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STATE OF WASHINGTON  
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No. 87656-8

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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RESIDENT ACTION COUNCIL,  
Respondent,  
V.  
SEATTLE HOUSING AUTHORITY  
Appellant.

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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**BRIEF OF AMICUS CURIAE COLUMBIA LEGAL SERVICES**

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## I. INTRODUCTION

The Public Records Act, RCW 42.56 *et seq.* (PRA), requires that the Seattle Housing Authority (SHA) disclose public housing grievance hearing decisions, if those decisions can be redacted to remove personal information.

The parties debate the meaning of two provisions of the PRA, RCW 42.56.210(1) and RCW 42.56.230(1). SHA asserts that these provisions do not require it to turn over any document held within a file that it maintains for one of its tenants, even if that document can be redacted to remove exempt personal information.<sup>1</sup> *See* Appellant's Brief at 19-25; Reply Brief at 10-13. SHA is incorrect. The Court should reject SHA's strained reading of relevant statutory provisions and enforce the PRA's plain language.

## II. STATEMENT OF THE CASE

Amicus adopts the statement of the case set out by the Respondent, Resident Action Council (RAC), in its brief. *See* Respondent's Brief at 3-9.

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<sup>1</sup> The parties dispute the extent of the redactions that SHA made to the grievance hearing decisions it turned over to RAC. Amicus takes no position on whether those redactions complied with the PRA. Rather, amicus simply shows that the PRA requires SHA to disclose redacted hearing decisions.

### **III. STATEMENT OF INTEREST**

#### **A. Columbia Legal Services' Interest In The Subject Matter.**

Amicus Curiae, Columbia Legal Services (CLS), is a non-profit law firm that represents low income Washingtonians in a variety of civil legal matters. Over the years, CLS, while representing its clients and working with other organizations with similar missions, has utilized the PRA to investigate allegations of problems and potential illegalities in governmental systems in many different arenas. The PRA has been an invaluable tool in revealing governmental policy and practices in Washington's prisons, in its schools and in the agencies entrusted with assisting people living with disabilities or low incomes.

CLS seeks amicus status to respond to SHA's argument that all documents public agencies keep in individual client files are completely exempt from disclosure even where redaction of personal information is possible. If the Court were to accept this argument, it would be much more difficult for CLS, and other organizations seeking to assist people who depend on government agencies, to represent clients in attempting to improve governmental systems that impact many Washington citizens.

#### IV. ARGUMENT

##### A. **The PRA Balances Important Interests By Requiring Broad Disclosure Of Public Records While Also Protecting Confidential, Personal Information.**

The PRA is “a strongly worded mandate for broad disclosure of public records” that requires “full access to information concerning the conduct of government on every level.” *Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405*, 164 Wn.2d 199, 209 (2008). Open access to information helps ensure that “public officials are honest and impartial in the conduct of their public offices.” *Cowles Pub. Co. v. State Patrol*, 109 Wn.2d 712, 719 (1988).

The legislature embedded these principles in the PRA:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.

RCW 42.56.030.

While requiring broad disclosure as the general rule, the PRA also contains specific, narrowly construed exemptions that prohibit disclosure of information that is not a matter of legitimate public concern. *See, e.g.*,

RCW 42.56.230-.470 (provisions that identify information exempt from disclosure); *see also*, *In re Request of Rosier*, 105 Wn.2d 606, 609-10 (1986) (“[The PRA] does not mandate unconditional disclosure. The statute indicates in various sections that the personal privacy interests of individuals must be considered and accommodated by exemption from public disclosure.”).

RCW 42.56.230(1), at issue in this case, exempts “[p]ersonal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.” RCW 42.56.230(1) (hereinafter “public benefits files” or “§ .230(1) files”).

The Legislature balanced the public’s “right to know” with the privacy interests of individuals by requiring government agencies to redact exempt personal information from public records and disclose all remaining non-exempt information. *See* RCW 42.56.070(1) (requiring redaction of “identifying details” in public records); *and* RCW 42.56.210(1); *also*, *Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wn.2d 243, 261 (1994) (“Portions of records which do not come under a specific exemption must be disclosed.”). SHA’s argument violates the PRA’s plain language by including an overbroad

definition of exempt information and by refusing to acknowledge the Act's redaction and disclosure requirement.

