

**FILED**

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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 34190 - 9

IN THE COURT OF APPEALS, DIVISION THREE

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PALMER D. STRAND AND PATRICIA N. STRAND

APPELLANTS

V.

SPOKANE COUNTY AND SPOKANE COUNTY ASSESSOR

RESPONDENTS

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**BRIEF OF APPELLANT**

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*Appellant*

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## **I. INTRODUCTION**

This is a Public Record Act (“PRA”) lawsuit stemming from Appellant Patricia Strand’s Public Record Act requests to obtain records to assist her in appealing a property value determination by her local Assessor that led to an alleged increase of her property value by more than \$100,000 in a given year and a resulting increase in property taxes. The Appellant Patricia Strand, referred to as “Pat” herein, contends the trial court erred in its rulings in relation to this PRA case and that such rulings violate binding and persuasive authority of the appellate courts regarding the PRA.

## **II. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

### **A. Errors and Issues in the 6/18/15 DECISION**

**1: The Trial Court Erred** in finding Pat’s request is for inspection reports for 38 parcels for the period of 2007 to 5/25/10 (CP 406, ¶3, #1).

The issues pertaining to the assignment of error:

- The aforementioned facts are present in Pat’s 6/10/10 request.
- Whether the Court can ignore the fact that Pat changed the parcel quantity and period in her subsequent requests over three years?

**2: The Trial Court Erred** in finding inspection reports were

responded to on 6/25/10 with property record cards<sup>1</sup> reflecting all information requested including “inspection reports” (CP 407 ¶6).

The issues pertaining to the assignment of error:

- Whether the assessor violated the PRA by not providing Pat with all responsive inspection records, failing to perform a search for these records and not disclosing such records existed until trial?
- Whether the assessor’s claimed “inspection report” created the claimed exemption for all records the assessor created/used in inspections?
- Whether the Court can ignore the fact that the 6/25/10 cards do not have the two specific bits of data, the “inspection report”, on them?
- Whether the assessor’s claimed exemptions – “32 words/phrases” and/or “not understanding Pat’s requests” – preclude PRA violations?

**3: The Trial Court Erred** in denying the 2/17/15 motion to reopen the record for photos with overlaid dates finding Pat’s use of the assessor’s website meant the photos were accessible and not hidden (CP 408 ¶2-4).

The issues pertaining to the assignment of error:

- Whether the County violated the PRA by not notifying Pat these photos were on their website and at a specific portal?
- Whether using a website obviates RCW 42.56.520(2)

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<sup>1</sup> Appraisal and property record card – two of 15 names used by the assessor (CP 37 number 3) for a record with multiple versions. Pat requested the version with page labels *Residential Valuation Record* and *Improvement Data*.

**4: The Trial Court Erred** in finding Pat’s request is for appraisals for assessment years 08-12 dated 3/19/12 (CP 406 ¶3, #2 and CP 408 ¶8).

The issues pertaining to the assignment of error:

- The aforementioned facts are present in Pat’s 3/19/12 third request.
- Whether the Court can ignore the fact that Pat made a fourth request for appraisals with a different period that was not responded to?

**5: The Trial Court Erred** in finding all appraisals requested were produced but not why or how (CP 409 ¶3-5).

The issues pertaining to the assignment of error:

- Whether the assessor’s testimony of producing all appraisals precludes PRA violations for not actually producing the appraisals at trial?
- Whether the assessor’s claim of an exemption, “Historic Property Record Cards”, to the 3/19/12 appraisal request precludes PRA violations for 75 denied historic appraisals?
- Whether the assessor’s claimed exemptions – “32 words/phrases” and/or “not understanding Pat’s requests” – preclude PRA violations?

**6: The Trial Court Erred** in finding “a” violation of the PRA based on rosters held by the Board of Equalization (BOE) (CP 409 ¶7).

The issues pertaining to the assignment of error:

- Whether the Court can ignore Pat’s request is for **assessor’s** rosters (emphasis added)?

- Whether the Court can ignore the assessor’s trial testimony that individual assessor’s office appraisers (18 currently) keep rosters?
- Whether the assessor violated the PRA by not providing Pat with all rosters responsive to her request, failing to perform a search for these rosters and not disclosing such rosters existed until trial?
- Whether the assessor’s claimed exemptions – “32 words/phrases” and/or “not understanding Pat’s requests” – preclude PRA violations?

**B. Errors and Issues in the 10/1/15 ORDERS**

**7: The Trial Court Erred** in denying post-trial discovery (CP 433).

The issues pertaining to the assignment of error:

- Whether post-trial discovery is appropriate after Pat proved post-trial the assessor created three reports from 9/12-9/19/14 that they presented to the Court as: (1) in the assessor’s possession but created by the BOE in their normal course of business from 2010-2012 and (2) satisfying Pat’s 9/13/12 requests for rosters and statistics?
- Whether post-trial discovery is appropriate after Pat found the assessor’s 2010-2012 County Statistics for Comparison Report<sup>2</sup> post-

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<sup>2</sup> Exhibits inadvertently submitted only to Defense and the Trial Court:  
 (1) 8/24/15 County Statistics for Comparison Report for 2010 through 2012 (CP 242 line 23 – 245 line 3)  
 (2) 10/19/15 on-site photos from website found 10/10/15 and 10/18/15 (CP 285 - 289)  
 (3) 2/18/16 bills for attorney fees and other costs (CP 387 - 389)  
 (4) 2/19/16 Civil Joint Case Status Report and email (CP 393 - 394)

trial; reports the assessor denied existed at trial?

- Whether post-trial discovery is appropriate after Pat found inspection photos that satisfied her 6/10/10 request on the assessor's website in Oct/2015 that were not on the website in Feb/2015?
- Whether the PRA was violated in denying the County Statistics for Comparison Report existed, failing to disclose and produce it?
- Whether post-trial discovery was appropriate because of so many proven acts of **Bad Faith** by the assessor before and after the trial?

**8: The Trial Court Erred** in finding violations for statistics not rosters based on 9/12-9/19/14 reports production (CP 413 ¶1 – CP 414).

The issues pertaining to the assignment of error:

- Whether the Court can ignore the 2010-2012 County Statistics for Comparison Report but recognize the 9/12-9/19/14 reports?
- Whether the Court can erase the rosters PRA violation without cause?
- Whether the 9/12-9/19/14 reports are public records under the PRA or evidence of criminal acts?
- Whether the assessor's claimed exemptions – "32 words/phrases" and/or "not understanding Pat's requests" – preclude PRA violations for rosters and statistics?

### **C. Errors and Issues in the 1/26/16 DECISION**

**9: The Trial Court Erred** in denying reconsideration finding the

evidence immaterial and discoverable before trial (CP 417 ¶ 1-5).

The issue pertaining to the assignment of error:

- Whether the Court can ignore the burden in PRA cases is on the assessor – not Pat – to disclose, search and prove compliance?

**10: The Trial Court Erred** in denying attorney fees and costs for failure to submit any documentation (CP 417 ¶6 - CP 418 ¶1).

The issue pertaining to the assignment of error:

- Whether the Court in requesting proposals for fees and costs twice and receiving Pat's proposals twice while Pat and the Defense were continuing legal arguments and filings acted improperly in denying Pat's fees and costs when she prevailed in this case when bills were ultimately submitted to the Court?

**11: The Trial Court Erred** in finding one violation of the Public Records Act (PRA) – statistics, 738 days, \$10/day (CP 418 ¶2-7).

The issues pertaining to the assignment of error:

- Whether the Court can ignore the proven PRA violations for multiple – inspection records, appraisals, rosters and statistics?
- Whether the Court can ignore Pat's arguments for aggravating factors in the first of the two requested penalty filings in setting a \$10 penalty and finding no **Bad Faith**?

**III. RELEVANT FACTS**

On 2/12/9 Pat went to the assessor asking for the bases for the increase in value of her land by \$100,000. The assessor should have provided the addresses of the sold properties used to value her land, her structures and her total property and that Marshall & Swift cost tables were used to value her house – RCW 84.40.030. It did not happen (EXH.# P5-#67 - 69).

The 2008 appraisal Pat requested 2/19/9 and received on 4/3/9 (EXH.# P6-#84 (L=land)) gave no reason for the \$100,000 land increase.

<b>RESIDENTIAL VALUATION RECORD</b>			
Assessment Year		05/08/2007	05/06/2008
VALUATION	L	100000	200000
Appr: Appraisal Notes			
6/29/07-101 Added 30x40 shop for 07/08			
FB00: Field Book #00034A RGE      FIRE: 5      IMP: 5			

Pat appealed, requesting the assessor inspect her property on 5/7/9 because the appraisal (EXH.# P6-#83) showed a three level house and a partial unfinished basement (main<sup>2048 square ft</sup>, lower<sup>896 square ft</sup>, basement<sup>1152 square ft</sup> – 896+1152=2048).

IMPROVEMENT DATA					
				Finished	
	Construction	Base Area	Floor	Area Sq Ft	Value
1	Wood frame	896	L	380	19940
1	Wood frame	2048	1.0	2048	149370
6	Concrete	1152	Bsmt	0	21890

On 5/7/9 two appraisers showed up carrying nothing and conducted

the inspection. Pat walked them around her house and her entire five-acres and offered her appeal report with the comparable sales proving their land valuation was wrong. They then asked a few questions and left.

On 7/31/9 the assessor raised Pat’s house value (EXH.# P43-#870;

<b>RESIDENTIAL VALUATION RECORD</b>			
Assessment Year		05/06/2008	07/31/2009
Posted True Tax	B	217100	249900

B=building/house 249900–217100=32800<sup>Increase</sup>). Pat lost the appeal.

On 1/19/10 Pat gave the assessor her building permit (EXH.# P2-#21) for a two-level house with a finished basement paid for on the permit.

<b>Building Permit Information</b>		
Description	Sq ft	Value
RESIDENCE	2048	\$126,978.00
BASEMENT F	2048	\$32,276.48

In four appeals from 2009-2013 Pat requested the assessor’s basis for the valuation of her property<sup>3</sup>. The requests were ignored. The properties included in the assessor’s appeal reports (EXH.# P2-#: 6-7; 14-15; 18-19; 29; 33-34; 41) to the Spokane County Board of Equalization (BOE) and the Wa. Board of Tax Appeals (BTA) in these appeals never state they were used to value Pat’s property. Pat requested her valuation bases under the Public Records Act (PRA) (EXH.# P5-#67, 2/19/9, 11 questions).

<sup>3</sup> EXH.# P1 number 3, “I request the information . . .” – RCW 84.48.150 the criteria and the specific addresses of properties used for valuation

These appeal properties are her population. The requests were ignored.

Pat's appeal is of *Cause 14-2-01079-1*, filed 3/28/14, Spokane County Superior Court, Judge Harold Clarke's rulings on requests for four kinds of assessor records on her population of properties – records of:

1. Physical inspections – a basis for valuing real property (RCW 84.41.041 and WAC 458-07-015(4)(a)).
2. Appraisals – the assessor's opinion of value at one point in time – the appraisal is the product of inputted values and manipulations of those values, the appraisal is the only record the assessor has on real property and it is created upon request (RP 104 lines 2-12).
3. Roster(s) of appellants to the BOE – the people appealing their valuation and what the assessor does in the appeal.
4. Statistics on success before the BOE and BTA – the assessor prevailed in 90%, 93%, 95% of these Board appeals (EXH.# D410 Pgs. 12118, 12184, 12236; final value divided by appraised value).

**A. FACTS REGARDING INSPECTION RECORDS**

The assessor's inspection reports/analysis/write-ups (whatever name they are identified by) for all of the properties in Table 1 from 1/1/07 through 5/31/10 (EXH.# D110 Pg. 831 number 3 – 832 [WAC 458-07-015(4)(a) "physical inspection" means]).

Above is the 6/10/10 request for inspection records. Pat had never seen an inspection record. Her inspectors from 5/7/9 displayed no records.

On 6/25/10 Pat received property record cards<sup>4</sup> (response to appraisal request – EXH.# D110 Pg. 831 number 2), lists of inspection dates<sup>5</sup> (all of the 2010 dates are within 90-days of the 6/10/10 request) and notice that the request was closed. There was no disclosure of the source records for the inspection dates or what records are created and/or used in inspections.

On 7/13/10 Pat amended her quantity of parcels for inspection records from 34-to-36 and told the assessor inspection dates did not satisfy her request (EXH.# P8-#102 number 2). The 7/26/10 assessor response,

. . . It appears this request is for documents that do not exist. The information provided is comprehensive at the parcel level which seems to be what you are requesting (EXH.# P10-#107).

On 7/23/10 the Department of Revenue (DOR) wrote standards for Spokane County Assessor physical inspections (EXH.# P34-#646)

Physical Inspections shall meet the requirements of RCW 84.41.041 and WAC 458-07-015(4). The quality and comprehensiveness of your physical inspections should be such that:

1. All property is listed and classified uniformly.
2. Adequate data is collected to make accurate valuations.
3. Changes in physical characteristics affecting value are recorded.
4. Properties are considered in their entirety, including consideration for internal and external influences affecting value.

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<sup>4</sup> EXH.# D405 Pgs.: KB 3462 - 3535 **or** BH 2065 - 2138 (1st of 5 emails);  
*Id.*: KB 3387 - 3461 **or** BH 1606 - 1679 (2nd of 5 emails);  
*Id.*: KB 3309 - 3382 **or** BH 1681 - 1754 (3rd of 5 emails);  
*Id.*: KB 3232 - 3307 **or** BH 1762 - 1835 (4th of 5 emails)

<sup>5</sup> EXH.#: P8-#101 **or** D111 Pg. 858 and D405 Pgs. BH 1604 – 1605 (5th of five emails)

On 7/28 and 7/30/10 Pat clarified her request (EXH.# P10-#107 - 108),

. . .when inspecting something, an inspector works from some standard information which is contained on some standard form and writes the conclusions of their inspection on that form. This is what I am requesting for all the properties

. . . Does Spokane County not have a formal procedure for directing its employees in how this is done? Does Spokane County not generate a written inspection document to start this process? Does Spokane County not have those doing the inspection not work from this document and record their findings on it? This document – the inspection document – is what I am requesting

On 7/30/10 the assessor responded (EXH.# P10-#109),

According to my Appraisal Supervisor, the property record cards (already provided) are the only documents that come close to the enclosed request.

