

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

NO. 80532-6

2008 APR -4 P 4: 33

BY RONALD R. CARPENTER

SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

RENTAL HOUSING ASSOCIATION OF PUGET SOUND, a
Washington non-profit corporation,

Appellant,

v.

CITY OF DES MOINES, a Washington municipal corporation,

Respondent.

FILED
APR 14 2008

CLERK OF SUPREME COURT
STATE OF WASHINGTON

RM

BRIEF OF AMICUS CURIAE ATTORNEY GENERAL

ROBERT M. MCKENNA
Attorney General

Jeffrey D. Goltz, WSBA 5640
Deputy Attorney General

Carol A. Murphy, WSBA 21244
Deputy Solicitor General

Attorneys for *Amicus Curiae*
Office of the Attorney General

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6200

TABLE OF CONTENTS

INTEREST OF AMICUS1

ISSUES PRESENTED BY AMICUS2

HISTORY OF THE LIMITATIONS PERIOD
IN THE PUBLIC RECORDS ACT3

ARGUMENT4

A. An Agency’s Response To A Public Records Request
That Puts A Requestor On Notice That An Exemption
Is Being Claimed Triggers The Limitations Period Of
RCW 42.56.550(6) Without Regard To Whether The
Agency Has Complied With The Further Explanatory
Requirements Of RCW 42.56.210(3)4

1. The Plain Language Of The Term “Claim Of
Exemption” Does Not Mean “Explanation” Of
A Claim of Exemption8

2. Construing The Term “Claim Of Exemption”
To Not Require An Explanation Under RCW
42.56.530 Is Consistent With The Purpose Of
Statutes Of Limitations9

3. Construing The Term “Claim Of Exemption”
To Require Only A Claim (And Not An
Explanation) To Commence The Statute Of
Limitations Is Consistent With The PRA,
Including The 2005 Amendments11

B. An Agency’s Supplemental Response To A Request,
Not Part Of A Response In Installments, Does Not
Restart The Statute Of Limitations12

CONCLUSION15

Appendix

TABLE OF AUTHORITIES

Cases

<i>Atchison v. Great Western Malting Co.</i> 161 Wn.2d 372, 166 P.3d 662 (2007).....	10
<i>Dawson v. Daly</i> 120 Wn.2d 782, 845 P.2d 995 (1993).....	8
<i>Dep't of Ecology v. Campbell & Gwinn, L.L.C.</i> 146 Wn.2d 1, 43 P.3d 4 (2002).....	9
<i>Fritz v. Gorton</i> 83 Wn.2d 275, 517 P.2d 911 (1974).....	3
<i>Hangartner v. City of Seattle</i> 151 Wn.2d 439, 90 P.3d 26 (2004).....	3
<i>Progressive Animal Welfare Soc'y v. Univ. of Washington</i> 125 Wn.2d 243, 884 P.2d 592 (1994).....	7, 8, 10
<i>Stenberg v. Pacific Power & Light Co.</i> 104 Wn.2d 710, 709 P.2d 793 (1985).....	9, 10
<i>Young Americans for Freedom v. Gorton</i> 91 Wn.2d 204, 588 P.2d 195 (1978).....	1
<i>Yousoufian v. Office of King County Executive</i> 152 Wn.2d 421, 98 P.3d 463 (2004).....	3

Statutes

Laws of 1973, ch. 1.....	3
Laws of 1973, ch. 1, § 41.....	3
Laws of 1982, ch. 147, § 18.....	3
Laws of 2005, ch. 274.....	4

Laws of 2005, ch. 487.....	2, 5
Laws of 2005, ch. 487, § 1.....	13
RCW 42.17	3
RCW 42.17.340	4
RCW 42.17.410	3, 6
RCW 42.56 (Public Records Act).....	1, 3
RCW 42.56.120	13
RCW 42.56.210(3).....	2, 6, 8, 9
RCW 42.56.520	6
RCW 42.56.530	1
RCW 42.56.550(4).....	11
RCW 42.56.550(6).....	2, 4, 6, 8, 9, 11, 14
RCW 42.56.570(1).....	1
RCW 42.56.570(2)–(3).....	1
RCW 42.56.580	13
RCW 43.10.045	1

Other Authorities

H.B. 1446, 60th Leg., Reg. Sess. (Wash. 2007)	6
H.B. 1758, 59th Leg., Reg. Sess. (Wash. 2005)	2, 3, 4, 13
Second Substitute H.B. 1758	5

