal case file.....	5
B. Pullman Police's Response Brief explanations departs from positions held at the Show Cause hearing.....	6
C. To meet its burden under the PRA, Pullman Police affidavits must show that the LED records were managed and disposed of according to State approved Records Management Guidelines and Retention Schedules.....	7
1. Pullman Police's silence is telling.....	7
2. Washington Courts rely on the State Records Management Guidelines when analyzing whether agencies violated the PRA.....	8
II. Violation of Rules of Appellate Procedure.....	9
A. Pullman Police's brief fails to cite the record.....	9
MOTION FOR FURTHER BRIEFING.....	10
GROUND FOR RELIEF.....	10
ARGUMENT.....	10
CONCLUSION.....	10

TABLE OF AUTHORITIES

STATE CASES

Building Industry Ass'n of Washington v. McCarthy,
152 Wash.App. 720 (2nd Div. 2009).....8

Daines v. Spokane County,
111 Wash.App. (3rd Div. 2002).....8

Neighborhood Alliance v. County of Spokane,
153 Wash.App. 241 (3rd Div. 2009).....2

Neighborhood Alliance V. County of Spokane,
172 Wn.2d 702 (2011) Justice Mary E.
Fairhurst concurring.....8

O'Neill v. City of Shoreline,
170 Wn.2d 138 (2010).....8

FEDERAL CASES

King v. Dep't of Justice,
830 F.2d at 218-19.....3

Weiner v. F.B.I.,
943 F.2d at 977-79 (9th Cir. 1991).....2

OTHER

RAP 10.3(a)(5).....9

RAP 10.3(a)(6).....9

PRELIMINARY STATEMENT

There is only one thing more violating than discovering from prison that the accuser who pointed at me in a rape trial previously pointed at someone else. That one thing is the Pullman Police claiming the records do not exist. The records were original chain-of-custody documents--suppressed at trial--establishing the date and times Pullman Police obtained DOL identification of the man she pointed at, plus three other suspects (the four suspects).

Vague and conclusory explanations as to the mysterious disappearance of these public records have not been limited to the Response Brief. Recently, City officials made public statements that my inquiry into what happened to those records constitutes harrassment and infliction of pain and suffering for revenge.¹ Yet conclusions that Pullman Police has not violated the Public Records Act cannot be reached without knowing: WHAT HAPPENED TO THOSE LAW ENFORCEMENT DATABASE RECORDS?

It is undisputed that the Law Enforcement Database (LED) Records created by Pullman Police were not provided in response to my PRA request.² This appeal is only about whether the Trial Court's findings on Pullman Police's

1. See Appendix A.

2. See CP at 125:15-21.

explanations for not providing the LED records relieved the agency from its burden of proof under the PRA.

ARGUMENT AND AUTHORITIES

This Court held that "The PRA closely parallels the federal Freedom of Information Act (FOIA)...thus, where appropriate, Washington courts look to judicial interpretations of FOIA in construing the PRA."³

The Ninth Circuit Court stated that "'boilerplate' explanations without an effort to 'tailor the explanation to the specific document withheld' were insufficient."⁴

ISSUE 1: Waiver of affidavit's presumption of good faith.

Under Federal and State law, Pullman Police must tailor its explanations to the specific records withheld. Pullman Police gave unsubstantiated explanations for non-disclosure by asserting that the LED Records were: not received by the Pullman Police; transmitted via Whitcom radio dispatch; never put in Reid's criminal case file; and removed from his criminal case file. Has Pullman Police waived its affidavit's presumption of good faith?

A. Pullman Police violated all affidavit requirements.

Pullman Police affidavits are conclusory, omit critical details, and are controverted by other evidence in the record. By omitting from its affidavits any facts substantiating its claims, Pullman Police failed to meet

3. See Neighborhood Alliance v. County of Spokane, 153 Wash.App. 241 (3rd Div. 2009).

4. See Weiner v. F.B.I., 943 F.2d at 977-79 (9th Cir. 1991).

its burden of proof that the records did not exist prior to Reid's PRA request. The agency may give alternative reasons for withholding a document only if each reason is applicable to the document at issue.⁵

1. Pullman Police failed to show it did not receive the LED records.

In the first three sentences of Pullman Police's first argument, it misstates both the evidence and Reid's characterization about it, and then--on that shaky foundation--stack's its conclusion that the records were not improperly withheld.⁶

Pullman Police invites this Court to believe it never received the LED records concerning the four suspects.⁷ Yet Pullman Police failed to tailor the details of this explanation to those specific records. The only facts on the record are those submitted by Reid making it clear that the LED records concerning the four suspects were created, sent, and **received** by Officer Orsborn from Pullman Police A.C.C.E.S.S. terminals.⁸ Therefore, this Court must decline Pullman Police's conclusory statement that is controverted by Reid's undisputed evidence.

