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SUPREME COURT
OF THE STATE OF WASHINGTON

NEIGHBORHOOD ALLIANCE OF SPOKANE COUNTY,
a non-profit corporation,

Petitioner,

v.

COUNTY OF SPOKANE,
a political subdivision of the State of Washington,

Respondent.

FILED
JAN 13 2010
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

PETITION FOR REVIEW

CENTER FOR JUSTICE
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A. IDENTITY OF PETITIONER

Plaintiff Neighborhood Alliance of Spokane County (“Alliance”) requests this Court to accept review of the decision terminating review by the Court of Appeals, Division III, designated in Part B of this petition.

B. DECISION BELOW

The Alliance seeks review of the decision issued by the Court of Appeals, Division III, in *Neighborhood Alliance of Spokane County v. County of Spokane*, filed August 11, 2009. Relying on federal law, the decision found that plaintiffs suing under the Washington State Public Records Act¹ (“PRA”) do not have the same access to the state’s civil rules governing discovery as other civil litigants and that such plaintiffs may prevail only upon a showing that suit caused disclosure. Both of these rulings contradict recent Supreme Court precedent and unduly narrow the PRA in contravention to legislative mandate.

A copy of the decision is in the Appendix at pages one to ten. The decision was originally published at 151 Wn. App. 1043, *not reported* in P.3d , 2009 WL 2456857 (2009). The Alliance timely filed a motion for reconsideration and Spokane County (“County”) timely filed a motion to publish. On December 15, 2009, the Court of Appeals denied the motion

¹ In 2005, the legislature recodified and renamed the Public Disclosure Act, chapter 42.17 RCW. This case arose prior to recodification. Although all cites herein will be to the prior code, the Alliance utilizes the new title, the “Public Records Act.”

for reconsideration and granted the motion for publication. A copy of the order denying the Alliance's motion for reconsideration and granting the County's motion for publication is in the Appendix at pages 11 to 12.

C. ISSUES PRESENTED FOR REVIEW

1. Whether a plaintiff in a PRA action is entitled to the same scope of discovery allowed other civil plaintiffs under Washington's civil discovery rules, and
2. Whether a plaintiff is a prevailing party under the PRA where the defendant agency wrongfully withheld documents at the time of request but released the same prior to suit in response to a different public records request.

D. STATEMENT OF THE CASE

The Alliance is a nonprofit, community-based organization that emphasizes "government accountability, especially in land use and planning issues." CP 91. On May 16, 2005, the organization filed a public records request in an effort to uncover what appeared to be illegal hiring practices in Spokane County's Building and Planning Department ("BPD"). CP 51-52, 90-93, 101-102, 341-349. The request was twofold. "Item 1" requested the complete electronic log of an undated seating chart showing the seating arrangement of BPD employees with their first names placed in their respective cubicles. CP 51-52. The chart was generated by Pam Knutsen, a BPD assistant director, on or about February 16, 2005. CP 60, 283-284. The chart included the names of two employees in one

cubicle, "Ron and Steve," neither of whom appeared to be employees on the date the chart was created. CP 90-103, 257-275. However, "Ron" Hand and "Steve" Harris were subsequently hired about a month later. *Id.* "Item 2" requested existing records showing the full names of the employees on the chart. CP 51-52.

The chart, sent to the Alliance in March 2005, was of interest to the Alliance because it appeared a decision had been made to hire these two men before their job openings had been posted as required by law. CP 90-103, 257-275. Moreover, Steve Harris was the third son of then County Commissioner Phil Harris to be hired by the County. *Id.*

The County responded on June 6, 2005 with one document as to Item 1 and no documents as to Item 2. CP 60-65. Finding the response inadequate, the Alliance filed suit on May 6, 2006. CP 32-37. Soon after filing, the Alliance tendered written discovery to the County and attempted to depose Pam Knudsen, who not only generated the undated seating chart, but was also responsible for responding to the request. CP 104-105, 149-188. The discovery covered issues of liability and penalties and included questions regarding the County's search procedures, the identity of staff responsible for responding to public records requests, their training and experience, motivation, potential destruction of records and the identities of persons who might have relevant information regarding

these issues. CP 149-188, 195-209. The County answered only seven of twenty-six requests for admissions, refused to respond to the request for interrogatories and production, and refused to make Ms. Knutsen or any other employees available for oral deposition. CP 104-105, 149-188. Subsequently the County filed for summary judgment on November 16, 2006. CP 105.

In order to avoid defending against summary judgment without discovery, the Alliance filed a motion to compel and for continuance of the motion for summary judgment. (CP 74-123) It also asked the County for a brief continuance to allow the trial court time to rule on discovery. CP 190-194. The County refused maintaining it was the Alliance's burden to present credible evidence by affidavit to defeat summary judgment and only then could it request discovery. CP 354-355. As such, the County continued to resist discovery throughout the case. CP 77-78, 104-105, 354-355, 383-384, 422-423, 425-485, 609-612.

At hearing on December 5, 2006, the trial court deferred ruling on all motions but entered a stipulated order for a written CR 32 deposition of Ms. Knutsen limited to two issues – whether responsive documents existed and the search processes utilized. RP 19–25, Dec. 5, 2006. Even with a court order, setting a date and agreeing on the scope of the questions required another ten months. CP 384, 385-86, 421-423. The

deposition was finally taken on October 12, 2007, and Ms. Knutsen answered only 18 of 53 questions. CP 424-485. Four months later, the County tendered answers to five more. CP 608-612.

In April and May 2008, the Alliance filed a cross motion for summary judgment. CP 219-240. At hearing on May 13, 2008, the parties agreed to argue their respective summary judgment motions first and reach discovery issues later, if necessary. Finding there had been ample time for discovery, the trial court granted summary judgment on all issues to the County and denied the Alliance's motion to compel. CP 620, 622, RP at 33, May 13, 2008. The Alliance timely appealed. CP 658-664.

On appeal, Division III appropriately reversed as to Item 1 by finding the County failed to conduct an adequate search for the complete electronic information log. *Neighborhood Alliance*, 151 Wn. App. at 9. The court also entered an order on remand for a determination of attorney fees and costs against the County and costs on appeal related to this issue. *Neighborhood Alliance*, 151 Wn. App. at 13.

As to Item 2, the court, in reliance on its earlier decision in *Daines v. Spokane County*, 111 Wn. App. 342, 44 P.3d 909 (2002), adopted the federal "prevailing party" doctrine applicable in public records cases brought under the Freedom of Information Act ("FOIA") in affirming summary judgment for the County. *Neighborhood Alliance* 151 Wn. App.

at 10-11. The court found the County “correctly argue[d] there is no cause of action under the PRA to enforce the redisclosure of records known by the Alliance to already be in its possession” and affirmed based on “documents provided to the Alliance under a separate request.” *Id.* at 10, 12. These were three e-mails regarding the provision of logistical support to Ron Hand and Steve Harris’ cubicles provided by the County to the Alliance on or about November 14, 2005, in response to another request. *Id.* at 10; CP 493, 517, 529, 530. The Alliance had argued the e-mails would have been responsive to Item 2 of the May 2005 request and were thus unlawfully withheld from the time of the June 6, 2005 response until their release in November. *Neighborhood Alliance*, 151 Wn. App. at 10; CP 228, 239, 651, Bf. Pet’r. at 28, *Neighborhood Alliance v. Spokane County*, No. 271846 (Oct. 24, 2008); Pet’r Mot. for Recons., *supra* at 17 (Aug. 26, 2009).

