Supreme Court No. _____

Court of Appeals No. 58362-3-II

THE SUPREME COURT
OF THE STATE OF WASHINGTON

ERIC HOOD

Appellant

v.

CENTRALIA COLLEGE,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner is Eric Hood ("Hood").

B. COURT OF APPEALS DECISION

Hood's 2023 complaint against Centralia College ("College") alleged the College violated the Public Records Act ("PRA") by failing to produce public records in response to requests that Hood made while litigating his 2020 PRA complaint against the College. Although the issue of whether the College received "fair notice" that those requests should have treated as PRA requests was never briefed, Division II upheld the trial court's CR 12 (b)(6) dismissal of Hood's 2023 complaint on the sole basis that Hood's litigation requests did not pass Division II's "fair notice test." Hood thus requests review of the Court of Appeals Division II's *Opinion* dated April 23, 2024 (Appendix 1) and *Order denying Hood's Motion for Reconsideration* dated June 26, 2024 (Appendix 2).

C. ISSUES PRESENTED FOR REVIEW

Three issues arise from Division II's holding that Hood's litigation requests made during the course of Hood's previous litigation did not provide the College with "fair notice" that Hood wanted records pursuant to the PRA:

1. whether Division II's complicated, exclusionary, unlegislated, unbriefed, and untested "fair notice test," should supplant this Courts' simpler standard for a PRA request, this State's notice pleading standard, and the plain language and intent of the Act;

2. whether an agency may ignore repeated requests for records solely because those requests were made during the course of litigation; and

3. whether Hoods' 2023 complaint should have been dismissed.

D. STATEMENT OF THE CASE

1. Facts Relevant To This Petition

In 2020, Hood sued Centralia College for its response to his 2019 PRA request for "all records [College] got from the auditor and all records of any response to the audit or to the audit report" related to a State audit of the College. Appendix 1, p. 2.

In his 2020 complaint, Hood alleged that his 2019 PRA request "encompassed records other than the documents [the College produced]." CP 182. Hood subsequently made a discovery request for production for "all records related to the State Auditor's Office audit of the College . . . that have not been previously produced, whether or not the College considers them responsive to the [records request that based Hood's 2020 lawsuit]." Appendix 1, p. 3.

The College understood that the purpose of Hood's request for production was to determine whether additional documents should have been produced in response to Hood's 2019 PRA request. CP 51. The College nonetheless pushed back,

objecting that Hood's discovery request "sought information that was outside the scope of discovery." Appendix 1, p. 3. Hood in turn argued that the College's "failure to search its Board files is unreasonable" and that it withheld records showing the "Board's response to the audit or audit report" including "Minutes that are an obvious response to the audit." CP 98-99. *And see* Appendix 1, p. 4. The trial court agreed with the College's objection, and later dismissed Hood's case, thus the College was not required to search its Board's files for audit-related records or to produce the minutes.

During his appeal of the trial court's dismissal of his 2020 lawsuit, Hood made additional requests for the records he believed the College withheld. For example, Hood "notified the College that Hood considered the College's response to have been overly narrow" and again demanded that the College produce its "Board's minutes" Appendix 1, p. 5. College again refused to produce search its Board's files or produce its Board's minutes.

After Division II affirmed the 2020 trial court's decision, Hood filed a Petition for Review, arguing that the College was obliged to produce the records that Hood requested during his 2020 litigation, which would have included the Board minutes, even though courts found they were not responsive to his 2019 PRA request. *Id*., p. 5-6.

The same day that the Supreme Court terminated Hood's Petition for Review in that case, March 8, 2023, Hood filed a new complaint alleging that the College violated the PRA by ignoring the requests for records that Hood made during the litigation of his 2020 lawsuit, including the Board's minutes ("litigation requests"). *Id*., p. 6-7. (Although Hood's 2020 complaint and litigation are relevant to understanding the basis of this petition, Division II's decision regarding Hood's 2023 complaint is solely at issue here.)

The College did not answer Hood's 2023 complaint. Instead, it moved to dismiss it, under CR 12(b)(6), on the grounds that Hood's claims were precluded and time-barred. *Id*., p. 7.

The 2023 trial court granted, without comment, the College's motion. CP 222. The 2023 trial court also agreed that the College was not required to search its Board's files or produce its minutes in response to Hood's discovery request. Appendix 3, p. 16 ("all that is required, [is] that the college completed its discovery.") Despite Hood's multiple requests the College never searched its Board's files or produced its Board minutes discussing the audit, even though the audit report was addressed to the Board. Appendix 4, p. 2, 4, 7. [1]

2. The Court of Appeals Opinion

Division II "agree[d]" that Hood's 2023 complaint,

> sufficiently raises the issue argued in his opening brief—that his "litigation requests" made in the course of the 2020 litigation were also public records requests separate from the 2019 public records request [and thus] put the College on notice that Hood was, at least in part, claiming PRA penalties and attorney fees for the failure to adequately respond to his "litigation requests" made in the course of his 2020 litigation.

[1] A copy of the audit report is shown at: https://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1023438&isFinding=false&sp=false

Appendix 1, p. 8-9.

In other words, Division II found that Hood's 2023 complaint was *not* precluded or time-barred and sufficiently stated a claim for relief. Although the College's arguments to the contrary were unmerited,[2] Division II applied its "fair notice test," which was not briefed by the parties, to find that Hood's "litigation requests" were not public records requests. *Id*., p. 10-19. On that sole basis, Division II confirmed the trial court's dismissal. *Id.*

Because the issue of whether Hood's litigation requests provided fair notice was never briefed in the trial court, Hood partially briefed it in his motion for reconsideration, incorporated here by reference. Appendix 6.

[2] Division II declined to sanction the College for intransigently arguing that Hood's claims were precluded. Appendix 5, p. 11-16.

3. Reasons for Review

Division II justified the trial court's dismissal of Hood's 2023 complaint because "the core issues here are legal," i.e., Division II found that unambiguous requests for certainly identified records, if made during the course of litigation of a PRA complaint, fail the "fair notice test" devised by Division II and thus cannot "legal[ly]" be subject to the PRA. Appendix 1, p. 10-11.

As argued below and here, Division II's ruling allows an unlegislated, unbriefed, untested, complicated, exclusionary, "fair notice test" that invites contentious litigation to supplant the simple and logical standard for PRA requests established by this Court, thwarts this State's notice pleading standard, and contradicts the plain language and intent of the PRA. Division II's rulings effectively hold that *no* authority requires the College to search its Board's files or produce its minutes, and

consequently *it has not done so*. Appendix 7.[3] Like Division II's "bright line rule," the "fair notice test" and its application cry out for review by this Supreme Court. RAP 13.4.

E. WHY REVIEW SHOULD BE ACCEPTED

1. Division II's Decision Conflicts With the Standard for PRA Requests Established by Washington State's Supreme Court

This Court's standard for a legal PRA request is contained in a single sentence:

> [A] party seeking documents must, at a minimum, provide notice that the request is made pursuant to the [PRA] and identify the documents with reasonable clarity to allow the agency to locate them.

Hangartner v. City of Seattle, 151 Wn. 2d 439, 447 (Wash. 2004)

The key phrase here is "pursuant to." [4] Thus, to determine whether a request is made "pursuant to the PRA" requires an

[3] Emboldened by Division II's decision, the College continues to ignore Hood's PRA requests for its Board records, which resulted in Hood's 2024 complaint served to the AGO on May 14, 2024. Appendix 7.

[4] "Pursuant to" is defined as "[i]n compliance with," "in accordance with," "as authorized by," and "under." *Black's Law*

understanding of the singular authority, purpose and breadth and of the PRA, which specifies no less than *three* times that it be liberally construed in favor of disclosure. *King County v. Sheehan*, 114 Wn. App. 325, 338, 57 P.3d 307 (2002) (referring to the "thrice-repeated" mandate of interpreting the Act in favor of disclosure and quoting RCW 42.17A.001(11), RCW 42.56.030, RCW 42.17A.904.) *And see* RCW 42.56.080 (2) ('Public records *shall* be available …and agencies *shall*, upon request for identifiable public records, make them promptly available to any person.") (Emphasis added) *And see* RCW 46.56.550(3) "[F]ree and open examination of public records is in the public interest....")

Because the PRA's provisions reflect its purpose, courts "must look at the Act in its entirety in order to enforce the law's overall purpose." *Rental Hous. Ass'n of Puget Sound v. City of*

Dictionary 1272 (8th ed.2004). And see *A Dictionary of Modern Legal Usage* 721 (2d. ed. 1995), which adds "in carrying out."

Des Moines, 165 Wn.2d 525, 536, 199 P.3d 393 (2009) (citation omitted).

> Said "purpose" is:
>
> > nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions.

Prog. Animal Welfare Soc'y v. Univ. of Wash. (PAWS II), 125 Wn.2d 243, n251, 884 P.2d 592 (1994) (citations and footnotes omitted); *see also Gendler v. Batiste*, 174 Wn.2d 244, 251-52, 274 P.3d 346 (2012) (quoting *PAWS II*); *Burt v. State Dep't of Corr.*, 168 Wn.2d 828, 832, 231 P.3d 191 (2010) (quoting *PAWS II*); *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 429, 98 P.3d 463 (2004) ("The [PRA] enables citizens to retain their sovereignty over their government and to demand full access to information relating to their government's activities."); *Amren v. City of Kalama*, 131 Wn.2d 25, 31, 929 P.2d 389 (1997)) ("The purpose of the PRA is to 'ensure the sovereignty of the people and the accountability of the governmental agencies that serve

them' by providing full access to information concerning the conduct of government."); *Daines v. Spokane County*, 111 Wn. App. 342, 347, 44 P.3d 37 909 (2002) ("The purpose of the [PRA] is to keep public officials and institutions accountable to the people."), *overruling on other grounds* r*ecognized by Neighborhood Alliance of Spokane Cnty. v. County of Spokane*, 172 Wn.2d 702, 261 P.3d 119 (2011).

This Court recognizes that the purpose of the PRA is not only to protect but *increase* access to records. "The PRA's purpose is to increase access to government records." *Sanders v. State*, 169 Wn.2d 827, 849, 240 P.3d 120 (2010). *Amren*, 131 Wn.2d at 31 (PRA is "designed to provide open access to governmental activities").

Access to public records must be *full* access. *Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405,* 164 Wn.2d 199, 209, 189 P.3d 139 (2008) (citation omitted) (policy of PRA "is to ensure 'full access to information concerning the conduct of

government on every level'"); *Newman v. King County*, 133 Wn.2d 565, 570, 947 P.2d 217 (1997) ("The [PRA] reflects the belief that the public should have full access to information concerning the working of the government.")

In short, a request that is made "pursuant to the PRA" is a request that should increase a citizen's full access to the workings of a government agency.

Hangartner's clear and simple language that a request sufficiently "provides notice" if it is made "pursuant to" the PRA comports with the authoritative language and purpose of the PRA. The *Hangartner* standard also mirrors the simple language of FOIA, 5 U.S. Code § 552(a), on which the PRA is modeled, and federal rulings that interpret FOIA, notably:

> When, however, an agency becomes reasonably clear as to the materials desired, FOIA's text and legislative history make plain the agency's obligation to bring them forth.

Truitt v. Department of State, 897 F.2d 540, 543 (D.D.C.1990).

By contrast with the unambiguous single sentences of *Hangartner and Truitt*, Division II devotes approximately *nine*

pages to explain its complicated and multi-factored "fair notice test" of what constitutes a "legal" PRA request. Appendix 1, p. 11-19.

Such complexity invites arbitrariness and contradiction. For example, the PRA considers a request for all records "regarding a particular keyword or name" to be a request for "identifiable" records. RCW 42.56.080(1). "An 'identifiable record' is one that is existing at the time of the request and which agency staff can reasonably locate." WAC 44-14-04002(2). *And see Beal v. City of Seattle*, 150 Wn. App. 865, 873, 209 P.3d 872 (2009). A request for documentation related to a particular topic is therefore a request for identifiable records. RCW 42.56.080(1).

The Washington State Supreme Court accordingly found that a request for "documents constituting, associated with, and related to [a grant proposal]" to be valid. *Progressive Animal Welfare Society v. University of Washington,* 125 Wn. 2d 243, 268 n.12 (Wash. 1994). Similarly, it found that "all material relating to [a particular] study and any other such studies [was]

clear and unambiguous." *Yousoufian v. Office of Ron Sims, 165 Wn. 2d 446 (Wash. 2009) at 439, 465- 465.*

Division III, however, had a different view.

> [The request was for] "documentation" related to Ms. Wood's employment ***or*** the prosecutor's office generally…. [The] request for "documentation" lacks any meaningful description helpful for the person charged with finding the record. *See Bonamy*, 92 Wn. App. At 411 (reasoning request "for general policy guidelines" too broad).

Wood v. Lowe, 102 Wash.App. 872, 879, 10 P.3d 494 (2000), citing *Bonamy v. City of Seattle,* 92 Wn. App. 403, 411, 960 P.2d 447 (1998). (emphasis added).

To make its finding, the *Wood* court conflated two separate topics, "Wood's employment" and "prosecutor's office generally." *Bonamy*, and hence *Wood*, may have applied to the latter topic, but *not* the former. That is, a request for "all documents related to the prosecutor's office generally" *is not* request for identifiable records, but a request for all "documents related to Wood's employment" *is*.

A request for records "related to" a particular topic should not be both invalid and valid, yet that contradiction directly results from Division II's arbitrary application of its "fair notice test." This test, first articulated in *Germeau v. Mason Cnty.*, 271 P.3d 932, 940-43 (Wash. Ct. App. 2012), heavily relies on the contradictory holding in *Wood* to determine whether a request's "language" provides fair notice. *Germeau*, 102 Wash. App. At 941-942, 10 P.3d, citing *Wood*, 102 Wash.App. at 879, 10 P.3d 494.

Division II applied similar contradictory reasoning to find that "the language of Hood's "litigation requests" does not support fair notice." Appendix1, p. 16. Recall, however, that Hood requested

> all records related to the State Auditor's Office audit of the College . . . that have not been previously produced, whether or not the College considers them responsive to the [request that based Hood's 2020 lawsuit].

Id., p. 3. Hood later precisely and repeatedly specified some of those undisclosed records, including the College Board minutes. *Id*., p. 4-5. Hood challenges this Court to devise "language" that more clearly notifies the College that Hood wants all undisclosed records related to the audit, including the board minutes.

The complexity or arbitrariness of Division II's fair notice test also confuses courts of appeal. For example, Division II insisted that "Hood's "litigation requests" did not give the College fair notice he was seeking records under the PRA." Appendix 1, p. 19. Contrarily, *Division 1* interpreted *O'Dea* to mean the opposite:

> [A] public agency is placed on "fair notice" of a Public Records Act request when such request is made in the context of litigation.

Appendix 8, p. 10, fn. (unpublished decision).

According to Division II, "Hood did not use language suggesting he was making a new public records request." Appendix 1, p. 16. But according to *Hangartner* and the purpose

of the PRA, which is to provide a citizen full access to an agency's records, Hood certainly made a new PRA request.

Division II's decision here shows that its "fair notice test" is contrary to the purpose of the PRA. The question that should be asked, is: "Did Hood's litigation requests provide notice to the College that he wanted additional records that would increase his access to the College's decision making?" or in other words, were Hood's litigation requests for identifiable records made "pursuant to" the PRA? Yes. There is no question that Hood wanted records in addition to what the College had previously provided, including the records of its decision-makers, the College's Board.

Division II's complicated, confusing and arbitrarily applied "fair notice test" imposes unlegislated requirements that are contrary to the text and intention of *Hangartner, Truitt*, and the PRA. By contrast with the many constraints imposed by Division II's fair notice test, this Court consistently favors the purpose and legislative intent of the PRA. For example, agencies

may not impose an "administrative exhaustion requirement" to prevent access to records and thus "frustrate [the PRA's] purpose." *Kilduff v. San Juan Cnty.*, 194 Wash. 2d 859, 874 (Wash. 2019) at 874 and 878. Similarly, agencies cannot use an estimated date of disclosure as an excuse to withhold available records, because that too would frustrate the PRA's purpose. *Wade's Eastside Gun Shop.,* 185 Wash.2d 270, 372 P.3d 97.

This Court recently found that another of Division II's devices, its "bright line" rule, "interpret[ed]the PRA in a way that would tend to frustrate [the PRA's] purpose." *Cousins v. State*, No. 101769-3, 37 (Wash. Apr. 11, 2024). *And see* Appendix 6, *Motion for Reconsideration*, p. 27-31.

By contrast with this Court's reluctance to hinder access to public records, Division II's restrictive and exclusionary "fair notice test," like its "bright line" rule, represents an unlegislated hurdle for requesters that functions as an "administrative exhaustion requirement" (*see Kilduff, supra*). Such an exhaustion requirement should not be permitted simply because it is

administered by Division II. Nor should agencies be able to use Division's II's " fair notice test" as an unlegislated exemption.

Division II's "fair notice test" and its application are clearly contrary to multiple Supreme Court's opinions that disfavor agency (including court) attempts to create barriers to public records. Granting this Petition will provide this Court with the urgent opportunity to review the basis, application and unfairness of Division II's "fair notice test."

2. Division II's Decision Conflicts With This Court's Decision Regarding RCW 42.56.550(4)

Division II found that Hood

> sufficiently … put the College on notice that Hood was, at least in part, claiming PRA penalties and attorney fees for the failure to adequately respond to his "litigation requests" made in the course of his 2020 litigation.

Appendix 1, p. 8-9.

Hood thus prevailed on the *sole* issue under appeal. Hood must be compensated "to the extent that he prevailed here." *Sargent v. Seattle Police Dep't*, 314 P.3d 1093, 1105 (Wash.

2013). Such compensation must include "all costs, including reasonable attorney fees, incurred in connection with such legal action." *Id.*, quoting RCW 42.56.550(4).

The language of RCW 42.56.550(4) must also be liberally construed. *Progressive Animal Welfare Society v. University of Washington*, 125 Wn. 2d 243, 272 (Wash. 1994) ("strict enforcement").

Consulting attorney fees were undisputedly a "cost" that Hood "incurred" and nowhere is it disputed that those fees are unreasonable. The only reasoning that Division II provided for denying costs to Hood is that he is "unrepresented." Appendix 1, p. 20. But agencies, including courts, must act "without regard to the status or motivation of the requester." *Livingston v. Cedeno*, 164 Wn. 2d 46, 53 (Wash. 2008). Hood's status as an unrepresented but prevailing plaintiff should not bar him from being compensated.

Furthermore, Hood should be compensated for the College's intransigence. Division II found that Hood

"sufficiently… put the College on notice," *supra*, that the College had violated the PRA, which the College undisputedly admitted. CP 9:21, SCP 371-373. The College also certainly understood that the fundamental issue was whether Hood had "provide[d] notice that the request was made pursuant to the [PRA]." CP 12:15. The College instead litigated on the frivolous bases of preclusion and statute of limitations. Division II's refusal to sanction College's obvious intransigence conflicts with this Court's ruling. *In re Marriage of Katare,* 175 Wn.2d 23, 42, 283 P.3d 546 (2012) (*quoting Greenlee,* 65 Wn. App. at 708) (Intransigence occurs "when one party made the trial unduly difficult and increased legal costs by his or her actions.")

3. Division II's Decision Conflicts With Published Decisions In Courts Of Appeal

Division II's instant decision **a)** conflicts with its own previous decisions, **b)** conflicts with RCW 42.56.550(3) and thus conflicts with multiple court of appeals decisions, and **c)** was applied with obvious bias.

a) Conflicts with previous Division II decisions

Although Division II devised and first applied its "fair notice test" in *Germeau v. Mason County*, 166 Wn. App. 789, 271 P.3d 932 (2012), it failed to apply said test three years later, instead opting for this Court's clearer, simpler standard. *Belenski v. Jefferson Cnty*., 187 Wash. App. 724, 740 (Wash. Ct. App. 2015) (citing *Hangartner, supra*). Division II then applied its "fair notice test" in *Brittig v. Mason Cnty. Fire Dist*. #6, No. 57408-0-II, (Wash. Ct. App. Aug. 8, 2023 (unpublished), which was litigated for approximately four years. It again applied the test here, which has spawned an additional complaint to gain access to the College's public records.[5] Division II's arbitrarily applied "fair notice test" requires this Court's review, not least because it invites contentious and expensive litigation, which all Divisions claim they seek to avoid. *Hudson v. Hapner*, 146 Wn. App. 280, 288 (Wash. Ct. App. 2008), *Lindgren v. Lindgren*, 58 Wn. App. 588, 594 (Wash. Ct. App. 1990); *Johnson v. Asotin*

[5]Appendix 7.