And Pat responded on 8/2/10 (EXH.# P10-#109 number 2),

. . . You provided no “property record cards”! Or nothing identified as “property record cards”

8/2/10 the assessor wrote (EXH.# P10-#110 number 2)

. . . Each two-page compilation of data provided is the “property record card” for each parcel.

On 8/4/10 Appraisal Supervisor Hodgson and Pat met to satisfy the inspection records request Pat summarized for the meeting (EXH.# D111 Pgs. 928 - 929). The meeting was memorialized (EXH.# P10-#112 and #D111 Pgs. 931 - 932). Pat received no disclosures of inspection records,

no identification of what the property record cards “already provided” were; the meeting ignored EXH.# D111 Pgs. 928 - 929.

On 4/24/11 Pat asked for the inspection records on the 5/7/9 inspection of her property (EXH.# P12-#122). The 5/7/9 date is not on EXH.# P8-#101. On 4/26/11 Pat changed the inspection records request and clarified it further because a year had passed (EXH.# P13-#123 number 4):

I want a copy of all of the individual assessor(s) computerized inspections of what they saw, valued, noted as relevant to an assessment, dated, etc. during their inspections which should be contained in their electronic (or manual) records logs if that is the only record of these inspections available from 1/1/07 through 4/26/11. NO, I DO NOT WANT ANOTHER COPY OF YOUR APPRAISALS, AKA PRICING LADDERS<sup>1</sup>.

On 4/27/11 the assessor responded (EXH.# P14-#126),

Changes to the parcel record and parcel information have been provided to you via the ProVal Property Record Card<sup>1</sup> and ProVal Cost Buildup<sup>1</sup>. Cost table changes can be identified on these documents.

On 3/19/12 Pat repeated the 4/26/11 request but increased the parcels to 38 because of another appeal and a bigger population (EXH.# P15-#132 number 7). The assessor requested a clarification (EXH.# P15-#140 number 7). Her clarification was (EXH.# P15-#145) a photo-copied appraisal bracketing the Appraisal Notes saying the inspection dates on EXH.# P8-#101 are not on this appraisal and asking where did they come from. The request was ignored.

ASSESSOR’S “32 WORDS/PHRASES STUFF” EXEMPTION

On 3/19/12 Pat requested the assessor’s policies/procedures (EXH.# P15-#130 number 1). The assessor requested clarification (EXH.# P15-#140 number 1). Pat’s clarification was (EXH.# P15-#141 number 1),

Please provide for the period Jan/1/2008 through Apr/20/2012 (prioritization: Baker, Horton, top down supervisors, prioritization 2008, 2009, 2010, 2011, 2012 (1) “all complete writings” of any/all forms (2) by Spokane Assessor Ralph Baker and Spokane Assessor Vicki Horton and (3) by any/all personnel employed by and/or contracted by the Spokane Assessor in any/all capacities that have any of the following words/phrases in them (all typography cases): [32 words/phrases were listed]

Pat’s request for assessor policies/procedures, the assessor’s requested clarification and Pat’s clarification was the basis for case 13-2-00123-8<sup>6</sup>. But, on 4/30/12 the assessor started producing stuff they asserted was responsive to “32 words/phrases” with no regard to policies/procedures and this stuff was their priority. From 4/30/12-Jan/2015 the assessor produced thousands of pages of stuff – on any topic, from any source, containing any word/phrase. On 10/9/12 Pat sent the assessor a summary of five-months of the stuff she received to date and how it did not satisfy the 3/19/12 request (EXH.# P23-#515-517). This notice was ignored.

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<sup>6</sup> On 1/11/13 Pat (pro se) filed case 13-2-00123-8, *Strand v. Spokane County Assessor* in Spokane County Superior Court for denial of the assessor’s policy/procedure records under the PRA. Pat prevailed in the case for ‘a’ PRA violation, penalty \$25, 1053 days.

EXH.# P28 is two months of the stuff (RP 58 line 11 - 61 line 11). This purported exemption subverted Pat's PRA rights completely.

ASSESSOR'S DID NOT UNDERSTAND REQUEST EXEMPTION

Pat's public record requests are cumulative lists of all of the records she requested but never received. Pat is a retired Certified Public Accountant and auditor; lists are a professional tool. When the assessor responded to a request it was with a request for clarification – not records. Pat clarified every time. Her clarifications did not produce records just more requests for clarifications. The plain language of the relevant requests: inspection records, appraisals, rosters of appellants to the BOE and assessor statistics – are understandable. The assessor's understanding of Pat's requests is evidenced in their responses (RP 235 – 245 line 12). The repetitious clarifications exemption subverted Pat's PRA rights.

On 2/19/13 Assessor Horton wrote an affidavit in case 13-2-00123-8<sup>6</sup> (EXH.# P25-#521 number 6) about inspection records.

The Assessor's Office stores data, including cost tables, inspection reports, sales analysis reports, field notes, and appeal data electronically.

On 4/10/13 Pat made the final request (EXH.# P27-#525 number 6)

Inspection reports for all properties in Table 1 for years 2008 through 2012 . . . Assessor Horton's Affidavit in Case No. 13200123-8<sup>6</sup> on Feb/19/2013 page 2 of 4 means 'Inspection Reports' exist.

The request was ignored. Pat filed case 14-2-01079-1 on 3/28/14.

On 6/19/14 Pat filed a Trial Brief of facts about inspection records (CP 1-9 line 13) – her erroneously listed house, her land value unsupported by sales, her appeals, her requests for her valuations, her appraisals that say nothing about where her property values came from, an inspection that cost her \$32,800 and she has no records to explain why.

On 6/24/14 Pat received Discovery field notes identified in the Horton Affidavit (EXH.# P45).

The trial was 1/20-1/22/15. Defense presented three compact discs as evidence (RP 5 line 14 - 10 line 12) and boxes of paper printouts of the discs (RP 163 – 165 line 6). The evidence has problems. The discs have in excess of 20,000 pages in no order with multiple inaccurate copies of any record. The discs are not searchable without having the record being searched for in-hand, to take key words from it, to search by, to find it on the disc. Three discs and innumerable files have each to be searched for any record. The records of one event are not together. The indexes to the discs use generic language and have their own errors (RP 172 line 14 - 180 line 16). An example shows the problems, Pat's evidence (EXH.# P35-#640 - 645) versus the Defense evidence (EXH.# D102 Pgs. 631 - 658).

At trial Defense witnesses, Assessor Horton and Chief Deputy Assessor Hodgson, disclosed for the first time – six inspection “source”

records appraisers create/use that are edited down into appraisal/field notes then destroyed: (1) notes, (2) Ortho maps, (3) pre-inspection appraisal [RP 108 line 4 - 115 line 2], (4) building permits [RP 140 lines 8-21], (5) inspection schedules [RP 161 lines 2-4], (6) aerial photos [RP 247 line 9 - 250 line 18]. They did not disclose: (7) on-site photos [CP 62 - 72], (8) stipulated value agreements [EXH.# D410 Pg. 12184, Stip Val], (9) a destruction log<sup>7</sup> or a search for the records in the office or from the appraisers<sup>8</sup> doing the inspections. [SEE: EXH.# P10-#112].

Question: When is the conversion from paper to electronic media? Answer: Data is turned in from the inspection in time for mailing assessment notices annually. So the frame of changes made to properties is by June 1 unless there are special circumstances: new construction, correction or parcel data, parcel division or segregation, destroyed property.

*Id.* – “Inspection report” exemption is announced. “Inspection report” is the inspection record – two-bits of data on the appraisal – field or appraisal notes in the lower-left corner of the land card (SEE: *Strand Appeal* page 7<sup>Middle</sup>) and “Data Collector/Date” at bottom of improvement card (RP 155 line 24 - 156 line 6). Pat was never told any of this.

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<sup>7</sup> RCW 40.14.070 destruction and record retention – Wa. State Archives, County Assessor Records Retention Schedule for real property 2.3.7 – retain property reference records until superseded

<sup>8</sup> Accredited real property appraisers have a two-year minimum recordkeeping standard per the Uniform Standards of Professional Appraisal Practice (USPAP) – RCW 36.21.015 appraiser qualifications, WACS 308-125-010 terminology, 308-125-200 and 458-10-060 appraiser standards of practice.

RP 227 line 19

- Q. Is there anything in the e-mails that Mr. Best sent to Ms. Strand that we looked at previously that would advise her that the data on the lower left-hand side of the page is the inspection report data, and the date of inspection is actually the collector date on the back side lower part of the page; anything tell her that?
- A. No. But I'm not sure why he would be explaining the property record card.

*Id.* – Pat's 6/10/10 request was for "inspection reports" produced on 6/25/10<sup>4</sup> and extracted from the discs for production at trial [RP 215 line 22 - 216 line 10]. Pat rebutted this testimony; the 6/25/10<sup>4</sup> appraisals do not have the two-bits of data [RP 382 line 24 - 387 line 8].

*Id.* – The field notes, EXH.# P45, are the "inspection reports". Pat's 7/24/15 response to Defense alter/amend are the testimony and facts about the field notes (CP 167 – 168 line 19). Pat did not have them; they say nothing about inspections and/or valuation changes on these properties.

ASSESSOR'S WORDS/PHRASES EXEMPTION at TRIAL

RP 184 line 22

MR. CATT: The request originating in March -- I believe it is March -- I want to say March 19th, 2012, amended subsequently on March -- on April 20th. And then there has been subsequent clarifications.

RP 185 line 8

MR. HODGSON: Mrs. Strand clarified a request. She asked us to search for 32 words or phrases. And as a footnote we asked clarification for that several times on what exactly did she want. And the requests -- Our attempt to limit the requests went to no avail. She wanted writings, she wanted spreadsheets, she -- e-mails -- she wanted all of those things.

RP 186 line 18

MR. HODGSON: Because she -- in her request, her clarification, she said, I want all writings from every employee in the office. I tried to get clarification from Mrs. Strand. She repeatedly said she wanted writings from employees -- so it is for the entire -- for the entire request.

MR. BURNS: It is your testimony, it is your understanding that this request that she made to search for 31 words related to all eight or nine public records requests on the March

RP 190 line 17

MR. BURNS: It is a relevancy objection, because it is crystal clear that this litigation does not involve any issues related to policies and procedures. It is crystal clear. All this is irrelevant.

MR. CATT: It is not irrelevant because a public records request that is made may have multiple subparts, but those are one request. And if your production on that request, which this would be March 19th originated as amended, 2012, that production point is, it is ongoing and it will continue to go on until she modifies that request.

RP 193 line 10

THE COURT: So are you saying you can -- if you are responding to even one-tenth of the March 19th document, Hobbs simply says it all stays ad infinitum?

MR. CATT: It stays open until you complete it, as long as there is continuing earnest effort to produce documents. In this particular public records request because of the size and volume of the request, it has been an ongoing production.

THE COURT: I get what you are saying. I don't agree with you that you can take one part of the request and paint the whole request with it that way.

RP 194 line 18

MR. BURNS: Your Honor, he should be judicially estopped from advancing the argument he made, because if his theory is that the request for policies and procedures is ongoing, that argument should be made before Judge Moreno<sup>6</sup>. He should have argued before Judge Moreno that that litigation was premature. He didn't. He chose to

litigate that issue, and that issue was resolved. Policies and procedures are over.

The fact that they on their own continue to inundate this woman with stuff that doesn't mean anything is their problem, not ours. He should be judicially estopped from answering this argument.

On 2/17/15 Pat motioned to reopen the record (CP 55-72) for photos overlaid with inspection dates from the assessor's website – dates not on EXH.# P8-#101. The assessor never directed Pat to their website or disclosed the photos. The photos could only be created during inspections and are source evidence inspections occurred (WAC 458-07-015(4)(a)).

The 6/18/15 Decision found: (1) Pat requested inspection reports for 38 parcels for the period 2007-5/25/10 [CP 406 ¶3, #1], (2) was responded to on 6/25/10<sup>4</sup> with inspection reports, (3) a violation of the PRA of 15 versus 5 days [CP 408 ¶6-7], (4) reopening the record is denied – the photos were accessible before trial, Pat was familiar and used the website, the evidence was not hidden or just became available [CP 408 ¶2-4].

#### CONCLUSION to FACTS REGARDING INSPECTION RECORDS

- Four requests changed the quantity of parcels and period requested (Trial Brief – CP 9-10, Tables 1 and 2.)
- The 6/25/10<sup>4</sup> appraisals' field or appraisal notes are nonresponsive to: Pat's 6/10/10 request and her clarifications, they do not have the two-bits of data making up the "inspection report", they do not conform to

DOR standards for inspection records.

- RCW 42.56 does not have an “inspection report” exemption that excludes the eight source inspection records from disclosure.
- The PRA violations are for the eight source records, their quantity and years.
- The assessor never notified Pat the website and a portal were a record source for inspection photos. Pat was oblivious to the photo portal.
- Pat’s filings – the record contradicting the Decision:
  1. 7/24/15 CP 151 line 12 - CP 170 response to alter/amend
  2. 10/9/15 CP 255-257 line 18 memo on reconsideration
  3. 10/19/15 CP 287 numbers 5-9 declaration to reopen record for additional inspection photos from the website.
  4. 10/20/15 CP 290-292 line 14 amended reconsideration

## **B. FACTS REGARDING APPRAISALS**

**New request:** Improvement Data and Residential Valuation Record(s)<sup>2</sup> for each property in table 1 for assessment years 2008 through 2012 (EXH.# P15-#132 number 4).

Above is Pat’s 3/19/12 fourth request for appraisals ( $5^{\text{Years}} \times 38^{\text{Parcels}} = 380^{\text{Appraisals}}$ ) – after the 10/3/11 *Assessor’s Answer* added parcels (EXH.# P2-#28 - 31). The assessor requested clarification (EXH.# P15-#140).

4. Your request indicates the parcels on Table 1 are part of requests from Feb of 2009 to July of 2011. If this is correct, the requested information was provided at the time if the request(s). If a request is missing, please identify the specific date of the request and parcel number. Note: 2012 assessments will not be completed until June 2012.

On 4/20/12 Pat clarified the request by photocopying the original request, the assessor's above response and (EXH.# P15-#143 - 144),

Clarification – No! The request is as stated. I want Improvement Data and Residential Valuation Record(s) for each property in Table 1 for assessment years 2008 through 2012. That means I want 40 parcels and 5 years each of assessments. That is 200 newly requested Improvement Data and Residential Valuation Record(s). This is to verify that nothing has been changed on these Appraisals by the Assessor since I last checked?

