No. 1032714

SUPREME COURT
OF THE STATE OF WASHINGTON

ROGER W. FLOOK JR,

Petitioner,

V.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondent.

DISCRETIONARY REVIEW
Treated as a Petition for Review

Roger W. Flook #841039
A.H.C.C. L-B-36L
PO Box 2049
Airway Heights, WA 99001
-Pro Se-

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Cases

A. IDENTITY OF PETITIONER

Petitioner, Roger W. Flook Jr. (Mr. Flook), asks this Court to accept review of the Court of Appeals, Division Three, decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Mr. Flook seeks review of the Court of Appeals decision affirming the Spokane County Superior Court's Order Granting the Department of Corrections (DOC) Motion for Judicial Review, finding that the DOC did not act in bad faith in handling Mr. Flook's Public Records Act (PRA) request, P-20190. The Court of Appeals decision was filed on July 2, 2024. A copy of the decision is attached as the Appendix (App.). The Appendix is boldly and sequentially numbered at the bottom right-hand corner. All references to the App. will be to those pages.

C. ISSUES PRESENTED FOR REVIEW

1. Did DOC act in bad faith by failing to conduct a search for responsive records which was reasonable and consistent with it's public records policy?

2. Was DOC's failure to search for, and resulting failure to produce, responsive records a willful act or omission and, therefore, in bad faith?

3. Was DOC's failure to search for, and resulting failure to produce, responsive records a wanton act or omission and, therefore, in bad faith?

4. Is totality of the circumstances the proper standard of review in considering the DOC's motion for judicial review?

5. Is an agency's employee a "party" for purposes of requests for admissions?

D. STATEMENT OF THE CASE

1. Substantive Facts.

On September 1, 2020, Lori Jones (Ms. Jones) began working for the DOC's Public Disclosure Unit. CP 336. Although Ms. Jones was given a position of public Records Specialist (PRS), she is employed as a Communications Consultant 3 (CC3). CP 468.

Ms. Jones' qualifications as a CC3 required her to have "[o]ne (1) year experience processing records pursuant to the Public Records Act." CP 468. That "experience must encompass all phases of the public records responses, to include corresponding with the requester, gathering and reviewing records, applying redaction's and citing appropriate exemption." Id. Ms. Jones' position qualifications required a demonstrated "ability to effectively communicate, independently analyze, and weigh risks versus benefits in decisions and recommendations related to public disclosure issues." CP 450, 468. Ms. Jones was also required to successfully complete an in-training plan with-in six months which required her to become "familiar with the requirements of the PRA... RCWs WACs and newsbriefs." Id.

As a PRS, Ms. Jones attends formal training related to the PRA and processing public records. CP 270, 293. This does not include the informal on-the-job training and instruction that the Public Records Unit (PRU) employees receive on a daily basis. Id. Additionally, all public records specialists receive "review and

feedback from their supervisors, training and discussion at bi-monthly meetings." CP 270.

Ms. Jones' sworn testimony confirms that she has received extensive training in handling and responding to records requests under the PRA. CP 450-451. Specifically, Ms. Jones testified in her declaration that she has been "trained to search for public records." CP 336. Ms. Jones testified she was qualified to "identify and gather records responsive to Public Records Requests." Id. Ms. Jones also received online training provided by DOC and significant on-the-job training. CP 58. Further, Ms. Jones participates in bi-weekly "huddles" with the Public Records Unit. CP 336. The huddles provide Ms. Jones an opportunity to present questions to and/or receive additional training from unit supervisors and Director Denise Vaughan. (Ms. Vaughan). CP 336, 450.

In particular, Ms. Jones is trained to consider all potential locations under her purview that may contain records responsive to the public records request and to thoroughly search those locations. CP 451. This training included that Ms. Jones err on the side of searching if she is unsure whether or not she has any records responsive to a particular request. Id. If Ms. Jones does not understand what records are being requested, she was trained to seek clarification from public disclosure coordinators. Id. With respect to searches and liability for failure to search, Ms. Jones was trained that,

- As a public employee, she's required to search for and

provide public records when requested;

- In response to a records request she must search in any location where responsive records may be located;
- Failure to conduct an adequate search violates the PRA and subjects the agency to potential liability for penalties, attorney's fees and litigation costs;
- Inadequate search, resulting in records not produced, is a common reason penalties are imposed; and
- The PRA demands strict compliance, even accidental or good faith mistakes can cost the agency money in penalty, fees, and cost awards.

CP 451.

Petitioner, Mr. Flook, submitted a public records request to the DOC's Public Records Unit on April 14, 2021. CP 84, 317. DOC received Mr. Flook's records request on April 20, 2021. CP 273, 296, 317. Mr. Flook's request sought, in relevant part, "[t]he JPay contract with DOC." CP 317. Mr. Flook stated that his request was "to include, but not be limited to, all copies, writings, pictures, and electronic data pertaining to the [requested] records." CP 273,296, 317. Mr. Flook also requested that any responsive records be sent to his email account. CP 317. Further, Mr. Flook informed the PRU to contact him for clarification if they had any issues with his request. Id.

Ms. Jones responded to Mr. Flook's request on April 20, 2021, stating in part:

> The records you requested from the JPay messaging system are not public records prepared, owned, used, or retained by the department and therefore are not disclosable under the Public

> Records Act, RCW 42.56; unless they were used in agency business. A search has been conducted and we found no responsive JPay records that were used for agency business.

CP 84, 324 (Emphasis added). In closing, Ms. Jones' response stated that "public records request, P-20190 is now closed." Id.

To reiterate, Ms. Jones was "trained to search for public records." CP 336, 303, 89. And it is DOC's "practice to search for responsive records." CP 81, 85-86. Although Ms. Jones initially claimed that a search for responsive records was conducted, DOC admitted that, in fact, no search was conducted. CP 78, 85. This was contrary to Ms. Jones' training and DOC policy 280.510 directive I.D.1. CP 303.

Specifically, Ms. Jones received training on DOC's Newsbrief for responding to requests for JPay records. CP 65. DOC admitted Ms. Jones had been trained in tracking and locating JPay records. CP 79. Ms. Jones is also familiar with DOC policies and procedures regarding JPay searches. CP 66-67. Ms. Jones testified in her declaration that she "understood the JPay contract to be a JPay record." CP 337. Yet, Ms. Jones largely ignored her training and the procedures for responding to records requests for JPay records, even though she understood the contract to be a JPay record. CP 337, 452. In fact, Ms. Jones had a duty to conduct a search and "contact Public Records Coordinators/Contacts to search" all locations identified in Newsbrief 11-04. CP 314. Instead, Ms. Jones sent Mr. Flook a cut and paste response stating a search had been conducted. CP 324, 446.

