

67275-4

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NO. 67275-4-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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RESIDENT ACTION COUNCIL,

Respondent,

v.

SEATTLE HOUSING AUTHORITY,

Appellant.

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REPLY BRIEF

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## INTRODUCTION

RAC concedes that the unredacted grievance-hearing decisions are categorically exempt under the PRA. BR 30. Thus, SHA gave RAC the only grievance-hearing decisions subject to RAC's PRA request – those SHA properly redacted pursuant to 24 C.F.R. § 966.57. Aside from its bare assertions, RAC does not argue (here or below) that SHA violated the C.F.R.

Rather, RAC convinced the trial court to review SHA's redactions under the PRA's broad disclosure policy, rather than the C.F.R.'s plain language. The C.F.R. has no similar policy, there is no basis for using a State statute to interpret a HUD regulation, and the C.F.R. is unambiguous in any event.

The court also erred in ordering SHA to create nonexistent documents under the PRA – new, less-redacted versions of the grievance-hearing decisions. RAC agrees that “[i]t is undeniable that an agency has ‘no duty to create or produce a record that is nonexistent.’” BR 26. Yet the trial court's order requires SHA to do just that. RAC's proffered end-run is unpersuasive.

The damages award and injunction are also based on inapplicable PRA provisions. This Court should reverse.

## REPLY STATEMENT OF THE CASE

RAC seems to forget that SHA redacted the grievance-hearing decisions at issue pursuant to 24 C.F.R. § 966.57(a), not under the PRA. The following brief statement of facts corrects any misunderstanding.

SHA public housing tenants who have been adversely affected by SHA's acts (or failures to act) are entitled to an informal grievance hearing. CP 124-25, 146. These hearings are private unless the tenant requests otherwise. BA 6; CP 151, 159 n. 2; RP 23-24; 24 C.F.R. § 966.56(b)(3).

Pursuant to 24 C.F.R. §966.57(a), SHA places a copy of the grievance-hearing decision in the tenant's file. Tenant files are strictly confidential. CP 148.

Also pursuant to 24 C.F.R. § 966.57(a), SHA keeps a copy of the grievance-hearing decisions, "with all names and identifying references deleted," on file in a central location. CP 146, 148; 24 C.F.R. § 966.57(a). These redacted copies are available for inspection by potential complainants, their representatives, and hearing officer personnel. *Id.*

HUD does not further explain or define "all names and identifying references." 24 C.F.R. § 966.57(a); RP 22-23. Rather,

HUD leaves it up to individual housing authorities to implement the C.F.R. as they see fit. *Id.*

Amongst other documents, RAC requested grievance-hearing decisions under the PRA. CP 38-39. SHA promptly provided RAC copies of the redacted grievance-hearing decisions, but did not notify RAC that the redactions were made pursuant to 24 C.F.R. § 966.57(a). CP 29-30. RAC filed suit against SHA two weeks after seeking an explanation for the redactions. CP 3-8, 48.

## ARGUMENT

### **A. The parties agree that the standard of review is *de novo*.**

This Court reviews statutory-interpretation questions *de novo*, sitting in the same position as the trial court. ***Life Care Ctrs. of Am., Inc. v. Dep't of Soc. & Health Servs.***, 162 Wn. App. 370, 374, 254 P.3d 919 (2011). Although it is not conclusive, the Court will give “‘great weight’ to the statutory interpretation of the executive agency charged with a statute's enforcement.” ***Life Care Ctrs.***, 162 Wn. App. at 374-75. The Court looks first to the statute's plain language, enforcing unambiguous statutes according to their plain meaning. 162 Wn. App. at 375. The Court may look at other provisions of the same act, and related statutes to determine their plain meaning. *Id.*

RAC agrees that review is *de novo*, and agrees that courts generally defer to housing-authority interpretations of HUD regulations. BR 12, 22. But RAC argues that this Court should not defer to SHA's interpretation of 24 C.F.R. § 966.57(a), where our Courts do not defer to agency interpretations of the PRA. BR 22-23. As discussed in the opening brief, above, and below, SHA redacted the grievance-hearing decisions under 24 C.F.R. § 966.57(a), not under the PRA's redaction rule, RCW 42.56.210. BA 14-15; RP 17-18. HUD leaves it to housing authorities to implement the C.F.R. as they see fit. BA 15-16; RP 18, 22-23. SHA's interpretation of the C.F.R. is entitled to "great weight." *Life Care Ctrs.*, 162 Wn. App. at 374-75. The trial court erred in giving it no weight.