Once more, the court relied on federal law. Adopting standards applicable to discovery under FOIA, the court rejected the Alliance’s argument that public records plaintiffs have the same right to discovery as other civil litigants under the civil rules. *Neighborhood Alliance*, 151 Wn. App. at 11-12. Under FOIA, discovery in public records cases is generally not allowed as federal courts decide these on summary judgment *without discovery*. *Id.* at 12 (citations omitted) (emphasis added). Moreover,

“[w]hen discovery is permitted, it is ‘sparingly granted’” and limited to the “scope of the agency’s search and its indexing and classification procedures.” *Id.* (citations omitted). Applying this standard to the case at bar, Division III found the Alliance’s discovery overreaching.

E. ARGUMENT

The Court should grant review for the following reasons:

Division III’s decision conflicts with binding State Supreme Court precedent in two important ways. First, in 2005, this Court rejected the premise that public records cases are special proceedings to which the civil rules do not apply. *Spokane Research & Defense Fund*, 155 Wn. 2d 89, 104-105, 117 P.3d 1117 (2005). And second, the Court also rejected the prevailing party doctrine from FOIA and found instead that under the state PRA, “prevailing” relates to whether documents were wrongfully withheld at the time of request and nowhere does it require a showing that suit caused release. *Id.* at 103-104.

1. The decision is contrary to this Court’s ruling in *Spokane Research* wherein the Court held the civil rules apply to public records cases.

- a. *The civil rules, including discovery, apply to PRA cases.*

Division III applied the wrong standard in finding the Alliance’s discovery overreaching. Rejecting the Alliance’s argument that the state civil discovery rules govern cases under the state PRA, the court relied

instead on cases construing FOIA under which discovery is severely restricted. In so ruling, Division III essentially found that public records cases are somehow unique and outside the normal civil rules.

This Court soundly rejected this argument five years ago in *Spokane Research*. There, the City of Spokane argued and Division III agreed that PRA cases are special proceedings and plaintiffs may not utilize the normal civil procedures of summary judgment and intervention, but instead are limited to the statutory show cause procedures of RCW 42.17.340. *Id.* at 104. *Spokane Research*, 155 Wn. 2d at 97 citing *Spokane Research & Defense Fund v. City of Spokane*, 121 Wn. App. 584, 586, 89 P.3d 319 (2004). Finding no statutory or legislative intent to so limit the right of public records plaintiffs, this Court reversed and confirmed the application of the civil rules and procedures to PRA cases. *Spokane Research*, 155 Wn. 2d at 104-105. As the Court explained:

The civil rules “govern the procedure in the superior court in all suits of a civil nature ... with the exceptions stated in rule 81.” *CR 1*. There is only one form of a civil action. *CR 2*. *CR 81* states the civil rules govern all civil proceedings “[e]xcept where inconsistent with rules or statutes applicable to special proceedings.” *CR 81*. Special proceedings are detailed in the statutes and include garnishment, *Zesbaugh, Inc. v. Gen. Steel Fabricating, Inc.*, 95 Wash.2d 600, 603, 627 P.2d 1321 (1981), unlawful detainer, *Canterwood Place L.P. v. Thande*, 106 Wn. App. 844, 847, 25 P.3d 495 (2001), and sexually violent predator proceedings, *In re Detention of Aguilar*, 77 Wn. App. 596, 600, 892 P.2d 1091 (1995).

All of these proceedings are statutorily defined, whereas actions under the PRA are not. The statute simply does not define a special proceeding exclusive of all others. When a statute is silent on a particular issue, the civil rules govern the procedure. *King County Water Dist. v. City of Renton*, 88 Wn. App. 214, 227, 944 P.2d 1067 (1997). Thus, normal civil procedures are an appropriate method to prosecute a claim under the liberally construed PRA. . . .

Id. at 104-105.

Just as there is nothing in the PRA that prevents the use of summary judgment and intervention, there is nothing that prevents access to normal civil discovery. Although the PRA does allow cases to be heard on affidavit alone, it is not mandatory. *Id.* at 104. If the Legislature had intended to circumscribe discovery in PRA cases, “it could easily have said so,” and “its failure to do so is an eloquent expression of intent.” *Grabicki v. Dept. of Retirement Systems*, 81 Wn. App. 745, 755 916 P.2d 452 (1996).

Moreover, the following Washington cases, going back almost twenty years, support the proposition that pre-trial discovery applies to PRA cases: *Coalition on Govt. Spying v. King County Dept. of Public Safety* (“COGS”), 59 Wn. App. 856, 860, 801 P.2d 1009 (1990) abrogated on other grounds by *Spokane Research & Defense Fund*, 155 Wn. 2d 89, 117 P.3d 1117 (2005) (Plaintiff “conducted further discovery” after filing PRA action and preliminary proceedings); *Brouillet v. Cowles Publ. Co.*,

114 Wn. 2d 788, 791 P.2d 526 (1990) (In petition for declaratory judgment upholding non-release under PRA, court denied request for oral examination where school system failed to take depositions or tender affidavits of its own to show need for oral examination); *Progressive Animal Welfare Soc. v. University of Washington ("PAWS")*, 125 Wn.2d 243, 884 P.2d 592 (1994) (pre-trial discovery request for letters deemed appropriate where they disclosed the University's express refusal to comply with PRA requests); *Concerned Ratepayers v. PUC No. 1*, 138 Wn. 2d 950, 956, 983 P.2d 635 (1999) (trial court's findings relied on depositions of witnesses); *Bellevue John Does 1-11 v. Bellevue School District # 405*, 129 Wn. App. 832, 120 P.3d 616 (2005), *rev. granted in part by* 158 Wn. 2d 1024, 149 P.3d 376 (2007), and *rev'd in part by* 64 Wn.2d 199, 189 P.3d 139 (pre-trial discovery utilized in action seeking release of names of teachers accused of misconduct); *Parmelee v. Clarke*, 148 Wn. App. 748, 753, 201 P.3d 1022 (2008) (plaintiff submitted deposition testimony from DOC staff in attempt to establish that any DOC employee was proper recipient of PRA request and hence request appropriately filed).

- b. *Division III's narrow interpretation of discovery under the PRA is contrary to legislative intent.*

The PRA is 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*, 125 Wn.2d at 251. Its purpose is to keep public officials and institutions accountable to the people, *O'Connor v. Wash. State Dept. of Soc. and Health Services*, 143 Wn.2d 895, 905, 25 P.3d 426 (2001). To that end, the Act must be “liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.” RCW 42.56.030.

Washington courts must give effect to the legislative purpose as expressed in the statute and thus construe the PRA broadly. *Spokane Research*, 155 Wn. 2d at 100. The state’s civil discovery rules themselves are consistent with this legislative mandate. These rules are to be given a “broad and liberal construction.” *McGugart v. Brumback*, 77 Wn. 2d 441, 444, 463 P.2d 140 (1969) *citing Moore v. Keesey*, 26 Wn. 2d 31, 173 P.2d 130 (1946); *Hickman v. Taylor*, 329 U.S. 495 (1947). *See also O'Connor* 143 Wn.2d at 907 (“The civil rules do not conflict with the Public Records Act.”) To that end, they allow for broad discovery into the subject matter of a claim with no express limit but relevancy. *See Bushman v. New Holland Divison of Sperry Rand Corp.*, 83 Wn. 2d 429, 435, 518 P.2d

1078 (1974) (only limitation is relevancy to subject matter involved and not to the precise issues framed by the pleadings).