NOTE: There are 38 not 40 parcels on Table 1 – number 21 is omitted and parcel 17223.0114 is repeated as number 37 and 40.

On 5/2/12 (44 days after the request) the assessor denied Pat's request by producing 104 pages of 'old' appraisals and stuff (EXH.# P16).

#### OLD APPRAISALS

An old appraisal is a photocopy of an appraisal the assessor previously created. At trial Defense explained for the first time what an appraisal is (RP 150 line 4 - 159 line 8) and how it is produced (RP 492 lines 5-21).

The property record card is not a record that exists in the office. It has to be created. The property record card itself is a -- is part of the canned software of ProVAL. And actually we haven't used that property record card all that much until Mrs.

Strand's requests came. Not that we haven't used it, but it's something that has to be created. And it is basically date driven.

Pat taught herself how to read the appraisal because the assessor refused to provide her the requested ProVal records explaining the process (12/30/9; EXH.# D405 Pg. KB 1314). Chief Deputy Assessor Best said,

I received your public records request dated December 28, 2009 . . . You indicate a desire for definitions and explanations of many other items in your request. However, I do not have a public record of explanations of appraisal practices, appraisal definitions, and arithmetic formulas contained in proprietary appraisal software. There are publications and courses that would provide detailed information on mass appraisal practices. Additionally, the public library may have books on the subject. Finally, the International Association of Assessing Officers (IAAO) may provide some guidance on these subjects. In a large degree, your request seems to ask my office to educate you on many topics involved in mass appraisal. I regret we do not have the resources to fulfill this desire. Ultimately, we gladly provide the public records we have. At this time, having attached the public records you requested, I am considering your request closed.

Old appraisals were created when Pat requested **the version** (Pat's emphasis) labeled *Residential Valuation Record* and *Improvement Data*<sup>1</sup> and tables: (1) Land Data and Calculations, (2) Physical Characteristics, (3) Special Features, (4) Summary of Improvements, (5) building components and values and Quality of Construction, (6) building diagrams with ProVal description codes and square footages. Pat also requested specific tax or assessment years. The appraisals do not have a tax or

assessment year on them; they have a print/creation date. EXH.# D405 Pgs. KB 3462-3535<sup>4</sup> are an appraisal version with photos not tables. The assessor has trouble producing the version and a tax or assessment year.

Pat's first requested all appraisals on her property (EXH.# P5-#67). She filed it with the assigned appraiser (2/19/9), the assessor (3/19/9) and the Spokane County Public Records Officer (4/2/9) before they were created on 4/3/9 (EXH.# P6-#76 - 86). Her second request, 8/24/9 (EXH.# P7-#87), took 21 days to satisfy because Pat requested the version and assessment years 07-09 ( $8^{\text{Parcels}} \times 3^{\text{Years}} = 24^{\text{Appraisals}}$ ). The assessor created over 200 bad appraisals from 8/24-9/14/9 to satisfy the request (RP 292 lines 4-24). EXH.# P35-#641- 645 documents problems. Her third request, 6/10/10 for 136 appraisals ( $34^{\text{Parcels}} \times 4^{\text{Years}}$ ), resulted in over 700 appraisals being created (6/25-8/2/10) (RP 293 line 9 - 294 line 13). By April 2012 the assessor had photocopies of about a 1,000 old and mostly bad appraisals in their files.

#### BAD RESPONSES TO APPRAISAL REQUESTS

EXH.# P16-#151 is an 'old' appraisal – "Printed 04/03/2009" (upper right) with Pat's handwriting above it – EXH.# P6-#85 is the original. Pat gave EXH.# P16-#151 to the assessor as part of her 2008 appeal to prove they had her property in the wrong city. The property is in Nine Mile

Falls not Spokane. EXH.# P16-#154 - 155 are 'old' and 'bad' – version with pictures is wrong and “Printed 08/24/2009”.

On 5/9/12 Pat notified the assessor the appraisals produced on 5/2/12 were nonresponsive (EXH.# P17-#254) with specific reasons. On 5/10/12 Pat received a second installment of 'old' appraisals (EXH.# P17-#254 - #301). On 5/13/12 Pat sent a second notice of nonresponsive appraisal production (EXH.# P17-#302). On 5/18/12 the assessor responded to Pat's notices (EXH.# P17-#304 ¶1).

The information sent to you on May 2 and May 10 are the documents that you requested. You requested improvement data and residential valuation records for assessment years 2008 through 2012. Historic Property Record Cards are static and not updated. Based on your request, the only option we had was to resend the data already provided, even though I informed you this information had been sent to you multiple times.

Above the assessor created the “Historic Property Record Card” exemption as the basis for denying Pat 75 appraisals.

On 6/8/12 the assessor produced 'new' appraisals created 6/8/12 (EXH.# P18). On 6/13/12 the assessor produced 'new' appraisals created 6/13/12 (EXH.# P19). On 6/22/12 the assessor produced 'new' appraisals created 6/22/12 (EXH.# P20). On 7/6/12 the assessor produced 'new' appraisals created 7/6/12 (EXH.# P21). On 10/9/12 Pat again notified the assessor of the 'old' appraisal production (EXH.# P23-#515 - 516). Pat's

request for the denied appraisals was ignored.

On 4/10/13 Pat made a fifth request for appraisals ( $38^{\text{Parcels}} \times 6^{\text{Years}} = 228^{\text{Appraisals}}$ ) (EXH.# P27-#524 number 3).

Public Records Request – Please Provide these documents by E-mail . . .

3. Improvement Data and Residential Valuation Records for each parcel in Table 1 for assessment years 2008 through 2013 printed on/after Apr/10/2013 (Attachment 1 for print date reference). Requested since Apr/20/2012.

The request was ignored. Pat filed case 14-2-01079-1 on 3/28/14.

Pat's Trial Brief summarized the requests, responses, identified each appraisal produced as responsive or not (CP 15 - 20, Tables 3-5) and, showed the evidence that appraisals are constantly changing and updated.

At the trial from 1/20-1/22/15 Pat testified about all five of her appraisal requests, used her evidence to show the characteristics of 'old' versus 'new' appraisals, why she requested historic appraisals and, each response to the 3/19/12 request for appraisals (RP 294 line 14 - 377) proving the 75 denied records. Mr. Hodgson testified for the first time that Historic property record cards<sup>1</sup> are updated constantly (RP 152 line 20 -159 line 3). And this was his testimony on producing the appraisals Pat requested on 3/19/12 and 4/10/13 (RP 495 lines 15),

MR. CATT - Q. The records that you have produced for Mrs. Strand, property record cards, plus the other stuff, have you produced the records that are -- that are available on the tax

years that have been requested -- on the assessment years -- on parcels?

A. Dan, can you --

Q. Let me rephrase that. You have responded with multiple productions of property record cards.

A. Yes.

(RP 506 line 14)

Q. Mr. Hodgson, Mr. Burns asked you if you had provided 2008 records identified in the transmittal letter as being 2008 records. And your response was you provided the records, but you didn't recall whether you had identified the year.

And then he asked you if -- if you had identified the 2009 records. And you again said you didn't recall whether you identified the year.

What was admitted in there was whether or not you had produced the 2009 records. Did you produce those?

A. Yes.

Defense did not extract from the discs any appraisals relevant to the 3/19/12 and/or 4/10/13 requests; they produced no evidence at trial.

The 6/18/15 Decision found: (1) Pat requested 38 parcels' appraisals on 3/19/12 for 2008 through 2012, (2) Pat acknowledged not receiving 75 of the requested 190 appraisals, (3) the assessor gave no explanation of how or when the appraisals were produced and (4) no PRA violation.

#### CONCLUSION to FACTS REGARDING APPRAISALS

- The assessor stated denying 75 appraisals due to a "Historic Property Record Card" exemption which is not present in RCW 42.56.
- The assessor and the Court ignored the 4/10/13 request for 228 appraisals which included a request to create appraisals after 4/10/13.

- At trial the Defense repudiated the basis for the “Historic Property Record Card” exemption but did not produce the 75 denied appraisals.
- The PRA violation is for 303 (75+228) denied two-page appraisals.
- Pat’s filings – the record contradicting the Decision:
  1. 7/24/15 CP 146 line 14 - 151 line 10 response to alter/amend
  2. 10/9/15 CP 260 - 261 line 4 memo on reconsideration
  3. 10/20/15 CP 292 line 15 - 294 line 9 amended reconsideration

**C. FACTS REGARDING ROSTERS and STATISTICS**

4. I want the roster of appeals to the Board of Equalization from Jan/1/10 through Sep/13/12 – petition #, parcel, neighborhood, petitioner name, situs address, property type
5. I want the Spokane County statistics on success on appeals to the Board of Equalization and Board of Tax Appeals from Jan/1/2010 through Sep/13/2012

Above are the 9/13/12 request for rosters and statistics (EXH.# P22-#513 numbers 4 and 5). The roster request uses text – “petition #, parcel, neighborhood, petitioner name, situs address, property type” – taken from BOE Master Lists. Pat used BOE rosters in her possession to request assessor rosters. The requests were ignored. On 4/10/13 Pat repeated the requests (EXH.# P27-#526 number 8.D and E). They were ignored.

Pat did not receive PRA records because of the assessor’s production of “32 words/phrases stuff”. Pat filed case 14-2-01079-1 on 3/28/14.

At trial from 1/20-1/22/15 Defense witnesses disclosed for the first time – taxpayer petitions appealing assessed valuations are filed (EXH.# P1) with the BOE and stored on the BEATS database and assessor’s appraisers<sup>8</sup> (18 currently – RP 111 lines 17-21) access BEATS to find their assigned petitions to create and maintain individual rosters as they work the appeals (RP 104 line 18).

Q. What about -- what about records on, like, rosters of Board of Equalization appeals?

A. That is held through the Board of Equalization.

Q. You don't maintain the records on your appeals?

A. We don't have records on appeals. We keep the documents so the appraisers can look at them, but we are not the major custodian.

Q. You don't have a roster of what's been up on appeal, those kind of things?

A. You mean that the appraisers keep? Is that the --

Q. Yeah.

A. Yes. The appraisers keep a roster of the -- of their individual appeals. And as they are handled they are turned -- they're all coming from the Board of Equalization BEAT system. And that is where they go to get them.

(RP 105 line 18)

Q. What about statistics on Board of Tax Appeals?

A. Those are through the state Board of Tax Appeals, through the Board of Equalization.

Q. So would you, if you wanted to know what a status was or the status -- statistics were -- would you go to the Board of Equalization site then and look?

A. Yes.

Q. And not an internal site where you maintain records?

A. Correct.

(RP 211 line 23)

The assessor's office has no control over the BEAT system.

(RP 212 line 16)

- Q. And in the case of the request for the Board of Equalization rosters for -- of the assessor's and the tax appeal's statistics, there just aren't any maintained or kept, or any records available responsive to that?
- A. The assessor's office depends on the Board of Equalization to process all of that information.

Defense stated that on 9/12 and 9/19/14<sup>9</sup> they emailed Pat two reports they identified as BOE data that were entered into evidence (RP 399, Exhibit Index, No. D-412) and testified to having no records responsive to her 9/13/12 requests (RP 503 - 506 line 6). Pat testified she wanted and requested assessor – not BOE – rosters (RP 467 line 16 - 470 line 10).

The 6/18/15 Decision found: (1) the request for rosters was made 9/13/12 #4 for the period 1/1/10-9/13/12 the request for statistics is not given, (2) the county presented evidence that rosters were held by the BOE but did not notify Pat of this and she was not directed to the BOE , (3) testimony was that individual appraisers in the assessor's office keep rosters but Pat was not informed of this (CP 409 ¶¶6-9), (4) 'a' PRA violation for rosters (5) statistics are not maintained as an ordinary course of business by the assessor but the assessor did not notify Pat of this for two years and simple negligence is found (CP 410 ¶¶1-3).

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<sup>9</sup> Master Lists dated 9/12/14; EXH.#: D407 Pg. 6821 and D410 Pgs. 11794 - 12017  
SBTA and Final Valuation Summaries dated 9/19/14; EXH.#: D407 Pg. 6822 and D410 Pgs. 12237-12262 and D410 Pgs. 12018-12236 – respectively

INTERIM CONCLUSIONS REGARDING ROSTERS and STATISTICS

- The 9/12 and 9/19/14<sup>9</sup> BOE rosters in the possession of the assessor are not responsive to Pat's request for rosters created by the assessor. But, they are responsive to Pat's request for statistics.
  - The statistics violations are for six responsive 9/12-9/19/14 reports.
- The roster violations are for all of the individual appraiser rosters existing from 2010-2012 that were disclosed at trial.

On 6/29/15 Defense filed a memo to alter/amend the 6/18/15 Decision asserting the 9/12 and 9/19/14, rosters and statistics, respectively satisfied Pat's requests (CP 130 line 2 - 135). The 9/12 and 9/19/14 records said,

Enclosed are records obtained from the Spokane County Board of Equalization. The Board of Equalization is the custodian of all records related to appeals (EXH.# D407 Pg. 6821)

Request for Board of Equalization and Board of Tax Appeals information 2010 to 2012. (EXH.# D407 Pg. 6822)

Enclosed are records obtained from the Spokane County Board of Equalization, The Board of Equalization is the custodian of all records related to appeals and is a separate agency from the Spokane County Assessor's Office.

On 7/24/15 (response to alter/amend CP 142 line 18 – 146 line 10) Pat proved the Defense assertions about the 9/12 and 9/19/14 records false.

On 7/21/15 Pat asked Linda Kovick (BOE Director), if she prepared the SBTA reports (Kovick Declaration); she said NO (CP 305 - 321)!

CP 306 number 7

Other users which are granted special security clearance –

including the Spokane County Assessor - have limited access to BEATS. These limited users have only "read-only" status. That is, limited users may access the data in BEATS, perform queries, and produce custom reports such as the report attached to Exhibit "A". However, **such limited users have no authority to input data, or otherwise change the information in the BEATS system - except for entries by the Assessor of value stipulation agreements reached with taxpayers in settlement of pending appeals before the BOE.**

CP 307 number 9

BOE did not produce the record attached to Exhibit "A"; and, would not have ever produced such a report in the normal course of business. However, as noted above, a limited user with access to the BEATS system could have

(emphasis added). All of the 9/12-9/19/14 reports were prepared by the assessor, in their offices on 9/12-9/19/14. On 10/25/15 Mr. Hodgson amended a prior affidavit stating,

CP 324 number 9

The Assessor's Office has no need to create or maintain rosters or statistics regarding appeals to the Board of Equalization or Washington State Board of Tax Appeals. . .