**B. SHA provided RAC grievance-hearing decisions properly redacted pursuant to 24 C.F.R. § 966.57 – RAC was not entitled to anything else.**

SHA's primary argument on appeal is that it redacted the grievance-hearing decisions in compliance with 24 C.F.R. § 966.57(a), requiring it to delete "all names and identifying references." This issue should turn on the C.F.R.'s plain language, and then on applicable HUD regulations, if any. Instead, the trial court applied the PRA's "broad policy of disclosure," essentially

ruling that “all names” does not mean “all” and narrowly construing (without actually defining) “identifying references.” CP 169-70. This was plainly error.

But RAC spends little time responding to this point, instead arguing that 24 C.F.R. § 966.57(a) does not preempt the PRA. BR 13-18. SHA never raised preemption. RAC does not demonstrate on appeal – and did not prove below – that SHA deleted from the grievance-hearing decisions more than “all names” and references that would identify the tenant. This Court should reverse.

SHA’s argument on this point is based on the following undisputed facts:

- ◆ SHA redacted the grievance-hearing decisions pursuant to 24 C.F.R. § 966.57(a), directing SHA to delete “all names and identifying references”;
- ◆ SHA gave RAC the redacted grievance-hearing decisions in response to RAC’s PRA request;
- ◆ SHA did not make new redactions – it never redacted the grievance-hearing decisions pursuant to the PRA.

“[A]ll names and identifying references” is clear and unambiguous, so must be enforced according to its plain meaning. *Life Care Ctrs.*, 162 Wn. App. at 375. SHA did not “point[] out” that the C.F.R. is “somewhat ambiguous.” BR 20 (citing BA 15). SHA correctly stated that HUD does not define “all names and identifying references,” and leaves it up to housing authorities to implement

the C.F.R. as they see fit. BA 15-16. This does not suggest that the C.F.R.'s plain language is ambiguous.

The trial court should have looked first to the C.F.R.'s plain language and then to other relevant HUD provisions. *Life Care Ctrs.*, 162 Wn. App. at 375. Instead, the court narrowly defined "all names and identifying references" based not on 24 C.F.R. § 966.57(a) or on any other HUD regulation, but on the PRA's "broad policy of disclosure." BA 18-19 (quoting CP 169-70). But there is no basis for using policy underlying a state statute to interpret a federal regulation with no similar policy. BA 18-19; 24 C.F.R. § 966.50.<sup>1</sup>

SHA complied with 24 C.F.R. § 966.57(a). Since the C.F.R. directs SHA to delete "all names," SHA did not err in occasionally deleting names of witnesses, police officers, and SHA employees.<sup>2</sup>

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<sup>1</sup> RAC falsely claims that SHA argues for the first time on appeal that HUD gives housing authorities discretion to interpret and apply the C.F.R. BR 21-22. But in response to the trial court's inquiry, SHA explained that "there's no HUD standard, there's no legal standard of how redaction is supposed to be done," and that HUD provides no guidance other than the C.F.R. itself, such that "every Housing Authority interprets it as it understands it." BA 15-16 (quoting RP 18, 22-23).

<sup>2</sup> RAC falsely claims that SHA argues for the first time on appeal that "identifying references" may include removing items like building names, witnesses and zip codes. BR 21-22. SHA plainly argued at trial that identifying references include the name of anyone appearing in a grievance hearing, all addresses, and any other item, such as locations, that may be an identifier under certain fact patterns. BA 15; RP 22-23.

Nor did SHA err in deleting identifying references such as the title of a newspaper article, which enabled anyone with computer access to quickly find the article, identifying the tenant. BA 16-17. Despite complaining about this redaction below, RAC all but concedes that it was proper. BR 24.

RAC's first two responses address arguments that SHA never raised. BR 13-18. RAC first argues that the grievance-hearing decisions are "public records" as defined by the PRA, so are subject to disclosure unless exempted by the PRA or other statute. BR 13-14. SHA does not claim otherwise. SHA provided the redacted grievance-hearing decision pursuant to RAC's PRA request – SHA never argued that the redacted decisions are not public records subject to disclosure under the PRA.