Unlike FOIA, the subject matter of a state public records action is not simply the existence or nonexistence of relevant documents and the procedures utilized to find them. Rather, because the state act provides for mandatory penalties, the “agency’s decision not to release records, and the grounds for that decision are precisely the subject matter of a suit brought under the Public Records Act.” *PAWS*, 125 Wn. 2d at 270, n.17 (1994) *citing* RCW 42.17.340. Further, under the PRA, agencies must “timely comply with the mandates of the PRA” and “provide for the fullest assistance to inquirers and the most timely possible action on requests for information.” *Spokane Research*, 155 Wn. 2d at 100. Hence appropriate topics for discovery under the PRA include 1) the identity of persons with relevant information, including those responsible for responding to a request and their training and supervision, 2) the agency’s ability to track and retrieve records, 3) the potential destruction of records after a request was made, 4) the motivations behind the agency’s response, 5) the reasonableness of the agency’s explanations for failure to provide documents or untimely response, (5) the agency’s level of culpability in failing to follow the mandates of the PRA and (6) its good or bad faith.

Discovery under the civil rules is liberal, even when cases are decided on summary judgment, not only to allow courts to decide cases on their merits, but also to ensure litigants access to information necessary to effectively pursue their claim. *Weeks v. Chief of Washington State Patrol*, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982). *See also Doe v. Puget Sound Blood Ctr.*, 117 Wn. 2d 772, 781-82, 819 P.2d 370 (1991) (constitutional right of access to courts furthered by broad right of access to discovery necessary to effectively pursue claim). And, contrary to the County's position, these rules expressly provide for discovery *prior* to a ruling on summary judgment. CR 56(c) (judgment shall be rendered if pleadings, depositions, answers to interrogatories, and admissions on file show no genuine issue of material fact). There is simply nothing in the PRA inconsistent with the applicability of these broad rules to public records cases and nothing which precludes a trial court's exercise of its discretion therein.

If the PRA is liberally construed to promote full disclosure and accountability for illegal non-disclosure, especially where disclosure implicates illegal practices, then civil discovery is imperative. Carving out an exception in PRA cases that limits the scope of discovery below that afforded other civil litigants or prevents discovery necessary to adequately process a claim runs contrary to legislative mandate. It is inappropriate to

read into the statute a limitation the legislature did not impose and this court has expressly disapproved. Such a narrowing is inconsistent with legislative imperative and Washington case law.

2. The decision is contrary to this Court's ruling in *Spokane Research* in which the Court rejected the "prevailing party" doctrine under FOIA.

Division III relied on its prior ruling in *Daines* in affirming summary judgment for the County as to Item 2. *Neighborhood Alliance*, 151 Wn. App. at 10-11. And *Daines* in turn relied on *Coalition on Government Spying* ("COGS") for the proposition that PRA plaintiffs cannot prevail where they have documents in hand responsive to the request at the time of suit. *Daines*, 111 Wn. App. at 347-48. Rather, "[t]o trigger the remedial provisions of the PRA, the action must be one that could 'reasonably be regarded as necessary' to obtain the records." *Id.*

The *COGS* court borrowed the "prevailing party" doctrine from FOIA which allows fees and costs to a party who "substantially prevails." *Spokane Research*, 155 Wn. 2d at 104 n. 10. Under FOIA, to substantially prevail, the plaintiff must prove his action was reasonably necessary to obtain the information and that the action had a causative effect on the release." *Id. citing COGS*, 59 Wn. App. at 863 *citing Miller v. U.S. Dept. of State*, 779 F.3d 1378, 1389 (8th Cir. 1985).

The prevailing party doctrine as enunciated by *COGS* and *Daines* is no longer good law in Washington. As this Court explained in *Spokane Research*, while the “COGS court adopted this standard for the PDA, we never have, and decline to do so. Our statute says nothing about ‘substantially prevailing’ and differs from the federal scheme at several important points, notably fees and penalties.” *Spokane Research*, 155 Wn. 2d 104 n.10 (citation omitted). Rather, “‘prevailing’ [under the state act] relates to the legal question of whether the records should have been disclosed on request.” *Id.* at 103. “[N]owhere in the PDA is prevailing party status conditioned on causing disclosure.” *Id.* Moreover, “[s]ubsequent events do not affect the wrongfulness of the agency's initial action to withhold the records if the records were wrongfully withheld at that time. Penalties may be properly assessed for the time between the request and the disclosure, even if the disclosure occurs for reasons unrelated to the lawsuit.” *Id.*

Although it is true that in *Spokane Research*, the documents sought were disclosed after the plaintiff filed suit, albeit for unrelated reasons, while here the documents were disclosed prior to suit, this is a distinction without merit. *Id.* at 103. Untimely release is itself a violation of the PRA. RCW 42.17.320. *See also* RCW 42.17.290 (agency to provide fullest assistance and most timely possible action). As such, this Court made

clear that “the harm occurs when the record is withheld.” *Id.* at 14, n.10. To hold that litigants cannot sue where an agency fails to release documents in a prompt manner would allow agencies to violate the PRA with impunity by simply withholding until a plaintiff threatens suit or until release is no longer timely - perhaps after an election or passage of controversial legislation – exactly the behavior the Court’s ruling in *Spokane Research* sought to address.

Division III erred in applying the federal “prevailing party” doctrine to the Alliance based on its possession of three e-mails responsive to Item 2 prior to suit and affirming summary judgment to the County on that basis. *Neighborhood Alliance*, 151 Wn. App. at 12. Here, as in *Spokane Research*, the County failed to disclose responsive documents at the time of request. And, as in *Spokane Research*, the fact that the Alliance’s suit was not the cause of disclosure is immaterial. By withholding these e-mails from June 6, 2005 through November 14, 2005, the County violated the PRA and summary judgment was appropriate for the Alliance on Item 2.

F. Conclusion

For the reasons set forth above, the Alliance requests this Court to do the following: 1) accept review to reinforce its earlier ruling regarding the right of public records plaintiffs to utilize the state civil rules and

procedures, including those applicable to discovery, and to expressly overturn *Daines* to the extent it adopted the prevailing party doctrine under FOIA in state public records cases; 2) find summary judgment for the Alliance as to Item 2 based on the County's wrongful withholding of documents responsive to its May 16, 2005 request; 3) remand with an order for discovery as to any remaining issues, including penalties; 4) remand with an order for an award of attorney's fees, costs and penalties pursuant to former RCW 42.17.340, to be determined by the trial court, and 5) enter an Order granting the Alliance reasonable attorneys fees and expenses on appeal as allowed by RAP 18.1.

DATED this 11th day of January 2010.