Ms. Jones had two places to search that were resonably likely

to contain responsive records: DOC's website and DOC's contracts office. CP 89. If Ms. Jones did not understand what records were being requested or where to search, she was trained to seek clarification from public disclosure coordinators. CP 270, 451. Ms. Jones did neither.

When Ms. Jones closed request P-20190, she did not disclose or produce the JPay contract. CP 78, 92. Nor did Ms. Jones provide an exemption log for withholding the contract. CP 78. Ms. Jones knew she must provide an exemption log, cite the statute(s) that allow withholding of the records, in whole or in part, and state how the exemption applies to the information withheld. CP 305, 450, 468. DOC did not produce the JPay contract for request P-20190 for over a year. CP 86.

2. Procedural Facts.

Mr. Flook filed his PRA complaint in Spokane County Superior Court on March 8, 2022. CP 2-4. Mr. Flook then filed an amended complaint on March 28, 2022. CP 5-8. Mr. Flook's amended complaint limited his cause of action to the JPay contract in this case. CP 6-8, 276.

At the time Mr. Flook filed his amended complaint, he began to conduct discovery. CP 10, 25. Based on the discovery responses by DOC, Mr. Flook moved for partial summary judgment on August 26, 2022. CP 83-95. Mr Flook argued in his motion that DOC violated the PRA by: failing to conduct an adequate search; silently withholding the JPay contract; failing to provide an exemption log; failing to provide Mr. Flook the fullest assistance and most

timely possible action; and not making the JPay contract available for inspection and copying. CP 88-95.

The trial court held a hearing on November 4, 2022, and heard oral argument from the parties. Verbatim Report of Proceedings (VP)(Nov. 4, 2022) 1-21. DOC did not file a response to Mr. Flook's motion for partial summary judgment. (VP)(Nov. 4, 2022) at 12:1-3. In granting Mr. Flook's motion for partial summary judgment, the court ruled, "my review of the documentation filed by the plaintiff in this matter does reflect that the JPay contract is a public record. It was available to the department, based upon the answers to interrogatories, as well as admissions. It was not provided, nor was...a log provided to Mr. Flook as to why it wasn't provided to him." (VP)(Nov. 4, 2022) at 14:7-16. The court concluded "The department has admitted this was error... I can make a finding that there are no disputes of material fact based upon the request being made." (VP)(Nov. 4, 2022) at 14:17-23. The court issued its order on December 12, 2022. CP 441-443.

On November 10, 2022, DOC filed a motion for judicial review under RCW 42.56.550 and CR 7(c). CP 269-353. DOC's primary argument was that it did not act in bad faith and its actions were not willful or wanton because the error in processing the request was a reasonable mistake made by a staff member who misunderstood Department policy. CP 269-280. In response to DOC's motion, Mr. Flook filed a motion for additional time to respond on December 1, 2022. CP 354-380. As one of Mr. Flook's arguments, he argued the need for additional time based on DOC's failure to produce

admissions previously propounded to the DOC employee that handled his request, P-20190. CP 359-363.

DOC filed a response on December 6, 2022. CP 404-440. DOC argued CR 36 allows a party to serve requests for admissions on any other party and that Ms. Jones was not a party to the case. CP 409.

The court held a hearing on December 9, 2022, after briefing from the parties, and heard oral arguments. (VP)(Dec. 9, 2022) 1-20. Pursuant to its reading of CR 36, the trial court ruled that "admissions get propounded to parties" and "what this Court looks at is who are the parties here." (VP)(Dec. 9, 2022) at 15:14-19. The court concluded "Ms. Lori Jones is not listed as an individual defendant in this lawsuit" and "is not a listed party for purposes of the court rule." (VP)(Dec. 9, 2022) at 15:21-25.

After the court granted Mr. Flook's motion for additional time to respond to DOC's motion for judicial reveiw, Mr. Flook filed a cross-motion for summary judgment on bad faith in response to DOC's motion for judicial reveiw on December 14, 2022. CP 445-470. Mr. Flook's response made his respective arguments. Appellant's Opening Brief (Opening Brief), at 14. DOC replied on December 19, 2022. Id. The trial court held a hearing on December 20, 2022, and heard oral arguments from the parties. Id. In its oral ruling the trial court stated, in relevant part:

> As I review the totality of the circumstances in this matter, I don't find that the facts that are outlined and not disputed rise to the level of a wanton act by the department. There is a misunderstanding by Ms. Jones on -- on what the department policy was pertaining to the JPay records. Her act of sending a letter that indicates she did a search that was not done, is concerning to the Court. I do not find that the act of not

searching, based upon the fact that Ms. Jones misunderstood the JPay records not being public records for disclosure, as well as the letter sent, rise to the level of unreasonable or malicious risk of harm indifferent to consequences. That is an extremely high standard from this Court's perspective.

It does not appear to me as if the department was acting to defeat the purpose of the Public Record Act, because if it was, then Mr. Flook would never have gotten the contract. He does argue that receiving the records under a different request is irrelevant. But the department is who is acting in responding to the second records request, and the department goes beyond Ms. Jones. The department is answering and responding to all records request of this kind. When Mr. Flook received the contract through another specialist prior to suit, it was the department that was giving him those records in response to a records request.

The act of Ms. Jones failing to provide him with that record doesn't fit that the department was attempting to defeat the purpose of the Public Records Act, which is what we are trying to prevent, a denial of records. He got the records, not necessarily as fast and in response to the request that he sought initially, but the actual purpose of the Public Records Act was being served by the department in providing him with those records.

In addition, when you look at the totality of the circumstances, as soon as Ms. Jones recognized her mistake, she took steps to correct it. The facts indicate she was not aware that she wasn't doing things properly, she did not know she made a mistake, and was required to search further. The purpose for penalties under the Public Records Act is to promote transparency and to deter improper denial to the access of public records. Under these circumstances, I cannot determine that this set of facts rises to what this Court believes to be a very high standard and high level of culpability. The facts do not rise to the level of bad faith, and when the Court does not find bad faith, then penalties are not appropriate, nor can they be statutorily given. I am granting the defendant's motion for judicial review and make a finding that there is no bad faith.

(VP)(Dec. 20, 2022) at 23:20-25:17.