5. See Weiner (citing) King v. Dep't of Justice, 830 F.2d at 218-19.

6. See Response Brief at 11.

7. See Response Brief at 11.

8. See Appellate Brief at 5 (citing) CP 17-18, 26-27, 35-36, 40-41, 51-52.

2. Pullman Police failed to show the LED records were transmitted via Whitcom radio dispatch.

The second profound failing of Pullman Police's response brief is its claim that officers obtained the LED records "by radioing requests to Whitcom, a regional dispatch center, and then receiving results over the radio."⁹ Although this explanation was mentioned in affidavits, Pullman Police failed to tailor it to the specific LED records at issue.

Detective Crow avered that "all such queries would be routed through Whitcom and transmitted to the officer over the radio."¹⁰ Detective Peringer also avered that officers "would provide information over the radio to Whitcom ... Whitcom would then provide results to the police officer over the radio."¹¹ However, a close look reveals that both detectives were referring to procedures for officers conducting queries "in their cars" and "while on patrol." Reid never claimed the missing LED records were conducted from police cars while the officers were on patrol.

In fact, Reid's undisputed evidence controverted that theory from the outset, and he demonstrated to the Trial Court that the LED records show on their face that they

9. See Response Brief at 12.

10. See CP at 136:22-23.

11. See CP at 134:4-15.

were sent and received by Officers Orsborn and Crow using A.C.C.E.S.S. terminals CX60 and CX61, located inside the Pullman Police Department.¹²

3. Pullman Police failed to show the LED records were never put into Reid's criminal case file.

In its Response Brief, Pullman Police asserted that the LED Records "were never put into his criminal casefile" without citing to any part of the record for support.¹³ Instead, Pullman Police cited the second and third pages of the Trial Court's Memorandum Decision which says no such thing.

Besides, the LED records were created and used during the course of investigating Pullman Case No. 07-P07290, and therefore, were related to Reid's case. The Trial Court acknowledged that Reid's PRA request was for "all records related to his criminal case."¹⁴ So whether or not the LED records were placed into the case file is irrelevant. Nevertheless, that explanation is not supported by any evidence on the record.

4. Pullman Police failed to show the LED records were removed from Reid's criminal case file.

Next, Pullman Police made the alternative argument that the LED records "were removed during the course of the investigation that led to his conviction."¹⁵ Again, the

12. See CP at 17-18, 26-27, 35-36, 40-41, 51-52.

13. See Response Brief at 13.

14. See CP at 125:15-21.

15. See Response Brief at 13.

Trial Court's Memorandum Decision was cited which does not support that explanation.

Detective Peringer did state "Even if a WSP record was initially printed out, an officer might remove it from the case file and discard it in light of new information that tended to show the WSP record was irrelevant."¹⁶ But setting aside the vagueness of "might," he still failed to tailor the explanation to the specific LED records concerning the four suspects.

B. Pullman Police's Response Brief explanations departs from positions held at the Show Cause hearing.

While Pullman Police refuses to acknowledge it now, it argued different explanations for not providing the LED records in the Trial Court.

- "Irrelevant records are not retained because they do not pertain to the investigation of the crime."¹⁷
- "Here, the records which Plaintiff seeks do not exist in the City's case jacket because they were not retained by the investigating officers. In Building Industry Association of Wash. v. McCarthy, 152 Wn. App. 720, 218 P.3d 196 (2009), the Plaintiff claimed a violation of the Act because emails that had been permanently deleted pursuant to the State Records Retention Schedule had not been produced in response to a public records request."¹⁸
- "Plaintiff can produce no evidence to show whether an officer recieved the WSP records verbally or printed them out at the station."¹⁹

16. See CP at 134:20-22.

17. See CP at 70:25-2.

18. See CP at 73:14-19.

19. See CP at 72:23-25.

- "Plaintiff then complains that he did not receive duplicate copies of these same records from the PPD."²⁰
- "The City denies...the conclusion that PPD retained and used every record that was generated. The affidavits of Officers Peringer and Crow clearly demonstrate that such a conclusion is in error and is inconsistent with the method by which WSP reports were accessed in 2007. Most Identification and Criminal History checks in 2007 were performed by...Whitcom, and results were verbally communicated to officers in the field via radio communications."²¹

On appeal, Pullman Police have either abandoned or altered these explanations and you have to wonder--why? Nevertheless, Pullman Police failed to tailor any one of them to the specific LED records of this case.