Although the word "preemption" is found nowhere in SHA's opening brief, RAC next argues that the C.F.R. does not preempt the PRA. BR 14-18 (citing BA 14, 18-19).<sup>3</sup> RAC's claim appears to be based on SHA's argument that 24 C.F.R. § 966.57(a) narrowly

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<sup>3</sup> RAC far too broadly defines "prospective complainants" as "any person living in one of 6,000 public housing dwelling units," and argues that "almost anyone could potentially serve as a tenant's 'representative.'" BR 18. "Prospective complainants" includes those tenants who are adversely affected by SHA's actions or failures to act, where only those tenants are entitled to grievance hearings. Their "representative[s]" are the persons who actually represent them in a grievance hearing, not "almost anyone." BR 18.

defines the class of persons who may obtain the redacted grievance-hearing decisions. BR 9, 16-18. But SHA never claimed that the C.F.R. “exclusively controls access to grievance decisions.” BR 14. Contrary to that strawman argument, SHA provided the redacted grievance-hearing decisions pursuant to RAC’s PRA request. SHA’s point is that 24 C.F.R. § 966.57(a) does not have a broad-disclosure policy, unlike the PRA, evidenced in part by the narrow class of persons to whom the C.F.R. requires disclosure. BA 14, 18-19.

When it finally addresses the C.F.R., RAC argues that “all names” does not “literally” mean all names. BR 23. In other words, RAC argues that the C.F.R. does not mean exactly what it says. *Id.* This Court does not rewrite federal regulations.

RAC does not discuss “identifying references,” other than to summarily conclude – without any argument or authority – that “not all of the redactions SHA made . . . were allowed by 24 CFR 966.57(a).” BR 19-20. RAC’s argument on this point was also completely conclusory at trial. BA 16-17. RAC still fails to point to even one specific redaction that supposedly violates 24 C.F.R. § 966.57(a). BR 19-20.

RAC's real complaint seems to be that SHA does not always remove all names and identifying references. BR 24. But before the trial court, RAC alleged that only one grievance-hearing decision within the scope of its request was redacted too heavily, but that decision includes the names of the tenant's girlfriend, the property manager, and the police officer, as well as the tenant's apartment building and number. CP 157. This does not prove that SHA redacted too much, but suggests that SHA may have redacted too little this one time. *Id.*

Finally, RAC faults SHA for using "clerical people" to redact the grievance-hearing decisions and complains that different people may make different redactions. BR 25. HUD does not require housing authorities to do anything else, but leaves it solely to their discretion to implement 24 C.F.R. § 966.57(a). BA 15-16. And deciding what constitutes an "identifying references" necessarily requires some discretion. Some differences in the redaction process naturally follow – that does not violate the C.F.R.

RAC would apparently have SHA use attorneys to redact the grievance-hearing decisions. But directing more resources to this task would take funding away from programs benefiting SHA's tenants.

In sum, SHA gave RAC the only thing it was entitled to – grievance-hearing decisions properly redacted pursuant to 24 C.F.R. § 966.57. This Court should reverse.<sup>4</sup>

**C. The PRA does not require SHA to give RAC anything other than the grievance-hearing decision redacted pursuant to 24 C.F.R. § 966.57(a).**

As discussed above and at length in the opening brief, determining whether SHA properly redacted the grievance-hearing decisions should begin and end with an analysis of 24 C.F.R. § 966.57(a). Nonetheless, SHA argued in the opening brief that the PRA redaction provision – RCW 42.56.210 – does not apply and that PRA does not require public agencies to create otherwise nonexistent documents in any event. BA 19-25. In other words, all RAC is entitled to under the PRA are the grievance-hearing decisions that SHA redacted pursuant to 24 C.F.R. § 966.57(a). This Court should reverse.

**1. The unredacted grievance-hearing decisions are categorically exempt under the PRA, so are not subject to the PRA redaction provision.**

The PRA exempts certain “personal information” from public inspection, enumerating seven categories of exempt personal

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<sup>4</sup> RAC asks this Court to hold that “SHA must redact (from publically-available grievance decisions) the names and identifying information of SHA residents only.” BR 25. The only “publically-available” grievance decision are the copies SHA redacted pursuant to 24 C.F.R. § 966.57 and produced to RAC.

information. RCW 42.56.230. The first subsection exempts from disclosure the “[p]ersonal information in any files maintained for . . . clients of public institutions . . . or welfare recipients.” RCW 42.56.230(1). Other subsections exempt personal information only “to the extent that disclosure would violate the[] right to privacy” belonging to those persons encompassed by the exemption. RCW 42.56.230(3) & (4).