House Hearings on H.B. 1758 before the House Committee on Government Operations and Accountability, 59th Leg., Reg. Sess. (Wash. Feb. 9, 2005), available at www.tvw.org	4, 5, 12, 13
S.B. 5436, 60th Leg, Reg. Sess. (Wash 2007)	6
S.B. 5735, 59th Leg., Reg. Sess. (Wash. 2005)	2, 3
<i>Developments in the Law: Statutes of Limitations</i> , 63 Harv. L. Rev. 1177 (1950)	10
Webster's Third New International Dictionary of the English Language (2002)	8, 13

Regulations

WAC 44-14	1
-----------------	---

INTEREST OF AMICUS

Amicus curiae is the Attorney General of Washington. The Attorney General's constitutional and statutory powers include the submission of amicus curiae briefs on matters affecting the public interest. *See Young Americans for Freedom v. Gorton*, 91 Wn.2d 204, 212, 588 P.2d 195 (1978). The public and the Attorney General have a strong interest in open government and the proper application of Washington's Public Records Act (PRA), RCW 42.56.

The PRA assigns to the Attorney General specific interpretive functions for the benefit of both the general public and state and local agencies. For example, the Attorney General reviews state agency conclusions that certain records are exempt from disclosure (RCW 42.56.530); publishes a pamphlet explaining the PRA (RCW 42.56.570(1)); and adopts and revises from time to time "an advisory model rule for state and local agencies" (RCW 42.56.570(2)–(3); *see* WAC 44-14). Additionally, as the legal advisor to state agencies, the Attorney General provides legal counsel and representation to state agencies on public records matters. RCW 43.10.045. Accordingly, the Attorney General has a strong interest in cases involving the construction or application of the PRA.

The interest of the Attorney General is particularly strong in this case as it involves interpretation of 2005 legislation that was introduced at his request. Laws of 2005, ch. 487; see H.B. 1758, 59th Leg., Reg. Sess. (Wash. 2005); S.B. 5735, 59th Leg., Reg. Sess. (Wash. 2005).

ISSUES PRESENTED BY AMICUS

1. Does the one-year statute of limitations contained in RCW 42.56.550(6) commence when an agency's response to a public disclosure request claims an exemption, even though the agency has not complied with the further explanatory requirements of RCW 42.56.210(3)?

2. When an agency's response has not indicated that it is providing documents in installments, does the one-year statute of limitations contained in RCW 42.56.550(6) commence anytime an agency supplements an earlier response with additional records?

This amicus curiae brief does not address the facts of this case or suggest a resolution of the factual disputes between the parties. Rather, the brief addresses the history of the statute at issue and guidance regarding the interpretation of RCW 42.56.550(6).

HISTORY OF THE LIMITATIONS PERIOD IN THE PUBLIC RECORDS ACT

The Public Records Act was enacted by Initiative 276 in 1972. Laws of 1973, ch. 1. It covered a number of topics, including campaign finance, lobbyist expenses, financial affairs of public officials, and public records. RCW 42.17; see *Fritz v. Gorton*, 83 Wn.2d 275, 517 P.2d 911 (1974). Section 41 of Initiative 276 included a six-year limitations period applicable to all actions under that initiative. Laws of 1973, ch. 1, § 41. In 1982, this limitations period was reduced to five years. Laws of 1982, ch. 147, § 18.¹

In 2005, the Attorney General proposed legislation to revise the PRA. H.B. 1758, 59th Leg., Reg. Sess. (Wash. 2005); S.B. 5735, 59th Leg., Reg. Sess. (Wash 2005). This legislation was in part a response to two 2004 decisions of this Court: *Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004) (upholding exemption based on attorney-client privilege and upholding denials of requests because they were “overbroad”), and *Yousoufian v. Office of King County Executive*, 152 Wn.2d 421, 98 P.3d 463 (2004) (upholding penalty based on a delay in

¹ This five-year limitations period is now codified in RCW 42.17.410 and is applicable to matters remaining under that chapter—the portions of Initiative 276 that were not recodified in RCW 42.56.

responding of 527 days and ordering a penalty of at least \$5 per day).² As introduced, H.B. 1758 would have:

- Codified the attorney-client privilege as an exemption to the disclosure requirement in the PRA, specifically stating that it does not extend to written communications merely because a copy was sent to legal counsel (§ 1);
- Authorized agencies to produce records “on a rolling basis” (§ 2);
- Denied authority of agencies to deny requests because they are “overbroad” (§ 2);
- Stated that agency documentation of its actual costs for copies is subject to audit by the State Auditor (§ 3);
- Authorized the Attorney General to adopt a “model rule” for state and local agencies addressing various topics (§ 5);
- Increased the penalties for violation from a range of \$5 to \$100 to a range of \$50 to \$500; and
- Inserted a one-year statute of limitations period for actions under RCW 42.17.340 (which now is codified as RCW 42.56.550(6)).³

This bill was intended to provide a balanced approach to a reform of the PRA.⁴ Relevant to the issues in this case, the bill proposed an

² See House Hearings on H.B. 1758 before the House Committee on Government Operations and Accountability, 59th Leg., Reg. Sess. (Wash. Feb. 9, 2005) (testimony of Attorney General McKenna), *available at* www.tvw.org (follow “Media Archives/Audio Visual Archives”, then follow “House Committees/2005/State Government Committee”, then follow “House State Government Operations & Accountability Feb. 9, 2005”, at 33:58).

