

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

2007 MAR -2 A 11: 50

No. 78574-1

---

IN THE SUPREME COURT  
CLERK OF THE STATE OF WASHINGTON

---

COWLES PUBLISHING COMPANY, a Washington corporation,

Petitioner,

v.

CODY SOTER, a minor child; FRANCIS SOTER and GLENDA CARR,  
individually, and as parents of CODY SOTER; THE ESTATE OF  
NATHAN WALTERS, a deceased minor child; RICK WALTERS and  
TERESA WALTERS, deceased minor child; and SPOKANE SCHOOL  
DISTRICT NO. 81, a Washington municipal corporation,

Respondents.

---

**PETITIONER COWLES PUBLISHING COMPANY'S ANSWER  
TO AMICI CURIAE  
WASHINGTON SCHOOLS RISK MANAGEMENT POOL, THE WASHINGTON  
ASSOCIATION OF SCHOOL ADMINISTRATORS, THE SOUTHWEST  
WASHINGTON RISK MANAGEMENT INSURANCE COOPERATIVE, THE  
WASHINGTON COUNCIL OF SCHOOL ATTORNEYS, THE WASHINGTON  
COUNTIES RISK POOL, THE ASSOCIATION OF WASHINGTON CITIES,  
THE ASSOCIATION OF WASHINGTON CITIES RISK MANAGEMENT  
SERVICE AGENCY, THE WASHINGTON CITIES INSURANCE AUTHORITY,  
THE WATER & SEWER RISK MANAGEMENT POOL, THE PUBLIC UTILITY  
RISK MANAGEMENT SERVICES SELF INSURANCE FUND, AND THE  
WASHINGTON GOVERNMENTAL ENTITY POOL**

---

DUANE M. SWINTON, WSBA No. 8354  
TRACY N. LeROY, WSBA No. 36155  
WITHERSPOON, KELLEY,  
DAVENPORT & TOOLE, P.S.  
422 W. Riverside Avenue  
Spokane, Washington 99201-0390  
(509) 624-5265  
Attorneys for Cowles Publishing Company

**FILED**  
MAR -2 2007

CLERK OF SUPREME COURT  
STATE OF WASHINGTON  
*WJ*

TABLE OF CONTENTS

Page

**TABLE OF AUTHORITIES..... iii**

**I. INTRODUCTION AND SUMMARY OF ARGUMENT..... 1**

**II. ARGUMENT .....2**

A. **UNDER RULES OF STATUTORY CONSTRUCTION, THE PUBLIC RECORDS ACT CANNOT BE READ TO ALLOW AGENCIES TO INITIATE LITIGATION AGAINST A REQUESTOR .....2**

1. **Pertinent Provisions of The Public Records Act Must Be Read *In Para Materia* .....2**

2. **RCW 42.56.520 Lists The Three Permitted Responses By An Agency To A Public Records Request, None of Which Include Bringing Suit Against the Requestor.....3**

3. **RCW 42.56.540’s Injunctive Provision By Its Terms Does Not Apply To An Agency In Possession Of A Record To Which A Records Request Is Directed.....5**

4. **RCW 42.56.550 Confirms That The Public Records Act Contemplates Action By A Requestor Or A Party With An Interest In The Records, Not By The Agency To Which The Request Is Directed.....7**

a. ***The Legislature’s Language Imposing A Special Statute Of Limitations For Suits Under The Public Records Act Confirms That Suit By An Agency To Enjoin Itself Is Not Contemplated By The Act*.....7**

	<i>b.</i>	<i>The Provisions For Attorneys' Fees And Costs Would Not Apply To Amici's Proposed Interpretation .....</i>	<i>8</i>
<b>B.</b>		<b>AMICI'S INTERPRETATION TURNS WASHINGTON INJUNCTIVE LAW ON ITS HEAD .....</b>	<b>10</b>
<b>C.</b>		<b>AMICI'S INTERPRETATION OF THE STATUTE CONTRAVENES THE POLICY OF THE PUBLIC RECORDS ACT .....</b>	<b>14</b>
<b>III</b>		<b><u>CONCLUSION</u> .....</b>	<b>18</b>
		<b><u>CERTIFICATE OF SERVICE</u> .....</b>	<b>19</b>

## TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES</u>	
<i>Beach v. Board of Adjustment</i> , 73 Wn.2d 343 (1968).....	3
<i>Hearst Corp. v. Hoppe</i> , 90 Wn.2d 123 (1978) .....	3
<i>King v. Riveland</i> , 125 Wn.2d 500 (1994) .....	11
<i>Ockerman v. King County Department of Development and Environmental Services</i> , 102 Wn.App. 212 (2000).....	13
<i>Progressive Animal Welfare Society v. University of Washington</i> , 125 Wn.2d 243 (1994) .....	15
<i>Soter v. Cowles Publishing Company</i> , 131 Wn.App. 882 (2006) .....	9
<i>State v. Chapman</i> , 140 Wn.2d 436 (2000) .....	2
<i>Yousoufian v. Sims</i> , No. 57112-5-1, __ Wn.App. __, 151 P.3d 243 (Feb. 5, 2007) .....	17
<u>STATUTES</u>	
RCW 4.16.080 .....	8
RCW 4.16.130 .....	8
RCW 42.17.010 .....	15
RCW 42.56.030 .....	12, 18
RCW 42.56.060 .....	11, 13
RCW 42.56.080 .....	10
RCW 42.56.290 .....	7

RCW 42.56.520 .....3, 4, 5, 16  
RCW 42.56.540 .....*passim*  
RCW 42.56.550 .....*passim*

OTHER AUTHORITIES

*Public Records Act Deskbook: Washington's Public Disclosure and  
Open Meetings Laws (2006 WSBA CLE)*.....4

I. **INTRODUCTION AND SUMMARY OF ARGUMENT**

Cowles Publishing Company, publisher of *The Spokesman-Review* newspaper (hereinafter "*The Spokesman-Review*"), hereby responds to the brief filed by *amici curiae* Washington Schools Risk Management Pool, the Washington Association of School Administrators, the Southwest Washington Risk Management Insurance Cooperative, the Washington Council of School Attorneys, the Washington Counties Risk Pool, the Association of Washington Cities, the Association of Washington Cities Risk Management Service Agency, the Washington Cities Insurance Authority, the Water & Sewer Risk Management Pool, the Public Utility Risk Management Services Self Insurance Fund, and the Washington Governmental Entity Pool (collectively "WSRMP *et. al.*"). *Amici* WSRMP *et. al.* raise certain arguments related to application of the work product doctrine similar to those asserted by *Amicus* Washington State Association of Municipal Attorneys ("WSAMA"). *The Spokesman-Review*, therefore responds herein only to those arguments and authority raised exclusively by WSRMP *et. al.*, and respectfully refers the Court to *The Spokesman-Review's* Answer to *Amicus* WSAMA for its response to those issues raised both by WSRMP *et. al.* and WSAMA.

*Amici* argue that the Washington Public Records Act allows the initiation of a lawsuit by an agency to which a request is made for public records against the requestor in order to “seek a judicial clarification about whether a particular record may be released to a requestor.” (WSRMP *et. al.* Brief, p. 17.) This interpretation contradicts the plain language of the statute, long-standing law regarding the purpose and posture of an injunction action, and the policy behind the Public Records Act. As such, the Court should reverse the Court of Appeals’ ruling allowing an agency to, in lieu of denying a public records request, sue the requestor.