Subsection (1) does not include the privacy-right language in sections (3) and (4). Rather, subsection (1) exempts all personal information of government institution clients, regardless of whether the disclosure of such information “would violate their right to privacy.” *Compare* RCW 42.56.230(1) *with* §§ .230(3) & (4). Based on this distinction, the appellate court previously held that subsection (1) creates a categorical exemption; *i.e.* – the personal information is exempt, period, irrespective of whether disclosure would violate a privacy right. BA 20-21 (discussing ***Lindeman v. Kelso Sch. Dist. No. 458***, 127 Wn. App. 526, 534-35, 111 P.3d

1235 (2005), *rev'd on other grounds*, 162 Wn.2d 196, 172 P.3d 929 (2007).<sup>5</sup>

The PRA also includes an exception to these enumerated exemptions, providing that some otherwise exempt documents must be produced if they can be redacted to delete “information, the disclosure of which would *violate personal privacy or vital governmental interests*.” RCW 42.56.210(1) (emphasis added). But again, RCW 42.56.230(1) categorically exempts all personal information of government institution clients regardless of whether disclosing it “would violate personal privacy or vital governmental interests.” *Compare* RCW 42.56.210(1) *with* § .230(1). The PRA redaction rule does not apply to §.230(1), but only to the more narrow exemptions, protecting person information only to the extent that disclosing it would violate a privacy right. BA 22-24.

The trial court correctly found that the unredacted grievance-hearing decisions in tenant files are categorically exempt under RCW 42.56.230(1). CP 169. RAC did not cross-appeal, so cannot challenge the court's ruling here. In any event, RAC practically

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<sup>5</sup> *Lindeman* analyzes former RCW 42.17.310, the predecessor statute to RCW 42.56.230. *Lindeman*, 162 Wn.2d at 199 n.1. The recodification was not intended to “effectuate any substantive change to any public inspection and copying exemption.” LAWS OF 2005, ch. 274, §§ 103, 401-03.

conceded the point at trial (CP 18) and now states that it “has always conceded that” RCW 42.56.230(1) applies. BR 30.

But RAC ignores SHA’s arguments that since the grievance-hearing decisions are categorically exempt under RCW 42.56.230(1), they cannot be redacted under RCW 42.56.210(1). *Compare* BA 22-24 *with* BR 29-31. RAC states without any argument or authority that documents exempt under § .230(1) can be redacted pursuant to § .210(1). BR 30. But it says not one word about SHA’s argument on this point. *Compare* BA 22-24 *with* BR 29-31.

**2. RAC agrees that the PRA does not require SHA to create new, non-existent documents.**

RAC agrees that “[i]t is undeniable that an agency has ‘no duty to create or produce a record that is nonexistent.’” BR 26 (quoting *Bldg. Indus. Ass’n v. McCarthy*, 152 Wn. App. 720, 734, 218 P.3d 196 (2009)). But it argues that SHA could “correct” or “restore” its allegedly improper redactions without creating a new document. BR 26-29. RAC would apparently require SHA to use the categorically exempt grievance-hearing decisions in client files to fill-in the redacted grievance-hearing decisions. BR 28-29. Lacking any support for this argument, RAC says only that the PRA does not prevent it. BR 29.

RAC's end-run is unpersuasive. The simple fact is that SHA does not have the documents RAC seeks – a version of the grievance-hearing decisions that is less-redacted than the version SHA created, maintained, and made available for public dissemination pursuant to 24 C.F.R. § 966.57(a). To satisfy RAC, SHA would have to create a new document by re-redacting categorically exempt grievance-hearing decisions (which RAC agrees the PRA cannot require) or by using exempt grievance-hearing decisions to add information back into the redacted versions. Calling this “correct[ing]” or “restor[ing]” does not change the simple fact that SHA would have to create something it does not already have.