CP 331 number 22

The Master Lists and SBTA provided Plaintiffs in September of 2014 were created from BOE's BEATS database for the **sole purpose of were providing them as a courtesy to Plaintiffs.**

But, the assessor presented these reports to the Court and Pat as created by the BOE in their normal course of business from 2010 - 2012. And, only withdrew these statements when they were proven false.

Pat put these acts of **Bad Faith** before the Court as false statements – RCW 42.20.040 (CP 243, Argument for False Statements). And, Assessor

Horton and Chief Deputy Assessor Hodgson are accredited appraisers<sup>8</sup>.

Their actions in regards to the 9/12-9/19/14 reports violated appraiser ethics standards.

CP 201 number 2 (Hodgson Affidavit, 8/11/15)

I am an Accredited Appraiser with the Washington Department of Revenue (since 1985). I have worked in the ad valorem assessment since 1979 and have been a certified appraiser for ad valorem assessment in Idaho and Oregon.

CP 203 number 13

Also during the January hearing, questions were raised concerning the source of Exhibit #11903 and whether it represented statistics compiled and maintained by the Assessor's Office. In fact, Exhibit # 11903<sup>9</sup> is the last page of a Master List I accessed from BOE website and produced to Ms. Strand on September 12, 2014. I have included a screen print of the metadata which shows when the document was created in paragraph 16 herein. (CP 204 number 16 – 208)

(USPAP<sup>8</sup>, Ethics Rule appraiser conduct)

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report.

On 8/11/15 the assessor also stated a search was conducted,

CP 197 number 5-6 (Oesterheld Affidavit)

On July 9, 2015, acting on the instructions of Chief Deputy Assessor Byron Hodgson, I conducted a search of the Assessor's files for any copies of Board of Equalization agendas from tax/assessment years 2009/2010, 2010/2011, and 2011/2012. To ensure reliable results, I interviewed each residential and commercial appraiser personally and had them check all of the Assessor's Office's network drives, all of their personal "H" drives, and any folders stored on their desktops. Additionally, I had each appraiser search their paper files for any extant printed copies. None of the residential or commercial appraisers had any electronic or paper copies stored on any drive or in any file.

I made the same request of the residential and commercial appraisal supervisors, who checked all of their digital and paper files and did not find any responsive records.

The search failed to find these responsive records – the 2010 to 2012 County Statistics for Comparison Report<sup>2</sup> – annual reports prepared by the assessor, chief deputy assessor and every department head in the office (SEE: 2014 report, CP 369-380, 10/30/15 Hodgson Affidavit). The assessor never disclosed these reports and testified they did not produce such reports. Pat produced the 2010-2012 reports on 8/24/15. The search was clearly inadequate and an act of **Bad Faith**. The statistics report is another example of the assessor's control of the BEATS system.

The Court Orders on 10/1/15 found no problems with any actions of the assessor (CP 413 ¶1 #3 - 414 ¶2). 'A' (emphasis added) roster PRA violation disappeared and 'A' statistics violation appeared without explanation and nothing else changed by the Court.

#### CONCLUSION to FACTS REGARDING ROSTERS AND STATISTICS

- PRA violations are for all of the individual appraiser rosters existing from 2010-2012 that were disclosed at trial but never produced.
- PRA violations are for the three 2010-2012 County Statistics for Comparison Reports<sup>2</sup> proven to exist but never produced by the assessor.

The 1/26/16 Decision found no acts of **Bad Faith** (CP 418 ¶6) affected the \$10 penalty award. The Court found the burden of knowing what the assessor hid by never disclosing the records it created fell completely on Pat for not finding the hidden records earlier. Reconsideration was denied – immaterial issues presented too late. The penalty of \$10 was based on the Court requiring two penalty argument filings: (1) the 6/18/15 Decision (CP 410 ¶5) and (2) the 10/1/15 Order (CP 438 - 439). The 10/1/15 Order requested minimal argument because of the first argument. Apparently the Court did not read Pat’s first argument that specifically addressed personal harm (CP178 line 11 - 179) and the more important community harm done by an assessor who cannot provide the basis of real property valuations or real property inspections. Pat also addressed the other aggravating penalty factors.

**D. FACTS REGARDING AWARD of FEES and COSTS**

Pat did not receive the 1/26/16 Decision until 2/6/16 because it was mail delivered. She notified the Court that time sensitive material needed email delivery (CP 393-394<sup>9</sup> #<sup>(4)</sup>). The cascaded effects of Failure of Service (CR 5), Court closure, the Court electing not to hear the continuance that included all bills and, misunderstanding the Court’s two requests for proposed fees and costs (6/18/15 Decision – CP 410 ¶5 and

10/1/15 Order – CP 438 - 439) meant Pat has not been awarded her fees and costs for prevailing in case 14-2-01079-1 (RCW 42.56.550 (4)).

#### **IV. ARGUMENT AND AUTHORITY**

##### **A. Standard of Review and Burden Of Proof**

In a PRA case, the appellate court, like the trial court, reviews the agency's actions de novo – RCW 42.56.550(3); *Neighborhood Alliance v. Spokane County*, 153 Wn. App. 241; 224 P.3d 775 (2009) (“*Neighborhood 153*”). The Agency has the burden, at all times, to prove that it has complied with the PRA – RCW 42.56.550(1).

an agency claiming that a document is not subject to the public disclosure requirement of former RCW 42.17.260(1) (1997) has the burden of proving that refusing to disclose is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

See also *Progressive Animal Welfare Society v. Univ. WA.* (“*PAWS II*”), 125 Wn.2d 243, 251, 884 P.2d 592 (1994);

The agency bears burden of proving that refusing to disclose is in accordance with statute that exempts or prohibits disclosure in whole or in part of specific information or records.

This includes the burden to prove an agency's search was reasonable and adequate *Neighborhood 153*,

The adequacy of an agency's search for records for which a public disclosure request was made is judged by a standard of reasonableness, with the facts construed in the light most favorable to the party who made the request. An agency may

prove that it fulfilled its statutory obligations if it demonstrates beyond a material doubt that its search was reasonably calculated to uncover all relevant documents. The agency must show that it made a good faith effort to conduct a search for the requested records, using methods that can reasonably be expected to produce the information requested.

The adequacy of the search is judged by the record of the search performed, *Neighborhood Alliance v. Spokane County*, 172 Wn.2d 702, 261 P.3d 119 (2011) (“*Neighborhood 172*”). And that its statement of exemptions and their application to withheld records was sufficiently detailed, *Sanders v. State*, 169 Wn.2d 827, 240 P.3d 120 (2010).

**B. The PRA Must be Construed Broadly in Favor of Disclosure**

The Supreme Court of Washington interprets the PRA as “a strongly worded mandate for broad disclosure of public records”, *Amren v. City of Kalama*, 131 Wn.2d 25, 31, 929 P.2d 389 (1997) (quoting *PAWS II*). Additionally, the reviewing court is to liberally construe the PRA’s disclosure provisions, and interpret exemptions narrowly. The PRA’s instructions to a court on the interpretation of the Act are unusually strong

– RCW 42.56.030:

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.

See also *Hartman v. Washington State Game Comm'n*, 85 Wn.2d 176, 179, 532 P.2d 614 (1975) (“Where the legislature prefaces an enactment with a statement of purpose... that declaration... serves as an important guide in understanding the intended effect of operative sections.”) (citation omitted); *PAWS II* at 260 (“[the Legislature took] the trouble to repeat three times that exemptions under the Public Records Act should be construed narrowly.”); WAC 44-14-01003 (“The [PRA] emphasizes three separate times that it must be liberally construed to effect its purpose, which is the disclosure of nonexempt public records.”). Strict compliance with the disclosure provisions of the PRA is required—substantial compliance is insufficient, see *Zink v. City of Mesa*, 140 Wn. App. 328; 166 P.3d 738 (2007) at 340 (holding trial court erred when it concluded substantial compliance with PRA was sufficient).

**C. The Records at Issue are Public Records.**

The records at issue here, are “public records” pursuant to RCW 42.56.010(2) -- records owned, used, retained or prepared by the assessor and relate to a governmental or proprietary purpose. See *O’Neill v. City of Shoreline*, 170 Wn.2d 138, 147, 150, 240 P.3d 1149 (2010) noting the PRA is “a very broad statute defining public records as nearly any

conceivable government record related to the conduct of government is liberally construed in Washington.”

Here all of the records at issue are “public records”, including the records withheld in their entirety, the pages of records produced in redacted form, and the numerous records the assessor did not identify or produce until after being sued or still has failed to identify and produce.

RCW 42.56.070(1) provides in relevant part:

Each agency ... shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of ... this chapter, or other statute which exempts or prohibits disclosure of specific information or records.

In any action for judicial review the assessor bears the burden of proof to show that it has identified all responsive records, including those it claims are exempt.

Here the assessor failed to identify responsive records when it told Pat that all responsive non-exempt records of physical inspections had been provided from 6/15/10 until trial. The assessor failed to identify rosters and statistics were normally produced in the course of business until trial. The assessor further silently withheld these non-exempt records it never produced to this day.

The Public Records Act clearly and emphatically prohibits silent withholding by agencies of records relevant to a public records request.... Silent withholding would allow an agency

to retain a record or portion without providing the required link to a specific exemption, and without providing the required explanation of how the exemption applies to the specific record withheld. The Public Records Act does not allow silent withholding of entire documents or records, any more than it allows silent editing of documents or records. Failure to reveal that some records have been withheld in their entirety gives requesters the misleading impression that all documents relevant to the request have been disclosed. ... Moreover, without a specific identification of each individual record withheld in its entirety, the reviewing court's ability to conduct the statutorily required de novo review is vitiated.

The plain terms of the Public Records Act, as well as proper review and enforcement of the statute, make it imperative that all relevant records or portions be identified with particularity. Therefore, in order to ensure compliance with the statute and to create an adequate record for a reviewing court, an agency's response to a requester must include specific means of identifying any individual records which are being withheld in their entirety. Not only does this requirement ensure compliance with the statute and provide an adequate record on review, it also dovetails with the recently enacted ethics act.

### **PAWS II.**

The assessor further did not establish it performed a reasonable search prior to responding to the inspection records making its responses inadequate – **Neighborhood 153**. The assessor's search of 7/9/15 for rosters and statistics (CP 197 numbers 5-6) that failed to find the County Statistics for Comparison Report annually prepared by the entire assessor's office was obviously inadequate. [SEE *Strand Appeal*: Pg. 9-12 – A. Facts Regarding Inspection Records; Pg. 27 – C. Facts Regarding Rosters and Statistics]

Here, the record establishes the assessor did not identify the existence of “source” inspection records (SEE: *Strand Appeal* Pg. 15 last ¶), rosters and statistics (SEE: *Strand Appeal* Pgs. 28 - 29) until trial. Here the record establishes the assessor denied the existence of statistics throughout the trial while maintaining and producing annual statistics reports (SEE: *Strand Appeal* Pg. 30 next to last ¶). Here the record establishes the assessor created rosters and statistics reports and presented them to Pat and the Court as created by the BOE in their normal course of business and responsive to Pat’s requests (SEE: *Strand Appeal* Pgs. “On 6/29/15 . . .” – 32 “On 8/11/15”) when none of this was true.

**a. Assessor Failed to Provide Adequate Exemption Citation and Explanation.**

The PRA requires an agency, when it withholds a requested public record, to do two things: (1) cite an applicable exemption, and (2) provide a brief explanation of how that exemption applies to the records withheld or redacted (RCW 42.56.210(3))

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.

See *Rental Housing Ass’n v. City of Des Moines*, 165 Wn.2d 525, 539, 199 P.3d 393 (2009) (“RHA”) (discussing withholding index

requirement); see also WAC 44-14-04004(4)(b) discussing the (two requirements of a proper withholding index (citing exemption and brief explanation). The PRA is supposed to provide the public access to public records. To that end RCW 42.56.210(3) gives the requestor the right to be informed by the agency, before he or she is sued or has to sue, why requested records are exempt. That right is meaningless unless the exemption statement provided by the agency is both legally correct—citing exemptions that actually apply to the records at issue—and their application to the record sufficiently explained. An agency must provide a brief explanation of “each” withheld record—blanket explanations for entire categories of records are improper, See *Sanders*. An agency’s failure to provide a proper withholding index is a per se violation of the PRA. See *Citizens For Fair Share v. State Dept. of Corrections*, 117 Wn. App. 411, 431, 72 P.3d 206 (2003) (holding agency “violated the [PRA] by failing to name and recite to [requestor] its justification for withholding” portions of records and therefore finding requestor to be prevailing party).

In *PAWS II* at 260-261,

The Legislature's response to our opinion in *Rosier* makes clear that it does not want judges any more than agencies to be wielding broad and maleable exemptions. The Legislature did not intend to entrust to either agencies or judges extremely broad and protean exemptions

In sum, the Public Records Act contains only limited and specific exemptions

In *Sanders*, former Justice Sanders requested records from the Attorney General's Office ("AGO"). The AGO also produced an index that identified exempt documents by author, recipient and date and specifically the AGO's claimed exemption for 144 documents that were withheld or redacted, *Sanders* at 836-37. The AGO index "did not contain any facts or explanation of how its claimed exemptions applied to each document withheld."

Justice Sanders sued the AGO for violations of the PRA. Sanders argued that the AGO had failed to provide the brief explanation required by RCW 42.56.210(3). On cross motions for summary judgment the trial court agreed with Sanders, rejecting the AGO's argument that it had "explained" its exemptions by identifying the documents and their subject matter, and by specifying exemptions. *Id.* at 839-40, 845-46. The State Supreme Court affirmed stating:

The trial court's interpretation of the statute is correct: an agency withholding or redacting any record must specify the exemption and file a brief explanation of how the exemption applies to the document. . . . The identifying information about a given document does not explain, for example, why it is work product under the PRA's "controversy" exemption. See CP at 187-224 (claiming the controversy exemption for numerous records without specifying the details such as the controversy to which each record is relevant). Allowing the mere identification of a document and the claimed exemption to

count as a “brief explanation” would render the brief-explanation cause superfluous.