Mr. Flook timely appealed the trial court's ruling. The Court of Appeals affirmed the trial court's decision, ruling in relevant part:

Here, the trial court correctly applied the totality of the circumstances standard. Albeit Ms. Jones failed to conduct any

search following Mr. Flook's first request, such a search would have been futile due to her misunderstanding of the DOC's policy on JPay records. Nothing in the record suggests that Ms. Jones acted maliciously, unreasonably, or with the purpose of denying Mr. Flook a copy of the DOC's contract with JPay. In fact, Ms. Jones declared it was never her intent to deny Mr. Flook access to the record and her failure to do so was based on her misunderstanding of the DOC's NewsBrief related to JPay records. Both Ms. Jones's letter to Mr. Flook directing him to make the request directly to JPay and her note in GovQA stating [*16] "requestor needs to obtain records from the JPay system for the archived and incoming emails along with the contract" are consistent with her testimony and illuminate her misunderstanding of the DOC's policies. CP at 321.

Mr. Flook specifically takes issue with the language Ms. Jones used in her responsive letter, "[a] search has been conducted and we found no responsive JPay records that were used for agency business," when she failed to conduct a search. CP at 239. He attempts to draw a parallel between his case and the "dilatory search" described in Francis. Admittedly, Ms. Jones's letter is inartful and possibly misleading since she did not actually conduct a search for any JPay records. However, if a records specialist's understanding of the policy was that a requestor needed to request JPay records directly from JPay itself, it is reasonable the records specialist would not conduct a search. Ms. Jones's failure to search for records that she blieved held by another entity does not show a malicious intent to deny a record.

Mr. Flook also argues the DOC acted wantonly because it did not produce the JPay contract until a year after he filed his first request. However, Mr. Flook did not [*17] appeal Ms. Jones's response to his first request and it was not until Mr. Flook filed suit that Ms. Jones was made awere of her mistake. Once becoming aware of her mistake, Ms. Jones promptly reprocessed Mr. Flook's request and produced the record again, free of charge. Because Ms. Jones took immediate action to correct her mistake, her actions do not show that she was indifferent to whether harm would result; thus, Ms. Jones's actions did not rise to the level of a willful or wanton denial of records.

Furthermore, the DOC did not act unreasonably with an utter indifference to the purpose of the PRA. The evidence supports that, pursuant to his second request, Mr. Flook was provided with a copy of the JPay contract prior to filing the instant lawsuit. Had it been Ms. Jones's and the DOC's intent to maliciously deny Mr. Flook a disclosable public record, the DOC would have denied his second request. Instead, the records specialist assigned to Mr. Flook's second request

> understood the JPay contract to be a public record and quickly provided the record to Mr. Flook. Moreover, the DOC's contract with JPay was publicly available on the DOC's website. There exists no legitimate reason why [*18] the DOC would seek to prevent the disclosure of a document that is publicly available on its website until the DOC contracted with Securus Technologies.
>
> Reviewing the evidence anew, Ms. Jones's failure to produce the JPay contract pursuant to Mr. Flook's first request was the result of a mistake and misunderstanding of the DOC's policies. Ms. Jones did not act unreasonably or maliciously while being utterly indifferent to the consequences. Considering the totality of the circumstances, the trial court correctly determined the DOC's actions did not rise to the level of a willful or wanton act.
>
> The superior court did not err when it concluded the DOC's failure to produce the JPay contract in response to Mr. Flook's first request was not in bad faith and denied Mr. Flook daily penalties.

E. ARGUMENT IN FAVOR OF GRANTING REVIEW

Government agencies rarely fail to conduct a search for public records under the PRA, but when they do fail to conduct a search and fail to make available the records for inspection or copying, the public has a right to question the integrity of the agency and the PRA. This petition presents an issue at the heart of the PRA, whether DOC's willful and/or wanton failure to conduct any search for responsive records, then failed to make the records available for inspection and copying is a violation of the PRA in bad faith. The opinion attached focuses on whether DOC needed to conduct a search for the JPay contract if Ms. Jones believed that the JPay contract was still housed in the JPay system even if the contract is used by DOC everyday. The Court should grant review because the opinion suggests that as long as the public records specialist believes the public records are not records that DOC maintains

then no search should be conducted. Moreover, a ruling from this Court regarding the failure to conduct any search for public records in a public records request regardless of what the public records specialist thinks can uniquely assure the public that either no bad faith violation has occurred or the bad faith violations have been remedied.

1. **The Public Records Act depends on a search when a public records request is made.**

The PRA is a strongly worded mandate for broad disclosure of public records. The PRA is to be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. The PRA requires each agency to make available all public records unless the record falls within a PRA exemption or other statutory exemption. It is undisputed that the JPay contract is a public record that can be disclosed and is not exempt from disclosure. It is also undisputed that Ms. Jones did not conduct a search for the JPay contract and was dishonest in her response letter to Mr. Flook.

RCW 42.56.565(1) states:

"A court shall not award penalties under RCW 42.56.550(4) to a person serving a criminal sentence in a state, local or privately operated correctional facility on the date the request for public records was made, unless a court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record."

The argument Mr. Flook makes that the Francis case is on point and what the court should follow because Ms. Jones did not conduct a search is bad faith under Francis. The court even agreed with Mr. Flook and states "Mr. Flook argues the Francis case is on point and what this Court should follow because Ms. Jones did not conduct a search. The argument is kind of a per se bad faith finding in that because no search was done. This fact alone is sufficient for this Court to find bad faith." (VP)(December 20, 2022) at 23:3-7. Once the court found that DOC did not conduct a search, which was "sufficient" "to find bad faith" then there was nothing to do but to determine the penalty amount.

In Francis, Division Two of the Court of Appeals rejected the DOC's assertion that "an agency acts in bad faith only when it knows that it has responsive records but intentionally fails to disclose them." Francis, 178 Wn.App. at 54. The court held that "a determination of bad faith under RCW 42.56.565(1) does not require commission of some intentional, wrongful act". The court held that "among other potential circumstances, bad faith is present under RCW 42.56.565(1) if the agency fails to conduct a search that is both reasonable and consistent with its policies." Id. at n.5.

"Whether an agency acted in bad faith under the PRA presents a mixed question of law and fact, in that it requires the application of legal precepts (the definition of 'bad faith') to the factual circumstances (the details of the PRA violation)." Francis, 178 Wn.App. at 51-52. Francis further held that, "among other potential circumstances, bad faith is present under RCW

42.56.565(1) if the agency fails to conduct a search that is both reasonable and consistent with its policies."