County, 3 Wn. App. 659, 662 (Wash. Ct. App. 1970) *And see Lybbert v. Grant County*, 141 Wn. 2d 29, 39 (Wash. 2000).

b) Conflicts with RCW 42.56.550(3)

Division II's instant decision conflicts with past decisions upholding RCW 42.56.550(3). Ten years ago, Division II stated,

> The PRA requires every government agency to disclose any public record upon request. […] The PRA is a strongly worded mandate for broad disclosure of public records. Therefore, we must liberally construe the PRA in favor of disclosure and narrowly construe its exemptions to assure that the public interest in full disclosure of public information will be protected. RCW 42.56.030. When evaluating a PRA claim, we also must "take into account the policy ... that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550(3).

West v. Port Olympia, 333 P.3d 488, 490 (Wash. Ct. App. 2014) (citations to case law omitted).

Although RCW 42.56.550(3) has not changed, Division II *now* forbids requests for clearly identified public records made during the course of litigation because they would require agencies to "scour pleadings in PRA cases to avoid missing a

'litigation request' that could be the basis for another PRA lawsuit." Appendix 1, p. 17. In other words, Division II's instant application of its "fair notice test" permits agencies to ignore unambiguous requests for clearly identified records if they "cause inconvenience" during the course of litigation. Such finding conflicts with *West, supra*.

Division II's current decision also conflicts with multiple PRA cases upholding RCW 42.56.550(3) in every division. *See* e.g., *Zink v. City of Mesa,* 140 Wash.App. 328, 337, 166 P.3d 738 (2007), *O'Neill v. City of Shoreline*, 145 Wn. App. 913, 922 (Wash. Ct. App. 2008) *and see* multiple Supreme Court decisions upholding this statute, including *Progressive Animal Welfare Society v. University of Washington*, 125 Wn. 2d 243, 251 (Wash. 1994).

c) Division II applied its test with obvious bias

Division II's "fair notice test" has never been tested by any court other than Division II, i.e., no published decision in any other Court of Appeal or this Court has applied or approved of

the "fair notice test." Significantly, Division I agrees with Hood that "a public agency has fair notice of a public records request when that request occurs in the context of litigation." Appendix 8, p. 16 (unpublished decision). *And see id*., p. 10, fn., quoted *supra*.

Division II used its "fair notice test" to uphold the trial court's dismissal here, though the propriety of said test and its application to the scope of the PRA were *never* briefed. This decision thus conflicts with multiple decisions in courts of appeal that at least permitted *briefing* on the scope of the PRA. Appendix 5, p, 8-11.

In short, Division II applied its "fair notice test," which restricts the purpose and scope of the PRA, to find that Hood's litigation requests were not "legal," though it or the trial court never considered the merits or fairness of its test. Only the Supreme Court can curb Division II's bias.

4. Division II's Decision Conflicts With Washington State's Constitution

Article I, Section 1 of our Constitution states

> All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights
> .

Absent records showing what government does or decides, "the people" are essentially powerless. Thus, the concept that governments derive their power from the people is mirrored in the PRA's unflinching construction:

> 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.

RCW 42.56.030.

As shown, arbitrary application of Division II's unlegislated, exclusionary, complex and contentious "fair notice test" obstructs access to the "instruments we have created," viz.,

public records. Consequently, the College has been permitted to withhold its Board's records and emboldened to continue withholding them. The foundation of our Constitution is thus undermined.

5. Review of Division II's fair notice test is of substantial public interest

Division II's complicated "fair notice test" is based on inapt or untenable rulings. Appendix 6, p. 22-27. It functions as a judicially administered exhaustion requirement, is used by agencies, including courts, as an unlegislated exemption, conflicts with law and precedent, delays or prevents access to public records, is confusing and contrary to the purpose of the PRA, and undermines a fundamental constitutional principle. Consequently, it invites contentious litigation, arbitrary and inconsistent rulings, and delay or denial of access to public records, all to the detriment of the public. The public will certainly benefit from this Court's review.

F. CONCLUSION

Division II's "fair notice test" is flawed. Its biased and inconsistent application denies access to clearly requested and identified records. This Court should review Division II's decision.

This brief contains 4512 words.

DATED this 22nd day of July, 2024, by

/s/ Eric Hood
Eric Hood, Pro Se

CERTIFICATE OF SERVICE

I certify under the penalty of perjury under the laws of the State of Washington that on July 22, 2024 in Langley, WA Washington, I emailed the foregoing documents to: Matthew Barber

By: /s Eric Hood Date: July 24, 2024
ERIC HOOD

Appendix

APPENDIX 1

Filed
Washington State
Court of Appeals
Division Two

April 23, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ERIC HOOD, Appellant, v. CENTRALIA COLLEGE, Respondent.	No. 58362-3-II UNPUBLISHED OPINION

GLASGOW, J.—Eric Hood submitted a public records request to Centralia College in September 2019. He later sued the College in October 2020, under the Public Records Act (PRA), ch. 42.56 RCW, alleging the College's response to his request was inadequate.

In the discovery phase of the 2020 litigation, Hood requested additional documents, including board minutes, that both the trial court and appellate court deemed not responsive to his earlier 2019 public records request. Other documents filed in the 2020 litigation, including his complaint and legal briefing before the trial court and on appeal, also made it clear that Hood wanted additional documents. Hood has identified six written statements made in the course of the 2020 litigation that he refers to as his "litigation requests."

The trial court in the 2020 litigation ultimately concluded that the College did not violate the PRA when responding to Hood's 2019 public records request. We affirmed the trial court, and the Washington Supreme Court denied review. This concluded the 2020 litigation.

Hood then sued the College again in March 2023, arguing that his "litigation requests" made during the course of the 2020 litigation constituted new public records requests that required the College to respond under the PRA. The College filed a motion to dismiss on the grounds of collateral estoppel, res judicata, and the PRA's one-year statute of limitations. The trial court granted the College's motion.

Hood appeals, arguing that the trial court erred by granting the College's motion to dismiss because his 2023 complaint asserted new claims, articulated a new cause of action, and was filed within the PRA's one-year statute of limitations. He also seeks attorney fees and costs on appeal and on remand.

We affirm the trial court and decline to remand. We decline to award Hood attorney fees and costs on appeal.

FACTS

The current appeal arises from some of the same underlying facts as *Hood v. Centralia Coll.*, No. 56213-8-II (Wash. Ct. App. Aug. 2, 2022) (unpublished).[1]

I. 2019 PUBLIC RECORDS REQUEST

In September 2019, Eric Hood emailed Centralia College a public records request for records pertaining to a recent audit. Hood's 2019 request stated, "I learned that your organization was recently audited by the state auditor. May I have all records it got from the auditor and all records of any response to the audit or to the audit report?" *Hood*, No. 56213-8-II, slip op. at 2.

[1] https://www.courts.wa.gov/opinions/pdf/D2%2056213-8-II%20Unpublished%20Opinion.pdf, *review denied*, 200 Wn.2d 1032, 525 P.3d 151 (2023).

A public records officer at the college collected records she deemed responsive to Hood's request. After a few emails to Hood where she communicated about how she was interpreting Hood's request, the public records officer sent a response containing the audit report and an associated letter, the College's response, and emails about the College's response.

II. 2020 LAWSUIT ARISING FROM THE 2019 PUBLIC RECORDS REQUEST

Unsatisfied with the records he received, Hood filed a complaint against the College in October 2020 (the 2020 lawsuit). He now argues that a discovery request and arguments made in briefing in the course of his 2020 lawsuit constituted new public records requests independent from his 2019 request. Hood specifically identifies six "litigation requests." Br. of Appellant at 3-6.

In his 2020 complaint, Hood alleged that "Hood's records request encompassed records other than the documents it provided him," and the College "with[held] records responsive to Hood's [2019] request." Clerk's Papers (CP) at 182. Hood contends that this language constituted the first of his "litigation requests." Hood did not identify what the missing records were in his 2020 complaint.

During discovery, Hood began to seek documents beyond the scope of his 2019 public records request. Request for production 23 in the first set of Hood's discovery requests sought "all records related to the State Auditor's Office audit of the College . . . that have not been previously produced, whether or not the College considers them responsive to the Plaintiff's Request." CP at 64-65, 303. Hood refers to this request for production as the second "litigation request."

The College objected to request for production 23, stating that it was "overly broad" and "unduly burdensome" and sought information that was "outside the scope of discovery." CP at 65.

Without waiving these objections, the College produced documents responsive to request for production 23 after a discovery conference where the parties clarified the scope of that request.

The College, in its own interrogatory 11, asked Hood to describe what he considered to be encompassed in the phrase 'response to the audit,' in his 2019 public records request for "all records of any response to the audit or to the audit report." *Hood,* No. 56213-8-II, slip op. at 2, 10. Hood's response, which he argues constitutes his third "litigation request," explained that he sought "any 'reply or reaction' to the audit or audit report and he included a link to a resource on the Office of the Washington State Auditor's website. *Id.* at 10. The linked resource provided a general outline of the audit process, including a preaudit phase, an information-gathering phase, audit findings, and communication of recommendation. Hood alleged that "[s]ome or all of the actions described by the [State Auditor's Office] involve records in the possession of the College that are responsive to Plaintiff's Request which it nonetheless withheld." *Id.* at 11.

The College produced its final response to Hood's discovery requests on June 9, 2021. The College produced 1,737 pages of records that were not part of the College's response to Hood's 2019 public records request.

In his June 2021 brief on the merits, Hood pointed to the additional records produced in discovery as proof that the College's response to the 2019 public records request was inadequate. Hood also argued that the College's responses to his discovery requests were inadequate—notably its failure to search its board files: "The College's *post*-lawsuit search, *not* in response to Hood's records request but only in response to his discovery, was also inadequate. . . . The College's failure to search its Board files is unreasonable . . . . Its failure to produce [the board's] minutes shows an inadequate search . . . . The Minutes were not produced to Hood by the College, thus it withholds

them." CP at 98-99. Hood asserts this argument in his brief to the trial court was his fourth "litigation request."

The College responded that Hood's 2019 public records request was ambiguous. The trial court agreed and ruled that the College did not violate the PRA, finding that Hood's 2019 request was "open to subjective interpretation," the College's interpretation was reasonable, and its search was "reasonably calculated to identify all responsive records." *Hood,* No. 56213-8-II, slip op. at 13. As a result, the trial court dismissed Hood's 2020 lawsuit.

III. APPEAL OF THE DISMISSAL OF THE 2020 LAWSUIT

In his brief to this court on appeal, Hood continued to argue that the College's response to his 2019 public records request was inadequate. Hood stated that his October 2020 complaint "notified the College that Hood considered the College's response to have been overly narrow." CP at 115. He asserted that "[t]he College nonetheless required Hood to engage in a prolonged discovery dispute, and only then reluctantly produced records that it continue[d] to consider non-responsive to his PRA request." *Id*. Hood argued that "the College should have immediately disclosed all the records that it instead produced to Hood only after a discovery dispute, along with its Board's minutes." CP at 116. Hood asserts that this was his fifth "litigation request."

We affirmed, holding that the College's search was "reasonably calculated to find responsive records." *Hood*, No. 56213-8-II, slip op. at 22. We further held that the College's failure to search Board records for minutes responding to the audit was reasonable.

Hood then filed a petition for review with the Washington Supreme Court in November 2022. In the petition, Hood argued that "[e]ven if any part of Hood's request was ambiguous, [the] College had an obligation to modify its response as new information became available." CP at

147-48. According to Hood, because the College learned Hood wanted certain records, it had a duty to produce them. Hood identifies these arguments in his petition as his sixth "litigation request." The Supreme Court denied the petition for review on March 8, 2023. *See* Ruling Den. Rev., *Hood v. Centralia Coll.*, No. 101464-3 (Wash. Mar. 8, 2023).

IV. CURRENT LAWSUIT

Shortly after the Washington Supreme Court denied his petition for review in March 2023, Hood served the College with a new summons and complaint. Hood's 2023 complaint claimed that over the course of his 2020 lawsuit, the College learned that Hood wanted records independent of his 2019 public records request:

> 3.14 While litigating [Hood's 2020 lawsuit, the] College disclosed some records to Hood that it considered non-responsive to his September 23, 2019 PRA request.
>
> 3.15 While litigating [Hood's 2020 lawsuit], Hood indicated to the College that he wanted other audit-related records he had identified during the course of litigation, including Board minutes that discuss the audit of the College.
>
> 3.16 Whether [the] College considered Hood's identification of other audit-related records, including Board records discussing the audit, to be a clarification of his September 23, 2019 PRA request or a new records request or something else, [the] College knew Hood wanted them.
>
> 3.17 [The] College failed to disclose records, including Board minutes discussing the audit that Hood certainly identified during litigation of [Hood's 2020 lawsuit].
>
> 3.18 The denial of Hood's Petition for Review regarding [Hood's 2020 lawsuit] indicated that the College was not obligated to disclose, *in response to Hood's September 23, 2019 PRA request*, its Board's minutes and other records identified during litigation of that case.
>
> 3.19 [The College] intentionally withholds records that Hood both identified and indicated that he wanted while litigating [Hood's 2020 lawsuit], including Board minutes discussing the audit.
>
> . . . .
>
> 4.3 Hood's litigation of [Hood's 2020 lawsuit] identified records that he wanted the College to produce to Hood, regardless of whether the College or courts considered them responsive to his September 23, 2019 PRA request.

CP at 6-7. Hood sought an order requiring the College to respond and disclose the newly requested records. He also sought penalties and attorney fees under the relevant PRA provisions.

The College moved to dismiss Hood's 2023 lawsuit under CR 12(b)(6) on the grounds that Hood's complaint was barred by the doctrines of res judicata and collateral estoppel, as well as the PRA's one-year statute of limitations. The College's res judicata and collateral estoppel arguments were based on its assertions that "Mr. Hood is still arguing that the records he sought in both the prior and present case are responsive to his September 23, 2019, request for records," and that the issue in this 2023 lawsuit is still "the reasonableness of the College's interpretation of [Hood's 2019 public records request]." CP at 17, 19.

In response to the College's motion to dismiss, Hood moved to amend his complaint to clarify that the 2023 complaint was "*not* based on his September 23, 2019[,] request, but rather on his subsequent November 16, 2020[,]request for public records," referring to request for production 23 from the 2020 litigation. CP at 242. The trial court denied Hood's motion to amend based on the PRA's one-year statute of limitations, as the College's last production of records, even including records produced during discovery in the 2020 litigation, was in June 2021. Hood's current lawsuit was filed in March 2023, more than one year later.

At a hearing on the College's motion to dismiss, the trial court explained that it planned to base its decision on res judicata, collateral estoppel, and the PRA's statute of limitations. The trial court granted the motion to dismiss after reviewing "Defendant's Motion to Dismiss and all records and pleadings." CP at 222. Hood appeals the dismissal of his 2023 lawsuit.

ANALYSIS

I. SCOPE OF APPEAL

The College argues as a threshold matter that the claims and arguments made in Hood's briefing to this court are not properly before us on appeal. Specifically, the College argues that the "relief Hood sought in his 2023 complaint is an order for the College to 'promptly and properly respond to Mr. Hood's public records request . . . .'" Resp't's Opening Br. at 14. Because the only explicit mention of a public records request in Hood's complaint was his September 2019 request, the College asserts that Hood merely seeks to re-litigate that 2019 public records request. The College further argues that Hood's motion to amend his complaint sought to add the new claim that Hood's discovery requests and legal briefing in the 2020 litigation were new public records requests. But the trial court did not allow Hood to amend his complaint. Thus, the College argues, because Hood does not contest the trial court's denial of his motion to amend, those new claims are not before this court.

Hood responds that his 2023 complaint sufficiently raised the argument that his "litigation requests" are new public records requests, distinct from his 2019 public records request. Thus, Hood asserts that his claims and argument made on appeal are squarely within the claims and argument made below. We agree with Hood.

We "may refuse to review any claim of error [that] was not raised in the trial court." RAP 2.5(a). However, to raise a claim, a pleading need only contain "(1) a short and plain statement of the claim . . . and (2) a demand for judgment for the relief to which the pleader deems the pleader is entitled." CR 8(a). Further, CR 8(f) demands that "[a]ll pleadings shall be so construed as to do substantial justice." This rule requires that "[c]ourts must liberally construe complaints." *Kitsap*

County v. Kitsap County Corr. Officers' Guild, Inc., 179 Wn. App. 987, 994, 320 P.3d 70 (2014). Thus, for a plaintiff's complaint to be sufficient, it need not be "a vision of precise pleading" so long as it "seems sufficient to put defendants on notice [of the plaintiff's legal theory]." *Schoening v. Grays Harbor Cmty. Hosp.*, 40 Wn. App. 331, 336-37, 698 P.2d 593 (1985).

Here, Hood's 2023 complaint, read in context, sufficiently raises the issue argued in his opening brief—that his "litigation requests" made in the course of the 2020 litigation were also public records requests separate from the 2019 public records request. In his 2023 complaint, Hood asserted that he identified and requested documents during the course of the 2020 litigation that were independent of his 2019 request. Specifically, Hood asserted that "[the] College failed to disclose records, including Board minutes discussing the audit that Hood certainly identified during litigation of [Hood's 2020 lawsuit]." CP at 6. Further, he claimed that "Hood's litigation of [Hood's 2020 lawsuit] identified records that he wanted the College to produce to Hood, regardless of whether the College or courts considered them responsive to his September 23, 2019 PRA request." CP at 7. Finally, Hood's request for relief was for an order to disclose records, Hood had requested but not yet received, penalties, and attorney fees. This language was clear enough to put the College on notice that Hood was, at least in part, claiming PRA penalties and attorney fees for the failure to adequately respond to his "litigation requests" made in the course of his 2020 litigation.

II. STANDARD OF REVIEW

In an appeal from a trial court's dismissal of a complaint under CR 12(b)(6), our review is de novo. *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007). "Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove 'any set of facts [that]

would justify recovery.'" *Id*. (quoting *Tenore v. AT & T Wireless Servs.*, 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998)) "The court presumes all facts alleged in the plaintiff's complaint are true and may consider hypothetical facts supporting the plaintiff's claims." *Id.* Here, the facts before the trial court were undisputed, and the parties' arguments were about the legal effect of Hood's requests.

In granting the College's motion to dismiss, the trial court considered "all records and pleadings on file." CP at 222. This included our unpublished decision from Hood's 2020 lawsuit, as well as declarations from both parties that attached pleadings and discovery from the 2020 litigation. Neither party objected to the trial court's consideration of these materials.

Generally, where "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." CR 12(b)(7). However, "'[d]ocuments whose contents are alleged in a complaint but which are not physically attached to the pleading may . . . be considered in ruling on a CR 12(b)(6) motion to dismiss.'" *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 827 n.2, 355 P.3d 1100 (2015) (alteration in original) (quoting *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 726, 189 P.3d 168 (2008)). "Further, where the 'basic operative facts are undisputed and the core issue is one of law,' the motion to dismiss need not be treated as a motion for summary judgment." *Id*. (quoting *Ortbald v. State*, 85 Wn.2d 109, 111, 530 P.2d 635 (1975)). Additionally, a court "'may take judicial notice of public documents if their authenticity cannot be reasonably disputed' without converting the motion to a motion for summary judgment." *Wash. State Hum. Rts. Comm'n v. Hous. Auth.*, 21 Wn. App. 2d 978, 983, 509 P.3d 319 (2022) (quoting *Rodriguez*, 144 Wn. App. at 725-26).

The parties do not disagree on the underlying facts of this case, which were established in our prior unpublished opinion, nor do they dispute the contents of the litigation documents from Hood's 2020 lawsuit. The core issues here are legal. Thus, we may review the record before us without treating the College's 12(b)(6) motion to dismiss as a motion for summary judgment.

III. "LITIGATION REQUESTS"

Hood argues that his "litigation requests" made during the 2020 litigation gave fair notice to the College that they were actually public records requests. The College responds that Hood's discovery requests in the 2020 litigation explicitly invoked the authority of the civil rules of discovery, not the PRA. The College further points out that Hood's non-discovery "litigation requests," specifically the arguments Hood made in his briefing to the trial court, this court, and the petition for review to the Washington Supreme Court, do not even "remotely resemble . . . PRA request[s]." Resp't's Opening Br. at 23. We agree that Hood's litigation requests were not public records requests.