The Sanders court also held that an agency’s failure to provide the brief explanation required by RCW 42.56.210(3) is a violation of the PRA that requires a remedy. The court agreed with the trial court that the remedy for an agency’s failure to provide the required explanation is both attorney fees and consideration of the violation in awarding penalties.

The need for an accurate and correct citation of exemption by the assessor and an adequate explanation for how they apply to the records at the outset is clear. Pat required the information about the assessor’s claims of exemption to understand why the records were denied and to decide whether or not to pursue the request or sue based on the denial. This interest was recognized by the Supreme Court in RHA – 538 n.2,

Our analysis in PAWS II, however, underscores we were concerned with the need for sufficient identifying information about withheld documents in order to effectuate the goals of the PRA. **To sever this important concern from the statute of limitations would undermine the PRA by creating an incentive for agencies to provide as little information as possible in claiming an exemption and encouraging requesters to seek litigation first and cooperation later.**

(emphasis added).

Here, the assessor created multiple exemptions irrespective of RCW 42.56 and the Court confirmed them: (1) the “inspection report”

exemption to justify withholding the inspection records, (2) the “Historical Property Record Card” exemption to justify not producing the appraisals, (3) the “32 words/phrases exemption to justify not producing any records but those the assessor chose to produce, (4) the “assessor’s did not understand” exemption to justify mitigating the penalty.

These illegal exemptions were never explained and are violations of the PRA for the four groups of records. The failure to prove an exemption exists and to explain how it exempted specifically disclosed records is the law. Here it never happened. Here the assessor violated the PRA for all four categories of records and their actions also entitled Pat to an award of attorneys’ fees and costs, and an enhancement for penalties for non-exempt records that were not produced.

**b. The Assessor Did Not Prove Withheld Records or Portions of Records Were Exempt.**

The Assessor failed to prove any exemption covered any of the records it withheld. Pat is not required to prove records are not exempt. Rather the Assessor must prove its claim of exemption for each part of a record withheld. RCW 42.56.550(1). The Assessor did not, and could not, meet that burden for the records withheld entirely or redacted.

**c. The Assessor’s Failure to Cite a Lawful Exemption is a Violation of the PRA.**

The Assessor was required to identify every responsive record that was not provided to Pat, and to cite an exemption for any records not being provided. When the assessor did not produce a record, and did not identify that record and cite an exemption for it, the assessor committed a silent withholding. This is a violation of the PRA, *PAWS II*.

RCW 42.56.070(1) only allows withholding based on specific statutory exemptions:

Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, **unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records.**

(emphasis added). See e.g. *PAWS II*, at 260-61 (records or portions of records withheld must fall within a specific exemption from disclosure). See also *RHA*, at 538 (“Indeed, RCW 42.56.210(3) requires identification of a specific exemption and an explanation of how it applies to the individual agency record.”). If an agency withholds information and does not cite an exemption from disclosure, it is in violation of the PRA.

**d. A Court Will Not Interpret A Statute So As To Render Portions Superfluous.**

Here the assessor’s asserted exemptions of ‘32 words/phrases’ and ‘not understanding a request’; both render portions of the PRA meaningless.

The PRA has specific and limited exemptions that are construed narrowly.

The Legislature leaves no room for doubt about its intent:

Because the assessor failed to claim an exemption from the PRA for the silently-withheld records, the assessor necessarily failed to explain how an exemption applied to the records in question and thereby violated the PRA.

**e. Appellant is Entitled to an Award of Fees, Costs and Penalties under the PRA and as a Prevailing Party in this Appeal.**

RCW 42.56.550(4) of the PRA provides:

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

Washington courts recognize that “[s]trict enforcement of this provision discourages improper denial of access to public records.” *Spokane*

*Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 101, 117

P.3d 1117 (2005) (citation omitted. Moreover, “permitting a liberal

recovery of costs” for a requestor in a PRA enforcement action, “is

consistent with the policy behind the act by making it financially feasible

for private citizens to enforce the public’s right to access public records.”

*Am. Civil Liberties Union of Washington (“ACLU”) v. Blaine Sch. Dist.*

No. 503, 95 Wn. App. 106, 115, 975 P.2d 536 (1999); see also WAC 44-14-08004(7) (“The purpose of [the PRA’s] attorneys’ fees, costs and daily penalties provisions is to reimburse the requester for vindicating the public’s right to obtain public records, to make it financially feasible for requestors to do so, and to deter agencies from improperly withholding records.”) (citing ACLU).

The Public Records Act's cost provision, entitling any person who prevails against an agency to "all costs," (RCW 42.17.340(4)) provides for a more liberal recovery of costs than statutory cost recovery under RCW 4.84.010, and permits the prevailing party to recover all reasonable costs incurred in litigating the dispute. Costs - Attorney Fees - Amount - Lodestar Method - Documentation. To support an attorney fee award using the lodestar method, attorneys must provide reasonable documentation of the work performed. Such documentation must inform the court of the number of hours worked, the type of work performed, and the category of attorney who performed the work.

The PRA does not allow for court discretion in deciding whether to award attorney fees and costs to a prevailing party. Progressive Animal Welfare Society v. Univ. WA. (“PAWS I”), 114 Wn.2d 677, 687-88, 790 P.2d 604 (1990). The only discretion the court has is in determining the *amount* of reasonable attorney’s fees and costs. Amren at 36-37 (discussing how statutory penalties combine with attorney’s fees and costs under the PRA to comprise the statute’s “punitive provisions”) (citation and internal quotation marks omitted).

The Supreme Court in *Limstrom v. Ladenburg*, 136 Wn.2d 595, 616, 963 P.2d 869 (1998) remanded back to the trial court to determine whether a violation of the PRA occurred, but awarded attorney fees “[including] fees on appeal”—to the requester. Should Appellant prevail on appeal in any respect, she should be awarded her fees and costs on appeal and below, and should she prevail on her claims that any portion of a non-exempt record was not provided to her initially when the assessor claimed to provide its final production to her requests.

**D. The Penalty Award Must Be Increased.**

Pat is entitled to a penalty for each “record” she was deprived of for each day she was deprived. More than 303 appraisals have been denied her, most of these are two-page documents. The Washington State Supreme Court has held that courts may impose penalties per page with each page being treated as a “record” – *Wade's Eastside Gun Shop v. Dept of Labor and Industries*, 185 Wn.2d 270; 372 P.3d 97 (2016). And appeals courts have overturned trial courts awarding just \$10 a day as the trial court did here. See *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 98 P.3d 463 (2005) (“*Yousoufian I*”) (overturning \$10 per day award as an abuse of discretion) and. *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.2d 735 (2010) (setting penalty in same case at \$45 per day times 10 categories of records for equivalent of \$450 per day).

In *Yousoufian II* the Supreme Court set forth a multi-factor test trial courts were to apply to identify an appropriate penalty. *Yousoufian II*, at 463-69. The trial court here failed to appropriately apply the multi-factor test, failed to award penalties for the numerous records withheld, and abused its discretion.

The case should be remanded for an appropriate assessment of penalties, considering all of the *Yousoufian II* factors, and assessing penalties per page.

#### V. CONCLUSION

For the reasons set forth above, Pat respectfully requests that this Court reverse the trial court's grant of \$7,380, award her attorneys fees and costs on appeal and remand with an order requiring the assessor to produce all the withheld records and for a proper determination of statutory penalties.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of August, 2016.



Palmer D. Strand, Appellant



Patricia N. Strand, Appellant

CERTIFICATE OF SERVICE

I certify that on August 22, 2016 I served a true correct copy of this Brief  
of Appellant to:

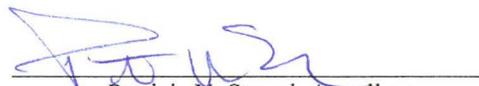
FOR: Spokane County Assessor  
Civil Division of the Prosecutor's Office  
Prosecutor Catt  
1115 W. Broadway Avenue  
Spokane, WA 99260-0010

BY: Hand Delivery

FOR: Division III Court of Appeals  
500 N Cedar St  
Spokane, WA 99201

BY: Hand Delivery

DATED this 22<sup>nd</sup> of August 2016

  
Patricia N. Strand, Appellant

# APPENDIX A

**6/18/15 MEMORANDUM DECISION – RELEVANT FULL TEXT**

**CP 406 ¶3** – As the Court understands the present request is for:

- 1) Inspection reports as to thirty eight separate parcels in Spokane County for the time period of 2007 to May 25, 2010;
- 2) Appraisals for the assessment years of 2008 through 2012;
- 3) Assessor’s Roster of Appeals to the Board of Equalization;
- 4) Assessor’s Statistics on Appeals to the Board of Equalization and the Washington State Board of Tax Appeals.

**CP 407 ¶5** – The Court cannot dictate to the Strands how they should send these requests but will note the number of requests and the fact they are repeated and often included in different lists of requests to make the decision of compliance (or lack thereof) to be extremely difficult at times. The Court merely makes a note of this as it may relate to possible penalties should a violation of the PRA be found.

**CP 407 ¶6** – As to the inspection reports for the parcels in question, some of the communication difficulties start right away in response to Ms. Strand’s June 10, 2010 request. The Assessor responded on June 25, 2010 to the request by sending “property record cards.” The Assessor asserts these cards reflect all of the information requested, including “inspection reports,” which according to the Assessor occupy a portion of the card. It is speculative as to where this case would have gone had the response to the request told Ms. Strand that the inspection reports were contained in the property record cards, but at least some of the communication difficulties would have been avoided. As noted, this theme repeats itself in this case.

**CP 408 ¶1** – Beyond the difficulty with the communication as to what was being produced, Ms. Strand now argues (post-trial) that the date on the Residential Valuation Record does not constitute an “inspection report” as mandated by statute and regulation.

**CP 408 ¶2** – As to this last point, Ms. Strand has moved to reopen the record and to admit into evidence a number of photographs she has obtained from the Assessor’s website. Ms. Strand requests these be admitted to demonstrate that the inspection dates on the property record cards are not correct. The County has objected.

**CP 408 ¶3** – The information (the photographs) was accessible to Ms. Strand for some time before trial. In fact, Ms. Strand was familiar with and had viewed the records on the website for some time. This was not evidence that was hidden or just became available. In fact, Ms. Strand has obviously spent many hours preparing her case and is well aware of the

contents of her claims. The point of the PRA is for the public to get records. If Ms. Strand can get the records (photographs) from the Assessor's website, then her request is satisfied. In any event, the Court did not have before it a request for photographs but for inspection reports and appraisals. For these reasons, the Motion to Re-open is denied.

**CP 408 ¶4** – Ms. Strand asserts the “property record card” does not constitute an inspection report as mandated by statute or regulation. She also asserts the inspection dates as noted on the card cannot be accurate. Additionally, Ms. Strand takes the position that the requested reports have a number of parts (including such things as photographs as noted above) that were never produced.

**CP 408 ¶5** – Regardless, the issue of the production of the inspection report remains. The Assessor's Office made a number of responses entitled “property record cards.” At no time did they designate these as “inspection reports” until January of 2015 during trial.

**CP 408 ¶6** – Here, the Court finds the documents that the Assessor's Office produced did respond to this request, albeit there is controversy and disagreement as to labeling and what is included in the request. The Court holds there is no violation as to this request.

**CP 408 ¶7** – The Court does find a violation of the PRA given the slowness of the initial response. [Fifteen (15) days as opposed to five (5)].

**CP 408 ¶8** – As to appraisal records, these were requested on March 19, 2012. The County asserts these were actually requested in June and July of 2010, and that this wasn't a new request as labeled. This only highlights the communication issues between the parties. They are not able to agree when requests are made for the first time or as a renewed request. This request was for thirty eight (38) parcels and included the years 2008 to 2012. The initial response to the request was March 20, 2012. The parties continued a back and forth with e-mail exchanges. Ms. Strand indicates she made seven (7) requests between March of 2012 and April of 2013 in these exchanges.

**CP 409 ¶1** – The County takes the position that the appraisal reports are contained in the “property record cards” as discussed above. The Strands take the position that they were provided data cards that were previously printed (the print dates are from a previous request) and they may not be the actual appraisals. In other words, they wanted newly printed appraisals.

**CP 409 ¶2** – The request (Exhibit P15-132) states “improvement data and residential valuation for each property in table 1 for assessment years 2008 through 2012.” The parties went back and forth as to the meaning of this

request. On its face the Court notes it does not ask for newly printed appraisal information

**CP 409 ¶3** – In any event, by July of 2012 Ms. Strand acknowledges getting all of the requested records for 2011 and 2012, all but one record for 2010, two out of thirty eight appraisals for 2009 and none for 2008. She also received the information for all thirty eight parcels for 2007 even though not requested. The County asserts all of the appraisals that they keep as records on the property record cards were produced.

**CP 409 ¶4** – The issue here again seems to be one of communication. Ms. Strand wants the appraisals (contained on the property record cards) to be produced in a particular way, and the Assessor produced them in a different way. There was not an explanation by the Assessor as the why or how the records were produced.

**CP 409 ¶5** – The Court holds that despite the dispute as to the nature of the production, the documents as requested were produced.

**(CP 409 ¶ 6)** – The third and fourth requests by Ms. Strand involve essentially the same category of information. The “Roster of appeals to the Board of Equalization” was requested by Ms. Strand on September 13, 2013 (item #4) for the time period January 1, 2010 to September 13, 2012. The request was timely acknowledged on September 13, 2012.

**(CP 409 ¶ 7)** – Other than the acknowledgment of the overall request of September 13, 2012 (the request had a number of subparts) the County did not respond any further to the request. At trial, the County presented evidence that this information was held by the Board of Equalization. At no time did the Assessor’s Office advise the Strands that this was the situation. They were not directed to the Board for information.

**(CP 409 ¶ 8)** – The testimony at trial also established individual appraisers keep their own rosters. This was never disclosed to Ms. Strand or offered to her. In short, nothing was done in response to this.

**(CP 409 ¶ 9)** – Here, although it may have been easier and faster for Ms. Strand to simply have made the request of the Board of Equalization, the fact remains that there were records available as to the request that should have been made available to the Strands. This is a violation of the PRA.