Bonne Beavers, WSBA # 32765
Breean Beggs, WSBA # 20795

G. Appendix

*Neighborhood Alliance of Spokane County v. County of
Spokane* Decision dated August 11, 2009.....000001

Order Denying Motion for Reconsideration and Granting
Motion to Publish December 15, 2009.....000011

Not Reported in P.3d, 151 Wash.App. 1043, 2009 WL 2456857 (Wash.App. Div. 3)
(Cite as: 2009 WL 2456857 (Wash.App. Div. 3))

H

NOTE: UNPUBLISHED OPINION, SEE RCWA
2.06.040

Court of Appeals of Washington,
Division 3.

NEIGHBORHOOD ALLIANCE OF SPOKANE
COUNTY, a non-profit corporation, Appellant,

v.

COUNTY OF SPOKANE, a political subdivision of
the State of Washington, Respondent.

No. 27184-6-III.

Aug. 11, 2009.

Appeal from Lincoln County Superior Court; Honorable Philip W. Borst, J.
Breean Lawrence Beggs, Center for Justice, Bonne W. Beavers, Attorney at Law, Spokane, WA, for Appellant.

Patrick Mark Risken, Attorney at Law, Spokane, WA, for Respondent.

UNPUBLISHED OPINION

KULIK, A.C.J.

*1 The Neighborhood Alliance of Spokane County (Alliance) brought an action against Spokane County (County) for its alleged failure to disclose records requested under Washington's public records act (PRA),^{FNI} former chapter 42.17 RCW. Both parties moved for summary judgment. The court granted summary judgment to the County.

^{FNI} Effective July 1, 2006, the public records act (PRA), formerly a part of the public disclosure act (PDA), was recodified at chapter 42.56 RCW. LAWS OF 2005, ch. 274,

§ 103. This case arose in May 2005, prior to recodification and, therefore, citations will be to the code as it existed at that time.

We hold that the County failed to adequately search its records when it did not examine the original computer where the requested record was created. Thus, we reverse summary judgment for the County on this issue. However, we affirm the summary judgment in favor of the County on its response to the Alliance's request for records relating to names on the seating chart because the Alliance had received these records under a separate request. Finally, we affirm the trial court's denial of the Alliance's motion to compel.

FACTS

The Alliance is a nonprofit, community-based organization that emphasizes "government accountability, especially in land use and planning issues." Clerk's Papers (CP) at 91.

The Alliance received a letter from what appeared to be an anonymous whistleblower complaining about potential illegal hiring practices in Spokane County's Building and Planning Department (BPD). The letter included a copy of an undated seating chart, allegedly depicting office space for staff in the BPD. The chart, which appears as a map or floor plan of the first floor of the BPD, depicts the location of cubicles and identifies the seating arrangement for approximately 18 current or prospective employees within those cubicles. The seating chart listed only employees' first names, including two in one cubicle, "Ron & Steve." CP at 88. The name "Steve" was also listed on the seating chart in a separate cubicle with what appeared to be a telephone extension number of "7221." CP at 88.

The letter stated that the chart was found in the printer at the BPD on February 16, 2005. Numerous copies were circulated to BPD employees on or about February 16. The chart originated from Pam Knutson's computer. Ms. Knutson is the assistant director of building and planning for Spokane County. The letter claimed that the positions occupied by Ron and Steve on the seating chart had not yet been posted for hiring as required by the County's personnel rules.

The Alliance took a strong interest in the allegations

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when the names Ron and Steve on the February seating chart matched the first names of the department employees hired several weeks later-Ron Hand and Steve Harris. This led the Alliance to believe the County may have engaged in illegal hiring practices.

In early March 2005, Spokane County posted notice of two openings for the position of development assistant coordinator. In mid-March, Spokane County hired Steve Harris as development assistance coordinator 1 to work with Ron Hand, who had also been recently hired as development assistance coordinator 2. Steve Harris is the son of then-Commissioner Phil Harris, and the third son of Phil Harris to be hired by Spokane County.

*2 Bonnie Mager, then executive director of the Alliance, filed public records requests for documents that would substantiate the date of the seating chart and the full names of the employees listed on the chart.

On May 3, 2005, Ms. Mager, on behalf of the Alliance, sent a public records request to the County, asking to review all records created in January 2005, February 2005, and March 2005 "that display either current or proposed office space assignments for County Building and Planning Department officials and employees." CP at 277. On May 11, the County provided Ms. Mager with three "proposed seating assignment charts." CP at 277. The first seating chart was undated. That chart appeared identical to the seating chart provided to the Alliance in February, and included the names Ron and Steve as well as Steve 7221. The other two versions of the chart were dated February 22, 2005, and April 18, 2005. The February 22, 2005 chart no longer had the names Ron and Steve in a cubicle but, instead, simply had the word "New" in two other cubicles. CP at 279.

Then, on May 16, 2005, the Alliance sent a second public records request to the County, addressed to the human resources director for Spokane County, Cathy Malzahn. The request asked for information regarding electronic file information logs for the undated BPD seating chart and records pertaining to the identities of Ron and Steve on the seating chart. The Alliance requested:

1) The complete electronic file information logs for the undated county planning division seating chart provided by Ms. Knutsen to the Neighborhood Al-

liance on May 13th. This information should include, but not necessarily be limited to, the information in the "date created" data field for the document as it exists on the specific Microsoft Publisher electronic document file created for the referenced seating chart. The requested information should also include, but not be limited to, the computer operating system(s) data record indicating the date of creation and dates of modification for the referenced seating chart document.

2) The identities of "Ron & Steve" individuals who are situated near the center of the seating chart referenced in item # 1. Also, the identity of the individual listed as "Steve" in the cubicle with the number 7221 at the top of the chart.^[FN2]

FN2. We refer to these requests as Item 1 and Item 2.

By the term public records, I am invoking a broad definition, consistent with [former] RCW 42.17.020(36) [(2002)] and specifically mean to include records that exist in any electronic form as well as those that exist on paper. This should be read to include, but not be limited to, records preserved in paper correspondence, electronic mail, facsimiles, videotape, and computer files.

Pursuant to [former] RCW 42.17.310 [(2003)], please identify any record covered by the above requests that is being withheld as exempt, and provide a summary of the record's content and the specific reason for the exemption.

*3 CP at 51-52.

The County responded by letter dated May 23, 2005, stating that the County would complete its response process by June 6, 2005.

The County responded to the Alliance's May 16, 2005 public records request by letter dated June 6, 2005. Addressing the first paragraph of the Alliance's request, referred to by the parties as Item 1, the County's letter stated "[c]onsistent with your Public Disclosure Request, enclosed you will find a copy of the 'date created' data file[s] as requested." CP at 54. The County attached a single document-an electronic file information log. The log contained the name,

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location, date created, date modified, and date accessed information for the seating chart and several other documents.

The log showed that the date created for each document listed was either April 26 or April 27, 2005. However, the date created field listed on the information log showed that each of the documents, including the seating chart, were created after the date modified. The seating chart showed a date last modified of February 22, 2005. No other information was provided in the County's June 6 response regarding the discrepancies between the dates of creation for the listed documents, nor was there any explanation of the search that was used to identify these documents.

The County did not provide any records in response to Item 2—the identities of Ron and Steve—of the Alliance's May 16, 2005 public records request. The County's letter stated that the statutory disclosure statement “does not require agencies to explain public records. As such, no response is required with respect to item number 2 referenced above.” CP at 54.