A. Fair Notice Test

The PRA states, "Agencies shall honor requests received . . . for identifiable public records unless exempted by provisions of this chapter. No official format is required for making a records request." RCW 42.56.080(2). However, for the PRA to apply, requests must be recognizable as public records requests. *Germeau v. Mason County*, 166 Wn. App. 789, 805, 271 P.3d 932 (2012). For a request to be recognizable as a public records request, the requester must give the agency "fair notice" that they are requesting records under the PRA. *Id*. at 804-05.

We apply the "fair notice" test to "distinguish PRA requests from those arising from some other legal authority." *O'Dea v. City of Tacoma*, 19 Wn. App. 2d 67, 80, 493 P.3d 1245 (2021).

Courts use a multifactor test to determine whether a request has established fair notice. *Germeau,* 166 Wn. App. at 805. "These factors fall under two broad categories: (1) the characteristics of the request itself, and (2) the characteristics of the requested records." *Id*.

The factors relating to the characteristics of the request are its language, its format, and the recipient of the request. *O'Dea,* 19 Wn. App. 2d at 81. The factors relating to the characteristics of the records are whether the request was for *specific* records, as opposed to information about or contained in the records; whether the requested records were *actual* public records; and whether it was reasonable for the agency to believe that the requester was requesting the documents under an independent, non-PRA authority. *Id*.

While courts weigh all of the above factors, if a request for records reasonably appears to be made under an authority other than the PRA, this factor is usually dispositive. *See Germeau*, 166 Wn. App. at 805 (finding it dispositive, despite most factors favoring fair notice, that plaintiff's letter appeared to request documents under a collective bargaining agreement, not under the PRA); *Wood v. Lowe*, 102 Wn. App. 872, 880-81, 10 P.3d 494 (2000) (finding no fair notice where plaintiff's public records request was ambiguous and could have been construed as a personnel action under RCW 49.12.250(1)).

It remains possible to provide fair notice where a request is submitted in the shadow of non-PRA legal authority. However, to do so, the request must clearly distinguish itself as a public records request. *O'Dea*, 19 Wn. App. 2d at 72-73 (finding fair notice despite plaintiff's letters requesting documents being attached as an exhibit to a complaint, where the letters explicitly requested documents under the PRA, and their subject lines read "'PUBLIC RECORDS REQUEST'").

B. Our Prior Application of the Fair Notice Test

In *Germeau*, the plaintiff was a representative for the Mason County Sheriff's Office Employees Guild, which had a collective bargaining agreement with Mason County. 166 Wn. App. at 792. Germeau represented a detective who was under investigation by the county's sheriff's office. *Id*. at 793. In his capacity as the detective's guild representative, Germeau wrote a letter to the chief of the sheriff's office requesting information about the investigation. *Id*. at 793-94. The letter introduced Germeau as the detective's "guild representative regarding any internal affairs investigation or line investigation." *Id*. at 794. The third paragraph of the letter stated that "the guild is requesting and has the right to be privileged to any work product, or investigative findings regarding any investigation involving [the detective]. This includes any notes, interoffice memo's . . . or emails that may be related." *Id*. Germeau later argued that the letter was a public records request. *Id*. at 799.

This court held that Germeau's letter did not provide fair notice. *Germeau*, 166 Wn. App. at 804-10. Of the three characteristics of the request, which are its language, format, and recipient, we found the language of the letter to be determinative. *Id*. at 805-06. In the letter, Germeau identified himself as a guild representative and as the detective's point of contact for any investigation-related communications. *Id*. at 806. Where the letter requested documents, its focus was on "investigative findings." *Id.* at 807. This language showed the purpose of the letter was for Germeau to "become privy to any investigation" of the detective; the letter did not appear to be a public records request. *Id*.

We further found that neither the format nor the recipient of Germeau's letter was dispositive. *Id*. at 806 n.17. Regarding format, we noted that although Germeau did not use the

County's PRA form as he had in the past, there is no official format for a valid PRA request. *Id*. As for the recipient of the request, Germeau's choice of the chief deputy, as opposed to the Mason County Sheriff's Office public disclosure coordinator, did not "render his claim fatal." *Id*.

We also found that the characteristics of the requested records failed to provide fair notice. *Id*. at 807-08. The letter identified specific documents, namely the Sheriff's Office's investigative findings, related interoffice memos, and related emails, and those documents were actually public records. *Id*. But because the Guild had a right under its collective bargaining agreement to receive information from the sheriff's office, the third factor—whether it was reasonable for the agency to believe that the requester was requesting the documents under an independent, non-PRA authority—was determinative. *Id.* It was reasonable for the County to have believed the letter invoked the authority of the collective bargaining agreement between the Guild and the Sheriff's Office, not the PRA. *Id*. We explained that "the letter's language strongly suggested that the [collective bargaining] agreement entitled Germeau (in his capacity as guild representative) to the requested records or, at the very least, that Germeau was making the request in such a capacity, not as a PRA request." *Id*. at 808.

In contrast, in *O'Dea*, we found the disputed requests were public records requests made under the PRA. O'Dea, a Tacoma police officer, was placed on administrative leave after a shooting incident. 19 Wn. App. 2d at 71. O'Dea's lawyer mailed two public records requests to the City of Tacoma's Public Records Office, but the public records officer never received the letters. *Id*. O'Dea then sued the City under the PRA because the City failed to respond. *Id*. at 74.

O'Dea attached the two public records requests as exhibits to his complaint. *Id*. Both letters explicitly requested documents under the PRA, and their subject lines read, "'PUBLIC RECORDS

REQUEST.'" *Id*. at 72-73. The requested documents included certain claims filed against the Tacoma Police Department, policies for notifying department staff about incidents involving use of force, training directives, and more. *Id*. at 73. The City answered the complaint, but did not disclose the records requested in the attached public records requests until nine months later. *Id*. at 71. O'Dea argued that the City violated the PRA by failing to timely respond to the two letters attached to his complaint. *Id*. at 74.

This court held that O'Dea's public records requests provided fair notice. *Id*. at 81. The characteristics of the request favored O'Dea. *Id*. First, the language explicitly referenced the PRA. We noted each letter was clearly titled "'PUBLIC RECORDS ACT REQUEST.'" *Id.* For the same reason, the letter's format, with a clear reference to the PRA in the title, indicated it was a public records request, even though it did not arrive through the City's online PRA submission form. *Id.* Third, even though the letters were received during litigation, the letters were addressed to the City's public records officer. *Id*.

The characteristics of the records also favored O'Dea. The first two factors, whether the request was for specific and actual public records, were clear: "O'Dea asked for documents relating to Department investigations, deadly force review board incidents, claims for damages, policies and procedures, training directives, personnel rosters, and other internal communications, all public records that the City possessed." *Id*. at 81. The third factor was a "closer question" but also favored O'Dea. *Id*. We found that it was not reasonable for the City to believe O'Dea requested documents under an independent, non-PRA authority. *Id*. "Although the City received the letters as attachments to a complaint, when read in context with the substance of the complaint, it was obvious that the plaintiffs had already attempted to submit these letters as public records requests."

Id. Further, O'Dea stated in his complaint that he was awaiting a response to his public records request letters, which both expressly referenced the PRA. *Id*. at 82. Because the complaint and request letters so clearly invoked the PRA, the fact that they were attached as exhibits to a complaint did not prevent a finding of fair notice. *Id*.

C. Fair Notice Factors Applied to Hood's "Litigation Requests"

When we apply the fair notice factors to Hood's "litigation requests," this case is more like *Germeau* than *O'Dea.*

1. Characteristics of the request

None of the factors relating to the characteristics of Hood's requests favors a finding that the requests now at issue were public records requests.

a. Language

First, the language of Hood's "litigation requests" does not support fair notice. Throughout his "litigation requests," Hood merely sought to define the scope of his 2019 public records request or repeatedly demanded records *he* deemed responsive to his 2019 public records request.

In each of his six "litigation requests," Hood did not use language suggesting he was making a new public records request. Hood's 2020 complaint sought "records responsive to Hood's [2019] request." CP at 182. Request for production 23 mimicked his 2019 public records request and again sought records "related to the . . . audit." CP at 64,303. Hood's response to the College's interrogatories merely answered the College's efforts to clarify his 2019 request. *Hood,* No. 56213-8-II, slip op. at 10. Hood's legal briefing in the 2020 litigation repeated Hood's disagreement with the College and courts as to whether he was entitled to documents he deemed "responsive"—meaning responsive to his 2019 public records request. CP at 9,115-19. Finally, in

his petition for review to the Washington Supreme Court, Hood argued that "as new information became available" over the course of the 2020 litigation, the College "had an obligation to modify its response [to Hood's 2019 litigation request]." CP at 147-48.

This language fails to distinguish Hood's "litigation requests" as independent of his 2019 public records request. It stands in clear contrast to the language in *O'Dea*, where O'Dea explicitly stated in his complaint that the attached letters were public records requests. Here, Hood's "litigation requests" repeatedly refer to his previous 2019 request—they do not make clear that they are unanswered, standalone public records requests like those in *O'Dea*. Rather, like in *Germeau*, where the language of Germeau's letter failed to identify a public records request independent of the surrounding investigation, here, Hood's language fails to illustrate the existence of a public records request independent from arguments about his 2019 request.

Hood's "litigation requests" were discovery requests that invoked the civil rules or legal briefing arguing about his 2019 request. Hood expressed dissatisfaction with the College's and courts' interpretation of his 2019 public records request, but he did not make a new public records request. Holding otherwise would be absurd and would cause discovery disputes and legal briefing in PRA litigation to become an endless breeding ground for new public records requests. Parties would be obligated to scour pleadings in PRA cases to avoid missing a "litigation request" that could be the basis for another PRA lawsuit.

b. Format

Second, the format of Hood's request fails to provide fair notice. Hood's "litigation requests" are a far cry from *O'Dea*, where the letters were clearly labeled "'PUBLIC RECORDS

REQUEST.'" 19 Wn. App. 2d at 72-73. Instead, Hood's "litigation requests" were expressly labeled as various pleadings or discovery requests, rather than public records requests.

c. Recipient

Third, the recipient of the request also disfavors a finding of fair notice. The fact that Hood neither sent nor addressed his "litigation requests" to the College's public records officer, does not alone "render his claim fatal." *Germeau*, 166 Wn. App. at 806 n.17. However, Hood's "litigation requests" were litigation documents sent to the College, its counsel, or the courts during active litigation over his 2019 public records request. The context in which these recipients received the "litigation requests" did not suggest there was any new, independent public records request.

2. Characteristics of the requested records

The fair notice factors relating to the characteristics of the records are whether the request was for specific records, as opposed to information about or contained in the records; whether the requested records were actual public records; and whether it was reasonable for the agency to believe that the requester was requesting the documents under an independent, non-PRA authority. *O'Dea,* 19 Wn. App. 2d at 81. The first two factors favor a finding of fair notice. Hood's "litigation requests" sought specific and actual public records, namely Board minutes and other documents Hood deemed responsive to his 2019 public records request. However, like in *Germeau*, we find it dispositive that the College reasonably interpreted Hood's requests as discovery requests or legal arguments pertaining to its initial response to his 2019 public records request.

Hood relies heavily on *O'Dea* again. However, in that case, "when read in context with the substance of the complaint, it was obvious that the plaintiffs had already attempted to submit [the attached letters] as public records requests." 19 Wn. App. at 81-82. The complaint in *O'Dea*

"explicitly referenced the attached letters" that were clearly labeled "'PUBLIC RECORDS REQUEST,'" and made obvious that the plaintiffs were awaiting a response to those letters. *Id.* at 72-73, 82. Because the letters were clearly distinguishable public records requests awaiting response, the City's failure to respond was unreasonable. *Id.* at 82.

In contrast, Hood's "litigation requests" existed in the context of a lawsuit over his 2019 public records request, which the College had already received and responded to. The "litigation requests" consist of small excerpts of discovery documents and legal briefing. Further, request for production 23 explicitly drew on non-PRA legal authority, the civil rules of discovery. Thus, because of the surrounding context in which the "litigation requests" were made and Hood's failure to distinguish his "litigation requests" as independent from his 2019 public records request, it was reasonable for the College to think that Hood was requesting documents under the authority of the civil rules or making arguments in civil litigation about the scope of his 2019 request, not making a new public records request.

In sum, we conclude that under the fair notice factors, Hood's "litigation requests" did not give the College fair notice he was seeking records under the PRA, and thus, these requests were not public records requests.

IV. OTHER ARGUMENTS

Hood further argues that because, in his view, request for production 23 was a public records request, the PRA applies and the College cannot refuse to respond to it on the grounds that it was outside the scope of discovery in the litigation over his 2019 public records request. This argument fails because, as explained above, we find that request for production 23 was not a public records request in the first instance.

Additionally, Hood points to the PRA's strongly worded command that it be "liberally construed" to encourage us to hold that his "litigation requests" are actually public records requests. RCW 42.56.030. However, when we interpret the PRA "[w]e . . . avoid absurd results." *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 431, 327 P.3d 600 (2013). Importantly, "we endeavor to provide clear and workable guidance to agencies insofar as possible." *Id*. For reasons we explained above, requiring agencies to interpret discovery requests and legal arguments that are not clearly and expressly labeled as new public records requests would be absurd and unworkable.

Finally, Hood argues that we should reverse and remand for the parties to have an opportunity to develop more evidence. But Hood does not identify what evidence or arguments he would add that have not already been presented to the trial court and included in this record. Because Hood was able to fully explain his "litigation requests" to the trial court in this record, and because we resolve this case on the legal question of what constitutes a public records request, we need not remand for further proceedings.

COSTS AND ATTORNEY FEES

Because Hood does not prevail in his action against the College and because unrepresented parties are not entitled to attorney fees, Hood is not entitled to costs or attorney fees on appeal under the PRA. RCW 42.56.550(4). Hood also seeks attorney fees on remand, but because we affirm, we are not remanding and Hood is not entitled to fees at the trial court level either. In his reply brief, Hood claims that he is entitled to costs and "consulting attorney fees" based on RAP 18.1, because the College has been intransigent. Reply Br. of Appellant at 15. We reject this basis for costs and attorney fees on appeal as well.

CONCLUSION

We affirm. We also decline Hood's request to remand and we decline to award costs and attorney fees on appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Glasgow, J.

We concur:

Lee, J.

Cruser, C.J.

APPENDIX 2

Filed
Washington State
Court of Appeals
Division Two

June 26, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

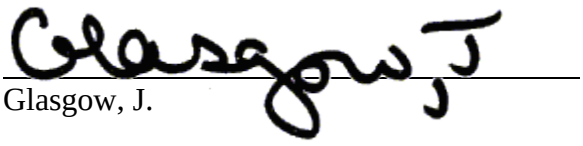
DIVISION II

ERIC HOOD, Appellant, v. CENTRALIA COLLEGE, Respondent.	No. 58362-3-II ORDER DENYING MOTION FOR RECONSIDERATION

This court's unpublished opinion was filed April 23, 2024. On May 28, 2024, appellant moved for reconsideration. After consideration, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

FOR THE COURT: Jj. Lee, Glasgow, Cruser.



Glasgow, J.

APPENDIX 3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

ERIC HOOD, Plaintiff, vs. CENTRALIA COLLEGE, Defendant.	COURT OF APPEALS NO. 58362-3-II THURSTON COUNTY NO. 23-2-00846-34

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on June 2, 2023, the above-entitled matter came on for hearing before the HONORABLE CAROL MURPHY, Judge of Thurston County Superior Court.

Reported by: Aurora Shackell, RMR CRR
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I N D E X

June 2, 2023, in Olympia, Washington

Before the Honorable CAROL MURPHY, Presiding

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THE COURT: We are back on the record of Hood versus Centralia College, 22-2-0846-34, on the court's civil motion calendar and dispositive motion. This matter has one matter on each of those two calendars, and I'd like to begin again with appearances on the record, please.

For the plaintiff, let's start with that.

MR. HOOD: This is Eric Hood, Your Honor, connecting by audio.

THE COURT: Thank you. And for the defendant?

MR. BARBER: Good morning, Your Honor. Matthew Barber with the Attorney General's Office appearing on behalf of Centralia College.

THE COURT: Thank you. So I would like to address the presentation of the order first, which is the matter on the court's civil motion calendar. And this was set for hearing by counsel for Centralia College, proposing an order that reflects the court's oral ruling on the motion in which the court denied plaintiff's motion to amend the complaint. I saw that there was a proposed order that was filed and

that was proposed by Centralia College.

Mr. Hood, did you propose a different order?

MR. HOOD: No, I did not.

THE COURT: And are you in agreement with the form of the order proposed by Centralia College?

MR. HOOD: The form of the order, yes.

THE COURT: You agree with the form of the order?

MR. HOOD: Yes, with the form of the order. Correct.

THE COURT: So in reviewing the order that was proposed, I'm going to sign it with a couple of changes. The changes that the court is making reflect that the court did not make findings of fact in deciding to deny the plaintiff's motion to amend the complaint. The court considered all of the pleadings and concluded as a matter of law that the amended complaint would be futile based upon the statute of limitations.

So the changes I've made are as follows: On page 2, line 2, I've taken out the words "findings of fact and," and then I have crossed out paragraphs 1, 2 and 3. And then on page 3, I have crossed out the sentence that begins on line 6 of paragraph 8 and ends on line 8 of paragraph 8.

Other than that, I've kept the order as is, and I'm signing it at this time. So I'm handing that to the clerk, and that will be in the court file. So that addresses the presentation of order.

And next is the motion to dismiss that was brought by Centralia College. Are there any preliminary matters that the court needs to address before I hear argument on that motion? Mr. Barber?

MR. BARBER: No, Your Honor.

THE COURT: Mr. Hood?

MR. HOOD: Yes, Your Honor. First of all, I testified in my declaration of May 3, 2023, the college ignored Local Court Rule 56, which requires -- the operative word in the court rule is "shall" -- shall serve and file a notice entitled "What is a summary judgment motion? Notice for parties who do not have a lawyer." It also failed to provide me a copy of CR 56 and LCR 56, also required by your local court rule. It continues to withhold those documents from me. They've had months to provide them.

Referring to LCR 56, *Thompson* -- the court in *Thompson vs. City of Mercer Island*, 2016, said the party, quote, "cannot evade the plain language of the local rule." Their motion should be dismissed.

THE COURT: So --

MR. HOOD: Second --

THE COURT: I'm sorry.

MR. HOOD: I'm sorry, go ahead.

THE COURT: Mr. Hood, I asked whether there were any preliminary matters, and I'm trying to understand -- just a minute. I'm trying to understand what you're asking of the court. Are you asking the court to strike the motion and not hear it today based upon your assertion that Centralia College -- please don't interrupt me. You can't make a good record if we speak at the same time.

So let me start over.

MR. HOOD: Okay.

THE COURT: Are you asking the court to strike the motion and not hear it today based upon your assertion that Centralia College did not follow LCR 56?

MR. HOOD: No, Your Honor. I'm asking you to dismiss their motion because it did not follow LCR 56.

THE COURT: Okay. So that sounds like maybe an argument that you want to make within your argument of why the court should deny the motion.

MR. HOOD: Okay. All right. Then I have a second -- I don't know if this is a preliminary

matter either. In my May 30th declaration -- as my May 30th declaration testified for LCR 56(1), the college untimely served its rebuttal brief to me, so I'm asking if the college will strike its rebuttal.

THE COURT: And you're asserting that the reply brief on the motion to dismiss was not timely?

MR. HOOD: Correct.

THE COURT: And what was the authority again?

MR. HOOD: LCR 56(c)(1) says rebuttal briefs must be served within seven days in advance of the hearing, and it was actually provided -- served to me on May 30th.

THE COURT: And Mr. Barber, I'll hear from you regarding that preliminary matter.

MR. BARBER: Thank you, Your Honor. The college shipped the package via Fed Ex overnight delivery to Mr. Hood on May 25th. It was sent for delivery at Mr. Hood's residence on May 26th at 2:00 p.m. That is what is shown on the mailing label Mr. Hood sent us. For some reason that we are still trying to ascertain, Fed Ex did not complete the delivery until May 30th. Our legal assistant has been trying to find out why but have not gotten a response yet from Fed Ex.

THE COURT: Do you have any other response?

MR. BARBER: No, Your Honor.

THE COURT: Mr. Hood, can you explain any prejudice based upon the failure to receive the reply brief until May 30th?

MR. HOOD: Well, the reply -- the prejudice that occurs is when obviously the court rules are intended to provide a party to thoroughly prepare for a hearing. Their failure to provide it to me at that time, I mean, it only gave me, what, two days to prepare, three days to prepare, and I should have had seven days. So, yes, that is a prejudice.

THE COURT: And do you need more time?

MR. HOOD: Do I need more time? Well, since -- okay. I don't know if I need more time. It depends -- okay.