DOC policy 280.510 is to "ensure that the release of records is consistent with state and federal laws and regulations" and to "meet the requirements of RCW 10.97, RCW 42.56, WAC 137-08 and Governor's Executive Order 00-03." CP 302, 449. To effectuate this purpose, the policy requires that all staff including Ms. Jones "Search records within their area of responsibility upon request of the Public Disclosure Unit or applicable PDC for records responsive to public records requests[.]" CP 303, 455.

The Supreme Court states "The harm occurs when the record is improperly withheld. The requester should recover his costs, and the agency should be penalized, **if the requester has to resort to litigation (the reason for the later disclosure is irrelevant).** This rule promotes the [PRA's] broad mandate of openness." Spokane Research & Def. Fund, 155 Wn.2d at 103 n.10. (emphasis added).

"Willful" is not defined in chapter 42.56 RCW. To determine the plain meaning of an undefined term, courts may look to the dictionary. Estate of Haselwood v.Bremerton Ice Arena, Inc., 166 Wn.2d 489, 498 (2009). The dictionary defines the adjective "willful" as "done deliberately: not accidental or without purpose: intentional, self-determined." In re Disciplinary Proceeding Against Vanderveen, 166 Wn.2d 594, 607 n.19 (2009) citing Webster's Third International Dictionary 2617 (2002); See also, Black's Law Dictionary 1630 (8th ed. 2004)(defining "willful" as "[v]oluntary and intentional, but not necessarily

malicious").

In the context of failure to produce documents in violation of the discovery rules "willful" has been defined as "without reasonable excuse." Smith v. Behr Process Corp., 113 Wn.App. 306, 327 (2002). In the context of bad faith under the PRA, however, "willful" does not necessarily mean intentional or deliberate. Francis, supra, 178 Wn.App. at 51 (holding that "a determination of bad faith under RCW 42.56.565(1) does not require commission of some intentional, wrongful act.").

Faulkner, 183 Wn.App. at 105 ("This wanton act of performing an unreasonable search contrary to agency policy resulted in the appeals court upholding the trial court's finding of bad faith.")

"Mistake" is defined as "1: A wrong judgement: MISUNDERSTANDING 2: a wrong action or statement proceeding from faulty judgment, inadequate knowledge, or inattention." Merriam Webster's Collegiate Dictionary 795 (11th ed. 2020).

2. **While Mr. Flook requested the JPay contract, Ms. Jones disregarded all of her training and failed to conduct any search.**

The court of appeals division III opinion sets a concerning standard, when they state "it is reasonable the records specialist would not conduct a search." this conflicts with case law and what this Court has stated.

Ms. Jones' failure to conduct any search and make available for inspection and copying the JPay contract in Mr. Flook's PRA request was not a mistake. Unlike in Francis where no more than 15

minutes was spent considering his request, Ms. Jones did not even conduct a search or even spend the minimum of 15 minutes considering Mr. Flook's request. The facts and evidence before the trial court and the court of appeals division III showed that Ms. Jones received training on responding to requests for JPay records. CP 79. Ms. Jones' training required her to become "familiar with requirements of the...policies, and Newsbriefs." CP 367, 468. Ms. Jones admits that she understood the JPay contract to be a JPay record. CP 337.

After receiving Mr. Flook's records request, the very next day Ms. Jones cut and pasted language from Newsbrief 11-04 stating that a search was conducted and no records were found. CP 324. Ms. Jones was aware that not only the Newsbrief, but also the DOC's policy and procedure required her to search for the JPay contract. Ms. Jones knew that she had not conducted any search for Mr. Flook's PRA request. CP 314-315, 324. Ms. Jones consciously chose to send a response letter to Mr. Flook falsely stating that a "search has been conducted and we found no responsive JPay records". CP 324. Ms. Jones then consciously chose to make an entry in GovQA falsely stating "no records exist." CP 321.

Ms. Jones was fully aware that she had not searched for the JPay contract, and her response to Mr. Flook that a search was conducted and no records were found, and her entry into GovQA that no records exist were false. This can only show that Ms. Jones did not make these misrepresentations by mistake.

Ms. Jones' failure to conduct a search and make available for

inspection and copying the JPay contract can only be deliberate, voluntary and intentional. Under any definition of "willful", Ms. Jones' failure to conduct any search and make available for inspection and copying the JPay contract was willful and done in bad faith.

Although the trial court expressed concern about Ms. Jones' false response, it did not elaborate why that was "concerning", nor did it address whether Ms. Jones' dishonesty demonstrated whether her failure to conduct a search for and produce the JPay contract was willful. (VP)(Dec. 20, 2022) at 23:3-25:17. "The courts have a duty to interpret statutes promulgated by the legislature." Wash. State Commc'n Access Poject v. Regal Cinemas, Inc, 173 Wn.App. 174, 203 (2013).

Mr. Flook argued that the Francis case is on point and what this court should follow. The court found bad faith because no search was done and even addressed it on the record but the court of appeals division III disregarded it completely. The court states "Mr. Flook argues the Francis case is on point and what this Court should follow because Ms. Jones did not conduct a search. The argument is kind of a per se bad faith finding in that because no search was done. This fact alone is sufficient for this Court to find bad faith." (VR)(Dec. 20, 2022) at 23:3-7. At that point the court and the court of appeals division III only needed to determine the penalty amount.

The trial court and the court of appeals division III failed in this duty by not addressing whether Ms. Jones' failure to

conduct a search and make available for inspection and copying the JPay contract was willful and in bad faith. The court of appeals division III erred by not addressing the willful part of the bad faith.

3. **The opinion from the court of appeals division III set's a concerning standard by finding no bad faith because Ms. Jones promptly reprocessed Mr. Flook's request once he filed suit.**

The court of appeals division III states "it was not until Mr. Flook filed suit that Ms. Jones was made aware of her mistake. Once becoming aware of her mistake, Ms. Jones promptly reprocessed Mr. Flook's request and produced the record again[.]"

Ms. Jones could not have produced the record again since she never produced the record in the first place. if Ms. Jones was made aware of her mistake by not conducting any search and producing the record until Mr. Flook filed suit then it would be impossible for Ms. Jones to have produced the JPay contract before Mr. Flook filed suit.

The Supreme Court explained in **Neighborhood Alliance:**

> [T]he remedial provisions of the PRA are triggered when an agency fails to properly disclose and produce records, and any intervention disclosure serves to only stop the clock on daily penalties, rather than to eviscerate the remedial provisions altogether.