**D. The PRA does not require SHA to produce electronic documents for RAC.**

The trial court erroneously ordered SHA to produce the grievance-hearing decisions electronically based on a “permissive, not mandatory” model rule that is not binding and creates no legal duty. BA 26-27; WAC 44-14-00003. SHA did not have the documents stored electronically when RAC requested them. BA 26-27. And producing electronic copies would not have saved RAC

any money – the stated reason for its request for electronic documents. BA 28.

RAC agrees that the PRA does not require any public agency to produce documents electronically. BR 31. It argues, however, that SHA had to produce the grievance-hearing decisions electronically because it would not be “burdensome” to do so. BR 35. This argument misses the point. Although SHA does not store the grievance-hearing decision electronically, it did not disagree that it had the capacity to scan them in and provide them the RAC electronically. It did not do so, however, because RAC requested electronic documents “to minimize reproduction costs,” and providing the documents electronically would have cost the same as providing photocopies. CP 41, 96.

RAC addresses this point only in passing, stating that SHA billed RAC for a messenger fee that would not have been incurred if the documents had been sent electronically. BR 34. But the court ruled that SHA could not pass this cost onto RAC. CP 167, 170, 171. The trial court erred in ordering SHA to create electronic records after it had already copied and produced all responsive documents.

**E. The trial court erroneously awarded damages and injunctive relief, where SHA had no duty to create less-redacted versions of the categorically exempt grievance-hearing decisions.**

A party seeking an injunction must prove: (1) a clear legal or equitable right; (2) a well-grounded fear of immediate invasion of that right; and (3) actual or impending substantial harm. *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209-10, 995 P.2d 63 (2000) (quoting *Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982)). As discussed at length in the opening brief, each item in the injunction fails this test on at least one and usually two factors. BA 25-34. The injunction requires SHA to re-redact the categorically exempt grievance-hearing decisions to create new nonexistent documents – something both parties agree the PRA does not require. This Court should reverse.

**1. RAC cannot be “adversely affected” by the lack of published procedures for requesting documents.**

The trial court plainly erred in enjoining SHA to publish procedures for requesting records, where RCW 42.56.040, which directs public agencies to publish procedures for requesting records, specifically provides that an agency’s failure to publish procedures does not “adversely affect[]” a requesting party. Since RAC could not have been “adversely affected” it was not injured.

**Kucera**, 140 Wn.2d at 209. In any event, RAC plainly knew how to request records from SHA, and does not claim otherwise. CP 28-32.

RAC confuses SHA's arguments, claiming that SHA misapplies RCW 42.56.040's provision that the failure to publish procedures for requesting records does not adversely affect a party to the statute requiring SHA to explain its redactions in writing. BR 40. SHA made no such argument. RAC does not otherwise respond to SHA's argument that its failure to publish procedures for requesting records did not injure RAC. *Id.*

RAC later argues that injunctive relief was appropriate where the PRA does not specify a remedy for an agency's failure to publish rules for requesting records. BR 44. But RAC still has not shown injury, a necessary prerequisite to injunctive relief. **Kucera**, 140 Wn.2d at 209-10.

**2. SHA does not assert any exemptions not listed in the PRA.**

RCW 42.56.070(2) requires an agency to publish a list of laws, "other than those listed in" the PRA, that "the agency *believes* exempts or prohibits disclosure." RCW 42.56.070(2) (emphasis added). SHA explained that it did not believe 24 C.F.R. §966.57 to be an exemption, but believed it to create a publically-available

document. CP 18, 169, 297. The unredacted grievance-hearing decisions are categorically exempt under the PRA, so were not subject to RAC's PRA request. *Supra*, Argument § C. RAC agrees. *Id.* Thus, SHA never asserted an exemption outside of the PRA, so was not required to list any.

RAC does not respond. BR 40-42.

**3. SHA had no duty to adopt policies for implementing 24 C.F.R. § 966.57(a), so RAC has no corresponding right.**

There is no federal provision requiring SHA to “[e]stablish a policy and procedure for redacting grievance hearing decisions,” yet this is exactly what the trial court ordered SHA to do. CP 310. The PRA plainly does not direct SHA to establish policies to implement HUD regulations, and apparently does not direct public agencies to adopt policies for redacting documents pursuant to RCW 46.52.070(1) (which does not apply in any event). Since SHA has no duty to adopt procedures to implement 24 C.F.R. § 966.57(a), RAC has no right to such procedures. ***Locke v. Pac. Tel. & Tel. Co.***, 178 Wash. 47, 53, 33 P.2d 1077 (1934) (“There can certainly be no right without a corresponding duty”). Thus, injunctive relief is inappropriate. ***Kucera***, 140 Wn.2d at 209-10.