Nevertheless, with regard to Item 2, Ms. Knutsen later stated in a declaration that her “search for documents which might reference the identities of ‘Ron and Steve’ and ‘Steve’ turned up nothing. Stated another way, there are no documents which reference the seating chart and identify the full names of ‘Ron and Steve’ or ‘Steve’ therein.” CP at 62.

The director of the information systems department (ISD) for Spokane County, Bill Fiedler, later explained the discrepancy in the electronic log file dates by stating that Ms. Knutsen's personal computer was replaced in April 2005 as part of routine maintenance. During that process, all documents that were on the hard drive of her old computer were transferred to her new computer. Mr. Fiedler explained that when that copying takes place, all documents are given a new date created. After all the documents were copied, the new computer was then delivered to Ms. Knutsen.

Mr. Fiedler further stated that the ISD then takes the old computer and hard drive back to its office where it wipes all data off the old hard drive. According to Mr. Fiedler, data stored on local computer hard

drives, including Ms. Knutsen's, are not backed up through the County network. “Therefore, the only information contained in that particular computer's Hard Drive would be found on its hard drive.” CP at 58. Mr. Fiedler did not state that Ms. Knutsen's old computer, from which the seating chart had originated, had been searched.

*4 The Alliance subsequently obtained the declaration of Bruce Hunt, a senior planner at the BPD, who stated that it was routine policy for staff to copy and paste all County work from staff C drives on their individual computers to network drives for backup and storage. Thereafter, the Alliance believed that if the information was stored on a server rather than on an individual computer, the County could have provided the actual date the seating chart file was created by accessing a backup file.

On October 7, 2005, counsel for the Alliance wrote a letter to the Spokane County Deputy Prosecutor Jim Emacio seeking compliance with the May 16, 2005 public records request. In that letter, the Alliance attempted to clarify its May 16, 2005 request, particularly Item 2, the identities of Ron and Steve. The letter states:

[I]n an effort to confirm that Steve Harris was the “Steve” listed on the February 16, 2005 seating chart, the letter asked the County for any *documents identifying or clarifying* the identities of “Ron” and “Steve.”

In essence, the request asked for any document that would have had the full name of the “Steve” listed on the seating chart in the same office space as “Ron.” My client believes that person is Steve Harris, but wants to confirm this belief with the County's own documents—that Steve Harris is, indeed, the person listed in the February 16 seating chart. The request did not ask for the identity of “Steve,” only for the County documents with his name on them.

CP at 68-69 (emphasis added).

That was followed by a letter from the Alliance to Mr. Emacio, dated October 31, 2005, which added new requests regarding Item 1 of the May 16, 2005 records request and the maintenance of Ms. Knutsen's computer. The County responded timely and the Al-

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liance has not challenged these responses to the additional requests in the October 31, 2005 letter.

At some point, Ms. Knutsen's old computer had its hard drive wiped, and in August 2005 it was given to Spokane County employee Gloria Wendel. By letter dated November 28, 2005, the Alliance made another public records request for the "email or memo requesting that Ms. Wendel receive Ms. Knutsen's computer and the documentation showing when Ms. Knutsen's computer was wiped of data." CP at 595. The County responded on December 5, 2005, by providing records regarding computer work done for Ms. Wendel in August 2005.

Procedural History. The Alliance filed suit against Spokane County on May 1, 2006, claiming that the County violated the public records act by failing to provide the requested records. Approximately one month later, the Alliance commenced discovery by serving on the County one set of requests for admission and one set of interrogatories and requests for production. The discovery explores not only the May 16, 2005 request, but also the additional requests made on October 31, 2005.

On May 24, 2006, attorney Patrick Riskin of Evans, Craven & Lackie, filed a notice of appearance on behalf of the County. The County then filed timely objections to all of the requests for admission and provided limited answers to 6 of 26 requests. The County did not answer the Alliance's interrogatories and requests for production; rather, in November, it moved for summary judgment and, in December 2006, it moved for a protective order.

*5 From August through November 2006, the Alliance attempted to arrange depositions of county employees, particularly Ms. Knutsen, and to receive answers to its written discovery. The County agreed to submit answers to written discovery by September and schedule a deposition of Ms. Knutsen by mid-October 2006. On October 30, 2006, the County agreed that Ms. Knutsen's deposition would be scheduled in December.

However, on November 16, 2006, the County moved for summary judgment. In support of its motion, the County filed affidavits by Ms. Malzahn, Ms. Knutsen, and Mr. Fiedler. The County argued that the Alliance was provided exactly what it asked for in Item

1 of its May 16, 2005 request, and that it was not required to interpret the seating chart already in the Alliance's possession, in response to Item 2. The County argued that its response to the Alliance's "very limited request for public records" was handled appropriately and in accordance with the public disclosure act. CP at 43. The County argued that unless the Alliance could demonstrate that the County did, in fact, possess further nonexempt records which were encompassed by the May 16, 2005 request for public records and had wrongfully withheld them, the Alliance's case must be dismissed.

Shortly thereafter, in order to avoid defending against summary judgment without discovery, the Alliance asked the County for a brief continuance until discovery could be completed. The County rejected the request and informed the Alliance that it would refuse to provide any discovery answers in writing or by deposition.

On November 30, 2006, the Alliance filed a motion to compel discovery and continue summary judgment. In its motion, the Alliance sought an order under CR 37 compelling the deposition of Ms. Knutsen, responses to written discovery, and a continuance of the County's summary judgment motion under CR 56(f) until full discovery was provided. The County moved for a protective order.

In support of its motion to compel, the Alliance attached the declaration of attorney Breean Briggs, which included pages from two internal Spokane County telephone directories that list Steve Davenport at telephone extension 7221, the same number listed next to his name on the February seating chart, as well as Ron Hand. The Alliance argued that these documents would have been responsive to its records request because they contained the identities of Ron and Steve at 7221. The Alliance pointed out that the County refused to provide these and other similar records, including documents that recorded the identity of the other person named Steve from the seating chart.

On December 5, 2006, the court heard the Alliance's motions to compel and to continue the summary judgment hearing. Prior to, and during the hearing, the Alliance offered to narrow initial discovery, including depositions, to the core issues of liability—namely, whether documents existed at the time the

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request was made and the search processes-and to delay discovery on issues related to penalties until after summary judgment on liability. In its oral ruling, the trial court ordered the deposition of Ms. Knutsen by written questions under CR 31. The trial court narrowed the scope of the questions to the following two issues: whether documents existed that were responsive to the May 16, 2005 records request, and the process used to find them. The court continued the summary judgment hearing and the motion to compel.

*6 The written deposition of Ms. Knutsen was finally taken on October 12, 2007, and Ms. Knutsen answered 18 out of 53 questions. Four months later, the County provided answers to five more written questions. The County admitted that it did not know the date Ms. Knutsen's hard drive on her old computer was wiped and that there was no record that it was wiped prior to the May 16, 2005 request for records from that computer's hard drive. The County's response indicates that it had made no efforts to confirm whether Ms. Knutsen's old computer retained any record of the seating chart. In its answers to remaining deposition questions, the County responded as follows:

QUESTION 9. Please identify the date that the data on Pam Knutsen's "old PC" was wiped off its hard drive as described in the Affidavit of Bill Fiedler at paragraph 6 (Exhibit 3).