Neighborhood Alliance, 172 Wn.2d at 727; Spokane Research & Def. Fund v. City of Spokane, 155 Wn.2d 89, 103-04 (2005)("Subsequent events do not affect the agency's initial action to withhold the records if the records were wrongfully withheld at that time.")

"[g]overnment agencies may not resist disclosure of records until suit is filed and then, by disclosing them voluntarily, avoid paying fees and penalties." West v. Thurston County, 144 Wn.App. 573, 581 (2008).

The court of appeals division III also goes on to say that "pursuant to his second request, Mr. Flook was provided with a copy of the JPay contract prior to filing the instant lawsuit." It was not until Mr. Flook did this second request that he became aware that DOC not only violated the PRA in his first request, but also that the DOC had falsely stated in his first request that a search was conducted and their were no responsive records that were found. This is the reason Mr. Flook filed suit against DOC because the PRA has a strict compliance and DOC should be held accountable for violating the PRA in bad faith by not complying with the PRA in Mr. Flook's first request by admitting not conducting any search for the JPay contract and for not making the JPay contract available for inspection and copying.

The Washington Supreme Court has held that the fact "that the requesting party possesses the documents does not relieve an agency of its statutory duties, nor diminish the statutory remedies allowed if the agency fails to fulfill those duties." Neighborhood Alliance of Spokane County v. Spokane County, 172 Wn.2d 702, 727 (2011).

Mr. Flook never received the JPay contract for public records request P-20190 until he filed suit against DOC. When Mr. Flook received the JPay contract in a completely different public

records request is when he was made aware that DOC violated the PRA in request P-20190. That is when Mr. Flook filed his lawsuit against DOC for violation of the PRA.

F. CONCLUSION

When DOC public records employees do not conduct any search for responsive records, means it was done in be bad faith for not conducting the most crucial part which is the search, that ultimately lead to not producing the JPay contract which was used, possessed, and maintained by DOC. This act of not searching can only be willful and/or wanton, for Ms. Jones to have disregarded all of her training that made her aware of her duty to search. Ms. Jones did not conduct any search, then sent a response letter to Mr. Flook stating a search was conducted and there were no records found, when in-fact no search was done and there were responsive records, which thus can and does show bad faith. On this and the other grounds raised herein, the Court should accept review.

This document was typed and falls within the page amount under RAP 18.17.

Respectfully submitted this 30th, day of December, 2024.

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Appendix (App)

FILED
JULY 2, 2024
In the Office of the Clerk of Court
WA State Court of Appeals Division III

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

ROGER W. FLOOK, JR., Appellant, v. WASHINGTON DEPARTMENT OF CORRECTIONS, Respondent.	)	No. 39553-7-III
	)	UNPUBLISHED OPINION

COONEY, J. — Roger Flook filed a Public Records Act (PRA), chapter 42.56 RCW, request with the Department of Corrections (DOC). Based on a DOC record specialist's misunderstanding of the DOC's policies, Mr. Flook was informed that no responsive records existed. Through a second PRA request , Mr. Flook obtained the desired records. Thereafter, he filed suit claiming the DOC had violated the PRA with respect to his first request. The trial court granted Mr. Flook's motion for partial summary judgment, concluding the DOC had violated the PRA. The court subsequently found the DOC's failure to produce the records was not done in bad faith and denied Mr. Flook penalties.

EXHIBIT 2

On appeal, Mr. Flook argues the trial court erred in finding the DOC did not act in bad faith and in determining the records specialist was not a party for purposes of responding to requests for admissions.

We affirm the trial court's finding that the DOC did not act in bad faith. We decline review of Mr. Flook's requests for the admissions issue.

BACKGROUND

Mr. Flook is an incarcerated individual housed at the DOC's Airway Heights Correction Center. On April 20, 2021, Mr. Flook sent a public records request (first request) to the DOC's Public Records Unit (PRU). The request stated:

> Pursuant to the Public Records Act (PRA), RCW 42.56.et.seq., I am requesting that you provide records pertaining to DOC Jpay.[1] This is to include, but not limited to all copies, writings, pictures, and electronic data pertaining to the following records:
>
> 1. All Jpay archived emails including picture attachments sent to inmate Roger Flook DOC#841039.
> 2. All incoming Jpay emails including picture attachments sent to inmate Roger Flook DOC #841039 that were rejected.
> 3. The Jpay contract with DOC.
>
> Please email all records pertaining to this PRA request to rwf81jr@gmail.com. Also send a paper copy to me.

Clerk's Papers (CP) at 317. Mr. Flook's first request was assigned to public records

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[1] JPay is a private vendor that contracts with the DOC "to provide services to incarcerated individuals, including e-messaging, video visitation, and music downloads." Clerk's Papers (CP) at 272.

specialist Lori Jones. At the time, Ms. Jones was one of the newest staff members with the PRU and had the third highest caseload among records specialists.

Ms. Jones responded to Mr. Flook's request and added a note to GovQA, the DOC's PRA tracking system, that read, "Review request, requestor needs to obtain records from the JPay system for the archived and incoming emails along with the contract. Closed request as no records exist. 4\21\21." CP at 321. In her letter to Mr. Flook, dated April 21, 2021, Ms. Jones copied the language from the NewsBrief,[2] that she believed indicated that the records needed to be requested from JPay directly. Ms. Jones's letter provided, in part:

> The records you requested from the JPay messaging system are not public records . . . unless they were used in agency business. A search has been conducted and we found no responsive JPay records that were used for

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[2] PRA requests are processed by the procedures found in DOC Policy 280.510 and in chapter 137-08 WAC. The DOC supplements its policies with "NewsBriefs," which are documents that explain changes in policy or guidance on certain types of requests. CP at 121.

> The NewsBrief specific to the release of JPay records provided:
>
> JPay records housed in JPay's system and on their servers[,] which are not used for agency business are not agency public records and therefore not subject to disclosure. They do not need to be gathered from the JPay system in response to a public records request.
>
> However, JPay records that have been used in agency business (even if the records [are] still in the JPay system) are public records and must be gathered, reviewed and provided consistent with any other agency public record.

CP at 314 (emphasis omitted).

> agency business. It is my understanding that you can contact JPay directly through your local kiosk.

CP at 239.

Six months after his first request, Mr. Flook submitted another PRA request (second request) again seeking a copy of the JPay contract with the DOC.[3] Mr. Flook's second request was assigned to a different records specialist. Two days later, the DOC sent Mr. Flook a letter confirming his request had been received and that the records should be sent to him on or before January 25, 2022. On January 24, the PRU sent an e-mail to Mr. Flook's e-mail address and provided the 65 pages of records identified as being responsive to his second request. Mr. Flook received the JPay contract that same day.