C. To meet its burden under the PRA, Pullman Police affidavits must show that the LED records were managed and disposed of according to State approved Records Management Guidelines and Retention Schedules.

1. Pullman Police's silence is telling.

The Court should take notice of what Pullman Police studiously avoids addressing. First, Pullman Police provides no support for its claim that officers can delete records or remove them from the case file. Second, Pullman Police has not met its burden of proving, as it must, that it was authorized to destroy the LED records when it did or at all. For example, Pullman Police studiously avoided providing a log identifying destroyed records, dates of

20. See CP at 72:4.

21. See CP at 72:15-23.

destruction, and State approved Retention Series authorizing destruction. "An agency is forbidden from destroying responsive documents while a PRA request is pending. RCW 42.56.100. Because of this prohibition, an agency must show that any recently destroyed documents were not wrongfully destroyed."²²

2. Washington Court's rely on the State Records Management Guidelines when analyzing whether agencies violated the PRA.

Pullman Police never details how the LED records responsive to Reid's request were managed. Instead, it talked in vague and conclusory terms such as "the records do not exist" when arguing for dismissal of Reid's case.

In *O'Neil v. City of Shoreline*, the defending agency asked Division II to consider these Guidelines as evidence.²³

In *BIAW v. McCarthy*, the State Supreme Court Justices used the Guidelines during their analysis when discussing the lawfulness of records destruction.²⁴

And in the *Daines* case, this Court stated that Spokane County "follows the published procedures in the official state Records Management Manual."²⁵

22. See *Neighborhood Alliance v. Spokane*, 172 Wn.2d 702 (2011) Justice Mary E. Fairhurst concurring.

23. See *O'Neill v. City of Shoreline*, 170 Wn.2d 138 (2010).

24. See *Building Industry Ass'n of Washington v. McCarthy*, 152 Wash.App. 720 (2nd Div. 2009).

25. See *Daines v. Spokane County*, 111 Wash.App. 342 (3rd Div. 2002).

ISSUE 2: Violation of Rules of Appellate Procedure

Under Washington State Court Rules, respondents are required to argue together with references to relevant parts of the record. In its Response Brief, Pullman Police argues about the "context of certain records" without referring to relevant parts of the record. Has Pullman Police violated the Rules of Appellate Procedure?

A. Pullman Police's Brief fails to cite the record.

Pullman Police has failed to cite record references, thus violating the State Rules of Appellate Procedure requiring them. Rule 10.3(a)(6) plainly requires that a respondent's brief provide, along with its argument, "citations ... to relevant parts of the record."²⁶ And as RAP 10.3(a)(5) makes equally clear, a reference to the record must be included for each factual statement.²⁷ Yet Pullman Police's Response Brief--even when alleging facts--contains no reference to the original record.

The most egregious lack of record support appears in the first argument, in which Pullman Police stated the following:

Based on these affidavits, along with the ... context of certain records, the Trial Court reasonably concluded that...no withholding of records or violation of the Act occurred.²⁸

The phrase "context of certain records" is alarming

26. See RAP 10.3(a)(6).

27. See RAP 10.3(a)(5).

28. See Response Brief at 13.

because this language is nowhere in the record. Reid has no knowledge of what "context" or "certain records" Pullman Police is referring to. Did the Trial Court consider the "context" of "certain records" without Reid knowing?

MOTION FOR FURTHER BRIEFING

Petitioner Christopher Jack Reid, pro se, pursuant to RAP 10.4(d), moves this Court to order Pullman Police to explain the "context of certain records."

GROUND FOR RELIEF

Pullman Police's failure to explain the "context of certain records" violated RAP 10.3(a)(5) and (6), and prejudiced Reid in the Trial Court and here on appeal.

ARGUMENT

Reid incorporates the same argument as set out above in ISSUE 2.