ANSWER: Unknown.

QUESTION 10. Please identify the person who performed the data wipe as described in the previous question.

ANSWER: To the best of our knowledge, Angela Kane. However, it could have been John Schlosser. There is no record of who did that work or when precisely it was done.

....

QUESTION 12. Please describe any and all efforts made by County employees to confirm whether or not Pam Knutsen's old "PC" retained any record of the seating chart at Exhibit 1 to this deposition.

ANSWER: There are no efforts in that regard, on this or any other computer. Once a PC is "wiped" there is no reason to check to see if that process was completed or successful.

CP at 610-11.

On April 4 and May 6, 2008, the Alliance filed a cross-motion for summary judgment and a response, supported by affidavits from the County's BPD. The County asked the trial court to strike these declarations as irrelevant and speculative.

At the hearing on May 13, 2008, the parties agreed to argue their respective summary judgment motions first and reach discovery issues as necessary. Finding there had been ample time for discovery, the trial court denied the Alliance's motion to compel discovery and granted summary judgment to the County. This appeal followed.

ANALYSIS

A. Standard of Review. We review a trial court's grant of summary judgment de novo, engaging in the same inquiry as the trial court. Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). "A material fact is one that affects the outcome of the litigation." Owen v. Burlington N. Santa Fe R.R., 153 Wn.2d 780, 789, 108 P.3d 1220 (2005). When considering a summary judgment motion, the court must construe all facts and reasonable inferences in the light most favorable to the nonmoving party. Lybbert, 141 Wn.2d at 34. Factual issues may be decided as a matter of law only if reasonable minds could reach but one conclusion. Sherman v. State, 128 Wn.2d 164, 184, 905 P.2d 355 (1995).

*7 The first issue on appeal concerns whether the trial court erroneously granted the County's motion for summary judgment. The Alliance contends that it was entitled to summary judgment because the County violated the PRA by failing to conduct a reasonable search for the documents requested. The County contends that the Alliance failed to present admissible, credible evidence beyond "wild speculation and conspiracy theories" demonstrating that the County violated the PRA when it responded to the

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Alliance's May 16, 2005 public records request. Br. of Resp't at 19.

B. *Public Records Act*. The public records provisions of the public disclosure act were enacted in 1972 by initiative, formerly chapter 42.17 RCW, now codified at chapter 42.56 RCW. The PRA is a “‘strongly worded mandate for broad disclosure of public records.’” *Progressive Animal Welfare Soc’y v. Univ. of Wa.*, 125 Wn.2d 243, 250-51, 884 P.2d 592 (1994) (quoting *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)). Courts must liberally construe the PRA’s disclosure provisions to promote full access to public records and narrowly construe its exemptions. Former RCW 42.17.251 (1992). We are cognizant of the PRA’s policy “‘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.’” *Smith v. Okanogan County*, 100 Wn.App. 7, 11, 994 P.2d 857 (2000) (quoting former RCW 42.17.340(3) (1992)).

Under the PRA, all state and local agencies must make available for public inspection and copying any public record not falling within a statutory exemption. Former RCW 42.17.260(1) (1997). The PRA requires agencies to provide “‘the fullest assistance to inquirers and the most timely possible action on requests for information.’” *Spokane Research & Defense Fund v. West Cent. Cmty. Dev. Ass’n*, 133 Wn.App. 602, 606, 137 P.3d 120 (2006) (quoting former RCW 42.17.290 (1995)). Further, agencies “‘shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request’” except under very limited circumstances. Former RCW 42.17.270 (1987). “‘The agency 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.’” *Smith*, 100 Wn.App. at 11 (quoting former RCW 42.17.340(1)).

The PRA closely parallels the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1970), as amended, (Supp.V, 1975); thus, where appropriate, Washington courts look to judicial interpretations of FOIA in construing the PRA. *Hearst Corp.*, 90 Wn.2d at 128.

C. *The Electronic Information Log-Item 1*. The Alliance first contends that the County violated the PRA by failing to conduct a reasonably adequate search for the electronic information log of the BPD’s seating chart, including the date created data field. The Alliance asserts, and the County does not dispute, that the County did not search Ms. Knutsen’s original computer.

*8 “The adequacy of the agency’s search is judged by a standard of reasonableness, construing the facts in the light most favorable to the requestor.” *Citizens Comm’n on Human Rights v. Food & Drug Admin.*, 45 F.3d 1325, 1328 (9th Cir.1995). An agency fulfills its obligations under the PRA if it can demonstrate beyond a material doubt that its search was “‘reasonably calculated to uncover all relevant documents.’” *Weisberg v. U.S. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C.Cir.1984) (quoting *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1350-51 (D.C.Cir.1983)). Moreover, the agency must show that it “‘made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’” *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C.Cir.1990).

Importantly, the adequacy of an agency’s search is separate from the question of whether the requested documents are found. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C.Cir. 1999). As the federal courts have made clear, “‘the issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate.’” *Weisberg*, 745 F.2d at 1485. The adequacy of the search, in turn, is judged by a standard of reasonableness and depends upon the particular facts of each case. *Id.*

At the summary judgment stage, where the agency has the burden to show that it acted in accordance with the statute, the trial court may rely on affidavits submitted by the agency demonstrating the adequacy of the search. *Valencia-Lucena*, 180 F.3d at 326 (quoting *Oglesby*, 920 F.2d at 68). Affidavits describing agency search procedures are sufficient for summary judgment purposes only if they were relatively detailed, nonconclusory, and not impugned by evidence in the record of bad faith on the part of the agency. *Zemansky v. U.S. Envtl. Prot. Agency*, 767

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F.2d 569, 573 (9th Cir.1985) (quoting McGehee v. Cent. Intelligence Agency, 697 F.2d 1095, 1102 (D.C.Cir.1983)). Such affidavits must set forth the search terms and the type of search performed, and aver that all files likely to contain responsive materials, if such records exist, were searched. Valencia-Lucena, 180 F.3d at 326 (quoting Oglesby, 920 F.2d at 68).

However, if a review of the record raises substantial doubt, particularly where the requests are well defined and there are positive indications of overlooked materials, summary judgment in favor of the agency is inappropriate. *Id.* (quoting Founding Church of Scientology v. Nat'l Sec. Agency, 610 F.2d 824, 837 (D.C. Cir.1979)).

Here, the County did not provide the record requested—a *complete* electronic information log showing the date of creation of the County's seating chart—because it could not be located on Ms. Knutsen's new computer. But Ms. Knutsen's *new* computer was the only place searched. Mr. Fiedler explained that the original information log could not be found on Ms. Knutsen's new computer because documents on employees' personal or C drives are not backed up on the County network, and therefore, “the only information contained in that particular computer's Hard Drive would be found on its hard drive.” CP at 58. Mr. Fiedler appeared to suggest that the log also could not be found on Ms. Knutsen's old hard drive because “standard practice of the County of Spokane ISD” is to wipe hard drives before they are sold or rebuilt and that “this process was followed with regard to Ms. Knutsen's PC in April 2005.” CP at 58. Mr. Fiedler did not state that Ms. Knutsen's old computer had been searched.