Another issue is that, in their reply brief, they asserted various arguments that were not in their initial motion, which I could not reply to, and I don't have a chance to make a surreply to it. So that is also an issue. They talked about fair notice requirements, which were not an issue in -- which were not discussed in their original motion.

So, yes, let me make -- Your Honor, if I could, I will ignore -- for a moment, I will ignore that they are -- their rebuttal brief was untimely and proceed

with the argument on the three issues that they identified in their motion, their CR 12(b)(6) motion.

THE COURT: Mr. Hood.

MR. HOOD: Yes.

THE COURT: Before you do that, I just want to keep a good record of each of the decisions that the court may be making today.

MR. HOOD: Okay.

THE COURT: So let me say this: Mr. Hood raised two arguments initially before the court has heard any argument on the motion before it today. The first relates to noncompliance with LCR 56. And I understood that Mr. Hood will be addressing that as part of his argument on the motion.

Next, he raised the argument that the reply brief that he received from Centralia College was not in compliance with the court's rule regarding timeframes for such reply. I am not going to strike any pleading at this time, but I will hear any arguments with regard to that or prejudice to Mr. Hood with regard to that in the course of his argument in responding to the motion.

So I would like to proceed by hearing arguments on the motion before the court today, and because we do have plenty of time this morning, I will allow the

parties up to 20 minutes per side, which is double the usual amount, in order to allow the parties to fully address the court on all of the matters that are before the court today. You may split up your time as you wish. You may reserve time after we hear from the other side and go back and forth as many times as you wish. But I will limit time to 20 minutes per side. Anything else preliminarily? Okay.

So, this is Centralia College's motion, so I'll hear from Mr. Barber first.

MR. BARBER: Thank you, Your Honor. Your Honor, this matter arises and is an attempt to relitigate a public records case that Mr. Hood had filed in 2020. The Court of Appeals issued a decision in that matter in August of '22, and that decision became final on March 8th of 2023, the same day that Mr. Hood served the college with the petition in this matter.

It is -- in reading through the complaint that Mr. Hood filed, it is clear that this is based off of the public records request he'd initially filed in September of 2019 requesting records regarding an audit of the college by the State Auditor's Office. The records that are at issue in his complaint are

the same issues that -- or the same documents that were at issue in the prior lawsuit. This case attempts to -- because the Superior Court and the Court of Appeals both ruled against Mr. Hood in the previous matter, this does appear to be an attempt to relitigate the issue to get a more favorable ruling and, for those reasons, would be barred by the doctrine of res judicata and collateral estoppel.

We also must acknowledge that Mr. Hood has in his three responses, in the three motions he has filed in response to the college's motion to dismiss, tried to modify his argument so that it is no longer so focused on the records he requested in September of 2019, but instead focused on an interrogatory and request for production that he had filed during the litigation in the previous lawsuit in which he claims that that request for production was pulling double duty and also served as a request for public records to which the college needed to respond.

Discovery in the prior litigation concluded in, I believe it was June of 2021, Your Honor, so even if the court were to accept Mr. Hood's assertion that his request for production, despite not giving fair notice to the college, had -- somehow also was pulling double duty, he is well past the PRA's

one-year statute of limitations for filing a suit based on the college's -- the date of when the college produced its last production in that prior litigation.

Mr. Hood has raised concerns about the college's failure to provide the court-issued pamphlet required under LCR 56(c). As the college has explained in its pleadings, that was not done intentionally. That was an oversight on my part. However, we do not see that Mr. Hood has been prejudiced or harmed by the college's failure to provide the pamphlet, which includes copies of CR 56 and LCR 56. And Mr. Hood has not identified has how he has been prejudiced or harmed. In fact, Mr. Hood is a very active pro se litigant. In our pleadings, we have mentioned where, in prior cases, Mr. Hood has on his own responded to and defended against motions to dismiss in the past.

So this is not a situation in which we are dealing with a pro se litigant who is unfamiliar with court procedures or with what a motion to dismiss is. Mr. Hood is quite familiar with these and has been able to respond adequately and has not been able -- as you mentioned before, has not been able to identify that he has been prejudiced or harmed by the college's oversight here.

Mr. Hood has also complained that the college has introduced new arguments in its reply brief that he has not had adequate time to respond to; specifically, the failure to provide fair notice. This is not a new argument, Your Honor. The college first raised this in its response in opposition to Mr. Hood's motion to amend his complaint, which was served -- filed and served on or about May 1st and was heard during the May 5th hearing in this matter.

The fair notice issue is based on the idea that a request for public records has to provide a public entity with fair notice that they are requesting public records under the PRA and not under some other court rule or statute. Mr. Hood has referenced repeatedly to the case of *O'Dea vs. City of Tacoma*. In that case, attorneys for Mr. O'Dea had attempted to file public records requests with the City of Tacoma by mail. Both sides agreed that the city did not receive those mailed public records requests. Then later, when the attorneys for Mr. O'Dea filed their lawsuit, they included as attachments those undelivered records requests, and the court found that because Mr. O'Dea had attempted to serve them in the past, there had been conversations, and that the requests were included with materials and clearly

stated that they were requests for public records under the Public Records Act, the City of Tacoma had fair notice that they were not being provided under -- were not requesting records under another statute or the civil rules.

That does not apply here. And, in fact, the court's reasoning in *O'Dea* would not support Mr. Hood's position here. In the prior litigation, Mr. Hood did not notify the college that he intended any of his three requests for production to serve double duty as requests for public records. He did not indicate on any of his requests for production that they were being -- that their authority was under the civil rules and the Public Records Act or mentioned the Public Records Act as a source of authority. There was no reason for the college to believe that they were anything other than what they were presented as, requests for production under the civil rules.

And, quite frankly, Mr. Hood's argument is rather concerning. And, one, it would be contrary to the text of the Public Records Act and the requirement that requesters make a request; and, two, it would be contrary to the caselaw which would require requesters make a clear request. If Mr. Hood's

argument was allowed to succeed, it would essentially allow for stealth records requests in which a requester could, for example, if they were to request a copy of their driving abstract as part of an application, if there was a statute or administrative rule which allows for making a request and a form for submitting -- for requesting a driver's abstract, that person could potentially, after receiving their abstract from Department of Licensing, come back a year later and claim, well, that wasn't just for my driver's abstract, that was also a request for public records, which you didn't provide.

And that would seem to be very concerning and create a risk of unnecessary and frivolous litigation for agencies. And, again, it would be contrary to both the caselaw and the text of the PRA.

Again, Mr. Hood has not adequately responded to the college's arguments regarding the statute of limitations. In his third and final response to the college's motion to dismiss, he claims that essentially the deadline for filing his current complaint, his current lawsuit, should be tolled and extended because he did not know the college would not provide him with the records he sought in his discovery request until after the Court of Appeals

decision became final.

That argument, again, is contrary to the text and the caselaw concerning the PRA, because, again, if we are to assume that his first request for production was pulling double duty as a request for public records, and the college completed its discovery in June of 2021, that is all that is required, that the college completed its discovery. And Mr. Hood is well outside the statute of limitations for filing that suit.

We also have the issue of res judicata and collateral estoppel. This matter is about Mr. Hood's request and demand for records, which were at issue in the prior lawsuit. The Court of Appeals has issued a final decision in this matter. We have sameness of the parties. The documents at issue are the same. The arguments are very similar. Mr. Hood cannot continue to relitigate this matter until he gets a favorable outcome he wants. The Court of Appeals has issued a decision, and both parties must abide by it. Collateral estoppel also applies, because the same issues Mr. Hood is trying to raise now, these, again, are very similar to the issues he sought to raise in the prior lawsuit. And, again, these issues have been decided and ruled on by the

Superior Court in the previous case as well as the Court of Appeals.

We have his -- one of the issues here is that he is complaining that the college did not provide him with records, which he wanted but which were not responsive to his September 2019 request. That issue has been resolved by the Court of Appeals decision. The way to resolve that issue in Mr. Hood's favor is not for him to continue relitigating this matter until he gets the decision he wants. It's for him to file a new, perhaps more clear, public records request.

The Court of Appeals did in its decision in the prior matter mention that Mr. Hood had interpreted his request at least three different ways, which would tend to indicate it was very ambiguous. And Mr. Hood has taken the lesson to heart, Your Honor. Around the same time he filed this complaint with the college, he also filed, I think it was eight different requests for public records, including for the records he sought in the prior litigation. And his most recent public records requests were more focused to get the documents he wanted.

So it does appear that Mr. Hood has not addressed the issues adequately, the statute of limitations

having been passed. The doctrines of res judicata and collateral estoppel will apply, and they're alternatives for Mr. Hood to get the records, which he has already initiated.

I'll reserve any remaining time I have for rebuttal.

THE COURT: You have eight minutes remaining.

MR. BARBER: Thank you, Your Honor.

THE COURT: Mr. Hood.

MR. HOOD: Okay. First, Your Honor, with regard to their failure to provide me the -- to abide by Court Rule LCR 56, I was certainly prejudiced. I had expected to file my response to their motion to dismiss on May 1, 2023, in accordance with CR 56. But I had to, in order to be timely, file quickly, rush and file my response to their motion on April 28th in accordance with LCR 56. So, I was certainly prejudiced. I did not -- as you can see, if you read my brief, it was short and rushed. I did not have adequate time to respond to it, particularly to their arguments regarding fair notice.

So on that ground, I think, yes, there -- I should be -- I would suggest that the court allow the parties to brief the -- well, anyway, I'll first of all go through my other arguments. But be sure that

I was prejudiced by their failure to provide me the documents as required by LCR 56.

They say, well, I'm an experienced litigant, I've also litigated a previous motion to dismiss. That is true. But in that previous motion to dismiss, the court was -- the court set a briefing schedule that was very clear. So there was no ambiguity about what date I had to file briefs.

THE COURT: Mr. Hood?

MR. HOOD: Yes.

THE COURT: The motion to dismiss before the court is not a summary judgment motion. Correct?

MR. HOOD: Correct. But -- yes, that's correct.

THE COURT: And so the local court rule requires that some represented litigants receive a document that explains what a summary judgment motion is. Can you explain how you're prejudiced by not having an explanation as to what a summary judgment motion is?

MR. HOOD: Okay. Because if you read LCR 12, it refers to motions that are dispositive motions, I think is the language that they use. And it says, you know, when an -- when -- for LCR 12, it refers to the time schedule for dispositive motions. And

because in LCR -- sorry, Your Honor.

THE COURT: My apologies for interrupting. Were you not aware of those timeframes?

MR. HOOD: No, I was not aware of those timeframes. I was not -- I was going by the -- I was planning to respond to their motion within 11 days, as required by CR 56, and when I started to -- when I -- on the 28th, when I started -- when I realized -- when I was doing my final draft or trying to work on it, I realized when I looked at the court rules, and I realized, oh, this is actually due today, not three days later. So, yes, I was certainly prejudiced. I did not know about it.

THE COURT: And are you requesting additional time?

MR. HOOD: To respond to their motion to dismiss, yes.

THE COURT: Okay. So I was a little unclear about that, because I asked whether that's what you were seeking in terms of a preliminary matter before I heard argument. It sounds like now you're requesting additional time. I'm not exactly sure what you're requesting. Do you want to brief more --

MR. HOOD: Okay. I asked --

THE COURT: I'm sorry. Go ahead.

MR. HOOD: I believe what I said was that I wanted to -- I was asking if you would dismiss their motion, but now that you've -- but now that you're asking me if I want additional time to respond to that, I think that would be fine, also.

THE COURT: You may proceed. You have 15 minutes remaining.

MR. HOOD: Okay. So my current -- okay. So, my current complaint involves a different records request and a different response. The issue whether the college should have produced board minutes in response to my 2020 discovery request was never considered, let alone adjudicated. Therefore, res judicata and collateral estoppel simply do not apply. A request triggers an agency's duties. Even if the request is identical, the agency must respond.

So in other words, each time an agency responds to a request, a potential for judicial review is created, because it is the response that triggers judicial review. Thus, if an agency's response to an identical request is different, then a lawsuit is not precluded.

Here, no final judgment was ever made on whether the college was obliged to provide the board minutes in response to my 2020 discovery request, which

invoked *O'Dea*. The college's right was not impaired, because the issue of whether the board minutes should have been produced during discovery was never considered or determined by the previous court. The only issue that was determined by the court previously was that the board minutes were not responsive to my 2019 PRA request. Because my 2020 request and the college response thereto were different and not determined by the court, res judicata simply does not apply.

Now, collateral estoppel is intended to prevent a second assertion of the same claim or cause of action. But I'm not trying to do that, Your Honor. I'm not trying to litigate their response to my 2019 PRA request, which is a totally separate thing, which they have acknowledged. I am trying to litigate their failure to produce their board minutes in response to my discovery requests. As the college has pointed out, I have requested those board minutes at least half -- at least half a dozen times since November of 2020, including a few days after March 8th, and they still haven't produced them to me, Your Honor. Why?

So res judicata and collateral estoppel simply do not apply. A different issue, different claim,

different response, different request. Everything is different. It just simply does not apply.

Now, with regard to their statute of limitations issue, until March 8th, 2023, the board minutes, which I had requested during discovery, were potentially responsive to my 2019 request. I could not have sued to obtain them prior to that date. My lawsuit was simply not ripe until the court determined that the board minutes were not responsive to my previous 2019 request. There's no -- if I had -- if I had sued during that time, the court would have said, well, we're still considering this matter, or it could have said that. But it wasn't -- but it didn't. Okay. It just -- it turns out that they never ever did consider whether or not the records, the board minutes, should have been disclosed in response to my discovery request.

Now, with regard -- now, I believe that this -- the issue of preclusion and statute of limitations don't apply to my 2020 request that I made during discovery. Since it is conceivable, Your Honor -- since it is conceivable that my 2020 request triggered the college's obligations under the PRA, then this 12(b)(6) motion must be dismissed and issue fully briefed in a motion for partial summary

judgment, which is what I suggest happen in this case.

THE COURT: Mr. Hood?

MR. HOOD: Pardon?

THE COURT: Mr. Hood?

MR. HOOD: Yes.

THE COURT: Are there any elements of collateral estoppel or res judicata that you concede? In other words, I hear you say everything is different, but in your briefing, it appears that you indicate that the issues might be different but other elements might be the same. So can you clarify that, please?

MR. HOOD: Okay. I'm sorry, Your Honor. Yes (inaudible).

Obviously, the parties are the same, but the issue is not identical. There was no -- okay. The four collateral estoppel issues are: Whether decided -- whether the issues decided in the prior adjudication is different. No. Prior adjudication must end in the final judgment on the merits. No.

(Court reporter interruption.)

MR. HOOD: The party against whom collateral estoppel is asserted was a party or in privity with a party to the -- I'm quoting from *Yakima County vs.*

Yakima County Law Enforcement Officers Guild. Number three, the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication. I was a party in the prior a adjudication. But again, the issue -- I didn't assert this issue in that prior adjudication, so number three does not apply.

Okay. So does that answer your question, Your Honor?

THE COURT: If that's your answer, yes, absolutely.

MR. HOOD: All right. So if fair notice is to be discussed here, okay, the short answer, whether I provided fair notice, is yes. Quote, Your Honor, "The adequacy of a public agency's response to a request for production is subject to judicial review." That is *Klinkert vs. Washington State Criminal Justice Training Commission,* 2015. There are other court cases that all -- that discuss fair notice, particularly *Hangartner*, *Beal*, *Wood vs. Lowe*, *Bonamy vs. Seattle*. None of those apply here because they are either, in the case of *Hangartner,* the request was overbroad. Or in the case of *Beale* or *Wood vs. Lowe*, they were a request for information, which was not a request for an

identifiable record. And again in *Bonamy*, *Bonamy* only requested information.

So to provide fair notice, what is required is pursuant to *Germeau vs. Mason County*, the only relevant requirement is whether it was reasonable for the agency to believe that the requester was requesting the documents under an independent non-PRA authority.

The board minutes were related to the audit, and I had asked for all records related to the audit during discovery. The college did not disclose them under the rules of discovery, even though I repeatedly identified them, repeatedly requested them. Since it refused to provide them under the authority of discovery, they were obligated to disclose them by default under the PRA because there is no other authority requiring their disclosure.

I think that RCW 42.56.030 applies here. "In the event of conflict between provisions of this chapter and any other act, provisions of the PRA shall govern."

Moreover, because I repeatedly cited to *O'Dea*, the college knew I was invoking the authority of the PRA. Not only that, Your Honor, but in their response to my request for production, which is the basis of this

complaint, they said -- their response was, "Hood's request was not reasonably calculated to lead to relevant and admissible evidence. As such, the request" -- here is the important part, Your Honor -- they said, quote, "the request seeks information that is outside the scope of discovery." In other words, they understood that my request for their board minutes was outside the scope of discovery. Since it was outside the scope of discovery, then there's no other authority in which I can get those documents. They are public records. I requested them repeatedly.

In my request for production, I cited *Nissen vs. Pierce County*. I said the term "related to" means what it means in Pierce County; in other words, that all records have to be disclosed. It was also intended to provide both me and the court a means of determining whether or not the records that it produced during discovery were, in fact, responsive to my 2019 request.

THE COURT: Mr. Hood?

MR. HOOD: That was --

THE COURT: Mr. Hood?

MR. HOOD: So -- yes.

THE COURT: You have three minutes remaining.

Do you wish to reserve that time?

MR. HOOD: Yes.

THE COURT: Very well. Mr. Barber.

MR. BARBER: Thank you, Your Honor. I find the argument a little confusing. It brings to mind Erwin Schrödinger's cat thought experiment, except in this case, instead of a cat or an atom being superpositioned in two states, you know, the cat being alive or dead, is that a discovery request can be or not be a request for public records depending on how the court rules or how a party interprets it. That just doesn't make any sense.

If Mr. Hood is correct and his request for production in November of 2019 or 2020 during the prior litigation were, in fact, a request for public records, the college produced the final records in response to those discovery requests in June of '21. The PRA statute of limitation would apply. Mr. Hood is well beyond the one-year statute of limitations, and this case is barred by it.

The argument that privity does not seem to apply, seems that privity would absolutely apply, Your Honor. The parties are exactly the same, and they stand in the exact same position as they did in the prior litigation. Mr. Hood is the plaintiff. The

college is the defendant. And he is continuing to seek records related to the audit. Mr. Hood has tried to argue that the college's complaint in the prior litigation, that his request for board minutes went beyond the request, is not an indication that the college understood his request for production as doing double duty as a request for public records but is an indication, as the Court of Appeals recognized in its decision in the prior matter, that Mr. Hood was expanding the scope of his request as the litigation progressed and that his initial request submitted in September 2019 was vague and very malleable, allowing him to expand or contract as the litigation went on, get more or less records as he sought.

So I don't see how privity -- privity exists here. The issues are the same. Many of the underlying facts are the same. But at the end of the day, regardless of Mr. Hood's opinions on res judicata or collateral estoppel, he cannot escape the fact that the college provided its final responses to his discovery requests in June of 2021, and he waited more than a year to file his lawsuit and is outside the PRA's statute of limitations.

I would also like to briefly address his arguments

concerning the college's failure to provide him the pamphlet required by the local court rules. I did not hear how Mr. Hood identified he had been prejudiced or harmed by the college's failure to do so. And this was an oversight on the college's part, I do apologize, but Mr. Hood has repeatedly failed to identify how he was prejudiced or harmed. All three of the pleadings he filed in response to the college's motion, his motion to amend, his motion to strike and, in fact, his response to the motion to dismiss were all filed at least 14 calendar days before the hearings on the college's motion.

A hearing had initially been scheduled on the college's motion for earlier this month. It was continued to today. But Mr. Hood's motion to amend and motion to strike were both filed 14 days before the original hearing on this matter, and his response to the college's motion was again filed 14 calendar days before this hearing.

So Mr. Hood has had adequate time and three bites at the apple here, Your Honor, to adequately respond to the college's motion and to create, develop and submit his arguments against it. He's just not shown any prejudice or harm by the failure of the college to provide him with a pamphlet.

Returning to the main argument, though, Your Honor, these issues were litigated in the prior case. It was determined that the board minutes were not responsive to his initial request. That strikes this issue. But even if we accept that his request for production somehow converted into a request for public records, he's waited too long to file this case. And he is already seeking these records through other public records requests that were filed earlier this year. There's no harm to Mr. Hood in dismissing this matter based on the statute of limitations contained in the PRA.

And I'll reserve any time I have remaining.

THE COURT: Thank you, Mr. Barber. You have three minutes remaining. And Mr. Hood, you have three minutes remaining.