## II. ARGUMENT

### A. **UNDER RULES OF STATUTORY CONSTRUCTION, THE PUBLIC RECORDS ACT CANNOT BE READ TO ALLOW AGENCIES TO INITIATE LITIGATION AGAINST A REQUESTOR.**

#### 1. Pertinent Provisions of The Public Records Act Must Be Read *In Para Materia*.

*Amici*’s argument ignores the interrelationship of several provisions of the Public Records Act that govern agencies’ duties in responding to a public records request and in litigating issues concerning access to public records. “Under rules of statutory construction each provision of a statute should be read together (*in para materia*) with other provisions...to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes.” *State v. Chapman*, 140

Wn.2d 436, 448 (2000); *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 138 (1978) (“Because the two statutes relate to one another and the same subject matter,” the Court “will read the sections as constituting one law to the end that a harmonious total schema which maintains the integrity of both is derived.”), *quoting Beach v. Board of Adjustment*, 73 Wn.2d 343, 346 (1968). Stated differently, statutory provisions must be construed so as to give meaning to each, and to not render any terms meaningless.

Here, the key provisions of the Public Records Act define a clear statutory scheme governing two related actions: (1) an agency’s response to a request for public records; and (2) legal recourse under the Act related to the agency’s response. The three provisions, RCW 42.56.520, RCW 42.56.540, and RCW 42.56.550, spell out the mechanism for responding to public records requests and remedies concerning an agency’s decision on access.

2. RCW 42.56.520 Lists The Three Permitted Responses By An Agency To A Public Records Request. None Of Which Include Bringing Suit Against The Requestor.

In RCW 42.56.520, the Legislature set out the available responses by an agency to a request for access to a public record under the agency’s control. Namely, an agency “must respond” by either “(1) providing the record; (2) acknowledging that the agency . . . . has received the request

and providing a reasonable estimate of the time the agency. . . will require to respond to the request; or (3) denying the public records request." RCW 42.56.520. *See also Public Records Act Deskbook: Washington's Public Disclosure and Open Meetings Laws* (2006 WSBA CLE) § 5.3(1)(a) at 5-10-5-11 (chapter drafted by an Assistant Attorney General, noting agency's permissible responses to a request are to either provide the record, deny the request, ask for clarification or provide an estimate of time required to make records available).

In other words, the Legislature directed how an agency must respond to a request in RCW 42.56.520 and included no language permitting an agency to respond by bringing an action in court to "enjoin" release of the record. The obligation to allow or deny access (or to estimate time to comply) is not discretionary with the agency — the Legislature stated that the agency "must respond" in this manner, and the statute sets out no other options. Thus, RCW 42.56.520 does not permit an agency to bring an action for injunctive relief. Stated differently, if an agency's position is that a record is exempt from disclosure, the agency's required action is to deny the request. RCW 42.56.520. An agency does not have the option to ask a court to make the determination for the agency whether the record is exempt from disclosure or, as District 81 did here,

ask for a court's blessing on its determination that a record is exempt from disclosure.

3. RCW 42.56.540's Injunctive Provision By Its Terms Does Not Apply To An Agency In Possession Of A Record To Which A Records Request Is Directed.

*Amici* argue that RCW 42.56.540 allows public agencies to, rather than deny or grant a public records request, "seek a judicial clarification about whether a particular record must be released to a requestor." (WSRMP *et. al.* Brief, p. 17.) *Amici* ignore the interplay between RCW 42.56.540 and RCW 42.56.520.

Specifically, when RCW 42.56.540 refers to a court enjoining release of a record "upon motion and affidavit by an agency or its representative or a person who is named in the records or to whom the records specifically pertains," the question presented is which "agency" the Legislature intended to be able to file an injunctive action under the statute. Reading RCW 42.56.540 in conjunction with RCW 42.56.520, as required by the rules of statutory construction, leads to the conclusion that, because RCW 42.56.520 sets out how an agency that is in possession of a public record "must respond" to a request for access to the record and a court action is not one of the options, then the term "agency" in RCW 42.56.540 cannot refer to the agency in whose possession the record rests.

Therefore, considering the provisions of the two statutes together makes it clear that the term "agency" in RCW 42.56.540 can only refer to an agency not in possession of the record, but which has an interest in the record, perhaps because it is identified in the record or because it has interests other than the agency to which the request has been made.