³ Laws of 2005, ch. 274.

increase in the penalty amounts, but a decrease in the statute of limitations period (i.e., a decrease in the number of days an agency could be exposed to penalties and associated attorneys fees and costs). In furtherance of the ultimate goal of public disclosure, this change was intended to maintain a financial incentive for agencies to comply with public records requests, but make it difficult for a requestor to make a request, let the agency respond, and then let potential penalties accrue for years before filing an action.⁵

Ultimately, the Legislature enacted the Attorney General's proposal with amendments. Second Substitute H.B. 1758; Laws of 2005, ch. 487. Relevant to this case, the Legislature enacted the new statute of limitations language in section 6 of the bill, unchanged from the Attorney General's proposal: "Actions under this section [then codified in RCW 42.17.340] 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

⁴ House Hearings on H.B. 1758, at 38:43, 39:40 (testimony of Attorney General McKenna).

⁵ See House Hearings on H.B. 1758, at 39:18 (testimony of Attorney General McKenna).

basis.” This is now codified as RCW 42.56.550(6).⁶ The Legislature did not adopt the Attorney General’s proposal for increased penalties.⁷

ARGUMENT

A. **An Agency’s Response To A Public Records Request That Puts A Requestor On Notice That An Exemption Is Being Claimed Triggers The Limitations Period Of RCW 42.56.550(6) Without Regard To Whether The Agency Has Complied With The Further Explanatory Requirements Of RCW 42.56.210(3)**

The PRA statute of limitations added in 2005, RCW 42.56.550, provides:

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.^[8]

RCW 42.56.550(6). Separately, a provision in the original 1972 enactment of the PRA, RCW 42.56.210, states:

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 42.56.210(3). This requirement is buttressed in another provision of the original PRA (now codified as RCW 42.56.520), which requires that

⁶ The prior general five-year statute of limitations, contained in RCW 42.17.410, was not transferred to the new chapter.

⁷ Though not relevant to the decision in this case, the Attorney General proposed, and the Legislature considered but did not enact, amendments to RCW 42.56.550(6) in the 2007 session. H.B. 1446, 60th Leg., Reg. Sess. (Wash. 2007); S.B. 5436, 60th Leg., Reg. Sess. (Wash 2007).

⁸ Key excerpts from the PRA are reproduced in the Appendix.

“[d]enials of requests must be accompanied by a written statement of the specific reasons therefor.”⁹

In *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 884 P.2d 592 (1994) (*PAWS II*),¹⁰ this Court explained the PRA’s requirements for such specificity:

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.

Id. at 270–71 (footnote omitted). The Court continued in a footnote, explaining what it had in mind:

The identifying information need not be elaborate, but should include the type of record, its date and number of pages, and, unless otherwise protected, the author and recipient, or if protected, other means of sufficiently identifying particular records without disclosing protected

⁹ See Laws of 1973, ch. 1, § 32

¹⁰ This case is generally referred to as “*PAWS II*.” *PAWS I* is *Progressive Animal Welfare Society v. University of Washington*, 114 Wn.2d 677, 790 P.2d 604 (1990).

content. Where use of any identifying features whatever would reveal protected content, the agency may designate the records by a numbered sequence.

PAWS II, 125 Wn.2d at 271 n.18.

For the reasons argued below, the limitations period begins to run pursuant to RCW 42.56.550(6) when the requestor is reasonably on notice that exemption is being applied (or “claimed”), even if the explanation required by RCW 42.56.210(3) is not complete. This is for three reasons.