MR. HOOD: Thank you, Your Honor. I would like to first of all show, when I earlier suggested that the court permit whole briefing on the issue of fair notice, which seems to be the sticking point here, and I'd point out that none of the cases that I cited earlier were -- involved a 12(b)(6) motion. That is, all those complaints, whether they involved requests for information or an overbroad request or whatever, they all were allowed to proceed on the

merits, because it was conceivable that the request triggered the PRA. Since it is conceivable that my request in 2020 triggered the college's response, it triggered a PRA response, then the college -- then this case should proceed on the merits.

Now, again, I said that I was prejudiced because I was expecting to file on May 1st, and instead, I had to file on April 28th my response to their motion to dismiss. Three days is quite a lot of time when you're rushed.

The privity issue, again, does not apply because the issue is separate and never was adjudicated by the previous court. Again, the statute of limitations simply does not apply to this case either, because, again, the issue was not ripe.

The court never determined whether or not the board minutes were responsive to my 2020 request, and without any other authority, PRA has to have authority. They weren't going to produce them in response to my discovery, and they said that my -- that my discovery requests was beyond the scope of discovery, then they had to produce them in response to my -- they had to produce them as obligated by the PRA. The argument that they simply did not know whether the PRA was invoked is not credible, Your

Honor. Both in my discovery requests, I cited PRA cases. In *O'Dea* -- I said they should be produced under the ruling in *O'Dea*. I also cited that. There's simply no credibility to their statement that, oh, we didn't know he was asking for them under the PRA.

I'll reserve any remaining time.

THE COURT: And your time is expired, Mr. Hood. Is there anything last you want to say to the court?

MR. HOOD: Well, again, I think the last thing I would like to say, I think I've already said, though, is that because I was prejudiced in responding to their 12(b)(6) motion, and I believe -- and because the fair notice requirement -- the issue of fair notice has not been -- is an issue that needs to be briefed, I think the court should allow briefing on that issue, because it seems to be the salient issue here. Thank you.

THE COURT: Thank you. Mr. Barber, anything else?

MR. BARBER: Your Honor, I would just say that the court has previously denied Mr. Hood's motion to amend his complaint on the grounds that it would be futile to do so, because even if the complaint had

been amended, it would still have been -- I'm sorry -- would have been barred by the PRA statute of limitations, because his complaint was filed more than a year after the college completed its final production of discovery in the prior litigation. And that reasoning would seem to require -- or would seem to apply here and lead to dismissal on the grounds of statute of limitations that Mr. Hood waited simply too long to file this complaint and is barred by the statute of limitations.

And again, he's admitted he had -- he managed to file three responses to the college's motion to dismiss. All were filed at least 14 calendar days in advance. This was not a situation in which Mr. Hood was denied time or given one calendar day to respond, as the college had in response to his motion to strike.

The college would simply ask Your Honor that this matter be dismissed. Thank you.

THE COURT: Thank you. In addressing the motion to dismiss before the court, I want to clarify a couple of things, and then I will indicate how the court will issue its decision in this case. First of all, the motion itself made three arguments as to a basis for dismissal: Res judicata, collateral

estoppel and statute of limitations. Those are the three issues in the motion, and those are the three issues that the court will decide the motion based upon. So the court is not going to base its decision on any issues raised for the first time in a reply brief.

With regard to both the service issue regarding whether the pleading was served on May 26th as indicated or May 30th as also indicated by the parties, it does not appear to the court that there was prejudice based upon that. With regard to LCR 56 and the admitted noncompliance with that rule, it does not appear that there was prejudice based upon that either.

But it's very difficult for the court to discern whether something different might have been done by Mr. Hood if those irregularities did not occur. And so based upon that, the court is going to defer ruling on this motion until next week. I'm going to ask the court clerk to put this motion to dismiss on the court's calendar for next week for issuing a decision on June 9th. So that will be on the court's dispositive motion calendar for June 9th. The court will hear that matter without oral argument. There will be no hearing on June 9th, but the court will

issue its decision on this motion on that day.

I'm going to ask the parties to submit proposed orders no later than noon on June 8th for the court to issue its decision, and I will issue a written decision on June 9th without oral argument.

I am going to allow Mr. Hood to file any additional briefing not to exceed ten pages in length by no later than June 7th at noon. And I believe that allowing that additional briefing addresses any potential prejudice as to the unintentional failure to follow LCR 56(c)(1) and the irregularity associated with the service of the pleading.

So, once again, any additional briefing by Mr. Hood on the motion before the court must be filed and served no later than noon on June 7th. And the parties should submit proposed orders on this motion, and those must be filed and served no later than noon on June 8th, and the court will issue a written decision on June 9th. It will be on the court's dispositive motion calendar on June 9th, but there will not be a hearing on June 9th. It will be issued without oral argument. And the parties should look in the court's case management system for that decision. It will not be mailed out or delivered to the parties. It will simply be in the court file for

anyone to access after it is issued.

Do the parties have any questions? Mr. Barber?

MR. BARBER: No, Your Honor. Thank you.

THE COURT: Mr. Hood.

MR. HOOD: No questions, but -- well, actually, yes. I think you said June 8th at noon for the proposed order; is that correct?

THE COURT: That is correct.

MR. HOOD: Okay. That's all. Thank you.

THE COURT: Thank you very much. I appreciate all of your arguments today as well as the written pleadings. They've been very helpful to the court. We are completed.

--o0o--

APPENDIX 3

CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, AURORA J. SHACKELL, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

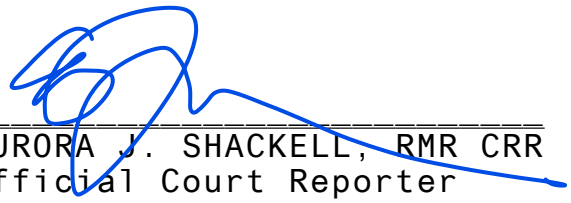
1. I reported the proceedings stenographically;

2. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;

3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

4. I have no financial interest in the litigation.

Dated this 8th day of August, 2023.



AURORA J. SHACKELL, RMR CRR
Official Court Reporter
CCR No. 2439

APPENDIX 3

THURSTON SUPERIOR COURT

August 03, 2023 - 11:13 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	58362-3
Appellate Court Case Title:	Eric Hood, Appellant v Centralia College, Respondent
Superior Court Case Number:	23-2-00846-1

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APPENDIX 4

Office of the Washington State Auditor
Pat McCarthy

Financial Statements Audit Report

Centralia College

For the period July 1, 2017 through June 30, 2018

Published March 21, 2019

Report No. 1023438

APPENDIX 4

Office of the Washington State Auditor

March 21, 2019

Board of Trustees
Centralia College
Centralia, Washington

Report on Financial Statements

Please find attached our report on the Centralia College's financial statements.

We are issuing this report in order to provide information on the College's financial condition.

Sincerely,

Pat McCarthy

State Auditor

Olympia, WA

Insurance Building, P.O. Box 40021 • Olympia, Washington 98504-0021 • (360) 902-0370 • Pat.McCarthy@sao.wa.gov

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Centralia College
July 1, 2017 through June 30, 2018

Board of Trustees
Centralia College
Centralia, Washington

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the financial statements of the business-type activities and the aggregate discretely presented component units of the Centralia College, as of and for the year ended June 30, 2018, and the related notes to the financial statements, which collectively comprise the College's basic financial statements, and have issued our report thereon dated March 7, 2019. As discussed in Note 2 to the financial statements, during the year ended June 30, 2018, the College implemented Governmental Accounting Standards Board Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*.

Our report includes a reference to other auditors who audited the financial statements of the Centralia College Foundation (the Foundation), as described in our report on the College's financial statements. This report includes our consideration of the results of the other auditor's testing of internal control over financial reporting and compliance and other matters that are reported on separately by those other auditors. However, this report, insofar as it relates to the results of the other auditors, is based solely on the reports of the other auditors. The financial statements of the Foundation were not audited in accordance with Government Auditing Standards and accordingly this report does not include reporting on internal control over financial reporting or instances of reportable noncompliance associated with the Foundation.

The financial statements of the Centralia College, an agency of the state of Washington, are intended to present the financial position, and the changes in financial position, and where applicable, cash flows of only the respective portion of the activities of the state of Washington that is attributable to the transactions of the College and its aggregate discretely presented component units. They do not purport to, and do not, present fairly the financial position of the

state of Washington as of June 30, 2018, the changes in its financial position, or where applicable, its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

INTERNAL CONTROL OVER FINANCIAL REPORTING

In planning and performing our audit of the financial statements, we considered the College's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the College's internal control. Accordingly, we do not express an opinion on the effectiveness of the College's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the College's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

In addition, we noted certain matters that we have reported to the management of the College in a separate letter dated March 7, 2019.

COMPLIANCE AND OTHER MATTERS

As part of obtaining reasonable assurance about whether the College's financial statements are free from material misstatement, we performed tests of the College's compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

PURPOSE OF THIS REPORT

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the College's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the College's internal control and compliance. Accordingly, this communication is not suitable for any other purpose. However, this report is a matter of public record and its distribution is not limited. It also serves to disseminate information to the public as a reporting tool to help citizens assess government operations.

Pat McCarthy

State Auditor

Olympia, WA

March 7, 2019

INDEPENDENT AUDITOR'S REPORT ON FINANCIAL STATEMENTS

Centralia College
July 1, 2017 through June 30, 2018

Board of Trustees
Centralia College
Centralia, Washington

REPORT ON THE FINANCIAL STATEMENTS

We have audited the accompanying financial statements of the business-type activities and the aggregate discretely presented component units of the Centralia College, as of and for the year ended June 30, 2018, and the related notes to the financial statements, which collectively comprise the College's basic financial statements as listed on page 11.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We did not audit the financial statements of the Centralia College Foundation (the Foundation), which represents 100 percent of the assets, net position and revenues of the aggregate discretely presented component units. Those statements were audited by other auditors, whose report has been furnished to us, and our opinion, insofar as it relates to the amounts included for the Foundation, is based solely on the report of the other auditors.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the

financial statements are free from material misstatement. The financial statements of the Foundation were not audited in accordance with *Government Auditing Standards*.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the College's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the College's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinion

In our opinion, based on our audit and the report of the other auditors, the financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities and the aggregate discretely presented component units of the Centralia College, as of June 30, 2018, and the respective changes in financial position and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Matters of Emphasis

As discussed in Note 2 to the financial statements, in 2018, the College adopted new accounting guidance, Governmental Accounting Standards Board Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*. Our opinion is not modified with respect to this matter.

As discussed in Note 1, the financial statements of Centralia College, an agency of the state of Washington, are intended to present the financial position, and the changes in financial position, and cash flows of only the respective portion of the activities of the state of Washington that is attributable to the transactions of the College and its aggregate discretely presented component units. They do not purport to, and do not, present fairly the financial position of the state of Washington as of June 30, 2018, the changes in its financial position, or where applicable, its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and required supplementary information listed on page 11 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

OTHER REPORTING REQUIRED BY GOVERNMENT AUDITING STANDARDS

In accordance with *Government Auditing Standards*, we have also issued our report dated March 7, 2019 on our consideration of the College's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral

part of an audit performed in accordance with *Government Auditing Standards* in considering the College's internal control over financial reporting and compliance.

Pat McCarthy

State Auditor

Olympia, WA

March 7, 2019

FINANCIAL SECTION

Centralia College
July 1, 2017 through June 30, 2018

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Statement of Cash Flows – 2018
Foundation Statement of Financial Position – 2018
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Schedule of Contributions – PERS 1, PERS 2/3, TRS 1, TRS 2/3 – 2018
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MANAGEMENT'S DISCUSSION & ANALYSIS

Centralia College

The objective of this Management Discussion and Analysis (MD&A) is to help readers of Centralia College's financial statements better understand the financial position and operating activities for the year ended June 30, 2018 with comparative information for the year ended June 30, 2017. This discussion has been prepared by management and should be read in conjunction with the financial statements and accompanying notes which follow this section. Unless otherwise stated, all years refer to the fiscal year ended June 30th.

The Centralia College financial report communicates financial information for Centralia College and its' discretely presented component unit, the Centralia College Foundation. The College is an agency of the State of Washington, and the financial information contained in this report is included in the State of Washington's Comprehensive Annual Financial Report (CAFR) for 2018.

Reporting Entity

Centralia College is one of 30 community and technical college districts in the State of Washington overseen by the State Board for Community and Technical Colleges (SBCTC). The College is governed by a Board of five Trustees, which has broad responsibilities to supervise, coordinate, manage and regulate the College as provided by state law. Trustees are appointed by the Governor for a term of five years, with consent of the Senate.

The College offers associate degrees and certificates in a variety of programs, and four baccalaureate degrees in Applied Science.

The College is the oldest continuously operating two-year public college in the State of Washington, was established in 1925 and currently averages approximately 3,800 full-time and part-time students per academic quarter. The College's main campus is located in Centralia, and serves Lewis and south Thurston counties with a population of over 75,000, and has a satellite campus in Morton.

Using the Financial Statements

The College reports as a special purpose government, engaged in business-type activities as defined by Governmental Accounting Standards Board (GASB) Statement No. 35, *Basic Financial Statements – Management's Discussion and Analysis – for Public Colleges and Universities*, as amended. Under this model, the financial report includes three financial statements, the Statement of Net Position, the Statement of Revenues, Expenses and Changes in Net Position and the Statement of Cash Flows. These financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The Governmental Accounting Standards Board (GASB) is the accepted accounting standard setting body for establishing governmental accounting and financial reporting principles.

GASB Statement No. 39, *Determining Whether Certain Organizations are Component Units* requires a college to report an organization that raises and holds economic resources for the direct benefit of a government unit. Under this requirement, the Centralia College Foundation is a component unit of the College and their financial statements are discretely presented into this financial report.

During 2018, the College implemented GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other than Pensions (OPEB)*. This Statement requires the College to recognize its proportionate share of the state's actuarially determined OPEB liability with a one year lag measurement date similar to GASB Statement No. 68. The change in accounting principle resulted in an adjustment to beginning net position in the amount of $14.3 million.

The College's Financial Position

The statement of net position provides information about the College's financial position at the end of the fiscal year. It displays all of the College's assets, deferred outflows, liabilities and deferred inflows. The difference between assets, deferred outflows, liabilities and deferred inflows is net position.

A condensed comparison of the Statements of Net Position as of June 30, 2018 and 2017, follows:

Condensed Statement of Net Position

As of June 30 (in thousands)	2018	2017
ASSETS		
Current assets	$ 9,096	$ 13,339
Capital assets, net	84,039	84,512
Other non-current assets	9,910	7,962
Total assets	103,045	105,813
DEFERRED OUTFLOWS		
Deferred outflows related to Pensions	1,055	1,201
Deferred outflows related to OPEB	204	
Total deferred outflows	1,259	1,201
LIABILITIES		
Current liabilities	3,627	4,261
Other non-current liabilities	21,600	11,509
Total liabilities	25,227	15,770
DEFERRED INFLOWS		
Deferred inflows related to Pensions	1,248	575
Deferred inflows related to OPEB	2,428	
Total deferred inflows	3,676	575
NET POSITION	$ 75,401	$ 90,669

Current assets consist of cash, investments, accounts receivable and inventories. The $4.2 million decrease from 2017 to 2018 was the result of several items, 1) cash decreased $5.75 million which is the result of additional investment in U.S. Government sponsored enterprise bonds. This increased the total bond investments to $12 million, of which $4.5 million is classified as current investments and $7.5 million as non-current. This was the result of a strategic decision to improve investment income as continued historically low interest rates put a damper on short term investment income options. 2) $1.48 million decrease in Accounts Receivable, largely from the reduction of monies owed the College for capital appropriations for spending on the TransAlta Commons Project as the project was completed in May 2017.

Capital assets including land and construction in progress decreased by a net of $473K in 2018, the result of increased depreciation following the completion of the TransAlta Commons Project, a $40 million project that was completed in May 2017. The college recorded $2.28 million in depreciation expense in 2018 on its capital assets and only had $1.8 million in additions to capital assets. More information on the College's capital assets can be found in Note 6 to the financial statements.

Non-current assets, other than the net capital assets, increased by $1.95 million in 2018. This is a result of a $3 million increase in investments associated with the investment in bonds discussed above and in Note 3 and a $612K decrease in restricted cash associated with property purchases in preparation for the student's athletic multi-purpose field.

Deferred outflows of resources and deferred inflows of resources represent pension-related deferrals associated with the implementation of GASB Statement No. 68 in FY 2015 and Statement No. 73 in FY 2017, and Statement No. 75 in FY2018. The increase in deferred outflows reflect the College's proportionate share of an increase in the state-wide amounts reported by the Department of Retirement System (DRS) and Health Care Authority (HCA) due to differences between expected and actual

experience related to the actuarial assumptions. The College recorded $1.2 million in FY 2017 and $1.26 million in FY 2018 of pension and postemployment-related deferred outflows.

Similarly, the increase in deferred inflows in 2018 reflects the increase in difference between actual and projected investment earnings on the state's pension plans and the implementation of GASB Statement No. 75. The College recorded $575K in FY 2017 and $3.7 million in FY 2018 of pension and postemployment-related deferred outflows.

Current liabilities include accounts payable, accrued payroll, the current portion of Certificate of Participation (COP) debt, and associated liabilities and unearned revenues. The decrease in current liabilities for 2018 was the result of a decrease in salaries and benefits owed to employees since Spring quarter ended June 15 so faculty contracts were paid off June 25 and the winding down of the four year, $9.86 million, Department of Labor grant for which we were the fiscal lead.

Non-current liabilities are made up of OPEB and pension liabilities, vacation and sick leave balances, and the long-term portion of Certificate of Participation debt. The large increase in non-current liabilities of $10.12 million is the result of the addition of OPEB liability with the implementation of GASB Statement 75, reflecting the College's proportionate share.

Net position represents the difference between the College's assets plus deferred outflows, less liabilities and deferred inflows, and measures whether the financial condition has improved or worsened during the year. The College reports its net position in three categories:

Investment in capital assets – The College's total investment in property, plant and equipment, net of accumulated depreciation and any outstanding debt attached to its capital assets. To the extent of restricted cash and cash equivalents for capital projects collected, but not yet spent, these amounts are not included as a component of capital assets, instead are included as a component of restricted net position, expendable described below.

Restricted net position, nonexpendable – consists of funds in which a donor or external party has imposed the restriction that the corpus or principal is not available for spending but for investment purposes only. Historically, donors interested in establishing such funds to benefit the College or its students have chosen to do so through the Foundation. As a result, the College is not reporting a balance in this category.

Restricted net position, expendable – Includes resources in which the College is legally or contractually obligated to spend in accordance with restrictions placed by the donor or external parties. The primary expendable funds for the College are the dedicated student fees collected as part of referendums and reserved for student projects, such as TransAlta Commons and athletic multi-purpose field.

Unrestricted net position – These represent all the other resources available to the College for general and educational obligations to meet expenses for any lawful purpose. Unrestricted net positon is not subject to externally imposed stipulations, however the College has designated the majority of the unrestricted net position for various academic and support functions. Prudent balances are maintained for use as working capital, as a reserve against emergencies and for other purposes, in accordance with policies established by the Board of Trustees.

Condensed Net Position

As of June 30 (in thousands)	2018	2017
Investment in capital assets	$81,091	$81,918
Restricted expendable	4,525	4,442
Unrestricted (deficit)	(10,215)	4,309
Total Net Position	75,401	90,669

Several factors are involved in the $15.3 million decrease in overall net positon. The net decrease of $827K for investment in capital assets, after depreciation expense of $2.28 million, is the result of increased depreciation following the completion of the TransAlta Commons Project, a $40 million project that was completed in May 2017. The $15.4 million decrease in unrestricted net position was the result of: 1) the inclusion of $12.9 million for the OPEB liability with the implementation of GASB Statement No. 75 is responsible for the majority of the decrease in unrestricted and 2) pension liability increasing by $2.5 million.

Statements of Revenues, Expenses and Changes in Net Position

The Statement of Revenues, Expenses, and Changes in Net Position provides information about the details of the changes in the net position of the College. The statement classifies revenues and expenses as either operating or non-operating. Generally, operating revenues are revenues that are earned by the College in exchange for providing goods or services. Operating expenses are defined as expenses incurred in the normal operation of the College, including a provision for the depreciation of property and equipment assets. The difference between the operating revenues and operating expenses, will always result in an operating loss since the College's state operating appropriations, and Federal Pell grant revenues are shown as non-operating revenues as required by the GASB.