For example, where a request is made to a police department for access to investigative records, and the police department is prepared to release the records, but the records also make reference to the Department of Social & Health Services ("DSHS") concerning review of specific issues, the DSHS would have the right under RCW 42.56.540 to initiate action to prevent release by the police department. Such an action would be brought by the DSHS against the police department, not against the requestor. Another example would be records possessed by a county that involve a dispute by a city located in the county. It is very possible that the interests of the city and the county may be different in terms of release of the records and the city should not be prohibited from weighing in, through an action for injunctive relief brought against the county as the agency in possession of the records and to which the request was made, to seek a court order blocking release of the record that the county has decided to release.

4. RCW 42.56.550 Confirms That The Public Records Act Contemplates Action By A Requestor Or A Party With An Interest In the Records, Not By The Agency To Which The Request Is Directed.

This interpretation is further underscored by RCW 42.56.550, which pertains to judicial review of agency actions. RCW 42.56.550 sets out the procedure whereby a party, whose request for public records has been denied, may pursue relief in court. As discussed below, the statute's language contravenes *Amici's* theory.

a. *The Legislature's Language Imposing A Special Statute Of Limitations For Suits Under The Public Records Act Confirms That Suit By An Agency To Enjoin Itself Is Not Contemplated By The Act.*

As an initial matter, subsection 6 states that "actions under this section must be filed within one year of the agency's claim of exemption." RCW 42.56.550 (emphasis added). In the interpretation advocated by *Amici*, a lawsuit could arise even with no claim of exemption being made by the agency — the agency could simply file a lawsuit and in an interpleader fashion seek that the court determine whether an exemption applies.<sup>1</sup> The statute, in contrast, refers only to the time period that an

---

<sup>1</sup> *The Spokesman-Review* reiterates that, in this case, the District 81 did not file the type of action contemplated by *Amici*, wherein the agency cannot make a determination as to the applicability of an exemption and asks the court for clarification. To the contrary, the District determined that the requested records were exempt from disclosure pursuant to RCW 42.56.290 and the attorney-client privilege and, instead of denying the request as it was required to do under the statute, brought a lawsuit to enjoin itself from granting the request.

action by a requesting party whose request has been denied must be initiated in Superior Court. Thus, if *Amici's* argument is accepted, and the Court of Appeals' ruling upheld, requesting parties seeking relief under the Public Records Act (including third party persons or agencies named in the records) would be subject to a one-year statute of limitations, while agencies to which the request is made could bring a lawsuit against the requestor subject to the general two-year statute of limitations. See RCW 4.16.130. Some agencies, sheriff's or coroner's offices, would be subject to a three-year statute of limitations. RCW 4.16.080(5). This is an absurd result. The Legislature, by stating specifically what types of lawsuits are to be brought related to public records — (1) by a party seeking either access to public records or (2) by a third party person or agency seeking to enjoin another agency's release of the records — and applying a shortened statute of limitations explicitly recognized that other lawsuits, including those by agencies seeking to enjoin themselves, are inappropriate under the Act.

*b. The Provisions For Attorneys' Fees And Costs  
Would Not Apply To Amici's Proposed  
Interpretation.*

The Legislature has not only provided a special statute of limitations for actions for relief pursuant to the Public Records Act, but

the Legislature further provided for attorneys' fees and costs to a person who successfully brings a suit for access. Specifically, the statute states that the entitlement to attorneys' fees and costs is only available "in any action in the court seeking the right to inspect or copy any public records or the right to receive a response to a public record." RCW 42.56.550(4) (emphasis added).