1. The Plain Language Of The Term “Claim Of Exemption” Does Not Mean “Explanation” Of A Claim of Exemption

The term “claim of exemption” is not defined in the PRA. The term “exemption,” however, certainly draws meaning from the various exemptions contained in the PRA. The issue, for the purposes of a plain language analysis, is what is meant by “claim”. Absent a statutory definition, this Court may resort to a dictionary definition. *Dawson v. Daly*, 120 Wn.2d 782, 791, 845 P.2d 995 (1993). Webster’s Third New International Dictionary of the English Language at 414 (2002) defines “claim” to mean “to assert esp. with conviction and in the face of possible contradiction or doubt”. The Court should look to the agency’s response

to the request to determine whether the claim of exemption is made that triggers the limitations period.¹¹

This conclusion finds support by reference to other parts of the PRA. *See Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11–12, 43 P.3d 4 (2002) (in determining the “plain meaning” of a statute, it is appropriate to look at the other parts of the statute). There is no express reference or connection between the use of the term “claim of exemption” in the statute of limitations language in RCW 42.56.550(6) and the explanation requirement in RCW 42.56.210(3). That absence of a connection or reference in the newly enacted RCW 42.56.550(6) to the then existing RCW 42.56.210(3) indicates the Legislature did not intend one section to relate to the other.

2. Construing The Term “Claim Of Exemption” To Not Require An Explanation Under RCW 42.56.530 Is Consistent With The Purpose Of Statutes Of Limitations

The purpose of a statute of limitations is to “compel the exercise of a right of action within a reasonable time so opposing parties have fair opportunity to defend.” *Stenberg v. Pacific Power & Light Co.*, 104

¹¹ In this case, the response was the August 17, 2005, letter from the City Attorney to the Rental Housing Association.

Wn.2d 710, 714, 709 P.2d 793 (1985); see *Developments in the Law: Statutes of Limitations*, 63 Harv. L. Rev. 1177, 1185–86 (1950). They are intended to provide certainty and bring finality to transactions for both parties. *Atchison v. Great Western Malting Co.*, 161 Wn.2d 372, 382, 166 P.3d 662 (2007). Such finality is important in the business environment, so private parties can rely on the finality of their transactions, and it is important in the public sector so government agencies can have certainty about the scope of their potential liability.

To hold that the statute of limitations is not triggered until after an explanation is made would be counter to these policies. In denying access to a document, an agency could clearly state the exemption to justify the withholding of the document, but fail to explain fully all the details contemplated by the *PAWS II* decision. The cause of action would accrue at the time of the denial of access to the document, but the action challenging the agency's withholding of documents could be filed years later. That would be contrary to policies of finality and certainty characteristic of statutes of limitation and potentially could lead to some loss of ability to defend the claim by the agency.

3. Construing The Term "Claim Of Exemption" To Require Only A Claim (And Not An Explanation) To Commence The Statute Of Limitations Is Consistent With The PRA, Including The 2005 Amendments

Adding an explanation requirement in order to commence the limitations provision of the PRA also would be inconsistent with the purpose and intent of the 2005 legislation that included the current language limiting actions. RCW 42.56.550(6) reduced the statute of limitations for PRA violations set forth in that section from five years to one year. As articulated above, the purpose of this reduction was to require those who believe there has been a PRA violation to bring prompt claims in part so that agencies could more easily limit their financial exposure (which ultimately is an exposure to the citizen-taxpayer). To hold that a claim of exemption without an explanation does not commence a claim of exemption would be contrary to the purpose of the 2005 legislation.

So construing the limitations period would also be contrary to the broad policies underlying the PRA. The purpose of the PRA is to provide a mechanism by which citizens can get information about government. The penalty and costs provision in RCW 42.56.550(4) are a means to that end. The one-year statute of limitations in RCW 42.56.550(6) is designed to ensure that actions may be timely filed to serve the PRA disclosure

goals and do not result in disproportionate individual financial gain at the expense of other citizens.¹² In addition, unlike many of statutes of limitations that act to prevent a potential litigant from all access to the relief he or she seeks, the PRA statute of limitations does not preclude requestors from what they ultimately seek—disclosure of records—because a requestor can always make a new request. Requiring requestors to file a claim for penalties and costs within one year of learning that an agency is claiming an exemption simply prevents a requestor from holding back and seeking higher penalties. Under no circumstance is the requestor deprived of any right to access public records.

B. An Agency's Supplemental Response To A Request, Not Part Of A Response In Installments, Does Not Restart The Statute Of Limitations

Potentially at issue in this case is the question of whether the statute of limitations is restarted by an agency voluntarily producing additional records responsive to the request, but where such production is not part of a response in installments.¹³

¹² See House Hearings on H.B. 1758, at 39:18 (testimony of Attorney General McKenna).

¹³ Though this issue is couched in terms of whether the City “waived” the statute (Rental Housing Reply Br. at 18–19) when it produced additional records in February 2007, the proper issue is whether a further production constituted an installment and therefore restarted the one-year limitation period. Again, amicus takes no position on the factual issues surrounding this claim, focusing only on the larger legal principle.