**B. The PRA Requires That SHA Redact, Not Withhold, Its Grievance Hearing Decisions.**

SHA makes a sweeping assertion that § .230(1) creates “categorically exempt files” and that § .210(1) does not require SHA to redact and disclose any document maintained within such “files.” *See* Appellant's Brief at 19, 23-24. SHA's proposed interpretation ignores the PRA's plain language and is directly contrary to the Act's main purposes.

**(1) § .230(1) only exempts “personal information” not whole documents or files.**

Section .230(1) does not exempt public benefits “files” from disclosure. It exempts “[p]ersonal information in any files[.]” RCW 42.56.320(1) (emphasis added). SHA's claim that the legislature intended that entire files are “categorically exempt” is not consistent with this statutory language, which plainly provides no exemption for material within those files that is not “personal.” *See Lindeman v. Kelso Sch. Dist. No. 458*, 162 Wn.2d 196, 202 (2007) (“[W]e construe [§ .230(1)] narrowly, in accordance with the directive of the [PRA], by exempting information only when it is both ‘personal’ and ‘maintained for students.’”).

SHA's argument also ignores the distinction the PRA makes between "information" and "records." For example, § .210(1) requires that agencies must disclose "records" if exempt "information" can be deleted from those "records." RCW 42.56.230(1); *see also, Mechling v. City of Monroe*, 152 Wn. App. 830, 843 (2009) ("If an exemption applies and the requested records contain both exempt and nonexempt information, the exempt information may be redacted, but the remaining information must be disclosed.") (emphasis added). In fact, "[w]here the legislature intended to exempt entire records, it has done so explicitly." *Koenig v. City of Des Moines*, 158 Wn.2d 173, 182 n.5 (2006) (*citing* former RCW 42.17.310(1)(j)-(k) & (q)); *see also* RCW 42.56.370 ("Client records maintained by an agency that is a domestic violence program....are exempt from disclosure under this chapter."). By its plain terms, § .230(1) exempts only personal information held in public benefits files, not all of the records that file contains.

**(2) *RCW 42.56.210(1)'s plain language requires SHA to redact its hearing decisions.***

Section .230(1) prohibits SHA from disclosing any personal information included in its hearing decisions. RCW 42.56.210(1) clarifies the scope of § .230(1)'s exemption by requiring SHA to redact any personal information and disclose the rest of each hearing decision. *See*

RCW 42.56.210(1); *cf.*, *Progressive Animal Welfare Soc.*, 125 Wn.2d at 261; *Mechling*, 152 Wn. App. at 843.

RCW 42.56.210(1), the PRA redaction and disclosure provision at issue here, reads in relevant part:

Except for information described in RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought.

RCW 42.56.210(1). This provision specifically identifies only two instances in which a government agency is not required to redact exempt information and release a redacted record – when a record includes either “information described in RCW 42.56.230(3)(a)” or “confidential income data” exempted by RCW 84.40.020. Section .210(1) explicitly excludes these two types of information, but contains no mention of RCW 42.56.230(1) or the personal information it describes. Because RCW 42.56.230(1) is not explicitly excluded from the general rule requiring redaction, the plain language of RCW 42.56.210(1) requires SHA to redact and disclose its hearing decisions. *State v. Kelley*, 168 Wn.2d 72, 83 (2010) (“Expression of one thing in a statute implies exclusion of others and this exclusion is presumed to be deliberate.”).

**(3) Requiring SHA to redact and disclose its hearing decisions serves vital governmental interests.**

Section .210(1) requires redaction of information, “the disclosure of which would violate personal privacy or vital governmental interests[.]” RCW 42.56.210(1) (emphasis added). SHA points out that § .230(1) does not include an explicit reference to “privacy,” while 42.56.230(3), relating to employment files, includes such a reference. *Compare* RCW 42.56.230(1), *with* 42.56.230(3).<sup>2</sup> SHA asserts that this distinction is significant in determining whether § .230(1) documents must be redacted. *See* Appellant’s Brief at 23. Again, SHA’s argument misses the mark. Section .210(1) doesn’t require redactions only when disclosure would violate “personal privacy.”<sup>3</sup> It also applies to information where redaction serves “vital governmental interests.” *See* RCW 42.56.210(1).