**(CP 410 ¶ 1)** – The fourth request was for “Assessor’s statistics on appeals to the Board of Equalization and the Washington State Board of Tax Appeals.” The Assessor asserts these are not records it maintains, but has at times compiled statistics on an ad hoc basis. The Strands point to an e-mail from 2010 showing at least a one-time compilation of these statistics, and an exhibit showing stats of appeals from an unknown year.

**(CP 410 ¶ 2)** – As with the previous request discussed above, the Assessor’s Office gave no response for a period of two years other than to

acknowledge the request. In September of 2014 the Assessor's office advised Ms. Strand they did not keep these records. The Court remains puzzled as to why the Assessor's Office did not tell Ms. Strand that the records are not kept as an ordinary course of business and refer her to the Board of Equalization.

**(CP 410 ¶ 3)** – The Court cannot find the record in this fourth request is maintained on any sort of an on-going basis. If the Exhibit (#11903) was produced on an ad hoc basis in 2014 it should have then been produced to Ms. Strand at that time. Given the passage of time since the initial request the failure to do so is simple negligence.

**(CP 410 ¶ 4)** – As to the third and fourth request the County has raised the issue of whether the Statute of Limitations RCW 42.56.550(6) applies. There was not a claim of exemption, nor was there a production on a partial or installment basis. The Court holds the Statute of Limitations does not apply to these claims.

**(CP 410 ¶ 5)** – The parties may submit a memorandum as to their position on penalties and fees, if any, given the Court's decision. These submittals are due by Friday, July 10, 2015 at 3:00 p.m.

#### **10/1/15 ORDER ALTER OR AMEND – RELEVANT FULL TEXT**

**(CP 412 ¶ 2)** – Ms. Strand has responded to the motion using, as the Defendants have done, various exhibits introduced at trial as a basis for the Court to alter its decision. As noted by Ms. Strand, it is very difficult to access in any meaningful way the Defendants' exhibits. The lack of organized, clear exhibits has hampered the Court in the resolution of this matter. The difficulty in sorting out this case, in terms of requests and responses, was discussed by the Court in its Memorandum Decision.

**(CP 413 ¶ 1)** – The Defendants' motion relates specifically to:

- 1) The date the County responded to Plaintiffs' request of June 10, 2010 for records;
- 2) The request and response to the request for Board of Equalization rosters;
- 3) The request and response to the request for Board of Equalization statistics.

**(CP 413 ¶ 3)** – The Court will grant the Defendants' motion in part. Specifically, the Court will grant the motion as to inspection reports and Board of Equalization Rosters. Although we now know Ms. Strand may have wanted rosters kept by the individual appraisers, the request was for "rosters of appeals to the Board of Equalization". The response by the

County was accurate but could have been more detailed in advising what the Assessor's Office actually had in the event Ms. Strand wanted to request these documents. No violation will be found.

**(CP 413 ¶ 4)** – As to statistics on appeals, the County maintains no records are kept by the Assessor's Office. However, the Plaintiffs, like the County, have pointed the Court to various exhibits which are a part of the record. (See Plaintiffs' Response to Defendants' Motion and Declaration of Patricia Strand in Support of Plaintiffs' Response and exhibits in support., letters "M and N").

**(CP 414 ¶ 1)** – The Assessor produced some of these records in September 2014. They appear to be Assessor records as they refer to documents that are sent to the Board of Tax Appeals (SBTA). SBTA would not have documents showing when someone sent documents to them, rather when they received them.

**(CP 414 ¶ 2)** – This record was available and appears to be what Ms. Strand requested. This is a violation. The "Judgment" (the Court's decision) will be modified to reflect this.

#### **1/26/16 MEMORANDUM DECISION – RELEVANT FULL TEXT**

**(CP 417 ¶ 1)** – The Plaintiffs' Motion for Reconsideration essentially requests the Court to reverse its rulings on evidentiary findings and to consider new evidence to the effect that defense witnesses lied at trial and in subsequent filing.

**(CP 417 ¶ 2)** – The Plaintiffs' Amended Motion for Reconsideration requests the Court to recognize certain documents provided to the Court from the defense as fraudulent, or in the case of photos from the website, to hold the photos were not available as asserted by Defendants, and to hold certain records now produced by Defendants are the records originally sought by the Plaintiffs.

**(CP 417 ¶ 3)** – The Plaintiffs' supplement to their amended motion responds to Defendants' filings and asserts Defendants have filed new evidence. Based upon that evidence, Plaintiffs assert Defendants have completely discredited their own testimony and previously filed affidavits. To quote the Plaintiffs pleadings "The stream of new evidence proves Mr. Hodgson committed perjury and created fraudulent records in this case".

**(CP 417 ¶ 4)** – Under CR 59 the test for the Court considering new evidence post-trial is whether the evidence is material and whether it could have been discovered with reasonable diligence before trial.

**(CP 417 ¶ 5)** – Had the parties sought to introduce the evidence now proffered at trial, it would be admissible and material. It was evidence that could have been discovered prior to trial. The issues of the records kept by the Assessor, how they were kept, and the reports done for the Department of Revenue and so forth were all discoverable matters. The matter continues to be litigated by the parties despite the trial being long over. The motions as it pertains to newly discovered evidence are denied. To the extent either party has filed any pleading that asks the Court to consider any evidence the Court did not consider at trial, that evidence will be disregarded.

**(CP 417 ¶ 6)** – As to attorney fees, the Plaintiff did not submit any documentation as to fees being sought other than just to state an amount. Accordingly, the Court denies the request.

**(CP 418 ¶ 1)** – As to costs, the Plaintiff did not submit any documentation as to costs being sought other than just to state an amount. Accordingly, the Court denies the request.

**(CP 418 ¶ 2)** – As to penalties, the Plaintiffs' submissions are of slight assistance to the Court. Rather than suggest a penalty that relates to the findings of the Court, other penalties are proposed.

**(CP 418 ¶ 3)** – The Court, in its order of October 1, 2015 found a violation of the PRA. This violation relates to records for statistics on appeal. The Plaintiff calculates 738 days as the time the records were not produced. For the purposes of the penalty decision the Court accepts that.

**(CP 418 ¶ 4)** – The Court has examined the factors in the statute, RCW 42.56.550(4) and the case law (see *Yousoufin v. Office of Ron Sims*, 168 WN 2d 444 (2010)).

**(CP 418 ¶ 5)** – The Court acknowledges the penalty range is \$5 a day to \$100 a day. There is no starting point within the range for the penalty determination.

**(CP 418 ¶ 6)** – Examining all of the factors set out at Page 467 and 468 of *Yousoufin*, the Court notes there is no evidence that the Strands sustained any personal economic loss in this matter. There was no bad faith found by the Court. The penalty should reflect deterrence.

**(CP 418 ¶ 7)** – The Court has considered these as well as the other factors, noting they are nonexclusive, and finds \$10 a day to be an appropriate penalty. Accordingly, the award is \$7,380.

**10/1/15 ORDER DISCOVERY – RELEVANT FULL TEXT**

**(CP 433 ¶ 1)** – This matter came before the Court upon the Plaintiffs' Motion for "Discovery". This motion was generated as a result of post-trial filings by the Defendant.

**(CP 433 ¶ 2)** – The Court declines to allow post-trial discovery. The Court will decide the matter based upon appropriate evidence and appropriate post-trial filings.

**10/1/15 ORDER FEES & COSTS – RELEVANT FULL TEXT**

**(CP 438 ¶ 1)** – This Court having found a violation of the PRA, the Plaintiffs are to be awarded:

- 1) Their costs in obtaining the records at issue;
- 2) Reasonable attorney fees incurred by Plaintiffs in retaining Mr. Burns as it pertains to the records at issue;
- 3) Penalties as determined by the Court. This will be set at the time of the establishment of fees and costs.

**(CP 438 ¶ 2)** – Plaintiffs are directed to submit a proposal, with appropriate documentation as to these items to which the Defendants may respond. The Court will decide the issue without oral argument. The parties are directed to keep the submissions to the point, given the previous filing of briefs on penalties and fees.

# APPENDIX B

## CR 5 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

- (a) Service--When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in rule 4.
- (b) Service--How Made.
  - (1) On Attorney or Party. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service directly upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the party or the party's attorney or by mailing it to the party's or the attorney's at his last known address or, if no address is known, filing with the clerk of the court an affidavit of attempt to serve. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the party's or the attorney's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service on an attorney is subject to the restrictions in subsections (b)(4) and (5) of this rule and in rule 71, Withdrawal by Attorneys.
  - (2) Service by Mail.
    - (A) How made. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

RCW 4.84.010 Costs allowed to prevailing party—Defined—Compensation of attorneys. The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums for the prevailing party's expenses in the action, which allowances are termed costs, including, in addition to costs otherwise authorized by law, the following expenses:

- (1) Filing fees;
- (2) Fees for the service of process by a public officer, registered process server, or other means, as follows:
  - (a) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.
  - (b) If service is by a process server registered pursuant to chapter 18.180 RCW or a person exempt from registration, the recoverable cost is the amount actually charged and incurred in effecting service;
- (3) Fees for service by publication;
- (4) Notary fees, but only to the extent the fees are for services that are expressly required by law and only to the extent they represent actual costs incurred by the prevailing party;
- (5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files;
- (6) Statutory attorney and witness fees; and
- (7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: PROVIDED, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment.

RCW 36.21.015 Qualifications for persons assessing real property — Examination — Examination waiver — Continuing education requirement.

- (1) Any person having the responsibility of valuing real property for purposes of taxation including persons acting as assistants or deputies to a county assessor under RCW 36.21.011 shall have first:
  - (a) Had at least one year of experience in transactions involving real property, in appraisal of real property, or in assessment of real property, or at least one year of experience in a combination of the three;
  - (b) Become knowledgeable in repair and remodeling of buildings and improvement of land, and in the significance of locality and area to the value of real property;

- (c) Become knowledgeable in the standards for appraising property set forth by the department of revenue; and
- (d) Met other minimum requirements specified by department of revenue rule.
- (2) The department of revenue shall prepare and administer an examination on subjects related to the valuation of real property. No person shall assess real property for purposes of taxation without having passed said examination or having received an examination waiver from the department of revenue upon showing education or experience determined by the department to be equivalent to passing the examination. A person passing said examination or receiving an examination waiver shall be accredited accordingly by the department of revenue.
- (3) The department of revenue may by rule establish continuing education requirements for persons assessing real property for purposes of taxation. The department shall provide accreditation of completion of requirements imposed under this section. No person shall assess real property for purposes of taxation without complying with requirements imposed under this subsection.
- (4) To the extent practical, the department of revenue shall coordinate accreditation requirements under this section with the requirements for certified real estate appraisers under chapter 18.140 RCW.
- (5) The examination requirements of subsection (2) of this section shall not apply to any person who shall have either:
  - (a) Been certified as a real property appraiser by the department of personnel prior to July 1, 1992; or
  - (b) Attended and satisfactorily completed the assessor's school operated jointly by the department of revenue and the Washington state assessors association prior to August 9, 1971.

RCW 40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules—Sealed records.

- (1) (a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.
- (b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.
- (2) (a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:
  - (i) The records are six or more years old;
  - (ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or
  - (iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

- (b) (i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as

defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

- (ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.
  - (iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.
- (c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.56.010 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

- (3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

- (a) The records are seventy years old or more;
- (b) The local records committee has approved the destruction of the public records; and
- (c) The state archivist has determined that the public records have no historic interest.

RCW 42.20.040 False report. Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor.

RCW 42.56.010 Definitions. (effective until Jan/01/12) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.
- (2) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.
- (3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

RCW 42.56.030 Construction. 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.

RCW 42.56.070 Documents and indexes to be made public

- (1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of \*subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.
- (2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.
- (3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:
  - (a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
  - (b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;
  - (c) Administrative staff manuals and instructions to staff that affect a member of the public;
  - (d) Planning policies and goals, and interim and final planning decisions;
  - (e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and
  - (f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.
- (4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:
  - (a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and
  - (b) Make available for public inspection and copying all indexes maintained for agency use.
- (5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:
  - (a) All records issued before July 1, 1990, for which the agency has maintained an index;
  - (b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;
  - (c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;
  - (d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and
  - (e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

- (6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:
  - (a) It has been indexed in an index available to the public; or
  - (b) Parties affected have timely notice (actual or constructive) of the terms thereof.

- (7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.
  - (a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.
  - (b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.
- (8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05RCW, the Administrative Procedure Act.

RCW 42.56.210 Certain personal and other records exempt.

- (1) Except for information described in \*RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.
- (2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.
- (3) 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.

RCW 42.56.520 Prompt responses required. Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer; (3) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (4) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written

statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

RCW 42.56.550 Judicial review of agency actions.

- (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.
- (2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.
- (3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.
- (4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.
- (5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.
- (6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis.

RCW 84.40.030 Basis of valuation, assessment, appraisal -- One hundred percent of true and fair value -- Exceptions -- Leasehold estates -- Real property -- Appraisal -- Comparable sales. All property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law. Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid. The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

- (1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage or highest and best use not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes or other government restrictions. The appraisal shall also take into account: (a) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.
- (2) In addition to sales as defined in subsection (1) of this section, consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance. Consideration should be given to any agreement, between an owner of rental housing and any government agency, that restricts rental income, appreciation, and liquidity; and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection shall be the dominant factors in valuation. When provisions of this subsection are relied upon for

establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

- (3) In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon shall be determined; also the true and fair value of structures thereon, but the valuation shall not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

RCW 84.41.041 Physical inspection and valuation of taxable property required -- Adjustments during intervals based on statistical data. Each county assessor shall cause taxable real property to be physically inspected and valued at least once every six years in accordance with RCW 84.41.030, and in accordance with a plan filed with and approved by the department of revenue. Such revaluation plan shall provide that a reasonable portion of all taxable real property within a county shall be revalued and these newly determined values placed on the assessment rolls each year. Until January 1, 2014, the department may approve a plan that provides that all property in the county be revalued every two years. If the revaluation plan provides for physical inspection at least once each four years, during the intervals between each physical inspection of real property, the valuation of such property may be adjusted to its current true and fair value, such adjustments to be based upon appropriate statistical data. If the revaluation plan provides for physical inspection less frequently than once each four years, during the intervals between each physical inspection of real property, the valuation of such property shall be adjusted to its current true and fair value, such adjustments to be made once each year and to be based upon appropriate statistical data.