*Amici* argue that an agency has the right to bring suit to enjoin release of the record under 42.56.550. Division III rationalized this argument in part based on an understanding that the requestor would not be prejudiced due to having to pay an attorney: "[i]t is immaterial who hauls whom into court, because the requestor who prevails in *any* court action over the release of public records is entitled to attorney fees." *Soter v. Cowles Publishing Company*, 131 Wn.App. 882, 907 (2006) (italics in original). The statute, however, in contrast to *Amici's* argument and Division III's ruling, does not provide for attorneys' fees to a requestor who is sued by the agency, just as it does not allow requestors to recover in cases where a third party named in the record sues to enjoin its release. The putative action brought by an agency to prevent inspection by enjoining release of the record is not an action "seeking the right to inspect" and, therefore, a requesting party named as a defendant would not

be entitled to attorneys' fees under RCW 42.56.550(4). The unlucky requestor whose request prompts a lawsuit filed against him or her by the agency, rather than a denial of the request by the agency, is simply not protected from having to pay his or her own costs of defending having made a request.

**B. AMICI'S INTERPRETATION TURNS WASHINGTON INJUNCTION LAW ON ITS HEAD.**

*Amici's* argument further ignores long-standing Washington law regarding the standards required for injunctive relief. RCW 42.56.540 specifically states that, upon cause shown, "the examination of any specific public record may be enjoined." RCW 42.56.540 (emphasis added). Use of the term "enjoined" necessarily assumes that, to accord relief, an entity must be required by Court order to refrain from taking a specific action. However, the only entity in a public records request that could be prohibited from releasing a public record is the agency that has possession of the record. The requestor cannot be enjoined from releasing the records since the requestor does not have possession of the record.<sup>2</sup>

*Amici* do not explain either: (1) why an agency that has control over a

---

<sup>2</sup> The only action that a requester could be enjoined from taking is making or pursuing the request. It would certainly be anomalous that a public records statute could be construed to enjoin a private citizen from making a request to review a public record, particularly where an agency, by statute, is precluded from responding to a request based on the identity of the requestor. RCW 42.56.080.

public record, is charged by statute with determining whether a statutory exemption to disclosure applies, and is protected from liability concerning good faith release of a public record (*See* RCW 42.56.060) would need to seek an injunction barring itself from acting; or (2) why the requesting party, who has no ability to control whether a record is released or not, would be named as a defendant to such action.

If the statute is construed in accordance with *Amici's* argument, the agency would be asking that a court enter an order enjoining it from releasing the record in a situation where the agency (according to the *Amici*) has not made a determination to release the record. This interpretation contravenes the black letter law regarding injunctive relief. Under Washington law, a party seeking injunctive relief must demonstrate that: (1) it has a clear legal or equitable right; (2) it has a well-grounded fear of immediate invasion of that right; and (3) the acts complained of are either resulting in or would result in actual and substantial injury to the party. *E.g., King v. Riveland*, 125 Wn.2d 500, 515 (1994). An agency that has not determined that denial of a request for public records is appropriate cannot meet any of these three elements of the test for injunctive relief.

First, an agency that has not determined that an exemption to disclosure applies under the Public Records Act has no "clear legal or equitable right" in withholding records from the public. The Public Records Act is clear that public records do not "belong" to the agencies which house them:

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 42.56.030. If an agency, as posited by *Amici*, simply wants a court to decide for it whether an exemption applies, the applicability of the exemption cannot, by definition, be so obvious as to support a "clear" right in withholding access to the record.

Second, even assuming, for the sake of argument, that an agency has a "clear legal and equitable right" to withhold public records which it has not determined are subject to an exemption under the Act, an agency cannot show a well-grounded fear of immediate invasion of that right because it is solely within the power of that agency as to whether the record will be released. This is precisely why the term "agency" in RCW 42.56.540 can only refer to an agency, not to which the request has been

made, but which may have some other interests concerning release of the record by the agency to which the request has been made, because in that case the non-possessory agency would not have such control.