RAC responds that the PRA requires agencies to adopt “published rules’ for the public examination of records.” BR 41 (quoting RCW 42.56.070(1)). RCW 42.56.070(1) provides that an agency will make available all non-exempt public records “in accordance with published rules.” This provision does not require agencies to publish their redaction procedures. Again, there is no federal or state rule that requires agencies to do so.

**4. There is no federal regulation requiring SHA to explain deletions made under 24 C.F.R. § 966-57(a), and the PRA provision on this point does not apply.**

No HUD regulation requires SHA to explain the deletions it makes under the C.F.R. Although an agency deleting information pursuant to RCW 42.56.070(1) must explain its deletions “fully in writing,” that provision applies only to deletions made pursuant to the PRA. BA 33-34. RCW 42.56.070(1) does not apply here, where SHA made no deletions pursuant to the PRA. Again, since SHA had no duty to explain its deletions, RAC had no legal right to an explanation, making injunctive relief improper. *Kucera*, 140 Wn.2d at 209-10; *Locke*, 178 Wash. at 53.

RAC does not respond. BR 40-42.

**5. RAC had no legal right to receive paper records electronically.**

Again, RAC plainly had no legal *right* to receive any documents electronically. WAC 44-14-00003. Thus, injunctive relief is improper. *Kucera*, 140 Wn.2d at 209-10. RAC does not respond specific to the injunction. BR 42.

**6. Damages are also inappropriate for the same reasons that the injunctive relief is inappropriate.**

SHA did not deny RAC the right to inspect or copy any public record, so cannot be liable for damages. RCW 42.56.550(4). SHA gave RAC the non-exempt, previously redacted grievance-hearing decisions. SHA cannot be penalized for failing to provide RAC a less-redacted version of the grievance-hearing decisions, where it has no duty to make a less redacted version. *Id.* This Court should reverse.

RAC does not directly respond.

**7. SHA's opposition to injunctive relief and damages is properly before this Court.**

Based on the parties' stipulation, the court suspended briefing on injunctive relief and damages "pending the outcome of SHA's anticipated motion for discretionary review." CP 184. Contrary to RAC's unsupported assertion, the stipulation and order was not limited to discretionary review in this Court, and SHA

reasonably believed that briefing was suspended until SHA had exhausted discretionary review in the State Supreme Court. *Compare* BR 47 with CP 184, 237-38. But the trial court denied SHA's motion for a continuance on April 28, striking its brief filed days later, even though the Supreme Court would consider SHA's RAP 13.5 discretionary-review motion on June 2. CP 280, 285, 310. This was error, but SHA's opposition to damages and injunctive relief was before the trial court in any event. BA 36-37.

RAC does not address SHA's argument that the trial court could have lifted the briefing suspension without striking SHA's brief. *Compare* BA 36 with BR 48-49. Nor does RAC address SHA's argument that the trial court was plainly aware of SHA's opposition to damages and injunctive relief. *Id.* This Court should reverse the improper injunction and damages award.

**F. This Court should deny RAC's request for appellate fees.**

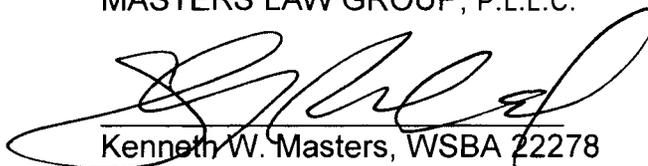
For the reasons discussed above, this Court should reverse, in which case RAC's fee award below, and its request for appellate fees is baseless. BR 49.

## CONCLUSION

The trial court plainly erred in applying PRA policy and redaction provisions to the grievance-hearing decisions SHA redacted pursuant to 24 C.F.R. § 966.57(a). The court erred again in awarding damages and injunctive relief based on inapplicable PRA provisions. This Court should reverse.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of February,  
2012.

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**CERTIFICATE OF SERVICE BY MAIL**

I certify that I caused to be mailed, a copy of the foregoing **REPLY BRIEF** postage prepaid, via U.S. mail on the 21<sup>st</sup> day of February 2012, to the following counsel of record at the following addresses:

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