*9 However, the evidence shows that Ms. Knutsen's computer was rebuilt and given to another employee in August 2005—almost three months after the Alliance's request. Contrary to Mr. Fiedler's affidavit, the County admitted it does not know whether the wipe occurred in April 2005. Not only does the County admit that it does not know whether the wipe occurred and has no records showing when the hard drive in Ms. Knutsen's old computer was wiped, or who performed that work, the County admits it made no effort to find out in response to the Alliance's May 16, 2005 request.

In Campbell v. United States Department of Justice, 164 F.3d 20, 28-29 (D.C.Cir.1998), the court held that a search was inadequate when it was evident from the agency's disclosed records that a search of another of its records system might uncover the documents sought. The court in *Campbell* held that the agency “‘cannot limit its search’ “ to only one place if there are additional sources “ ‘that are likely to turn up the information requested.’ “ *Id.* at 28 (quoting Oglesby, 920 F.2d at 68). The court explained:

An agency has discretion to conduct a standard search in response to a general request, but it must revise its assessment of what is “reasonable” in a particular case to account for leads that emerge during its inquiry. Consequently, the court evaluates the reasonableness of an agency's search based on what the agency knew at its conclusion rather than what the agency speculated at its inception.

Id. Likewise, the court in *Valencia-Lucena* stated: “[T]his court has required agencies to make more than perfunctory searches and, indeed, to follow through on obvious leads to discover requested documents.” Valencia-Lucena, 180 F.3d at 325.

The Alliance persuasively argues that the County's affidavits regarding this issue are conclusory, fail to provide sufficient detail to evidence an adequate search, and are controverted by other evidence in the record. “It is well-settled that if an agency has reason to know that certain places may contain responsive documents, it is obligated ... to search barring an undue burden.” *Id.* at 327 (agency's “failure to search the center it had identified as a likely place where the requested documents might be located clearly raises a genuine issue of material fact as to the adequacy of the [agency's] search”).

The County failed to conduct an adequate search for the complete electronic information log showing the date the seating chart was created. It did not search the computer Ms. Knutsen was using when the seating chart was created. On de novo review, the record indicates that the search was deficient and summary judgment for the County was not proper.

D. *Identities of Ron and Steve-Item 2.* The Alliance also contends that the County failed to conduct an adequate search for the records responsive to the sec-

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ond paragraph of its May 16, 2005 records request.

The Alliance's May 16, 2005 records request asked for documents that recorded "[t]he identities of 'Ron & Steve' individuals who are situated near the center of the seating chart [and] the identity of the individual listed as 'Steve' in the cubicle with the number 7221 at the top of the chart." CP at 51. In response to this item, the County stated that it was not required to explain or interpret public records. Nonetheless, Ms. Knutsen later stated in an affidavit that she conducted a search for documents which might reference the identities Ron and Steve and Steve, but found none. Specifically, she stated: "[T]here are no documents which reference the seating chart and identify the full names of 'Ron and Steve' or 'Steve' therein." CP at 62.

*10 The Alliance argues that at the time of the May 16, 2005 request, the County had at least three documents responsive to the second item. The Alliance points to e-mails of March 2005 regarding logistical support for Ron Hand's and Steve Harris's cubicles, and the work list referred to in one of these e-mails. The Alliance argues that the County failed to provide these documents in response to its request and, in doing so, violated the PRA.

The three documents were addressed at the summary judgment hearing on May 13, 2008. The Alliance admitted that those three documents had been provided to it by the County in November 2005 in response to a separate public records request. The Alliance went on to argue that "it just shows that there are plenty of records that have Ron Hand's name on it, Steve Harris's name, Steve Davenport." RP (May 13, 2008) at 23. The Alliance clarified that it was not seeking to litigate the issue of whether or not those individuals should have been hired, rather it "just wanted a record that showed their identity." RP (May 13, 2008) at 23.

The documents produced by the Alliance were not sufficient to defeat the County's motion for summary judgment regarding Item 2. Relying on Daines v. Spokane County, 111 Wn.App. 342, 44 P.3d 909 (2002), the County correctly argues that there is no cause of action under the PRA to enforce the re-disclosure of records known by the Alliance to already be in its possession.

In *Daines*, the plaintiff, Bernard Daines—who was a party to a separate, pending administrative action—sued Spokane County under the PDA, seeking an order to produce e-mails written and received by two county commissioners concerning growth management, as well as statutory per diem penalty and costs for noncompliance. *Id.* at 344-45.

In *Daines*, pursuant to a CR 26 discovery order in an administrative action, the County produced certain e-mails exchanged by the county commissioners. *Id.* at 345. Two years later, in February 1999, Mr. Daines submitted a written request under the PDA for all e-mails written and received by two named county commissioners between

January 1, 1997, and February 8, 1999, concerning growth management. *Id.* Approximately one month later, he asked for copies of all e-mails exchanged by the commissioners between January 1 and April 17, 1997. *Id.*

The County denied both requests. *Id.* In a letter to Mr. Daines, the County explained that no records satisfied his requests because e-mail was stored on magnetic discs—which were erased every five days—and none of the e-mails requested by Mr. Daines had been saved. *Id.* However, in reviewing his own files, Mr. Daines came across the materials from the administrative action. *Id.* The *Daines* court noted that "[i]t was precisely this discovery that alerted him that the County's response to his request was false." *Id.* at 348. Then, "[a]rmed with the knowledge that the records did exist," Mr. Daines filed an action to "enforce strict compliance" with the PDA. *Id.* at 345-46. Mr. Daines argued that the PDA required full compliance with requests and claimed that the County's first response was a per se violation of the PDA. *Id.* at 346. At trial, Mr. Daines conceded for the sake of argument that the e-mails already in his possession from the administrative action were the very items he requested in the PDA action. *Id.* at 345.

*11 This court determined that Mr. Daines was not a "prevailing party" entitled to a remedy under the PDA. *Id.* at 347. In light of the fact that Mr. Daines: (1) had the records in his own files before he filed the action, and (2) knew of this fact, the action could not reasonably be regarded as necessary to obtain the information. *Id.* at 348. This court went on to state that the statute's purpose "to empower citizens to

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extract information from reluctant agencies” would not be served under such facts. *Id.* Accordingly, this court concluded that the PDA did not provide relief to a plaintiff who had the records in hand before the lawsuit was filed. *Id.*

Here, as in *Daines*, the Alliance sought to establish a public records violation as the result of the County's failure to produce certain e-mails and documents in response to the May 16, 2005 request. Like the plaintiff in *Daines*, the Alliance effectively sought to penalize the County for failing to disclose those records, yet again. And while the Alliance also argues that other documents must surely exist, such an argument is entirely speculative and, therefore, insufficient to defeat this part of the County's motion for summary judgment. Thus, the trial court properly granted summary judgment to the County with respect to Item 2.

E. *The Alliance's Motion to Compel Discovery.* The Alliance next contends that the trial court erred by denying its motion to compel discovery. We review a trial court's decision denying a motion to compel discovery for an abuse of discretion where its decision is manifestly unreasonable or based on untenable grounds or reasons. *Lindblad v. Boeing Co.*, 108 Wn.App. 198, 207, 31 P.3d 1 (2001).