RCW 84.48.150 Valuation criteria including comparative sales to be made available to taxpayer — Change. The assessor shall, upon the request of any taxpayer who petitions the board of equalization for review of a tax claim or valuation dispute, make available to said taxpayer a compilation of comparable sales utilized by the assessor in establishing such taxpayer's property valuation. If valuation criteria other than comparable sales were used, the assessor shall furnish the taxpayer with such other factors and the addresses of such other property used in making the determination of value.

The assessor shall within sixty days of such request but at least fourteen business days, excluding legal holidays, prior to such taxpayer's appearance before the board of equalization make available to the taxpayer the valuation criteria and/or comparable sales which shall not be subsequently changed by the assessor unless the assessor has found new evidence supporting the assessor's valuation, in which situation the assessor shall provide such additional evidence to the taxpayer and the board of equalization at least fourteen business days prior to the hearing at the board of equalization. A taxpayer who lists comparable sales on a notice of appeal shall not subsequently change such sales unless the taxpayer has found new evidence supporting the taxpayer's proposed valuation in which case the taxpayer shall provide such additional evidence to the assessor and board of equalization at least seven business days, excluding legal holidays, prior to the hearing. If either the assessor or taxpayer does not meet the requirements of this section the board of equalization may continue the hearing to provide the parties an opportunity to review all evidence or, upon objection, refuse to consider sales not submitted in a timely manner.

WAC 44-14-01003 Construction and application of act. The act declares: "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created." RCW 42.17.251/42.56.030. The act further provides: "...mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society." RCW 42.17.010(11). The act further provides: "Courts shall take into account the policy of (the act) that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.17.340(3)/42.56.550(3).

Because the purpose of the act is to allow people to be informed about governmental decisions (and therefore help keep government accountable) while at the same time being "mindful of the right of individuals to privacy," it should not be used to obtain records containing purely personal information that has absolutely no bearing on the conduct of government.

The act emphasizes three separate times that it must be liberally construed to effect its purpose, which is the disclosure of nonexempt public records. RCW 42.17.010, 42.17.251/42.56.030, 42.17.920.1 The act places the burden on the agency of proving a record is not subject to disclosure or that its estimate of time to provide a full response is "reasonable." RCW 42.17.340 (1) and (2)/42.56.550 (1) and (2). The act also encourages disclosure by awarding a requestor reasonable attorneys fees, costs, and a daily penalty if the agency fails to meet its burden

of proving the record is not subject to disclosure or its estimate is not "reasonable." RCW 42.17.340(4)/42.56.550(4).

An additional incentive for disclosure is RCW 42.17.258, which provides: "No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply" with the act.

Note: 1 See *King County v. Sheehan*, 114 Wn. App. 325, 338, 57 P.3d 307 (2002) (referring to the three legislative intent provisions of the act as "the thrice-repeated legislative mandate that exemptions under the Public Records Act are to be narrowly construed.")

WAC 44-14-04004 Responsibilities of agency in providing records.

(1) **General.** An agency may simply provide the records or make them available within the five-business day period of the initial response. When it does so, an agency should also provide the requestor a written cover letter or e-mail briefly describing the records provided and informing the requestor that the request has been closed. This assists the agency in later proving that it provided the specified records on a certain date and told the requestor that the request had been closed. However, a cover letter or e-mail might not be practical in some circumstances, such as when the agency provides a small number of records or fulfills routine requests.

An agency can, of course, provide the records sooner than five business days. Providing the "fullest assistance" to a requestor would mean providing a readily available record as soon as possible. For example, an agency might routinely prepare a premeeting packet of documents three days in advance of a city council meeting. The packet is readily available so the agency should provide it to a requestor on the same day of the request so he or she can have it for the council meeting.

(2) **Means of providing access.** An agency must make nonexempt public records "available" for inspection or provide a copy. RCW 42.17.270/42.56.080. An agency is only required to make records "available" and has no duty to explain the meaning of public records.<sup>1</sup> Making records available is often called "access."

Access to a public record can be provided by allowing inspection of the record, providing a copy, or posting the record on the agency's web site and assisting the requestor in finding it (if necessary). An agency must mail a copy of records if requested and if the requestor pays the actual cost of postage and the mailing container.<sup>2</sup> The requestor can specify which method of access (or combination, such as inspection and then copying) he or she prefers. Different processes apply to requests for inspection versus copying (such as copy charges) so an agency should clarify with a requestor whether he or she seeks to inspect or copy a public record.

An agency can provide access to a public record by posting it on its web site. If requested, an agency should provide reasonable assistance to a requestor in finding a public record posted on its web site. If the requestor does not have internet access, the agency may provide access to the record by allowing the requestor to view the record on a specific computer terminal at the agency open to the public. An agency is not required to do so. Despite the availability of the record on the agency's web site, a requestor can still make a public records request and inspect the record or obtain a copy of it by paying the appropriate per-page copying charge.

(3) **Providing records in installments.** The act now provides that an agency must provide records "if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure." RCW 42.17.270/42.56.080. The purpose of this provision is to allow requestors to obtain records in installments as they are assembled and to allow agencies to provide records in logical batches. The provision is also designed to allow an agency to only assemble the first installment and then see if the requestor claims or reviews it before assembling the next installments.

Not all requests should be provided in installments. For example, a request for a small number of documents which are located at nearly the same time should be provided all at once. Installments are useful for large requests when, for example, an agency can provide the first box of records as an installment. An agency has wide discretion to determine when providing records in installments is "applicable." However, an agency cannot use installments to delay access by, for example, calling a small number of documents an "installment" and sending out separate notifications for each one. The agency must provide the "fullest assistance" and the "most timely possible action on requests" when processing requests. RCW 42.17.290/42.56.100.

(4) **Failure to provide records.** A "denial" of a request can occur when an agency:  
Does not have the record;  
Fails to respond to a request;  
Claims an exemption of the entire record or a portion of it; or  
Without justification, fails to provide the record after the reasonable estimate expires.

(a) **When the agency does not have the record.** An agency is only required to provide access to public records it has or has used.<sup>3</sup> An agency is not required to create a public record in response to a request.

An agency must only provide access to public records in existence at the time of the request. An agency is not obligated to supplement responses. Therefore, if a public record is created or comes into the possession of the agency after the request is received by the agency, it is not responsive to the request and need not be provided. A requestor must make a new request to obtain subsequently created public records.

Sometimes more than one agency holds the same record. When more than one agency holds a record, and a requestor makes a request to the first agency, the first agency cannot respond to the request by telling the requestor to obtain the record from the second agency. Instead, an agency must provide access to a record it holds regardless of its availability from another agency.<sup>4</sup>

An agency is not required to provide access to records that were not requested. An agency does not "deny" a request when it does not provide records that are outside the scope of the request because they were never asked for.

(b) **Claiming exemptions.**

(i) **Redactions.** If a portion of a record is exempt from disclosure, but the remainder is not, an agency generally is required to redact (black out) the exempt portion and then provide the remainder. RCW 42.17.310(2)/42.56.210(1). There are a few exceptions.<sup>5</sup> Withholding an entire record where only a portion of it is exempt violates the act.<sup>6</sup> Some records are almost entirely exempt but small portions remain nonexempt. For example, information revealing the identity of a crime victim is exempt from disclosure. RCW 42.17.310 (1)(e)/42.56.240(2). If a requestor requested a police report in a case in which charges have been filed, the agency must redact the victim's identifying information but provide the rest of the report.

Statistical information "not descriptive of any readily identifiable person or persons" is generally not subject to redaction or withholding. RCW 42.17.310(2)/42.56.210(1). For example, if a statute exempted the identity of a person who had been assessed a particular kind of penalty, and an agency record showed the amount of penalties assessed against various persons, the agency must provide the record with the names of the persons redacted but with the penalty amounts remaining.

Originals should not be redacted. For paper records, an agency should redact materials by first copying the record and then either using a black marker on the copy or covering the exempt portions with copying tape, and then making a copy. It is often a good practice to keep the initial copies which were redacted in case there is a need to make additional copies for disclosure or to show what was redacted. For electronic records such as data bases, an agency can sometimes redact a field of exempt information by excluding it from the set of fields to be copied. However, in some instances electronic redaction might not be feasible and a paper copy of the record with traditional redaction might be the only way to provide the redacted record. If a record is redacted electronically, by deleting a field of data or in any other way, the agency must identify the redaction and state the basis for the claimed exemption as required by RCW 42.56.210(3). See (b)(ii) of this subsection.

(ii) **Brief explanation of withholding.** When an agency claims an exemption for an entire record or portion of one, it must inform the requestor of the statutory exemption and provide a brief explanation of how the exemption applies to the record or portion withheld. RCW 42.17.310(4)/42.56.210(3). The brief explanation should cite the statute the agency claims grants an exemption from disclosure. The brief explanation should provide enough information for a requestor to make a threshold determination of whether the claimed exemption is proper. Nonspecific claims of exemption such as "proprietary" or "privacy" are insufficient.

One way to properly provide a brief explanation of the withheld record or redaction is for the agency to provide a withholding index. It identifies the type of record, its date and number of pages, and the author or recipient of the record (unless their identity is exempt).<sup>7</sup> The withholding index need not be elaborate but should allow a requestor to make a threshold determination of whether the agency has properly invoked the exemption.

(5) **Notifying requestor that records are available.** If the requestor sought to inspect the records, the agency should notify him or her that the entire request or an installment is available for inspection and ask the requestor to contact the agency to arrange for a mutually agreeable time for inspection.<sup>8</sup> The notification should recite that if the requestor fails to inspect or copy the records or make other arrangements within thirty days of the date of the notification that the agency will close the request and refile the records. An agency might consider on a case-by-case basis sending the notification by certified mail to document that the requestor received it.

If the requestor sought copies, the agency should notify him or her of the projected costs and whether a copying deposit is required before the copies will be made. The notification can be oral to provide the most timely possible response.

- (6) Documenting compliance. An agency should have a process to identify which records were provided to a requestor and the date of production. In some cases, an agency may wish to number-stamp or number-label paper records provided to a requestor to document which records were provided. The agency could also keep a copy of the numbered records so either the agency or requestor can later determine which records were or were not provided. However, the agency should balance the benefits of stamping or labeling the documents and making extra copies against the costs and burdens of doing so.

If memorializing which specific documents were offered for inspection is impractical, an agency might consider documenting which records were provided for inspection by making an index or list of the files or records made available for inspection.

- Notes: 1Bonamy v. City of Seattle, 92 Wn. App. 403, 409, 960 P.2d 447 (1998), review denied, 137 Wn.2d 1012, 978 P.2d 1099 (1999).  
2Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503, 86 Wn. App. 688, 695, 937 P.2d 1176 (1997).  
3Sperr v. City of Spokane, 123 Wn. App. 132, 136-37, 96 P.3d 1012 (2004).  
4Hearst Corp. v. Hoppe, 90 Wn.2d 123, 132, 580 P.2d 246 (1978).  
5The two main exceptions to the redaction requirement are state "tax information" (RCW 82.32.330 (1)(c)) and law enforcement case files in active cases (Newman v. King County, 133 Wn.2d 565, 574, 947 P.2d 712 (1997). Neither of these two kinds of records must be redacted but rather may be withheld in their entirety.  
6Seattle Firefighters Union Local No. 27 v. Hollister, 48 Wn. App. 129, 132, 737 P.2d 1302 (1987).  
7Progressive Animal Welfare Soc'y. v. Univ. of Wash., 125 Wn.2d 243, 271, n.18, 884 P.2d 592 (1994) ("PAWS II").  
8For smaller requests, the agency might simply provide them with the initial response or earlier so no notification is necessary.

#### WAC 44-14-08004 Judicial review.

- (1) Seeking judicial review. The act provides that an agency's decision to deny a request is final for purposes of judicial review two business days after the initial denial of the request. RCW 42.17.320/42.56.520.1 Therefore, the statute allows a requestor to seek judicial review two business days after the initial denial whether or not he or she has exhausted the internal agency review process.2 An agency should not have an internal review process that implies that a requestor cannot seek judicial review until internal reviews are complete because RCW 42.17.320/42.56.520 allows judicial review two business days after the initial denial.
- The act provides a speedy remedy for a requestor to obtain a court hearing on whether the agency has violated the act. RCW 42.17.340 (1) and (2)/42.56.550 (1) and (2). The purpose of the quick judicial procedure is to allow requestors to expeditiously find out if they are entitled to obtain public records.3 To speed up the court process, a public records case may be decided merely on the "motion" of a requestor and "solely on affidavits." RCW 42.17.340 (1) and (3)/42.56.550 (1) and (3).
- (2) Statute of limitations. The statute of limitations for an action under the act is one year after the agency's claim of exemption or the last production of a record on a partial or installment basis. RCW 42.17.340(6)/42.56.550(6).
- (3) Procedure. To initiate court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. RCW 42.17.340 (1) and (2)/42.56.550 (1) and (2).4 The case must be filed in the superior court in the county in which the record is maintained. RCW 42.17.340 (1) and (2)/42.56.550 (1) and (2). In a case against a county, the case may be filed in the superior court of that county, or in the superior court of either of the two nearest adjoining counties. RCW 42.17.340(5)/42.56.550(5). The show-cause procedure is designed so that a nonattorney requestor can obtain judicial review himself or herself without hiring an attorney. A requestor can file a motion for summary judgment to adjudicate the case.5 However, most cases are decided on a motion to show cause.6
- (4) **Burden of proof.** The burden is on an agency to demonstrate that it complied with the act. RCW 42.17.340 (1) and (2)/42.56.550 (1) and (2).
- (5) **Types of cases subject to judicial review.** The act provides three mechanisms for court review of a public records dispute.
- (a) **Denial of record.** The first kind of judicial review is when a requestor's request has been denied by an agency. RCW 42.17.340(1)/42.56.550(1). This is the most common kind of case.
- (b) **"Reasonable estimate."** The second form of judicial review is when a requestor challenges an agency's "reasonable estimate" of the time to provide a full response. RCW 42.17.340(2)/42.56.550(2).
- (c) **Injunctive action to prevent disclosure.** The third mechanism of judicial review is an injunctive action to restrain the disclosure of public records. RCW 42.17.330/42.56.540. An action under this statute can be initiated by the agency, a person named in the disputed record, or a person to whom the record

"specifically pertains." The party seeking to prevent disclosure has the burden of proving the record is exempt from disclosure.<sup>7</sup> The party seeking to prevent disclosure must prove both the necessary elements of an injunction and that a specific exemption prevents disclosure.<sup>8</sup>

- (6) **"In camera" review by court.** The act authorizes a court to review withheld records or portions of records "in camera." RCW [42.17.340\(3\)](#)/[42.56.550\(3\)](#). "In camera" means a confidential review by the judge alone in his or her chambers. Courts are encouraged to conduct an in camera review because it is often the only way to determine if an exemption has been properly claimed.<sup>9</sup>

An agency should prepare an in camera index of each withheld record or portion of a record to assist the judge's in camera review. This is a second index, in addition to a withholding index provided to the requestor. The in camera index should number each withheld record or redacted portion of the record, provide the unredacted record or portion to the judge with a reference to the index number, and provide a brief explanation of each claimed exemption corresponding to the numbering system. The agency's brief explanation should not be as detailed as a legal brief because the opposing party will not have an opportunity to review it and respond. The agency's legal briefing should be done in the normal course of pleadings, with the opposing party having an opportunity to respond.