A summary of the College's Statements of Revenue, Expenses and Changes in Net Position for the years ended June 30, 2018 and 2017, follows:

APPENDIX 4

Condensed Statement of Revenues, Expenses, and Changes in Net Position for Fiscal Years 2018 and 2017
(dollars in thousands)

	2018	2017
Operating Revenues		
Student tuition and fees, net	$ 4,167	$ 3,615
State and local grants and contracts	11,830	11,003
Federal grants and contracts	3,596	4,814
Auxiliary enterprise sales	1,389	1,393
Other operating revenues	68	64
Total operating revenues	**21,051**	**20,889**
Operating Expenses		
Salaries and wages	17,496	17,242
Scholarships, fellowships and other aid	4,684	4,315
Employee benefits	6,610	5,426
Other operating expenses	8,162	10,878
Depreciation	2,280	1,963
Total operating expenses	**39,232**	**39,824**
Net operating loss	(18,181)	(18,935)
Non-Operating Revenues (Expenses)		
State operating appropriations	12,964	12,876
Federal Pell grant revenue	4,103	3,962
Investment income	215	143
Other non-operating expenses	(1,053)	(788)
Net Non-operating revenues	**16,229**	**16,193**
Loss before capital contributions	(1,952)	(2,742)
Capital appropriations	1,024	19,141
Change in net position	**(928)**	**16,399**
Net position, beginning of year	90,668	76,283
Cumulative effect of accounting change (GASB 75)	(14,339)	-
Cumulative effect of accounting change (GASB 73)	-	(2,014)
Net position, beginning of year as restated	76,329	74,269
Net position, end of year	**75,401**	**90,668**

Operating and Non-Operating Revenues

State operating appropriations, tuition and fees (net of scholarship discounts and allowances), and grants and contracts, are the primary sources for funding the College's academic programs.

The following table shows a comparison of operating and non-operating revenues for years ended June 30, 2018 and 2017:

Revenues by Source

For the years ended June 30 (in thousands)	2018	2017
Operating		
Student tuition and fees, net	$ 4,167	$ 3,615
Grants & contracts	15,426	15,817
Auxiliary enterprise sales	1,389	1,393
Other revenues	68	64
Non-operating		
State operating appropriations	12,964	12,876
Capital appropriations	1,024	19,141
Federal pell grant	4,103	3,962
Total revenues	$ 39,141	$ 56,868

Revenues

The state of Washington appropriates funds to the community college system as a whole. The State Board for Community and Technical Colleges (SBCTC) then allocates monies to each college. In fiscal year 2018, the SBCTC allocated funds to each of the 34 colleges based on three-year average FTE actuals. Additionally, the supplemental budget also reduced the general fund by the amount set aside specifically for pension stabilization. This method of allocation will continue in FY2019.

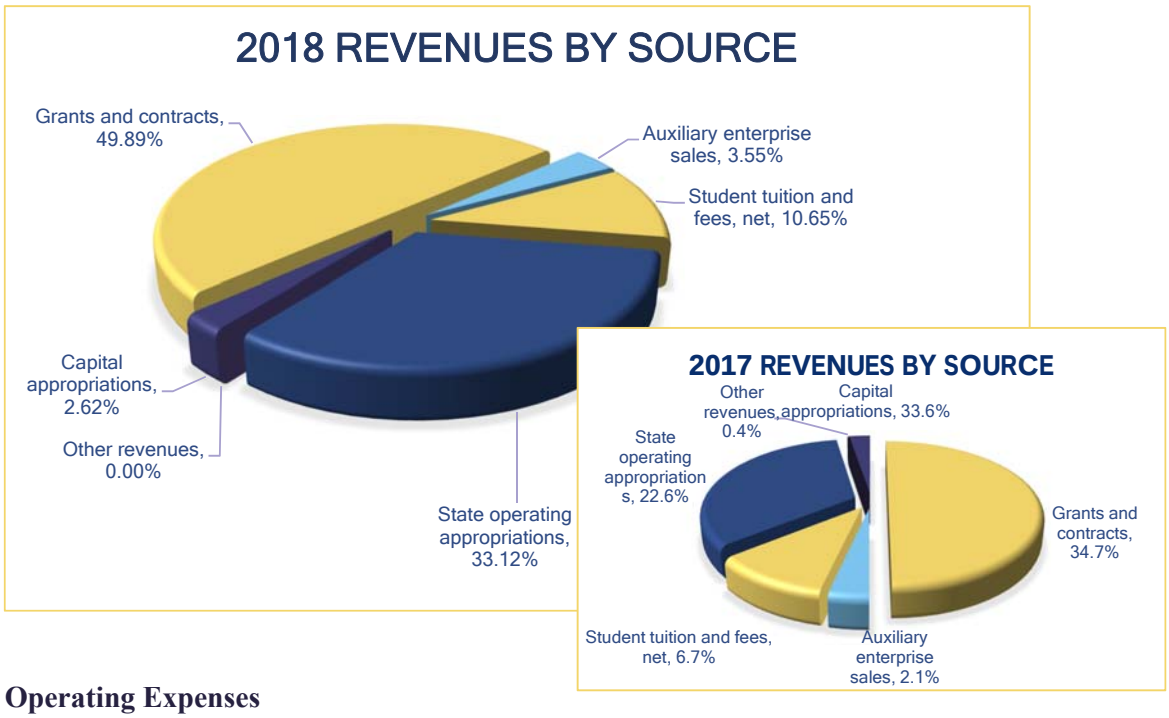
Although overall enrollments decreased again in fiscal year 2018, the College's $552K increase in tuition and fee revenue is primarily attributable to the increased bachelor's program enrollment, which increased by 66 annualized FTEs from fiscal year 2017, as well as the decrease in basic skills enrollments. In addition, scholarship discounts and allowances decreased by $208K primarily as a result in a change in how Foundation scholarships were awarded to students (Foundation controlled versus College controlled).

Pell grant revenues generally follow enrollment trends. Although the College's enrollment softened during FY18, the Pell grant revenue showed a slight increase, primarily as a result of the change of enrollment mix to higher enrollments in bachelor's programs.

Non-Pell Federal grant revenues decreased by $1.2 million as the result of decreased activity and the beginning of the close-out period on the U.S. Department of Labor WISE grant, a four-year grant in the amount of $10 million. State and local grants and contracts were up $826K. The College continued to see increased Running Start enrollments and revenues were up $252K over fiscal year 2017. These contracted students earn both high school and college credit while attending the College. In addition, the college received a few new grants: $232K from TransAlta for campus energy upgrades, $202K from Pacific Mountain Workforce Development Council for Upskills/Backfill project at CC East, $84K grant from Professional Educator Standards board in support of the Bachelors in Teaching program, and $40K from the DART Foundation for equipment for the Mechatronics program.

The College receives capital spending authority on a biennial basis and may carry unexpended amounts forward into one or two future biennia, depending on the original purpose of the funding. In accordance with accounting standards, the amount shown as capital appropriations was down by $18 million in fiscal year 2018 because construction activity on the $40 million TransAlta Commons project was completed in May 2017.

The following illustration showing revenue by source, both operating and non-operating used to fund the College's programs for the year ended June 30, 2018, in percentage terms.



Operating Expenses

Faced with severe budget cuts over the past six years, the College has continuously sought opportunities to identify savings and efficiencies. Over time, the College decreased spending and services and was subject to various state spending freezes and employee salary reductions.

For 2018, the College saw a decrease of $1.1 million in total operating expenses. Salary and benefit costs increased as a result of the 2% salary increase by the legislature and a $459K pension expense adjustment. Utilities decreased in FY2018 as a result of targeted efforts in energy reduction with solar panel installation and lighting upgrades completed.

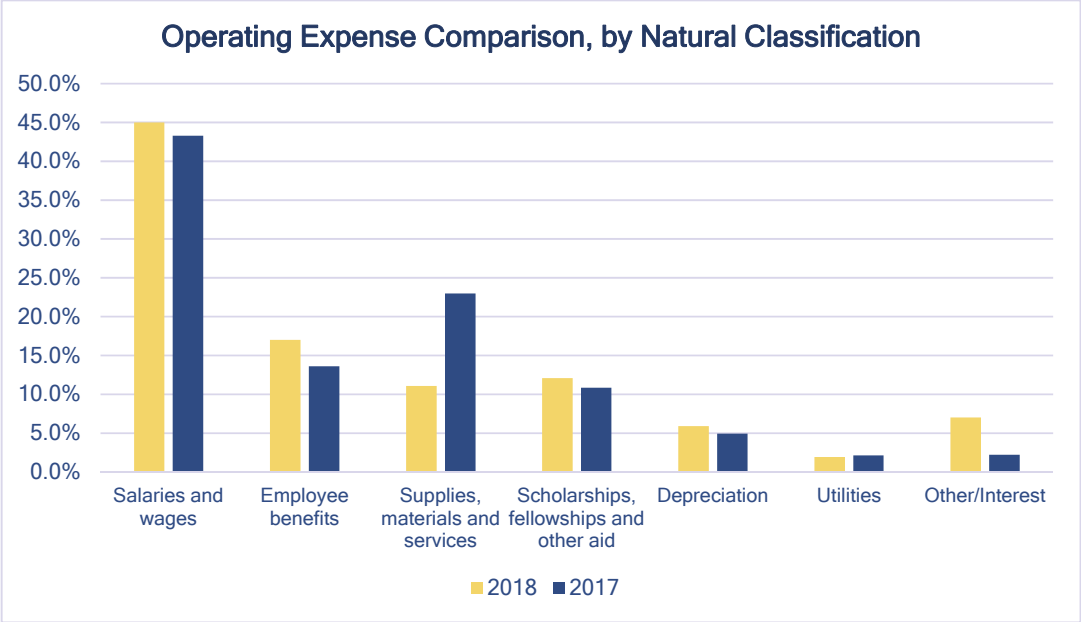
The supplies, materials and purchased services decreased significantly, $4.9 million, and depreciation increased with the completion of the new TransAlta Commons in May 2017. Certain capital project costs do not meet accounting criteria for capitalization as part of the cost of the building and are instead recognized as supplies and materials or purchased service costs. These fluctuations are to be expected. Depreciation expense is also primarily driven by capital activity. In addition, expenses decreased as a result of beginning the close out period of the U.S. Department of Labor WISE Grant.

The College has non-operating expenses, comprised primarily of tuition remittances, which has been consistently around $800,000 for each of the last two years. Operating expenses, for 2018 and 2017 are noted below, by natural classification, followed by a bar chart that shows the comparative percentages:

Operating Expenses

For the years ended June 30 (in thousands)	2018	2017
Salaries and wages	$ 17,496	$ 17,242
Supplies, materials and services	4,506	9,150
Employee benefits	6,610	5,426
Scholarships, fellowships and other aid	4,684	4,315
Depreciation	2,280	1,963
Other	3,656	1,728
Total operating expenses	$ 39,232	$ 39,824

Salaries and wages, scholarships, fellowships and other aid, and employee benefits are the major support cost for the College's programs, followed by other, supplies materials and services and depreciation.



Capital Improvements

The College spent $24 million for capital related purposes in 2017, primarily for the construction of the TransAlta Commons Project. With a total cost of $40 million and construction completed in May 2017, the 70,000 square foot building replaced the student services building, provide facilities for Financial Aid, Enrollment Services, Student Programs, cashiering, bookstore, cafeteria, and classrooms. Additional information of notes payable, long term debt and debt service schedules can be found in Notes 12, 13 and 14 of the Notes to the Financial Statements.

Financial Summary and Economic Factors That Will Affect the Future

Beginning fiscal year 2016, the Legislature enacted the Affordable Education Act, which reduced the lower division tuition rate by 5% at the College in fiscal year 2016 and reduced the upper division tuition rate by 16% in fiscal year 2017. The Legislature did backfill a portion of this loss, however this will further reduce the amount of tuition collected by the College in the future. For the 17-19 biennium, the State Board for Community and Technical College's has elected to move to a new allocation model, changing how the state allocated funds are distributed to each college. The new model is based on performance in several key indicators, from general enrollments to enrollments in high cost programs, as well as student completion and achievement points. The model is based on a three-year rolling average of enrollments and completions, comparative to other institutions in the state. Due to a continued decrease in enrollment, it is anticipated that the College will likely see a decrease in state operating appropriations in future years.

Statement of Net Position

As of June 30, 2018

Assets		
Current Assets		
Cash and cash equivalents (Note 3)	$	1,306,364
Investments (Note 3)		4,475,366
Accounts receivable, net (Note 4)		2,914,004
Inventories (Note 5)		293,901
Interest receivable (Note 4)		28,286
Other current assets		78,236
		9,096,157
Non-Current Assets		
Restricted cash and cash equivalents (Note 3)		2,375,401
Investments (Note 3)		7,534,280
Non-depreciable capital assets (Note 6)		7,997,441
Capital assets, net of depreciation (Note 6)		76,042,091
		93,949,213
Total Assets		103,045,370
Deferred Outflows (Note 16 and 17)		
Deferred outflows related to pensions		1,054,797
Deferred outflows related to OPEB		204,004
		1,258,801
Liabilities		
Current Liabilities		
Accounts payable and accrued liabilities (Note 7)	$	1,769,379
OPEB liability, short term (Note 14)		1,265,400
Unearned revenues (Note 8)		317,854
Compensated absences (Note 10 and 14)		141,671
Certificate of participation (Note 12 and 13)		105,783
Total pension liability, short term (Note 15)		27,286
		3,627,373
Non-Current Liabilities		
OPEB liability (Note 14)		11,625,364
Net pension liability (Note 15)		4,133,977
Certificate of participation (Note 12 and 13)		2,842,370
Compensated absences (Note 10 and 14)		1,536,044
Total pension liability (Note 15)		1,462,259
		21,600,014
Total Liabilities		25,227,387
Deferred Inflows (Note 16 and 17)		
Deferred inflows related to pensions	$	1,247,937
Deferred inflows related to OPEB		2,427,852
		3,675,789
Net Position		
Investment in capital assets		81,091,379
Restricted expendable		4,525,213
Unrestricted (deficit)		(10,215,597)
Total Net Position	$	75,400,995

See Accompanying Notes to financial statements.

Statement of Revenues, Expenses and Changes in Net Position

For the Year Ended June 30, 2018

Operating Revenues		
Student tuition and fees, net	$	4,167,307
State and local grants and contracts		11,829,881
Federal grants and contracts		3,596,397
Auxiliary enterprise sales		1,389,242
Other operating revenues		68,399
Total operating revenues		21,051,226
Operating Expenses		
Salaries and wages		17,496,395
Scholarships, fellowships and other aid		4,684,456
Employee benefits		6,610,543
Supplies, materials and services		4,505,711
Other operating expenses		2,911,295
Depreciation		2,279,928
Utilities		744,614
Total operating expenses		39,232,942
Operating loss	$	(18,181,716)
Non Operating Revenues (Expenses)		
State operating appropriations	$	12,963,624
Federal Pell grant revenue		4,103,388
Investment income		215,497
Interest on indebtedness		(241,005)
Building fee remittance		(648,790)
Innovation fund remittance		(163,442)
Net non operating revenues		16,229,272
Loss before capital appropriations		(1,952,444)
Capital appropriations		1,023,703
Change in net position		(928,741)
Net Position		
Net position, beginning of year		90,668,571
Cumulative effect of change in accounting principle (Note 1)		(14,338,835)
Net position, beginning of year		76,329,736
Net position, end of year	$	75,400,995

See Accompanying Notes to financial statements.

Statement of Cash Flows

For the Year Ended June 30, 2018

Cash Flows From Operating Activities	
Tuition and fees	$ 4,212,928
Grants and contracts	15,447,949
Payments for employees	(18,167,903)
Payments for benefits	(6,332,844)
Payments to vendors	(6,298,169)
Payments for scholarships and fellowship	(4,684,456)
Payments for utilities	(368,773)
Auxiliary enterprise sales, net	1,410,084
Other receipts (payments)	(3,298,910)
Net cash used by operating activities	(18,080,094)
Cash Flows From Noncapital Financing Activities	
State appropriations	13,032,962
Federal Pell grant receipts	4,103,388
Building fee remittance	(661,636)
Innovation fee remittance	(166,999)
Net cash provided by noncapital financing activities	16,307,715
Cash Flows From Capital Related Financing Activities	
Capital appropriations	2,784,349
Purchases of capital assets	(1,715,706)
Principal paid on capital debt	(143,916)
Interest paid on capital debt	(212,640)
Net cash provided/used by capital related financing activities	712,087
Cash Flows From Investing Activities	
Purchase of investments	(7,467,209)
Sales and maturities of investments	1,500,000
Investment income	194,716
Net cash used by investing activities	(5,772,493)
Increase (Decrease) in Cash and Cash Equivalents	(6,832,785)
Cash and Cash Equivalents, Beginning of Year	10,514,550
Cash and Cash Equivalents, End of Year	$ 3,681,765

See Accompanying Notes to financial statements.

Statement of Cash Flows – *continued*

For the Year Ended June 30, 2018

Reconciliation of Operating Loss to Net Cash used by Operating Activities	
Operating Loss	$ (18,181,716)
Adjustments to reconcile operating loss to net cash used by operating activities	
Depreciation expense	2,279,928
Changes in assets, liabilities and deferrals	
Accounts payable and accrued liabilities	(2,141,661)
Accounts receivable	1,477,529
Inventories	(24,717)
Compensated absences	(107,582)
Pension/OPEB liability	504,945
Deferred resources	(1,893,906)
Other assets	(16,799)
Unearned revenues	23,885
Net cash used by operating activities	$ (18,080,094)

See Accompanying Notes to financial statements.

APPENDIX 4

CENTRALIA COLLEGE FOUNDATION
STATEMENT OF FINANCIAL POSITION
June 30, 2018

ASSETS	
Current Assets:	
Cash and cash equivalents	$ 1,002,619
Short-term investments	127,767
Pledges receivable, net	21,612
Current portion of note receivable	3,047
TOTAL CURRENT ASSETS	1,155,045
Long-term pledges receivable, net	1,126
Long-term note receivable	89,774
Life insurance policies	87,889
Long-term investments	15,112,993
Land and building held for the benefit of the College, net	723,915
Land, building and equipment, net	65,866
TOTAL ASSETS	$ 17,236,608
LIABILITIES AND NET ASSETS	
Current Liabilities:	
Accounts payable	$ 12,799
Annuity and life income obligations	20,422
Payable to the College	694,463
TOTAL LIABILITIES	727,684
Net Assets:	
Without donor restrictions	
Undesignated	950,301
Designated by the Board for endowment	1,437,020
Invested in land and building	723,915
TOTAL WITHOUT DONOR RESTRICTIONS	3,111,236
With donor restrictions	
Purpose or time restrictions	7,101,524
Perpetual in nature	6,296,164
TOTAL WITH DONOR RESTRICTIONS	13,397,688
TOTAL NET ASSETS	16,508,924
TOTAL LIABILITIES AND NET ASSETS	$ 17,236,608

See accompanying notes.

CENTRALIA COLLEGE FOUNDATION
STATEMENT OF ACTIVITIES AND CHANGES IN NET ASSETS
For the year ended June 30, 2018

	Without Donor Restrictions	With Donor Restrictions	Total
SUPPORT AND REVENUE			
Contributions	$ 266,578	$ 630,861	$ 897,439
Grants	---	60,225	60,225
Special fundraising event	28,334	1,587	29,921
Net investment return	287,865	659,645	947,510
Rental revenue	26,000	---	26,000
Other income	8,380	178	8,558
Net assets released from restrictions	1,010,392	(1,010,392)	---
TOTAL SUPPORT AND REVENUE	1,627,549	342,104	1,969,653
EXPENSES			
Program services	849,324	---	849,324
Management and general	365,914	---	365,914
Fundraising	15,825	---	15,825
TOTAL EXPENSES	1,231,063	---	1,231,063
CHANGE IN NET ASSETS	396,486	342,104	738,590
NET ASSETS, Beginning, as restated (Note 9)	2,714,750	13,055,584	15,770,334
NET ASSETS, Ending	$ 3,111,236	$ 13,397,688	$ 16,508,924

See accompanying notes.

APPENDIX 4

CENTRALIA COLLEGE FOUNDATION
STATEMENT OF CASH FLOWS
For the year ended June 30, 2018

CASH FLOWS FROM OPERATING ACTIVITIES	
Cash received from support and revenue	$ 521,632
Cash paid for management, program and fundraising	(916,900)
Dividend and interest	126,440
NET CASH USED BY OPERATING ACTIVITIES	(268,828)
CASH FLOWS FROM INVESTING ACTIVITIES	
Purchase of land, building and equipment	(54,665)
Receipts on notes receivable	2,944
Proceeds from sale of investments	2,978,348
Purchases of investments	(2,585,927)
NET CASH PROVIDED BY INVESTING ACTIVITIES	340,700
CASH FLOWS FROM FINANCING IN ACTIVITIES	
Contributions to be held in perpetuity	202,662
NET CASH PROVIDED BY FINANCING ACTIVITIES	202,662
NET INCREASE IN CASH AND CASH EQUIVALENTS	274,534
CASH AND CASH EQUIVALENTS, Beginning	728,085
CASH AND CASH EQUIVALENTS, Ending	$ 1,002,619

See accompanying notes.