Six weeks after he received the JPay contract, Mr. Flook filed suit, alleging the DOC violated the PRA when, in bad faith, it failed to search for and make responsive records available pursuant to his first request, specifically, the JPay contract. He asked that the court order statutory per diem penalties and grant him costs and fees.

After Mr. Flook filed his lawsuit, the director of the PRU contacted Ms. Jones for more information regarding Mr. Flook's first request. Ms. Jones reported that she misunderstood the DOC's policy regarding JPay records and believed the JPay contract

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[3] The DOC's contract with JPay was formerly available to the public on the DOC's website. In April 2022, the DOC contracted with a different telecommunications service, Securus Technologies, LLC.

to be a JPay record and therefore not a public record. Ms. Jones admitted she had incorrectly informed Mr. Flook that his request for the JPay contract made in his first request needed to be requested directly from JPay.

Ms. Jones immediately reprocessed the first request. When no responsive JPay messages were found related to Mr. Flook's request for specific incoming and outgoing JPay messages, the DOC informed Mr. Flook that there were "no responsive records." CP at 334. Ms. Jones also provided Mr. Flook with another copy of the JPay contract free of charge on May 12, 2022.

Mr. Flook moved for partial summary judgment on the issue that the DOC violated the PRA in handling his first request. He reserved the issue of bad faith and statutory daily penalties. The DOC admitted there was a violation of the PRA with regard to Mr. Flook's first request. The superior court accepted the DOC's admission, concluded the DOC had violated the PRA, and granted Mr. Flook's motion for partial summary judgment. The court also granted Mr. Flook reasonable costs and attorney fees incurred in bringing the action and noted that the amount of fees and costs would be determined at a later hearing.

During discovery, Mr. Flook submitted "Plaintiff's Fourth Set of Admissions" to the DOC. CP at 368 (some capitalization omitted). All 11 requests for admissions were specifically directed at Ms. Jones. In response, the DOC objected to every request for admission from Ms. Jones with the same language: "This request is improper as it is

directed to a third party, not the [DOC]. Requests for admission cannot be directed to non-parties." CP at 368-71.

In November 2022, the DOC filed a motion for judicial review[4] seeking a determination from the superior court on whether the DOC had acted in bad faith and whether Mr. Flook was entitled to penalties. In support of its motion, the DOC provided declarations from Ms. Jones and the director of the PRU. Ms. Jones's declaration explained her misunderstanding of the DOC's policy on JPay records. She stated, in part:

> 5. . . . I mistakenly believed that JPay records were housed on the JPay system, and therefore were not public records held by the [DOC] for purposes of disclosure under the PRA. My understanding was that requestors must request JPay records directly from JPay. I understood the JPay contract to be a JPay record.
>
> 6. When I wrote the response letter to Flook, I copied the language from the NewsBrief which I believed indicated that the records needed to be requested from JPay directly.
>
> 7. . . . I added a note in GovQA reading, "Review request, requestor needs to obtain records form the JPay system for the archived and incoming emails along with the contract. Closed request as no records exist. . . ."
>
> 8. After receiving notice of Flook's lawsuit in March 2022 . . . I realized my mistake in my response to [the first request, and] I immediately re-processed the request. . . .
>
> . . . .

[4] Under the PRA, a person who has been denied a public record by an agency may seek judicial review and require the agency to show cause as to why it has refused to allow inspection or copying of the public record. RCW 42.56.550(1). Alternatively, an agency wishing to seek review may rely on CR 7(b)(1) to move for judicial review under RCW 42.56.550(3). *See Kittitas County v. Allphin*, 2 Wn. App. 2d 782, 792, 413 P.3d 22 (2018).

> 11. My intent was never to purposefully deny Flook with access to the JPay contract. My response to his request was based on my misunderstanding of the Newsbrief and JPay records.

CP at 252-53.

Mr. Flook sought an extension of time to respond to the DOC's motion for judicial review. His request for additional time was based on the DOC's objection to his requests for admission directed to Ms. Jones. Mr. Flook argued that he could not respond with evidence to defeat the DOC's motion for judicial review without a response to the requests for admission from Ms. Jones. The trial court agreed with the DOC's argument that a request for admission cannot be addressed to someone other than a party to the lawsuit. Nevertheless, the court granted Mr. Flook's request for a continuance, but concluded that, under CR 36, Ms. Jones was not a party to the lawsuit.

Mr. Flook responded to the DOC's motion for judicial review on December 14, 2022. He titled his response "Plaintiff's Cross-Motion for Summary Judgment on Bad Faith in Response to Motion for Judicial Review." CP at 445 (boldface and some capitalization omitted). He argued he was entitled to judgment as a matter of law because there was no genuine issue of material fact that the DOC acted in bad faith.

Ultimately, the superior court granted the DOC's motion for judicial review and denied Mr. Flook daily penalties. Relevant to this appeal is the court's finding of fact 11, which provides:

> Ms. Jones received training on searching and responding to public records held by the Department of Corrections. In April 2021, when Ms. Jones was assigned [the first request], she was a relatively new employee, and the [PRU] was understaffed, so all public records specialists had a higher than normal case load. When she reviewed [the first request], she misunderstood the Department's policy regarding JPay records. Ms. Jones mistakenly believed that JPay records, including the JPay contract, were not records available for public disclosure. Ms. Jones was notified of her mistake when Mr. Flook filed this lawsuit. Once she realized her mistake, she reprocessed the request. Ms. Jones['s] intent was not to purposefully deny Mr. Flook the JPay contract, her response to [the first request] was based on her misunderstanding of Department policy, NewsBriefs, and their application to JPay records.

CP at 481-82. The superior court also entered the following relevant conclusions of law:

> 7. In determining whether the [DOC] acted in bad faith, the Court must consider the totality of the circumstances, the purpose of the PRA, and the purpose of awarding any penalties. There is no per se bad faith simply because no search was done.
>
> 8. The [DOC's] actions here do not rise to the level of a willful or wanton act. Ms. Jones did not conduct a search, and erred in her response to [the first request] because she misunderstood the [DOC]'s policy pertaining to JPay records. As soon as she was notified of her mistake, she took steps to correct it.
>
> 9. In considering the totality of the circumstances, the Court must analyze the [DOC]'s actions as a whole, which goes beyond Ms. Jones. The [DOC]'s actions were not intended to defeat the purpose of the PRA because if they were, [Mr. Flook] would not have received a copy of the JPay contract at all. . . . The purpose of the PRA was served because Mr. Flook received the records he requested.
>
> 10. The purpose for penalties under the PRA is to promote transparency and to deter improper denial of public records. Under these circumstances, these facts do not rise to the very high standard and high level of culpability necessary to find that an agency acted in bad faith. When the Court does not find bad faith, penalties are not appropriate, nor can they be statutorily given.