On appeal, the Alliance contends that the County engaged in a pattern of unjustified resistance to discovery. According to the Alliance, public records plaintiffs have the same right to discovery as other plaintiffs under discovery rules. In response, the County first argues that the Alliance waived any argument regarding discovery when it went forward with its own summary judgment motion at the hearing on May 13, 2008. Second, the County argues that the Alliance's discovery was overreaching and exceeded not only the scope of discovery typically allowed in a FOIA case, but also the scope of the May 16, 2005 records request at issue.

The Alliance contends that there is no evidence that Washington courts place more restrictions on discovery in a public records case than any other; rather, discovery is bound only by the civil rules. The Alliance further argues that the subject matter of a public records action goes beyond the simple existence or nonexistence of relevant documents, to include the agency's decision not to disclose records and the

grounds for that decision.

The Washington cases cited by the Alliance, however, contain only passing references to discovery and are generally not helpful. But there is substantial federal law on the issue. As noted above, the Washington public disclosure act closely parallels the federal FOIA, “and judicial interpretations of that Act are therefore particularly helpful in construing our own.” *Smith*, 100 Wn.App. at 13.

*12 In general, discovery is not part of a FOIA case, and the decision whether to allow discovery rests within the discretion of the trial court. *Schiller v. Immigration & Naturalization Serv.*, 205 F.Supp.2d 648, 653 (W.D.Tex.2002). Federal courts typically dispose of FOIA cases on motions for summary judgment before a plaintiff is able to conduct discovery. *Id.* (citing *Rugiero v. U.S. Dep't of Justice*, 257 F.3d 534, 544 (6th Cir.2001)). “When discovery is permitted it is to be ‘sparingly granted.’” *Id.* (quoting *Pub. Citizen Health Research Group v. Food & Drug Admin.*, 997 F. Supp 56, 72 (D.D.C.1998), *aff'd in part, rev'd on other grounds*, 185 F.3d 898 (D.C.Cir.1999)).

In an action under FOIA, the scope of discovery is limited to whether complete disclosure has been made by the agency in response to a request for information. *Niren v. Immigration & Naturalization Serv.*, 103 F.R.D. 10, 11 (D.Or.1984). “Whether a thorough search for documents has taken place and whether withheld items are exempt from disclosure are permissible avenues for discovery.” *Id.* In fact, when courts have permitted discovery in FOIA cases, it generally is limited to the scope of the agency's search and its indexing and classification procedures. *Schiller*, 205 F.Supp.2d at 653-54 (quoting *Church of Scientology v. Internal Revenue Serv.*, 137 F.R.D. 201, 202 (D.Mass.1991)).

Here, the County persuasively argues that the Alliance's discovery was overreaching. The complaint references only one request for public records—the Alliance's May 16, 2005 letter. The discovery sought by the Alliance went far beyond the issue of whether a reasonably adequate search for documents had taken place. Rather, the Alliance inquired into such areas as: hiring practices and job postings; information about County meetings whereby the participants discussed withholding records, the identity of those

Not Reported in P.3d, 151 Wash.App. 1043, 2009 WL 2456857 (Wash.App. Div. 3)
(Cite as: 2009 WL 2456857 (Wash.App. Div. 3))

who make the hiring decisions, the experience and qualifications of those who had applied for the positions of development assistance coordinator 1 and 2, Ms. Knutsen's promotion date and the hiring process by which she was selected for her current position, and facts regarding the hiring of three specifically named individuals who appear to have nothing to do with this case.

Discovery which seeks information concerning "the policies, procedures, and operational guidelines" for an agency's operations "far exceeds the limited scope of discovery usually allowed in a FOIA case concerning factual disputes surrounding the adequacy of the search for documents." *Schiller*, 205 F.Supp.2d at 654. Accordingly, the trial court did not abuse its discretion by denying the Alliance's motion to compel.

F. *Conclusion*. The County violated the PRA by failing to conduct a reasonably adequate search for the electronic information log. Accordingly, we reverse the summary judgment related to Item 1 of the Alliance's request and affirm summary judgment in favor of the County on Item 2-the identities of Ron and Steve, documents provided to the Alliance under a previous request. We affirm the denial of the motion to compel.

*13 Finally, we remand to the trial court for determination of attorney fees, costs, and penalties against the County pursuant to former RCW 42.17.340(4) (recodified as RCW 42.56.550 in July 2006), and for a determination of attorney fees and costs on appeal related to the issue of the failure of the County to make a reasonably adequate search for the electronic information log. *See* RAP 18.1(i).

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR: SWEENEY and BROWN, JJ.
Wash.App. Div. 3,2009.
Neighborhood Alliance of Spokane County v. County of Spokane
Not Reported in P.3d, 151 Wash.App. 1043, 2009 WL 2456857 (Wash.App. Div. 3)

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

NEIGHBORHOOD ALLIANCE OF
SPOKANE COUNTY, a non-profit
corporation,

Appellant,

v.

COUNTY OF SPOKANE, a political
subdivision of the State of Washington,

Respondent.

No. 27184-6-III

ORDER DENYING MOTION
FOR RECONSIDERATION
AND GRANTING MOTION
TO PUBLISH

The court has considered Neighborhood Alliance's motion for reconsideration, the response thereto, and the record and file herein, and is of the opinion the motion should be denied.

The court has also considered Spokane County's motion to publish the court's opinion of August 11, 2009, the response thereto, and the record and file herein, and is of the opinion the motion to publish should be granted. Therefore,

IT IS ORDERED the motion for reconsideration is denied.

IT IS FURTHER ORDERED the motion to publish is granted. The opinion filed by the court in August 11, 2009, shall be modified on page 1 to designate it is a published opinion and on page 29 by deletion of the following language:

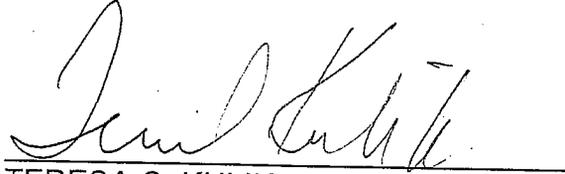
No. 27184-6-III

Neighborhood Alliance v. County of Spokane

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

DATED: December 15, 2009

FOR THE COURT:

A handwritten signature in cursive script, appearing to read "Teresa C. Kulik", written over a horizontal line.

TERESA C. KULIK
ACTING CHIEF JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **Petition for Review** by the following indicated method or methods:

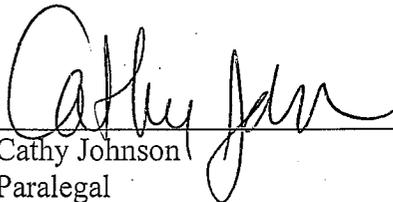
- by **hand-delivering** a full, true, and correct copy thereof in sealed, first-class envelopes, addressed to the person shown below, the last-known address of the person on the date set forth below.

**PAT RISKEN
EVANS, CRAVEN & LACKIE
LINCOLN BUILDING #250
818 W. RIVERSIDE AVENUE
SPOKANE, WA 99201**

- by causing full, true, and correct copies thereof to be **hand-delivered** and filed at:

Washington State Court of Appeals
Division III
500 N. Cedar Street
Spokane, WA 99201

DATED this 13th day of January 2010.



Cathy Johnson
Paralegal
Center for Justice
35 W. Main, Ste. 300
Spokane, WA 99201