Third, an agency, by legislative directive, is protected from injury by releasing a record. Pursuant to RCW 42.56.060, no cause of action exists, nor can any public agency, official or employee be liable, for the release of a public record in good faith. Nor can an agency suffer by withholding a record. The only possible repercussion is a lawsuit by the requestor — the same relief an agency would be seeking itself if allowed to sue the requestor under *Amici's* argument.

Finally, it cannot be ignored that the Legislature chose in RCW 42.56.540 to use the terminology "may be enjoined." In other words, the Legislature chose not to provide for another type of action, such as declaratory judgment. In essence, *Amici* are arguing that RCW 42.56.540, which is clearly injunctive in nature, should be changed by judicial fiat to an action for declaratory judgment. The Court is constrained, however, to assume that the Legislature meant to give effect to the actual words of the statute. *E.g., Ockerman v. King County Department of Development and Environmental Services*, 102 Wn.App. 212, 216 (2000).

C. **AMICI'S INTERPRETATION OF THE STATUTE CONTRAVENES THE POLICY OF THE PUBLIC RECORDS ACT.**

Finally, *Amici* argue that agencies should be allowed to sue requestors rather than simply denying the request in order to obtain prompt judicial review, and allege that “financial and political” checks “suggest . . . abuse is unlikely.” (*WSRMP et. al. Br.*, pp. 17, 19). *Amici* further allege that a requestor who has been sued by an agency in lieu of receiving a denial of the request is subject to no prejudice because the requestor can simply withdraw the request and moot the lawsuit. (*WSRMP et. al. Br.*, p. 19). By this statement, *Amici* reveal the danger of the practice they espouse, and the disregard these agencies, who allegedly represent “every school district in Washington, every Washington city and town, many counties, and a wide range of special purpose districts and interlocal entities”, hold for the Washington citizens who dare to ask for public records.

To be blunt, *Amici*, who speak for virtually every public agency in the State of Washington, are asking this Court to put the burden on the requestor to determine, prior to even making a request for public records, both whether that record would be exempt from disclosure and whether the agency to which the request is made will refuse to make such a determination, or else face a lawsuit. *Amici* blithely claim that a requestor

cannot be prejudiced by this threat because the requestor can always just withdraw the request. This belies the letter and the spirit of the Public Records Act. The Act is meant to allow private citizens to investigate their public servants. If public agencies are permitted to wave the threat of a lawsuit as a permissible response to a public records request, as a substitute for simply denying the request, the public will be hesitant to exercise their rights under the Act. Moreover, *Amici* fail to answer how a requestor can make an informed decision on whether to defend such a lawsuit when it is only the agency that has access to the record in question.

This Court has held on numerous occasions, in conformance with the statute, that the Public Records Act is to be construed liberally and that its exemptions are to be narrowly construed. *E.g.*, *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 260 (1994); RCW 42.17.010. The burden should not be placed on requestors to defend a lawsuit brought by an agency when the requestor's sole misstep was to make a public records request. *Amici* fail to answer what would happen if the requestor decided not to participate in the lawsuit. Who would be the advocate for access if the requesting party, perhaps because of considerations relating to costs of litigation or time spent in litigation, decided not to participate? Would the agency be entitled to its statutory

costs as prevailing party? Would a default judgment be entered, ruling as a matter of law that a record is exempt? Or would the Court be required to undertake the analysis an agency is supposed to do when confronted with a request, determine whether or not an exemption applies and rule despite having no party advocating for release?

*Amici* suggest that agencies should be allowed to initiate litigation as mere custodians of a public record concerning which the agency has no opinion as to release, as an action akin to interpleader. This contravenes RCW 42.56.520 and, further, is certainly not the situation that occurred in the case at bar. The District did not initiate an action and then merely seek advice from the Superior Court as to whether the records in question should be made available to *The Spokesman-Review*. Rather, the District initiated the action and has fought tooth and nail (now joined in with hundreds of agencies across the state) through extensive pleadings and affidavits for the past six years that it be prevented from releasing records.