11. The [DOC] did not act in bad faith in its response to [the first request].

CP at 484.

Mr. Flook appeals.

ANALYSIS

On appeal, Mr. Flook argues that the trial court erred in finding the DOC's failure to properly respond to his first request was not done in bad faith and when it concluded Ms. Jones was not a party to the lawsuit for purposes of responding to his requests for admissions. We disagree with his first contention and decline review of his second.

WHETHER THE TRIAL COURT ERRED IN FINDING THE DOC DID NOT ACT IN BAD FAITH

Mr. Flook argues the trial court erred when it determined the DOC's failure to properly respond to his first request did not amount to bad faith and in denying him daily penalty assessments.

The PRA mandates "all state and local agencies to disclose any public record upon request, unless it falls within certain specific enumerated exemptions." *Bldg. Indus. Ass'n of Wash. v. McCarthy*, 152 Wn. App. 720, 734, 218 P.3d 196 (2009). Agencies are required to conduct "adequate searches for responsive records and an inadequate search is treated as a PRA violation." *O'Dea v. City of Tacoma*, 19 Wn. App. 2d 67, 79, 493 P.3d 1245 (2021).

Here, the issue of whether the DOC violated the PRA was decided on summary judgment. The trial court concluded the DOC violated the PRA when it failed to adequately respond to Mr. Flook's first request. Because neither party challenges that decision, our review is limited to the trial court's determination that the DOC did not act in bad faith.

Ordinarily, the prevailing party in a PRA action is entitled to the costs and fees they incur in bringing the action. RCW 42.56.550(4). The court also has the discretion to award such a person a monetary amount, not to exceed one hundred dollars, for each day they are denied the records. *Id.* However, the legislature has limited this penalty provision of the PRA for incarcerated individuals.

Under RCW 42.56.565, PRA penalties are prohibited on record requests made by incarcerated individuals "unless the court finds that the agency acted in *bad faith* in denying the person the opportunity to inspect or copy a public record." RCW 42.56.565(1) (emphasis added). The burden is on the incarcerated individual to prove the agency acted in bad faith. *See Faulkner v. Dep't of Corr.*, 183 Wn. App. 93, 103, 332 P.3d 1136 (2014). If the court finds that the agency did not act in bad faith, the inquiry ends and the court need not engage in a penalty assessment. *See Hoffman v. Kittitas County*, 194 Wn.2d 217, 226, 449 P.3d 277 (2019).

The PRA authorizes the trial court to "conduct a hearing based solely on affidavits," as the trial court did in this case. RCW 42.56.550(3). When judicial review

is based solely on affidavits, appellate review of a trial court's findings and conclusion is de novo. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994); *Zink v. City of Mesa*, 140 Wn. App. 328, 336, 166 P.3d 738 (2007). Stated otherwise, if a trial court's decision was based only on documentary evidence, this court sits in the same position as the trial court and is "not bound by the trial court's findings on disputed factual issues." *Progressive Animal Welfare*, 125 Wn.2d at 253.

"Whether an agency acted in bad faith under the PRA presents a mixed question of law and fact, in that it requires the application of legal precepts (the definition of 'bad faith') to factual circumstances (the details of the PRA violation)." *Francis v. Dep't of Corr.*, 178 Wn. App. 42, 51-52, 313 P.3d 457 (2013). However, the PRA does not define "bad faith." Instead, "bad faith" has been defined by case law.

In *Francis*, Division Two of this court held:

> [A] failure to conduct a reasonable search for requested records . . . supports a finding of 'bad faith' for purposes of awarding PRA penalties to incarcerated requestors. This standard does not make an agency liable for penalties to incarcerated persons simply for making a *mistake* in a record search or for following a legal position that was subsequently reversed. In addition . . . an agency will be liable, though, if it fails to carry out a record search consistently with its proper policies and within the broad canopy of reasonableness.

Id. at 63 (emphasis added) (footnote omitted). On reconsideration, the court clarified, writing "[t]his is not to say the failure to conduct a reasonable search or the failure to follow policies in a search by themselves necessarily constitutes bad faith." *Id.* at 63 n.5.

"[A]mong other potential circumstances, bad faith is present under RCW 42.56.565(1) if the agency fails to conduct a search that is both reasonable and consistent with its policies." *Id.* Reasonableness is determined by examining all the circumstances of the case. *See id.*

Less than a year later, in *Faulkner v. Department of Corrections*, 183 Wn. App. 93, 332 P.3d 1136 (2014), we took the opportunity to further clarify the bad faith standard. "[B]ad faith incorporates a higher level of culpability than simple or casual negligence." *Id.* at 103. Instead, "to establish bad faith, an inmate must demonstrate a wanton or willful act or omission by the agency." *Id.* We defined "wanton" as

> "[u]nreasonably or maliciously risking harm while being utterly indifferent to the consequences." Further, "[w]anton differs from reckless both as to the actual state of mind and as to the degree of culpability. One who is acting recklessly is fully aware of the unreasonable risk he is creating, but may be trying and hoping to avoid any harm. One acting wantonly may be creating no greater risk of harm, but he is not trying to avoid it and is indifferent to whether harm results or not."

Id. at 103-04 (internal quotation marks omitted) (quoting BLACK'S LAW DICTIONARY 1719-20 (9th ed. 2009)). Under this standard, "[p]enalties are owed when an agency acts unreasonably with utter indifference to the purpose of the PRA." *Id.* at 105.

Applying the facts of Faulkner's case to our clarified bad faith standard, we concluded that the DOC had not acted "unreasonably or maliciously while being utterly indifferent to the consequences" when it originally failed to produce the record based on an "inadvertent mistake in summarizing the request." *Id.* at 107-08. In fact, we noted

that, once the DOC was alerted to the mistake, it located and provided the requested document to Faulkner. We held that the trial court did not abuse its discretion when it did not find bad faith. *Id.* at 108.