Agencies may make records available in installments. RCW 42.56.580. There were several purposes of that provision, also added in 2005.¹⁴ First, production of records in installments furthers the purpose of the PRA to get more records into the hands of requestors sooner, so they do not have to wait until the entire request is filled. Second, it enables agencies to provide some records, perhaps those most easily accessible, and see if those records are enough to satisfy the requestor. It also allows agencies, responding to very large requests, to gauge the seriousness of the requestor by seeing if the requestor actually inspects the first installment.¹⁵

An “installment” is “one of several parts . . . presented at intervals” Webster’s Third New International Dictionary Of The English Language 1171 (2002). It is not open-ended.¹⁶ Whether a production is

¹⁴ Laws of 2005, ch. 487, § 1.

¹⁵ See House Hearings on H.B. 1758, at 36:40 (testimony of Attorney General McKenna). Various witnesses at those hearings in the House testified on the usefulness of the tool to produce documents in installments, some pointing out that some requestors never appeared to inspect the documents that were gathered. *E.g., id.* at 27:38 (testimony of Randy Gaylord, San Juan County Prosecuting Attorney, representing the Washington Association of County Officials and the Washington Assn of Prosecuting Attorneys), 32:20 (testimony of Bill Vogler, Executive Director of Washington State Ass’n of Counties). If the requestor does not inspect the first installment, the agency is relieved from its duty to continue to search for other responsive records. RCW 42.56.120.

¹⁶ Initially, H.B. 1758 used the term “on a rolling basis” rather than “in installments.” H.B. 1758, § 2. The terminology was revised after interested parties suggested the change. See House Hearings on H.B. 1758, at 27:38 (testimony of Randy Gaylord, recommending the term “installments” instead of “rolling basis”).

being made on an installment basis should be determined by looking at the agency response.

If the agency makes a diligent search for records and produces what it locates without reference to further installments to come, then the agency has fulfilled its duty. If there is no reference to installments or that more documents are forthcoming, then the one-year limitation period starts at that point. In other words, if, in an agency response, the requestor is not notified of an installment production, then a later production is not converted to a production on an installment basis. If, on the other hand, the agency produces some documents, claiming one or more exemptions, but states that it is gathering more documents for production in a subsequent installment, then the one-year limitations period does not commence running until after the last installment is provided. RCW 42.56.550(6).

The issue addressed here is that rare occasion when an agency, after providing records in which a claim of exemption is asserted that gives the requestor fair notice of the exemption being claimed, later discovers other responsive records, or simply provides such records in an effort to settle a controversy. In that case, the limitations period does not restart with regard to the earlier claimed exemptions.

To hold otherwise would be contrary to the purpose of PRA. Under existing interpretations of the PRA, an agency has an incentive to provide more records. Providing more records serves to limit potential liability vis-à-vis the requestor in that, should litigation ensue, it will place an outside limit on the potential amount of penalties. However, if a subsequent disclosure were to effectively restart the limitations period for all prior disclosures, that pro-disclosure incentive would be reversed. If a subsequent disclosure—whether in the course of litigation or not—were to result in a reopening of a statute of limitations, then agencies would have a financial disincentive to voluntarily produce more records as such a production could open them up to greater liability. That would be inconsistent with the purpose of the PRA to encourage agencies to get records into the hands of the requesting public.

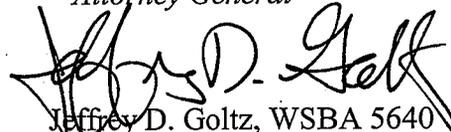
CONCLUSION

While the Attorney General does not take a position on the ultimate outcome of this case, we ask this Court to construe the PRA as articulated above and focus its analysis on the overall purpose of that act, the 2005 amendments to it, and statutes of limitations in general. In sum, those purposes are to get public records into the hands of the requestors without delay, to bring finality to issues that may arise between agencies and requestors about the applicability of exemptions to the PRA, and to

assure exposure to PRA penalties and costs that provide the proper incentive for compliance with the Act, but do not unduly expose agencies to financial risk.

RESPECTFULLY SUBMITTED this 4th day of April 2008.

ROBERT M. MCKENNA
Attorney General


Jeffrey D. Goltz, WSBA 5640
Deputy Attorney General



Carol A. Murphy, WSBA 21244
Deputy Solicitor General

Attorneys for *Amicus Curiae*
Office of the Attorney General

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6200

APPENDIX

EXCERPTS FROM PUBLIC RECORDS ACT

RCW 42.56.070(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 [(9)] 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.

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.

RCW 42.56.520

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) 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 (3) 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 therefore. 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

(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 less than five dollars and 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.