CENTRALIA COLLEGE FOUNDATION
STATEMENT OF CASH FLOWS (CONTINUED)
For the year ended June 30, 2018

RECONCILIATION OF CHANGE IN NET ASSETS TO NET CASH USED BY OPERATING ACTIVITIES	
Change in net assets	$ 738,590
Adjustments to reconcile change in net assets to net cash used by operating activities:	
Net unrealized and realized gains from investments	(895,737)
Contributions permanently restricted	(202,662)
Depreciation	29,190
Donated investments	(15,711)
Donated land, building and equipment	(67,600)
(Increase) decrease in:	
Pledges receivable	37,783
Life insurance policies	(3,668)
Increase (decrease) in:	
Accounts payable	(25,541)
Annuity and life income obligations	(4,452)
Payable to the College	140,980
NET CASH USED BY OPERATING ACTIVITIES	$ (268,828)

DISCLOSURE OF ACCOUNTING POLICY AND NONCASH TRANSACTIONS

For purposes of these financial statements, cash and cash equivalents is considered to include only cash on hand, and cash and money market accounts used for operating activities. In 2018, noncash transactions include donated materials and services of $273,391.

See accompanying notes.

NOTES TO FINANCIAL STATEMENTS

Note 1. Summary of Significant Accounting Policies

Financial Reporting Entity

Centralia College ("College") is a comprehensive community college offering open-door academic transfers, workforce education, and basic skill programs, as well as, community service and continuing education courses. The College confers applied baccalaureate degrees, associate degrees, certificates and high school diplomas. It is governed by a five-member Board of Trustees appointed by the Governor and confirmed by the state Senate.

The College is an agency of the State of Washington. The financial activity of the College is included in the State's Comprehensive Annual Financial Report.

Basis of Presentation

The financial statements have been prepared in accordance with GASB Statement No. 34, *Basic Financial Statements and Management Discussion and Analysis for State and Local Governments* as amended by GASB Statement No. 35, *Basic Financial Statements and Management Discussion and Analysis for Public Colleges and Universities*. For financial reporting purposes, the College is considered a special-purpose government engaged only in Business Type Activities (BTA). In accordance with BTA reporting, the College presents a Management's Discussion and Analysis; a Statement of Net Position; a Statement of Revenues, Expenses and Changes in Net Position; a Statement of Cash Flows; and Notes to the Financial Statements. The format provides a comprehensive, entity-wide perspective of the college's assets, deferred outflows, liabilities, deferred inflows, net position, revenues, expenses, changes in net position and cash flows.

The Governmental Accounting Standards Board (GASB) issued Statement No. 39, *Determining Whether Certain Organizations are Component Units*, which amended GASB Statement No. 14, *The Financial Reporting Entity*. This provides additional guidance to determine whether certain organizations are component units for which the primary government is not financially accountable but should be reported based on the nature and significance of their relationship with the primary government.

Under GASB Statement No. 39 criteria, the Centralia College Foundation ("Foundation") is considered a legally separate component unit of the College, and its financial statements are discretely presented in the College's financial statements. Inter-entity transactions and balances between the College and Foundation are not eliminated for financial statement presentation purposes.

The Foundation is a private nonprofit organization that reports under the Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 958 and as such, certain revenue recognition criteria and presentation features are different from GASB revenue recognition criteria and presentation features. No modifications have been made to the Foundation's financial information in the College's financial reporting entity for these differences.

Basis of Accounting

The financial statements of the College have been prepared using the economic resources measurement focus and the accrual basis of accounting. Under the accrual basis, revenues are recognized when earned and expenses are recorded when an obligation has been incurred, regardless of the timing of the cash flows. For the financial statements, intra-agency receivables and payables have generally been eliminated. However, revenues and expenses from the College's auxiliary enterprises are treated as though the College were dealing with private vendors. For all other funds, transactions that are reimbursements of expenses are recorded as reductions of expense.

Non-exchange transactions, in which the College receives (or gives) value without directly giving (or receiving) equal value in exchange, includes state and federal appropriations, and certain grants and donations. Revenues are recognized, net of estimated uncollectible amounts, as soon as all eligibility requirements imposed by the provider have been met.

The preparation of financial statements in conformity with U.S. Generally Accepted Accounting Principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

For the purposes of the statement of cash flows, the College considers all highly liquid investments with an original maturity date of 90 days or less to be cash equivalents. Funds invested through the State Treasurer's Local Government Investment Pool are also considered cash equivalents. Cash and cash equivalents that are held with the intent to fund capital projects are classified as non-current assets.

Investments

Investments are comprised of U.S. Government sponsored enterprise bonds, with laddered maturities ranging from six months up to 42 months. When investments are purchased, a discount or premium will also be factored into the purchase price, depending on the stated or face rate of the bond, versus the market interest rate at the time of the bond purchase. Bond premiums and discounts are amortized over the life of the bond using the straight-line method and reflected in the investment balances in the statement of net position. In addition, when an investment is purchased between its semi-annual interest payment dates, the purchase price will also include the number of days of accrued interest from the date the bond is purchased and when the last bond's last interest payment occurred. The purchase of interest is realized when the bond makes its' next semi-annual interest payment.

Inventories

Inventories consist of merchandise held by auxiliary departments. Inventories are valued at cost, using the First-in First-out (FIFO) valuation method.

Accounts Receivable

Accounts receivable consists of student tuition and fees and other charges for services provided to students, faculty and staff. Accounts receivable also includes amounts due from federal, state and local governments or private sources in connection with reimbursements of allowable expenses made in accordance with sponsored agreements, and includes a provision of an amount estimated by management deemed as uncollectible. Accounts receivable are shown net of estimated uncollectible amounts.

Capital Assets

In accordance with state law, capital assets constructed with state funds are owned by the State of Washington. Property titles are shown accordingly. However, responsibility for managing the assets rests with the College. As a result, the assets are included in the financial statements because excluding them would have been misleading.

Land, buildings and equipment are recorded at cost, or if acquired by gift, at acquisition value at the date of the gift. GASB 34 guidance concerning preparing initial estimates for historical cost and accumulated depreciation related to infrastructure was followed. Capital additions, replacements and major renovations are capitalized. The value of assets constructed includes all material direct and indirect construction costs. Any interest costs incurred are capitalized during the period of construction. Routine repairs and maintenance are charged to operating expense in the year in which the expense was incurred. In accordance

with the state capitalization policy, all land, intangible assets and software with a unit cost of $1,000,000 or more, buildings and improvements with a unit cost of $100,000 or more, library collections with a total cost of $5,000 or more and all other assets with a unit cost of $5,000 or more are capitalized. Depreciation is computed using the straight line method over the estimated useful lives of the assets as defined by the State of Washington's Office of Financial Management.

Useful lives are generally 3 to 7 years for equipment; 15 to 50 years for buildings and 20 to 50 years for infrastructure and land improvements.

The college reviews assets for impairment whenever events or changes in circumstances have indicated that the carrying amount of its assets might not be recoverable. Impaired assets are reported at the lower of cost or fair value. At June 30, 2018, no assets had been written down.

Unearned Revenue

Unearned revenues occur when funds have been collected prior to the end of the fiscal year but related to the subsequent fiscal year. Unearned revenues also include tuition and fees paid with financial aid funds. The College has recorded summer quarter tuition and fees as unearned revenues.

Tax Exemption

The College is a tax-exempt organization under Section 115(a) of the Internal Revenue Code and is exempt from federal income taxes on related income. The Foundation is exempt from income taxes under Section 501(c) (3) of the Internal Revenue Code.

Pension and OPEB Liability

For purposes of measuring the net pension liability in accordance with GASB 68, *Accounting and Financial Reporting for Pensions,* deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the State of Washington Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS) and additions to/deductions from PERS's and TRS's fiduciary net position have been determined on the same basis as they are reported by PERS and TRS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

In fiscal year 2017, the College also reported its share of the pension liability for the State Board Retirement Plan in accordance with GASB 73 *Accounting and Financial Reporting for Pensions and Related Assets* that are not within the Scope of GASB 68, *Accounting and Financial Reporting for Pensions*. The reporting requirements are similar to GASB 68 but use current fiscal yearend as the measurement date for reporting the pension liabilities.

In fiscal year 2018, the College implemented GASB Statement No. 75, *Accounting and Financial Reporting for postemployment Benefits Other than Pensions (OPEB)*. This Statement requires the College to recognize its proportionate share of the state's actuarially determined OPEB liability with a one year lag measurement date similar to GASB Statement No. 68.

Deferred Outflows of Resources and Deferred Inflows of Resources

Deferred outflows of resources represent consumption of net position that is applicable to a future period. Deferred inflows of resources represent acquisition of net position that is applicable to a future period.

Deferred outflows related to pensions are recorded when projected earnings on pension plan investments exceed actual earnings and are amortized to pension expense using a systematic and rational method over a closed period of time. Deferred inflows related to pensions are recorded when actual earnings on pension plan investments exceed projected earnings and are amortized in the same manner as deferred outflows.

Deferred outflows and inflows on pensions also include the difference between expected and actual experience with regard to economic or demographic factors; changes of assumptions about future economic, demographic, or other input factors; or changes in the college's proportionate share of pension liabilities. These are amortized over the average expected remaining service lives of all employees that are provided with pensions through each pension plan. Employer transactions to pension plans made subsequent to the measurement date are also deferred and reduce pension liabilities in the subsequent year.

The portion of differences between expected and actual experience with regard to economic or demographic factors, changes of assumptions about future economic or demographic factors, and changes in the college's proportionate share of OPEB liability that are not recognized in OPEB expense should be reported as deferred outflows of resources or deferred inflows of resources related to OPEB. Differences between projected and actual earning on OPEB plan investments that are not recognized in OPEB expense should be reported as deferred outflows of resources or deferred inflows of resources related to OPEB. Employer contributions to the OPEB plan subsequent to the measurement date of the collective OPEB liability should be recorded as deferred outflows of resources related to OPEB.

Net Position

The College's net position is classified, as follows:

Net investment in capital assets – This represents the College's total investment in capital assets, net of outstanding debt obligations related to those capital assets.

Restricted net position, expendable – Includes resources in which the College is legally or contractually obligated to spend in accordance with restrictions placed by third parties.

Unrestricted net position – These represent resources derived from student tuition and fees, and sales and services of educational departments and auxiliary enterprises.

Classification of Revenues and Expenses

Operating revenues consist of tuition and fees, grants and contracts, sales and services of educational activities and auxiliary enterprise revenues. Operating expenses include salaries, wages, fringe benefits, scholarships and fellowships, utilities, supplies, materials, purchased services and depreciation. All other revenues and expenses of the College are reported as non-operating revenues and expenses including state appropriations, Federal Pell grant revenues, investment income and tuition remittance. Non-operating expenses include state remittance related to the building fee and the innovation fee, and interest incurred on the Certificate of Participation loan.

Scholarship Discounts and Allowances

Student tuition and fee revenue, and certain other revenues from students, are reported net of scholarship discounts and allowances in the Statement of Revenues, Expenses and Changes in Net Position. Scholarship discounts and allowances are the difference between the stated charges for goods and services charged by the College, and the amount that is paid by the students and/or third parties on the students' behalf. Certain government grants, such as Pell grant, and other Federal, State or non-governmental programs are recorded as either operating or non-operating revenues in the College's financial statements. To the extent that revenues from such programs are used to satisfy tuition and fees and other student charges, the College has recorded a scholarship discount and allowance. Discounts and allowances for the year ending June 30, 2018 were $5,447,852.

State Appropriations

The state of Washington appropriates funds to the State Board of Community and Technical Colleges (SBCTC) which allocates funding to the College on both an annual and biennial basis. These revenues are reported as non-operating revenues on the Statement of Revenues, Expenses and Changes in Net Position, and recognized as such when the related expenses are incurred.

Building and Innovation Fee Remittance

Tuition collected includes amounts remitted to the Washington State Treasurer's office to be held and appropriated in future years. The Building Fee portion of tuition charged to students is an amount established by the Legislature is subject to change annually. The fee provides funding for capital construction and projects on a system wide basis using a competitive biennial allocation process. The Building Fee is remitted on the 35th day of each quarter. The Innovation Fee was established in order to fund the State Board of Community and Technical College's Strategic Technology Plan. The use of the fund is to implement new ERP software across the entire system. On a monthly basis, the College's remits the portion of tuition collected for the Innovation Fee to the State Treasurer for allocation to SBCTC. These remittances are non-exchange transactions reported as an expense in the non-operating revenues and expenses section of the statement of revenues, expenses and changes in net position.

Use of Estimates

Allowances for uncollectible accounts are estimated based on aging and historical data on collection of various receivables. Actual results could differ from these estimates, though the College believes these allowances are adequate.

Note 2. Accounting and Reporting Changes

In June 2015, the GASB issued Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions (OPEB).* The scope of this Statement addresses accounting and financial reporting for defined benefit OPEB and defined contribution OPEB that are provided to employees of state and local governmental employers. The Statement establishes standards for recognizing and measuring liabilities, deferred outflows of resources, deferred inflows of resources, and expense/expenditures. For defined benefit OPEB, this Statement identifies the methods and assumptions that are required to be used to project benefit payments, discount projected benefit payments to their actuarial present value, and attribute that present value to periods of employee service. In addition, this Statement details the recognition and disclosure requirements for employers with payables to defined benefit OPEB plans that are administered through trusts that meet the specified criteria and for employers whose employees are provided with defined contribution OPEB. The College has implemented this pronouncement during the 2018 fiscal year.

Due to the implementation of GASB Statement No. 75, *Accounting and Financial Reporting for postemployment Benefits Other than Pensions (OPEB),* the College has a deficit unrestricted net position of $10,215,597. This new accounting standard requires the College to recognize its portion of the State's total OPEB liability, reducing net position by a substantial amount. Additional information regarding GASB Statement No. 75 can be found in Note 17.

Cumulative Effect of a Change in Accounting Principle

Beginning net position was restated by $14,338,835 in fiscal year 2018 as a result of implementing GASB Statement No. 75 *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions (OPEB).*

Accounting Standard Impacting the Future

In November 2016, the GASB issued Statement No. 83, *Certain Asset Retirement Obligations*, to addresses accounting and financial reporting for certain asset retirement obligations (AROs). An ARO is a legally enforceable liability associated with the retirement of a tangible capital asset. A government that has legal obligations to perform future asset retirement activities related to its tangible capital assets should recognize a liability based on the guidance in this Statement. The effective date of this Statement is fiscal year 2019. The College is in the process of reviewing its assets to ensure compliance with this reporting requirement.

In June 2017, the GASB issued Statement No. 87, *Leases*, which will be in effect beginning fiscal year 2021. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources. The College is following the State's Office of Financial Management directives to prepare for the implementation of this Statement.

Note 3. Deposits and Investments

Deposits

Cash and cash equivalents include bank demand deposits, petty cash held at the College and unit shares in the Local Government Investment Pool (LGIP). Investments of surplus or pooled cash balances are reported on the accompanying Statements of Net Position, Balance Sheets, and Statements of Cash Flows as "Cash and Cash Equivalents."

As of June 30, 2018, the carrying amount of the College's cash and equivalents was $3,681,765 as represented in the table below.

Cash and Cash Equivalents	June 30, 2018
Petty cash and change funds	$ 4,000
Bank demand and time deposits	1,465,368
Local government investment pool	2,212,398
Total Cash and Cash Equivalents	$ 3,681,765

Cash and cash equivalents includes restricted cash and cash equivalents of $2,375,401 at June 30, 2018. The majority of the restricted balances comes from the collection of student self-assessed fees for their contribution towards the construction of the athletic multi-purpose field project.

Custodial Credit Risk

Custodial credit risk is the risk that in the event of the failure of the depository financial institution, the College would not be able to recover deposits or will not be able to recover collateral securities that are in possession of an outside party. The College's deposits and certificates of deposit are mostly covered by federal depository insurance (FDIC) or by collateral held in a multiple financial institution collateral pool administered by the Washington Public Deposit Protection Commission (PDPC). All of the College's securities are registered in the College's name by the custodial bank. As a result, custodial credit risk for such investments is not applicable.

Investments

Interest Rate Risk

Interest rate risk is the risk that the College may face should interest rate variances affect the fair value of investments. The College investment policy stipulates that the College manage its exposure to interest rate risk by limiting the duration of investment and structuring the maturity of investments to mature at various points in the year, with a maximum duration for fixed-income securities of 42 months from the time of purchase until maturity.

Although bonds are issued with clearly defined maturities, an issuer may be able to redeem, or call, a bond earlier than its maturity date. The College must then replace the called bond with a bond that may have a lower yield than the original yield. The call feature causes the fair value to be highly sensitive to changes in interest rates. Bond maturities, not factoring in any call provision they may contain, mature over the next three and one-half years as follows:

	Fair Market Value	Investment Maturities (in months)		
Investments - Operating Funds	**6/30/2018**	**0-12**	**13-24**	**25-42**
U.S. Government Agency Securities	$ 12,009,646	4,475,366	2,474,020	5,060,260

Concentration of Credit Risk

Concentration of credit risk is the risk of loss attributable to the magnitude of an investment of a single issuer. Fixed-income securities are subject to credit risk, which is the chance that a bond issuer will fail to pay interest or principal in a timely manner, or that negative perceptions of the issuer's ability to make these payments will cause security prices to decline. Management believes that obligations of the U.S. government sponsored enterprise (GSE) bonds, such as Fannie Mae (FNMA), Federal Home Loan Bank, Federal Home Loan Mortgage Corporation and Federal Farm Credit Bank or those explicitly guaranteed by the U.S. government, are considered to have minimal concentrations of credit risk.

Investments in Local Government Investment Pool (LGIP)

The College is a participant in the Local Government Investment Pool, authorized by Chapter 294, Laws of 1986, and managed and operated by the Washington State Treasurer. The State Finance Committee is the administrator of the statute that created the pool and adopts rules. The State Treasurer is responsible for establishing the investment policy for the pool and reviews the policy annually and proposed changes are reviewed by the LGIP advisory Committee.

Investments in the LGIP, a qualified external investment pool, are reported at amortized cost which approximates fair value. The LGIP is an unrated investment pool. The pool portfolio is invested in a manner that meets the requirements set forth by the Governmental Accounting Standards Board for the maturity, quality, diversification and liquidity for external investment pools that wish to measure all of its investments at amortized costs. The LGIP transacts with its participants at a stable net asset value per share of one dollar, which results in the amortized cost reported equaling the number of shares in the LGIP.

The Office of the State Treasurer prepares a stand-alone LGIP financial report. A copy of the report is available from the OST, PO Box 40200, Olympia, Washington 98504-0200, or online at: http://www.tre.wa.gov/lgip/cafr/LgipCafr.shtml. In addition, more information is available regarding the LGIP in the Washington State Consolidated Annual Financial report, which can be found online at http://www.ofm.wa.gov/cafr/.

The College can contribute or withdraw funds in any amount from the LGIP on a daily basis. The LGIP does not impose liquidity fees or redemption gates on participant withdrawals. The College adjusts its LGIP investment amounts monthly to reflect interest earnings as reported from the Office of the State Treasurer.

The College has $12 million in US Government sponsored enterprise bonds, with staggered maturities, in $500,000 amounts. The original maturities ranged from six months to 42 months. The College has assessed the effects of Statement No. 72 on its investments, and reports investments at fair value. Fair value is defined in the accounting standards as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities reported at fair value are organized into a hierarchy based on the levels of inputs observable in the marketplace that are used to measure fair value. Inputs are used in applying the various valuation techniques and take into account the assumptions that market participants use to make valuation decisions. Inputs may include price information, credit data, liquidity statistics and other factors specific to the financial instrument. Observable inputs reflect market data obtained from independent sources. In contrast, unobservable inputs reflect the entity's assumptions about how market participants would value the financial instrument.

A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. The following describes the hierarchy of inputs used to measure fair value and the primary valuation methodologies used for financial instruments measured at fair value on a recurring basis:

The College measures and reports investments at fair value using the valuation input hierarchy established by generally accepted accounting principles, as follows:

Level 1 – Prices based on quoted prices in active markets for identical assets or liabilities;

Level 2 – Quoted market prices for similar assets or liabilities, quoted prices for identical or similar assets or liabilities in markets that are not active, or other than quoted prices that are not observable;

Level 3 – Unobservable inputs for an asset or liability.