Here, the trial court correctly applied the totality of the circumstances standard. Albeit Ms. Jones failed to conduct any search following Mr. Flook's first request, such a search would have been futile due to her misunderstanding of the DOC's policy on JPay records. Nothing in the record suggests that Ms. Jones acted maliciously, unreasonably, or with the purpose of denying Mr. Flook a copy of the DOC's contract with JPay. In fact, Ms. Jones declared it was never her intent to deny Mr. Flook access to the record and her failure to do so was based on her misunderstanding of the DOC's NewsBrief related to JPay records. Both Ms. Jones's letter to Mr. Flook directing him to make the request directly to JPay and her note in GovQA stating "requestor needs to obtain records from the JPay system for the archived and incoming emails along with the contract" are consistent with her testimony and illuminate her misunderstanding of the DOC's policies. CP at 321.

Mr. Flook specifically takes issue with the language Ms. Jones used in her responsive letter, "[a] search has been conducted and we found no responsive JPay records that were used for agency business," when she failed to conduct a search. CP at 239. He attempts to draw a parallel between his case and the "dilatory search" described in *Francis*. Admittedly, Ms. Jones's letter is inartful and possibly misleading since she

did not actually conduct a search for any JPay records. However, if a records specialist's understanding of the policy was that a requestor needed to request JPay records directly from JPay itself, it is reasonable the records specialist would not conduct a search. Ms. Jones's failure to search for records that she believed held by another entity does not show a malicious intent to deny a record.

Mr. Flook also argues the DOC acted wantonly because it did not produce the JPay contract until a year after he filed his first request. However, Mr. Flook did not appeal Ms. Jones's response to his first request and it was not until Mr. Flook filed suit that Ms. Jones was made aware of her mistake. Once becoming aware of her mistake, Ms. Jones promptly reprocessed Mr. Flook's request and produced the record again, free of charge. Because Ms. Jones took immediate action to correct her mistake, her actions do not show that she was indifferent to whether harm would result; thus, Ms. Jones's actions did not rise to the level of a willful or wanton denial of records.

Furthermore, the DOC did not act unreasonably with an utter indifference to the purpose of the PRA. The evidence supports that, pursuant to his second request, Mr. Flook was provided with a copy of the JPay contract prior to filing the instant lawsuit. Had it been Ms. Jones's and the DOC's intent to maliciously deny Mr. Flook a disclosable public record, the DOC would have denied his second request. Instead, the records specialist assigned to Mr. Flook's second request understood the JPay contract to be a public record and quickly provided the record to Mr. Flook. Moreover, the DOC's

contract with JPay was publicly available on the DOC's website.[5] There exists no legitimate reason why the DOC would seek to prevent the disclosure of a document that is publicly available on its website until the DOC contracted with Securus Technologies.

Reviewing the evidence anew, Ms. Jones's failure to produce the JPay contract pursuant to Mr. Flook's first request was the result of a mistake and misunderstanding of the DOC's policies. Ms. Jones did not act unreasonably or maliciously while being utterly indifferent to the consequences. Considering the totality of the circumstances, the trial court correctly determined the DOC's actions did not rise to the level of a willful or wanton act.

The superior court did not err when it concluded the DOC's failure to produce the JPay contract in response to Mr. Flook's first request was not in bad faith and denied Mr. Flook daily penalties.

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[5] In Washington, the fact "that the requesting party possesses the documents does not relieve an agency of its statutory duties, nor diminish the statutory remedies allowed if the agency fails to fulfill those duties." *Neigh. All. of Spokane County v. Spokane County*, 172 Wn.2d 702, 727, 261 P.3d 119 (2011). "[T]he remedial provisions of the PRA are triggered when an agency fails to properly disclose and produce records, and any intervening disclosure serves only to stop the clock on daily penalties, rather than to eviscerate the remedial provisions altogether." *Id.*

WHETHER THE TRIAL COURT ERRED WHEN IT CONCLUDED MS. JONES WAS NOT A PARTY FOR PURPOSES OF REQUESTS FOR PRODUCTION

Mr. Flook argues that the trial court erred when it concluded Ms. Jones was not a party to the lawsuit for purposes of responding to his requests for admission.

The trial court granted Mr. Flook additional time to respond to the DOC's motion for judicial review after the DOC objected to his requests for admissions directed to Ms. Jones. The trial court explained to Mr. Flook that Ms. Jones was not listed as a party for purposes of CR 36. Mr. Flook neither objected to the trial court's explanation nor did he file a motion to compel responses from Ms. Jones.

Under RAP 2.5(a), we "may refuse to review any claim of error which was not raised in the trial court." Because Mr. Flook did not preserve this alleged error in the trial court, we decline review.

APPELLATE COSTS AND FEES

Mr. Flook argues that should he prevail on appeal, under RCW 42.56.550(4) and RAP 18.1, he is entitled to fees.

RAP 18.1(a) provides a party the "right to recover reasonable attorney fees or expenses on review" before this court, so long as the party requests the fees and "applicable law" grants the right to recover. Under RCW 42.56.550(4), a person who prevails against an agency in an action under the PRA "shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action."

Because Mr. Flook is not the prevailing party in this appeal, he is not entitled to costs and fees on appeal.

We affirm the trial court's finding that the DOC's PRA violation was not in bad faith, affirm the superior court's denial of penalty assessments, and affirm the superior court's conclusion that Ms. Jones was not a party for purposes of requests for admissions.

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.

Cooney, J.

WE CONCUR:

Fearing, J.

Pennell, J.

PROOF OF SERVICE

Roger W. Flook Jr., on today's date deposited the accompanying:

1. MOTION TO MODIFY RULING

2. DISCRETIONARY REVIEW

3. Attachment copy of the court of appeals division III decision.

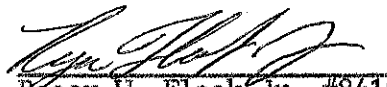
or a copy thereof, in the internal legal mailing system of Airway Heights Corrections Center with pre-paid postage and/or made arrangements for efiling and addressed to the following:

Sarah C. Brisbin
Assistant Attorney General
PO Box 40116
Olympia, WA 98504

The Supreme Court
PO Box 40929
Olympia, WA 98504

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at AHCC in Airway Heights, Washington, on 12-31-24



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December 31, 2024 - 10:40 AM

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DOC filing of Flook Inmate DOC Number 841039

The following documents have been uploaded:
DOC1pAIR1215_20241231_103308.pdf

The DOC Facility Name is Airway Heights Corrections Center
The Inmate/Filer's Last Name is Flook
The Inmate DOC Number is 841039
The Case Number is 1032714
The entire original email subject is 01,Flook,841039,1032714,1of1

The following email addresses also received a copy of this email and filed document(s):
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