The in camera index and disputed records or unredacted portions of records should be filed under seal. The judge should explain his or her ruling on each withheld record or redacted portion by referring to the numbering system in the in camera index. If the trial court's decision is appealed, the in camera index and its attachments should be made part of the record on appeal and filed under seal in the appellate court.

- (7) **Attorneys' fees, costs, and penalties to prevailing requestor.** The act requires an agency to pay a prevailing requestor's reasonable attorneys' fees, costs, and a daily penalty. RCW [42.17.340\(4\)](#)/[42.56.550\(4\)](#). Only a requestor can be awarded attorneys' fees, costs, or a daily penalty under the act; an agency or a third party resisting disclosure cannot.<sup>10</sup> A requestor is the "prevailing" party when he or she obtains a judgment in his or her favor, the suit was reasonably necessary to obtain the record, or a wrongfully withheld record was provided for another reason.<sup>11</sup> In an injunctive action under RCW [42.17.330](#)/[42.56.540](#), the prevailing requestor cannot be awarded attorneys' fees, costs, or a daily penalty against an agency if the agency took the position that the record was subject to disclosure.<sup>12</sup>

The purpose of the act's attorneys' fees, costs, and daily penalty provisions is to reimburse the requestor for vindicating the public's right to obtain public records, to make it financially feasible for requestors to do so, and to deter agencies from improperly withholding records.<sup>13</sup> However, a court is only authorized to award "reasonable" attorneys' fees. RCW [42.17.340\(4\)](#)/[42.56.550\(4\)](#). A court has discretion to award attorneys' fees based on an assessment of reasonable hourly rates and which work was necessary to obtain the favorable result.<sup>14</sup>

The award of "costs" under the act is for all of a requestor's nonattorney-fee costs and is broader than the court costs awarded to prevailing parties in other kinds of cases.<sup>15</sup>

A daily penalty of between five dollars to one hundred dollars must be awarded to a prevailing requestor, regardless of an agency's "good faith."<sup>16</sup> An agency's "bad faith" can warrant a penalty on the higher end of this scale.<sup>17</sup> The penalty is per day, not per-record per-day.<sup>18</sup>

Notes: <sup>1</sup>*Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 253, 884 P.2d 592 (1994) ("PAWS I") (RCW [42.17.320](#)/[42.56.520](#) "provides that, regardless of internal review, initial decisions become final for purposes of judicial review after two business days.").

<sup>2</sup>See, e.g., WAC [44-06-120](#) (attorney general's office internal review procedure specifying that review is final when the agency renders a decision on the appeal, or the close of the second business day after it receives the appeal, "whichever occurs first").

<sup>3</sup>*Spokane Research & Def. Fund v. City of Spokane*, 121 Wn. App. 584, 591, 89 P.3d 319 (2004), reversed on other grounds, 155 Wn.2d 89, 117 P.3d 1117 (2005) ("The purpose of the PDA is to ensure speedy disclosure of public records. The statute sets forth a simple procedure to achieve this.").

<sup>4</sup>See generally *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 117 P.3d 1117 (2005).  
<sup>5</sup>*Id.* at 106.

<sup>6</sup>*Wood v. Thurston County*, 117 Wn. App. 22, 27, 68 P.3d 1084 (2003).

<sup>7</sup>*Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 735, 744, 958 P.2d 260 (1998).

<sup>8</sup>PAWS II, 125 Wn.2d at 257-58.

<sup>9</sup>*Spokane Research & Def. Fund v. City of Spokane*, 96 Wn. App. 568, 577 & 588, 983 P.2d 676 (1999), review denied, 140 Wn.2d 1001, 999 P.2d 1259 (2000).

<sup>10</sup>RCW [42.17.340\(4\)](#)/[42.56.550\(4\)](#) (providing award only for "person" prevailing against "agency"); *Tiberino v. Spokane County Prosecutor*, 103 Wn. App. 680, 691-92, 13 P.3d 1104 (2000) (third party resisting disclosure not entitled to award).

<sup>11</sup>*Violante v. King County Fire Dist. No. 20*, 114 Wn. App. 565, 571, 59 P.3d 109 (2002); *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 104, 117 P.3d 1117 (2005).

<sup>12</sup>*Confederated Tribes*, 135 Wn.2d at 757.

13 *Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 95 Wn. App. 106, 115, 975 P.2d 536 (1999) ("ACLU II") ("permitting a liberal recovery of costs is consistent with the policy behind the act by making it financially feasible for private citizens to enforce the public's right to access to public records.").

14 *Id.* at 118.

15 *Id.* at 115.

16 *American Civil Liberties Union v. Blaine School Dist. No. 503*, 86 Wn. App. 688, 698-99, 937 P.2d 1176 (1997) ("ACLU I").

17 *Id.*

18 *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 436, 98 P.3d 463 (2004).

WAC 308-125 Real estate appraisers.

WAC 308-125-010 Definitions.

- (1) Words and terms used in these rules shall have the same meaning as each has in the Certified Real Estate Appraiser Act, (chapter 18.140 RCW) and the Uniform Standards of Professional Appraisal Practice (USPAP).
- (2) "Appraisal foundation" means a private association of appraiser professional organizations. The appraisal foundation develops appraisal standards which the regulatory agencies must use as minimum standards for federally related transactions and it develops qualification criteria for appraisers.
- (3) "Appraisal subcommittee" means a committee created by Title XI. It monitors all activities related to the implementation of Title XI.
- (4) "Appraisal standards board" means a board established by the appraisal foundation for the purpose of developing, publishing, interpreting and amending the *Uniform Standards of Professional Appraisal Practice*.
- (5) "The *Uniform Standards of Professional Appraisal Practice* (USPAP)" means the current edition of the publication in force of the appraisal standards board (ASB) of the appraisal foundation. USPAP is the applicable standard for all appraisal practice in the state of Washington regulated under the provisions of chapter 18.140 RCW.
- (6) "Appraiser qualifications board" means a board of the appraisal foundation for the purpose of developing, publishing, interpreting and amending the real property appraiser qualification criteria.
- (7) "Real property appraiser qualification criteria" means the minimum criteria establishing the minimum education, experience and examination requirements for real property appraisers to obtain a state certification as established by the appraiser qualifications board (AQB) of the appraisal foundation under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989, and any additional qualifying criteria established by the director in accordance with chapter 18.140 RCW.
- (8) "Classroom hour" means fifty minutes out of each sixty minute hour.
- (9) "Full-time" means the equivalent twelve-month period in which an applicant works at least one thousand hours in real estate appraisal.
- (10) "Required core curriculum" means a set of appraiser subject matter areas (known as "modules") that require a specified number of educational hours at each credential level as established by the appraiser qualifications board.
- (11) "Module" means an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum.
- (12) "Residential properties" means one to four single family residential units and lots where the highest and best use is for one to four family purposes.
- (13) "Significant professional appraisal assistance" shall include but not be limited to the work contributed or performed toward the completion of an appraisal report by either a trainee, state-licensed, or state-certified appraiser, while under the direct supervision of a certified residential appraiser or certified general appraiser as required by the department as qualifying appraisal experience for licensing. Significant professional appraisal assistance shall consist of identifying and analyzing the scope of work, collection of data, analyzing data to derive an opinion of value, or writing the appraisal report in accordance with the *Uniform Standards of Professional Appraisal Practice*.

WAC 308-125-200 ... The standard of practice

- (1) The standard of practice governing real estate appraisal activities will be the edition of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect on the date of the appraisal report. A copy of the Uniform Standards of Professional Appraisal Practice is available for review and inspection at the office of the Real Estate Appraiser Unit Office, Olympia, Washington. The Uniform Standards of Professional Appraisal Practice is a copyright document. Copy of the full text may be obtained from the Appraisal Foundation at The Appraisal Foundation, P.O. Box 96734, Washington, DC 20090-6734.

- (2) Expert review appraisers as defined by RCW 18.140.010(11) while performing expert reviews pursuant to chapter 18.140 RCW are required to comply with the Uniform Standards of Professional Appraisal Practice, Standard 3 review provisions while performing expert reviews for the director.

WAC 458-07-015 Revaluation of real property — Annual counties.

- (1) Appropriate statistical data defined. ... "appropriate statistical data" means the data required to accurately adjust real property values and includes, but is not limited to, data reflecting costs of new construction and real property market trends.
- (2) Comparable sales data. ... determining real property market trends, the assessor must consider current sales data. "Current sales data" means sales of real property that occurred within the past five years of the date of appraisal and may include sales that occur in the assessment year. To the extent feasible, and in accordance with generally accepted appraisal practices, the assessor shall compile the statistical data into categories of comparable properties. ...
- (4) Physical inspection cycles.
  - (a) For purposes of this chapter, "physical inspection" means, at a minimum, an exterior observation of the property to determine whether there have been any changes in the physical characteristics that affect value. The property improvement record must be appropriately documented in accordance with the findings of the physical inspection. In a county where all real property is revalued at its current true and fair value each year, using appropriate statistical data, the assessor must physically inspect all real property at least once within a six-year time period.
  - (b) Physical inspection of all the property in the county shall be accomplished on a proportional basis in cycle, with approximately equal portions of taxable property of the county inspected each year. Physical inspections of properties outside of the areas scheduled for physical inspection under the plan filed with the department (see WAC 458-07-025) may be conducted for purposes of validating sales, reconciling inconsistent valuation results, calibrating statistical models, valuing unique or **nonhomogeneous properties**, administering appeals or taxpayer reviews, documenting digital images, or for other purposes as necessary to maintain accurate property characteristics and uniform assessment practices. All properties shall be placed on the assessment rolls at current true and fair value as of January 1st of the assessment year.
  - (c) In any year, when the area of the county being physically inspected is not completed in that year, the portion remaining must be completed before beginning the physical inspection of another area in the succeeding year. All areas of the county must be physically inspected within the cycle established in the revaluation plan filed with the department.
- (5) Change of value notice. In a county that revalues all real property each year, revaluation notices must be mailed by the assessor to the taxpayer when there is any change in the assessed value of real property, not later than thirty days after an appraisal or adjustment in value.

WAC 458-10-060 – Standards of practice. The standards of practice adopted by the department and governing real property appraisal activities by accredited appraisers are the generally accepted appraisal standards as evidenced by the current appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

WA. State Archives – Assessor Records Retention Schedule 2.3.7 [[http://www.sos.wa.gov/\\_assets/archives/County%20Assessor%20Records%20Retention%20Schedule%20ver%204.0%20rev.pdf](http://www.sos.wa.gov/_assets/archives/County%20Assessor%20Records%20Retention%20Schedule%20ver%204.0%20rev.pdf)]

U-7 ETHICS RULE

To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics. This ETHICS RULE is divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The first three sections apply to appraisal practice, and all four sections apply to appraisal practice performed under STANDARDS through 10.

Comment: This Rule specifies the personal obligations and responsibilities of the individual appraiser. However, it should also be noted that groups and organizations engaged in appraisal practice share the same ethical obligations.

Compliance with USPAP is required when either the service or the appraiser is obligated by law or regulation, or by agreement with the client or intended users, to comply. In addition to the requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.

An appraiser must not misrepresent his or her role when providing valuation services that are outside appraisal practice.<sup>2</sup>

Comment: Honesty, impartiality, and professional competency are required of all appraisers under these *Uniform Standards of Professional Appraisal Practice* (USPAP). To document recognition and acceptance of his or her USPAP-related responsibilities in communicating an appraisal, appraisal review, or appraisal consulting assignment completed under USPAP, an appraiser is required to certify compliance with USPAP. (See Standards Rules 2-3, 3-3, 5-3, 6-9, 8-3, and 10-3.)

**Conduct:**

An appraiser must perform assignments ethically and competently, in accordance with USPAP.

An appraiser must not engage in criminal conduct.

An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An appraiser must not advocate the cause or interest of any party or issue.

An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

U-9 ETHICS RULE

**Record Keeping:**

**An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The workfile must include:**

- **the name of the client and the identity, by name or type, of any other intended users;**
- **true copies of any written reports, documented on any type of media;**
- **summaries of any oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and**
- **all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation.**

**An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.**

**An appraiser must have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.**

Comment: A workfile preserves evidence of the appraiser's consideration of all applicable data and statements required by USPAP and other information as may be required to support the appraiser's opinions, conclusions, and recommendations.

A photocopy or an electronic copy of the entire actual written appraisal, appraisal review, or appraisal consulting report sent or delivered to a client satisfies the requirement of a true copy. As an example, a photocopy or electronic copy of the Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report actually issued by an appraiser for a real property appraisal assignment satisfies the true copy requirement for that assignment.

Care should be exercised in the selection of the form, style, and type of medium for written records, which may be handwritten and informal, to ensure that they are retrievable by the appraiser throughout the prescribed record retention period.

A workfile must be in existence prior to and contemporaneous with the issuance of a written or oral report. A written summary of an oral report must be added to the workfile within a reasonable time after the issuance of the oral report.

A workfile must be made available by the appraiser when required by state enforcement agencies or due process of law. In addition, a workfile in support of a Restricted Use

Appraisal Report must be sufficient for the appraiser to produce a Summary Appraisal Report (for assignments under STANDARDS 2 and 8) or an Appraisal Report (for assignments under STANDARD 10), and must be available for inspection by the client in accordance with the Comment to Standards Rules 2-2(c)(viii), 8-2(c)(viii), and 10-2(b)(ix).