CONCLUSION

Washington Courts cannot be powerless to remedy PRA violations where the requestor proves documents were withheld, but the agency prevails by merely stating--without demonstrating--that the records did not exist prior to the request.

The only mechanism by which the Courts can keep agencies from circumventing the PRA is to find the requestor as the

prevailing party, when agencies fail to meet their burden
of proof.

DATED this 17th day of June, 2013

Respectfully submitted,

By: 
CHRISTOPHER JACK REID, pro se

APPENDIX A

Log in Create account

Newsletters Mobile E-edition Subscriber Services Shop Obituaries Jobs Homes Cars Ads/Classifieds Comics

THE SPOKESMAN-REVIEW

Topics Times Places Media

62°
Spokane forecast



May 3, 2013
Search
Today's headlines Archives

Quick links: [Bloomsday 2013](#) · [Summer Camps 2013](#) · [Custom newsletters](#) · [Live Well](#) · [News quiz](#)



Story Comments

May 3, 2013 in City

Rapist: City of Pullman withheld, deleted emails

Inmate serving 111 months to life in prison for rape, burglary

Tony Buhr Murrow News Service

Print Email Tweet 4 Recommend 6

COLFAX – A former pornography star convicted of rape has filed four lawsuits against the city of Pullman over alleged public record request violations.

In court documents, Christopher Reid, now an inmate of Stafford Creek Correctional Facility near Aberdeen, Wash., alleges the city intentionally withheld or destroyed email.

"Everything I've asked for has been in regards to my case," said Reid, who was convicted of rape and burglary and sentenced to 111 months to life in prison.

Reid has also tried to settle with the city twice, he said. He requested \$67,000, as well as an admission that a city officer's report was erroneous, and that a witness had identified another suspect in a photo lineup. Reid has since dropped his request for financial compensation.

Pullman Mayor Glenn Johnson said the allegations are false and that Reid is harassing the city for revenge.

"He wants to make sure we are in pain and suffering and sue us for public records requests we haven't violated," Johnson said.

In an interview, Reid said he respects public records law and sees it as a tool to challenge his conviction.

Reid alleges the city deleted emails requesting stock photos from the Department of Licensing for a police lineup on Sept. 13, 2007. Reid believes another man was selected by the rape victim instead of him. He received copies of some of the emails from the Department of Licensing, but the city responded saying it no longer had the documents he requested.

The city does not argue the fact that it deleted the emails, said City Attorney Laura McAloon.

"Pullman Police Department didn't retain those emails because they were not relevant to the case," she said. The city was in compliance with state law, she said.

As for the allegations that the rape victim selected another man in the lineup, "He has completely fabricated that," McAloon said. "He cuts and pastes things and draws conclusions."

Reid argues that the city's action violates state law, which says records can be destroyed only after six years or by permission of the Washington State Archives. The archives follows retention guidelines that vary depending on the document's content.

"There is no single retention period for email. The retention period depends on the content of the email," said Russell Wood, records manager for the Washington State Archives. Reid has also sued the state archive office.

McAloon said the documents held no important information and the city doesn't plan to give in to Reid's demands.

Reid said he would continue to appeal his case and has issued a subpoena against the state archives.

BizFinderNW.com
Down To Earth NW
 Find more businesses on [BizFinderNW.com](#)
 Deal of the Day • Restaurants • Retail • Info
 Arcelias Mexican Restaurant and Cantina [Buy 1 Dinner, Get Second Dinner...](#)

What do you think?

How concerned are you right now about the state of public education in the United States?

Very concerned

Somewhat concerned

Not at all concerned

Submit

Become a **Marketing Rock Star**

FULL SAIL UNIVERSITY Online
Internet Marketing Master's Degree - Online
 FIND OUT HOW

Find us on Facebook

The Spokesman-Review
Like

12,776 people like The Spokesman-Review.

Facebook social plugin



DECLARATION OF SERVICE BY MAIL

I, Christopher Jack Reid, declare that, on June 17, 2013, I deposited the foregoing REPLY BRIEF OF PETITIONER, or copy thereof, in the internal legal mail system of Stafford Creek Corrections Center and made arrangements for postage, addressed to:

Theresa L. Keyes
Attorney at Law
K & L Gates LLP
618 West Riverside Avenue
Suite 300
Spokane, WA 99201

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED at Aberdeen, Washington on June 17, 2013.


Signature