Indeed, it is certain that, if agencies are allowed to initiate actions, they will not be interpleader actions — because if an agency did not believe that a record should not be released, it would certainly not waste public funds with a lawsuit. These proposed lawsuits will be actions in which agencies have made the determination not to release records and

further decided to reinforce that position (with the result, intended or not, of discouraging requesting parties from having the temerity to make a request or to not withdraw their requests) by seeking court approval of their denial.<sup>3</sup> Certainly, exposing members of the public to the possibility of being sued because, as a member of the public, they are interested in reviewing a public record, does not comport with the philosophy of the Public Records Act to provide "full access" to public records.

In sum, the Court should hold, as RCW 42.56.550 mandates, that it is the option of the requestor to decide whether to bring an action. This comports with RCW 42.56.540, which provides that an agency (other than the one to which a request has been made) or another person identified in the record may bring an action for injunctive relief, and the defendant in such an action would be the agency to which the request has been made and which has decided to release the record. The option would then be that of the requesting party whether to intervene in the action, as an interested party, to support release of the record in question. Any other

---

<sup>3</sup> *Amici* further suggest that an agency should be allowed to initiate an action to obtain prompt judicial review so that undue costs are not incurred under the provisions of RCW 42.56.550 concerning the daily penalty. However, a court, in awarding the daily penalty, can certainly take into account whether delay in deciding on release of a record was based on the court docket or was based on a delay by the requesting party in initiating litigation. See *Yousoufian v. Sims*, No. 57112-5-I, \_\_ Wn.App. \_\_, 151 P.3d 243, 248-49 (Feb. 5, 2007). Moreover, if the agency correctly determined that a public record is exempt from disclosure, no penalties will be at issue.

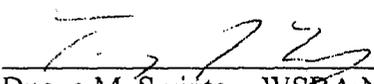
result takes the power given to the public under the Public Records Act and places it in the very agencies the Act mandates it is the right of the public to police. Stated differently, it will be the public agencies, not the Legislature, which will decide conclusively what records to withhold from public view, a particularly improper result given that these agencies, by legislative declaration, are designated as "servants" (not adversaries) of the public. RCW 42.56.030.

### III. CONCLUSION

For the reasons set forth above and those detailed in its earlier briefing, *The Spokesman-Review* requests that the Court of Appeals' rulings be reversed.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of March, 2007.

WITHERSPOON, KELLEY,  
DAVENPORT & TOOLE, P.S.

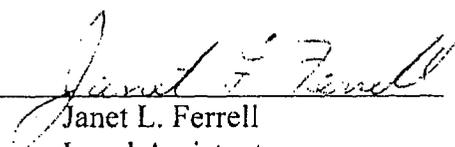
  
\_\_\_\_\_  
Duane M. Swinton, WSBA No. 8354  
Tracy N. LeRoy, WSBA No. 36155  
Attorneys for Cowles Publishing Company  
d/b/a *The Spokesman-Review*

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

2007 MAR -2 CERTIFICATE OF SERVICE

On the 2<sup>nd</sup> day of March, 2007, I served the within document on all interested parties to this action by e-mail and as follows:

<u>CLERK</u> John Manix Stevens-Clay-Mannix Suite 1575, Paulsen Center 421 W. Riverside Spokane, WA 99201	<u>  X  </u> Hand Delivered
Michele L. Earl-Hubbard 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688	<u>  X  </u> U.S. Mail
Grace T. Yuan Preston Gates & Ellis LLP 925 Fourth Avenue, Suite 2900 Seattle, WA 98104	<u>  X  </u> U.S. Mail
Daniel B. Heid Auburn City Attorney 25 West Main Street Auburn, WA 98001-4998	<u>  X  </u> U.S. Mail
Milton G. Rowland Spokane City Attorney's Office 808 W. Spokane Falls Blvd. Spokane, WA 99201-3333	<u>  X  </u> Hand Delivered

  
Janet L. Ferrell  
Legal Assistant

FILED AS ATTACHMENT  
TO E-MAIL