As discussed above, the PRA is a carefully crafted statutory balance between two vital governmental interests, providing the public with broad access to information about its government and protecting personal, private information from public scrutiny. *See id.* (requiring redaction of personal information and release of all other non-exempt

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<sup>2</sup> RCW 42.56.230(3) reads: “Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy[.]”

<sup>3</sup> The terms “personal privacy” and “right of privacy” have the same meaning under the PRA. RCW 42.56.050.

information); *also, In re Rosier*, 105 Wn.2d at 610 (“[The PRA’s] statutory scheme suggests that the Legislature believes privacy interests are the only interests sufficiently important to block disclosure of [public] records.”); *and, Deer v. Dep’t of Soc. & Health Services*, 122 Wn. App. 84, 93 (2004) (statute governing the disclosure of information held in dependency files “furthers the [PRA’s] policy of allowing access to records held by government agencies but simultaneously protects the privacy of dependent juveniles and their families.”).

The Legislature has tilted this balance towards disclosure in some places in the PRA. *See, e.g.*, RCW 42.56.230(3) (exempting personal information of government employees only “to the extent that disclosure would violate their right to privacy.”).<sup>4</sup> In § .230(1), the Legislature weighted the scales differently and placed more emphasis on protecting individual privacy.

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<sup>4</sup> Section .230(3) refers to the right to privacy because at times the government must release even the most personal information about its employees, if it serves a legitimate governmental purpose. *See e.g.*, *Cowles Pub. Co.*, 109 Wn.2d at 726 (instances of police misconduct “occurred in the course of public service” and so are no longer “private, intimate, personal details of the officer’s life” that should be kept hidden from the public); *Spokane Research & Def. Fund v. City of Spokane*, 99 Wn. App. 452, 455 (2000) (because public has a legitimate interest in the personal information contained in city manager’s performance review, it must be disclosed). Similar considerations do not apply to personal information held in public benefits files. *See In re Rosier*, 105 Wn.2d at 611.

The Legislature recognized that government rarely, if ever, has a legitimate reason to publically disclose the personal information of private citizens connected to government solely because of their age, infirmity or financial need. *See In re Rosier*, 105 Wn.2d at 611 (the PRA generally prohibits “scrutiny of particular individuals who are unrelated to any governmental operation.”) Section .230(1) therefore prohibits disclosure of personal information at all times irrespective of whether disclosure violates the right to privacy. *See* RCW 42.56.230(1). Maintaining the confidentiality of personal information is the “vital governmental interest” underlying the § .230(1) exemption. Section .210(1) by its explicit terms requires SHA to redact personal information in its hearing decisions in order to serve this vital governmental interest. *See* RCW 42.56.210(1).

*Lindeman v. Kelso Sch. Dist. No. 458*, 127 Wn. App. 526 (2005), *rev'd on other grounds*, 162 Wn.2d 196 (2007), cited by SHA, does not hold that § .210(1) is inapplicable to public benefits files. In *Lindeman*, the court ruled that an entire videotape of a fight between students was exempt from disclosure. Redaction to remove all exempt information would have left “no meaningful information remaining on the tape.” *Id.* at 541.<sup>5</sup> The

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<sup>5</sup> While *Lindeman* is distinguishable from the facts here, any persuasive authority it may have is limited because this Court subsequently overturned the decision and ordered that the school district disclose the videotape. *See Lindeman*, 160 Wn.2d at 204.

court of appeals rightly decided that redaction in that unique situation was pointless given the unique nature of the record requested in that case.

By contrast, here, SHA's hearing decisions RAC provide a wealth of useful, non-exempt information, even after all personal information has been redacted. *Lindeman* does not support SHA's argument that redactions are not required, even if feasible.

***(4) If SHA's argument is accepted, many different types of government records would not be subject to the PRA's redaction and disclosure requirement.***

SHA's argument that the word "privacy" must appear in an exemption for § .210(1)'s redaction requirement to apply, if accepted, would radically undermine the Legislature's clear intent that "redact and disclose" is the rule with nearly all public documents. Many of the PRA's exemptions do not include an explicit reference to "privacy." *See, e.g.*, RCW 42.56.230(4) (financial account numbers exempt); RCW 42.56.240(6) (personal and financial information related to a small loan); RCW 42.56.240(2) (identities of crime victims); RCW 42.56.240(5) (identities of child victims of sexual assault); RCW 42.56.270 (financial and proprietary information.). Under SHA's argument, because these exemptions also lack an explicit reference to "privacy," § .210(1)'s redaction and disclosure requirement does not apply to any record or document that contains any of this information.

Such a wide limitation on access to non-exempt information would be contrary to both the legislative mandate for broad access to public records and clear rulings from this Court. *See, e.g., Lindeman*, 162 Wn.2d at 203 (“simply placing the videotape in the student's file” does not make it exempt under § .230(1)); *Koenig*, 158 Wn.2d at 181 (2006) (provision at issue exempting “information revealing the identity of child victims of sexual assault” does not include reference to “privacy.” Nonetheless, records containing exempt information must be disclosed following redaction); *also, Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 132 (1978) (exemption that does not include word “privacy” “is inapplicable to the extent that exempt materials in the record can be deleted from the specific records sought[.]”).

**C. SHA’s Argument Is Contrary To The PRA’s Purpose And Will Have A Vast, Negative Impact If Accepted By The Court.**

Acceptance of SHA’s argument that government agencies are not required to disclose redacted documents contained within individual files will have a sweeping impact on the public’s ability to understand and monitor the workings of its government. This case exemplifies how important access to non-exempt information contained within the individual files of recipients of public benefits can be. RAC sought SHA’s grievance hearing decisions in order to review the performance of SHA’s

hearing officer. These decisions, even when appropriate personal information is redacted, provide the best means to measure that performance.

RAC's interest in SHA's hearing officer is well founded. One court has found that SHA's utilization of its hearing officer constitutes a violation of public housing tenants' constitutional rights. *See Shepherd v. Weldon Mediation Services, Inc.*, 794 F. Supp. 2d 1173, 1184 (W.D. Wash. 2011) (“[The hearing officer’s] admissions that he has had no training in the substantive law that governs the landlord-tenant relationship leads the court to conclude that he currently is not qualified to preside over grievance hearings.”) The hearing decisions that RAC seeks allow evaluation of the performance of a public servant who is failing the people he serves. The PRA was designed to allow for exactly this type of investigation and publicity. *See Cowles Pub. Co.*, 109 Wn.2d at 719 (disclosure of documents related to police misconduct necessary to allow public to evaluate investigation and discipline process); *Spokane Research & Def. Fund*, 99 Wn. App. at 455 (public entitled to view city manager’s performance evaluation). Barring RAC access to these decisions even after personal information has been redacted flatly contradicts the PRA’s letter and purpose.

Furthermore, the negative implications of SHA's argument go much beyond the public housing context. The public will lose access to vast stores of non-exempt government information if the Court exempts all documents held in any § .230(1) file from the PRA's redaction and disclosure requirement. Redacted records from such files provide invaluable insights into how government works. Armed with vital, non-exempt information, concerned citizens can petition their government for redress, inform legislators about the need for reform or reassure themselves that government is functioning ethically and effectively.

Denying access to such records will severely limit future investigations into the manner in which schools discipline their students, the sufficiency of health care in our prisons, and, as in this case, the legality of a public housing authority's grievance hearing processes. By completely shielding non-exempt information from disclosure, SHA's interpretation would deny the public its right to monitor its government's performance, in direct contravention of the PRA's express dictates.

## V. CONCLUSION

The plain language of the PRA requires SHA to provide RAC with redacted grievance hearing decisions. SHA's argument to the contrary attacks the very heart of the PRA. The Court should reject it.

Respectfully submitted this 18th day of September, 2012.

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