At June 30, 2018, the College had the following investments:

Investments by fair value level	Total	Level 1	Level 2	Level 3
Fixed income securities				
U.S. Government Agency Securities	$ 12,009,646		12,009,646	

Note 4. Accounts Receivable

The major components of accounts receivable as of June 30, 2018 were:

Grants and contracts	1,568,902
Due from other agencies	487,321
Tuition and fees	404,533
Auxiliary support	30,490
Other	422,758
Net accounts receivable	2,914,004

As of June 30, 2018 interest receivable from bond investments was $28,286.

Note 5. Inventories

Merchandise inventories for the College Bookstore at year-end, stated at cost using the first-in, first-out (FIFO) method were $293,901 at June 30, 2018.

Note 6. Capital Assets

Capital asset activity for the year ended June 30, 2018 is summarized as follows:

	June 30, 2017	Additions	Retirements	June 30, 2018
Capital assets				
Land	$ 6,781,994	584,909		7,366,903
Construction in progress	16,285	614,253		630,538
Total capital assets, non-depreciable	6,798,279	1,199,162	-	7,997,441
Buildings	96,638,283	316,965		96,955,248
Infrastructure	2,908,249	-		2,908,249
Furniture, fixtures and equipment	3,825,225	290,923		4,116,148
Library resources	2,284,819	-		2,284,819
Total capital assets, depreciable	105,656,576	607,888	-	106,264,464
Less accumulated depreciation				
Buildings	22,781,800	1,838,761		24,620,561
Infrastructure	751,864	85,386		837,250
Furniture, fixtures and equipment	2,170,104	343,317		2,513,421
Library resources	2,238,677	12,464		2,251,141
Total accumulated depreciation	27,942,445	2,279,928	-	30,222,373
Capital assets, net	$ 84,512,410	$ (472,878)	$ -	$ 84,039,532

Note 7. Accounts Payable and Accrued Liabilities

At June 30, 2018, net accrued liabilities includes:

Accounts Payable and Accrued Liabilities	Amount
Salaries and wages	$ 476,806
Benefits	158,935
Utilities	460,083
Due to State Treasurer	13,487
Held for others and retainage	660,068
	1,769,379

Note 8. Unearned Revenue

Unearned revenue is comprised of receipts which have not yet met revenue recognition criteria, at June 30, 2018, as follows:

Unearned Revenue	Amount
Tuition and fees	$ 265,361
Auxiliary enterprises	52,418
Grants and contracts	75
Total unearned revenue	317,854

Note 9. Risk Management

The College is exposed to various risk of loss related to tort liability, injuries to employees, errors and omissions, theft of, damage to, and destruction of assets, and natural disasters. The College purchases insurance to mitigate these risks. Management believes such coverage is sufficient to preclude any significant uninsured losses for the covered risks.

The College purchases commercial property insurance through the master property program administered by the Department of Enterprise Services for buildings that were acquired with COP proceeds. The policy has a deductible of $250,000 per occurrence and the policy limit is $100,000,000 per occurrence. The college has had no claims in excess of the coverage amount within the past three years. The College assumes its potential property losses for most other buildings and contents.

The College participates in a State of Washington risk management self-insurance program, which covers its exposure to tort, general damage and vehicle claims. Premiums paid to the State are based on actuarially determined projections and include allowances for payments of both outstanding and current liabilities. Coverage is provided up to $10,000,000 for each claim with no deductible. The college has had no claims in excess of the coverage amount within the past three years.

The College, in accordance with state policy, pays unemployment claims on a pay-as-you-go basis. Payments made for claims from July 1, 2017 through June 30, 2018, were $44,215.

Note 10. Compensated Absences

At termination of employment, employees may receive a cash payment for all accumulated vacation and compensatory time. Employees who retire get 25% of the value of their accumulated sick leave credited to a Voluntary Employees' Beneficiary Association (VEBA) account, which may be used for future medical expenses and insurance purposes. The sick leave liability is recorded as an actuarial estimate of one-fourth the total balance on the payroll records. The accrued vacation leave totaled $722,313 and accrued sick leave totaled $955,402 at June 30, 2018.

An estimated amount, based on a three-year average payout, is accrued as a current liability. The remaining amount of accrued annual and sick leave are categorized as non-current liabilities. Compensatory time is categorized as a current liability since it must be used before other leave.

Note 11. Leases Payable

The College leases facilities under a non-cancelable operating leases. At June 30, 2018, the College lease expense totaled $63,346.

Note 12. Notes Payable

In 2017, the College obtained financing in order to cover the student's share of the TransAlta Commons through certificates of participation (COP), issued by the Washington Office of State Treasurer (OST) in the amount of $2,595,000 at a premium of $415,668. The premium are to be amortized over the twenty year term of the loan, at an annual amount of $20,783. The interest rate charged is approximately 3.4%.

The students assessed themselves a mandatory fee to service this debt. Student fees related to the COP are accounted for in a dedicated fund, which is used to pay principal and interest, not coming out of the general operating budget.

Note 13. Annual Debt Service Requirements

Future debt service requirements at June 30, 2018 are as follows:

	Certificates of Participation		
Fiscal year	**Principal**	**Interest**	**Total**
2019	85,000	127,750	212,750
2020	90,000	123,500	213,500
2021	90,000	119,000	209,000
2022	95,000	114,500	209,500
2023	100,000	109,750	209,750
2024-2028	590,000	468,000	1,058,000
2029-2033	755,000	304,500	1,059,500
2034-2037	750,000	95,750	845,750
Total	**$ 2,555,000**	**$ 1,462,750**	**$ 4,017,750**

Note 14. Schedule of Long Term Liabilities

Long Term Debt Liabilities	**Beginning Balance**	**Additions**	**Reductions**	**Ending Balance**	**Current Portion**
Certificates of Participation	2,595,000	-	40,000	2,555,000	85,000
Certificate of Participation - Amortized Premium	413,936	-	20,783	393,153	20,783
Compensated Absences	1,785,381	780,666	888,332	1,677,715	141,671
OPEB Liabilities	-	14,338,835	1,448,071	12,890,764	1,265,400
Net pension obligation	6,754,647	27,283	1,158,408	5,623,522	27,286
	11,548,964	15,146,784	3,555,594	23,140,154	1,540,140

Note 15. Pension Liability

Pension liabilities reported as of June 30, 2018 consists of the following:

Pension Liability by Plan		
PERS 1	$	1,946,195
PERS 2/3		1,658,979
TRS 1		421,594
TRS 2/3		107,209
SBRP		1,489,545
Total	**$**	**5,623,522**

Additional information on net pension liabilities can be found in Note 16 to these financial statements.

Note 16. Retirement Plans

A. General

The College offers three contributory pension plans. The Washington State Public Employees Retirement System (PERS) and Teachers Retirement System (TRS) plans are cost sharing multiple employer defined benefit pension plans administered by the State of Washington Department of Retirement Services. The State Board Retirement Plan (SBRP) is a multiple employer defined contribution plan for the faculty and exempt administrative and professional staff of the state's public community and technical colleges. The plan includes supplemental payment, when required. The plan is administered by the State Board for Community and Technical Colleges (SBCTC).

For fiscal year 2018, the payroll for the College's employees was $4,802,607 for PERS, $795,053 for TRS, and $9,417,486 for SBRP. Total covered payroll was $15,015,146.

Basis of Accounting

Pension plans administered by the state are accounted for using the accrual basis of accounting. Under the accrual basis of accounting, employee and employer contributions are recognized in the period in which employee services are performed; investment gains and losses are recognized as incurred; and benefits and refunds are recognized when due and payable in accordance with the terms of the applicable plan. For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of all plans and additions to/deductions from all plan fiduciary net position have been determined in all material respects on the same basis as they are reported by the plans.

The following table represents the aggregate pension amounts for all plans subject to the requirements of GASB Statement No. 68 and No. 73 for Centralia College, for fiscal year 2018:

Aggregate Pension Amounts - All Plans	
Pension liabilities	$ 5,623,522
Deferred outflows of resources related to pensions	1,054,797
Deferred inflows of resources related to pensions	1,247,937
Pension expense	500,717

B. College Participation in Plans Administered by the Department of Retirement Systems

PERS and TRS

Plan Descriptions. PERS Plan 1 provides retirement and disability benefits and minimum benefit increases to eligible nonacademic plan members hired prior to October 1, 1977. PERS Plans 2 and 3 provide retirement and disability benefits and a cost-of-living adjustment to eligible nonacademic plan members hired on or after October 1, 1977. Retirement benefits are vested after five years of eligible service. PERS Plan 3 has a defined contribution component that members may elect to self-direct as established by the Employee Retirement Benefits Board. PERS 3 defined benefit plan benefits are vested after an employee completes five years of eligible service.

TRS Plan 3 provides retirement benefits to certain eligible faculty hired on or after October 1, 1977. The plan includes both a defined benefit portion and a defined contribution portion. The defined benefit portion is funded by employer contributions only. Benefits are vested after an employee completes five or ten years of eligible service, depending on the employee's age and service credit, and include an annual cost-of living adjustment. The defined contribution component is fully funded by employee contributions and investment performance.

The college also has three faculty members with pre-existing eligibility who continue to participate in TRS 1 or 2.

The authority to establish and amend benefit provisions resides with the legislature. PERS and TRS issue publicly available financial reports that include financial statements and required supplementary information. The report may be obtained by writing to the Department of Retirement Systems, PO Box 48380, Olympia, Washington 98504-8380 or online at http://www.drs.wa.gov/administration.

Funding Policy. Each biennium, the state Pension Funding Council adopts PERS and TRS Plan 1 employer contribution rates, Plan 2 employer and employee contribution rates, and Plan 3 employer contribution rates. Employee contribution rates for PERS and TRS Plans 1 are established by statute. By statute, PERS 3 employees may select among six contribution rate options, ranging from 5 to 15 percent.

The required contribution rates expressed as a percentage of current year covered payroll are shown in the table below. The College and the employees made 100% of required contributions.

Contribution Rates and Required Contributions. The College's contribution rates and required contributions for the above retirement plans for the years ending June 30, 2018, 2017, and 2016 are as follows:

Contribution Rates at June 30

	FY 2016		FY 2017		FY 2018	
	Employee	College	Employee	College	Employee	College
PERS 1	6.00%	11.18%	6.00%	11.18%	6.00%	12.70%
PERS 2	6.12%	11.18%	6.12%	11.18%	7.38%	12.70%
PERS 3	5 - 15%	11.18%	5 - 15%	11.18%	5 - 15%	12.70%
TRS 1	6.00%	13.13%	6.00%	13.13%	6.00%	15.20%
TRS 2	5.95%	13.13%	5.95%	13.13%	7.06%	15.20%
TRS 3	5-15%	13.13%	5-15%	13.13%	5-15%	15.20%

Required Contributions

	FY 2016		FY 2017		FY 2018	
	Employee	College	Employee	College	Employee	College
PERS 1	$ 16,202	$ 30,190	$ 12,964	$ 24,157	$ 4,338	$ 9,183
PERS 2	224,832	410,724	235,688	430,555	283,159	487,281
PERS 3	50,327	76,995	60,121	95,665	60,666	113,462
TRS 1	4,305	9,398	4,240	9,279	4,629	11,725
TRS 2	7,627	16,770	6,302	13,907	9,156	19,775
TRS 3	35,149	54,203	46,354	71,696	48,603	87,474

Investments. The Washington State Investment Board (WSIB) has been authorized by statute as having investment management responsibility for the pension funds. The WSIB manages retirement fund assets to maximize return at a prudent level of risk.

Retirement funds are invested in the Commingled Trust Fund (CTF). Established on July 1, 1992, the CTF is a diversified pool of investments that invests in fixed income, public equity, private equity, real estate, and tangible assets. Investment decisions are made within the framework of a Strategic Asset Allocation Policy and a series of written WSIB adopted investment policies for the various asset classes in which the WSIB invests.

For the year ended June 30, 2017, the annual money-weighted rate of return on the pension investments, net of pension plan expenses are as follows:

Pension Plan	Rate of Return
PERS Plan 1	13.84%
PERS Plan 2/3	14.11%
TRS Plan 1	14.45%
TRS Plan 2/3	14.10%

These money-weighted rates of return express investment performance, net of pension plan investment expense, and reflects both the size and timing of cash flows.

The PERS and TRS target asset allocation and long-term expected real rate of return as of June 30, 2017, are summarized in the following table:

Asset Class	Target Allocation	Long-term Expected Real Rate of Return
Fixed Income	20%	1.70%
Tangible Assets	5%	4.90%
Real Estate	15%	5.80%
Global Equity	37%	6.30%
Private Equity	23%	9.30%
Total	**100%**	

The inflation component used to create the above table is 2.20 percent and represents WSIB's most recent long-term estimate of broad economic inflation.

Pension Expense. Pension expense is included as part of "Employee Benefits" expense in the statement of revenues, expenses and changes in net position. The table below shows the components of each pension plans expense as it affected employee benefits:

	PERS 1	PERS 2/3	TRS 1	TRS 2/3	Total
Actuarially determined pension expense	121,482	230,679	27,105	38,545	417,811
Amortization of change in proportionate liability	(24,135)	4,864	(47,837)	10,733	(56,374)
Total Pension Expense	**97,347**	**235,544**	**(20,732)**	**49,277**	**361,436**

Changes in Proportionate Shares of Pension Liabilities. The changes to the College's proportionate share of pension liabilities from 2016 to 2017 for each retirement plan are listed below:

Pension Plan	2017	2016	Change
PERS 1	0.041015%	0.041476%	-0.000461%
PERS 2/3	0.047747%	0.046496%	0.001251%
TRS 1	0.013945%	0.012498%	0.001447%
TRS 2/3	0.011616%	0.010351%	0.001265%

The College's proportion of the net pension liability was based on a projection of the College's long-term share of contributions to the pension plan to the projected contributions of all participating state agencies, actuarially determined.

Actuarial Assumptions. The total pension liability was determined by an actuarial valuation as of June 30, 2017, using the following actuarial assumptions, applied to all periods included in the measurement:

Economic Inflation	3.00%
Salary Increases	3.75%
Investment Rate of Return	7.50%

Mortality rates were based on the RP-2000 Combined Healthy Table and Combined Disabled Table by the Society of Actuaries. The Office of the State Actuary applied offsets to the base table and recognized future improvements in mortality by projecting the mortality rates using 100% Scale BB. Mortality rates are applied on a generational basis; meaning, each member is assumed to receive additional mortality improvements in each future year, throughout the member's lifetime.

Discount Rate. The discount rate used to measure the total pension liability was 7.5 percent, the same as the prior measurement date. To determine the discount rate, an asset sufficiency test was completed to test whether the pension plan's fiduciary net position was sufficient to make all projected future benefit payments of current plan members. Consistent with current law, the completed asset sufficiency test included an assumed 7.7 percent long-term discount rate to determine funding liabilities for calculating future contribution rate requirements.

Consistent with the long-term expected rate of return, a 7.5 percent future investment rate of return on invested assets was assumed for the test. Contributions from plan members and employers are assumed to continue to be made at contractually required rates (including TRS Plan 2/3, whose rates include a component for the TRS Plan 1 liability).

Based on those assumptions, the pension plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members. Therefore, the long-term expected rate of return of 7.5 percent on pension plan investments was applied to determine the total pension liability.

Sensitivity of the net pension liability to changes in the discount rate. The following presents the net pension liability of the College calculated using the discount rate of 7.50 percent, as well as what the College's net pension liability would be if it were calculated using a discount rate that is 1-percentage-point lower (6.50 percent) or 1-percentage-point higher (8.50 percent) than the current rate.

Pension Plan	1% Decrease 6.50%	Current Rate 7.50%	1% Increase 8.50%
PERS 1	$ 2,370,836	$ 1,946,194	$ 1,578,363
PERS 2/3	$ 4,469,466	$ 1,658,980	$ (643,796)
TRS 1	$ 524,244	$ 421,595	$ 332,745
TRS 2/3	$ 364,121	$ 107,209	$ (101,451)

Pension Expense and Deferred Outflows and Inflows of Resources Related to Pensions.

The following represent the components of the College's deferred outflows and inflows of resources as reflected on the Statement of Net Position, for the year ended June 30, 2017:

	PERS 1		PERS 2/3	
	Deferred Outflows	Deferred Inflows	Deferred Outflows	Deferred Inflows
Difference between expected and actual experience	-	-	168,099	54,561
Difference between expected and actual earnings of pension plan investments	-	72,626	-	442,244
Changes of Assumptions	-	-	17,622	-
Changes in College's proportionate share of pension liabilities	-	-	71,887	11,865
Contributions to pension plans after measurement date	250,014	-	354,922	-
	$ 250,014	**$ 72,626**	**$ 612,529**	**$ 508,670**

	TRS 1		TRS 2/3	
	Deferred Outflows	Deferred Inflows	Deferred Outflows	Deferred Inflows
Difference between expected and actual experience	-	-	26,736	5,469
Difference between expected and actual earnings of pension plan investments	-	17,861	-	38,799
Changes of Assumptions	-	-	1,263	-
Changes in College's proportionate share of pension liabilities	-	-	29,305	2,085
Contributions to pension plans after measurement date	68,292	-	58,944	-
	$ 68,292	**$ 17,861**	**$ 116,248**	**$ 46,353**

The $732,171 reported as deferred outflows of resources represent contributions the College made subsequent to the measurement date and will be recognized as a reduction of the net pension liability for the year ended June 30, 2019.

Other amounts reported as deferred outflows and inflows of resources will be recognized in pension expense as follows:

Year ended June 30	PERS 1**	PERS 2/3	TRS 1**	TRS 2/3
2019	(49,091)	(166,901)	(13,119)	(4,469)
2020	15,499	64,000	4,911	13,132
2021	(3,599)	(28,789)	(437)	(706)
2022	(35,436)	(170,563)	(9,216)	(13,681)
2023	-	22,255	-	3,474
Thereafter	-	28,931	-	13,200
Total	**(72,626)**	**(251,068)**	**(17,861)**	**10,949**

C. College Participation in Plan Administered by the State Board for Community and Technical Colleges

State Board Retirement Plan (SBRP) – Supplemental Defined Benefits Plans

Plan Description. The State Board Retirement Plan is a privately administered single-employer defined contribution plans with a supplemental defined benefit plan component which guarantees a minimum retirement benefit based upon a one-time calculation at each employee's retirement date. The supplemental component is financed on a pay-as-you-go basis. The College participates in this plan as authorized by chapter 28B.10 RCW, the plans cover faculty and other positions as designated by each participating employer. State Board makes direct payments to qualifying retirees when the retirement benefits provided by the fund sponsors do not meet the benefit goals, no assets are accumulated in trusts or equivalent arrangements.

Contributions. Contribution rates for the SBRP (TIAA-CREF), which are based upon age, are 5%, 7.5% or 10% of salary and are matched by the College. Employee and employer contributions for the year ended June 30, 2018 were each $832,926.

Benefits Provided. The State Board Supplemental Retirement Plans provide retirement, disability, and death benefits to eligible members.

As of July 1, 2011, all the Supplemental Retirement Plans were closed to new entrants.

Members are eligible to receive benefits under this plan at age 62 with 10 years of credited service. The supplemental benefit is a lifetime benefit equal to the amount a member's goal income exceeds their

assumed income. The monthly goal income is the one-twelfth of 2 percent of the member's average annual salary multiplied by the number of years of service (such product not to exceed one-twelfth of fifty percent of the member's average annual salary). The member's assumed income is an annuity benefit the retired member would receive from their defined contribution Retirement Plan benefit in the first month of retirement had they invested all employer and member contributions equally between a fixed income and variable income annuity investment.

Plan members have the option to retire early with reduced benefits.

The SBRP supplemental pension benefits are unfunded. For the year ended June 30, 2018, supplemental benefits were paid by the SBCTC on behalf of the College in the amount of $1,300,000. The College's share of this amount was $22,213. In 2012, legislation (RCW 28B.10.423) was passed requiring colleges to pay into a Supplemental Benefit Fund managed by the State Investment Board, for the purpose of funding future benefit obligations. During fiscal year 2018, the College paid into this fund at a rate of 0.5% of covered salaries, totaling $49,685. This amount was not used as a part of GASB 73 calculations its status as an asset has not been determined by the Legislature. As of June 30, 2018, the Community and Technical College system accounted for $16,351,270 of the fund balance.

Actuarial Assumptions. The total pension liability was determined by an actuarial valuation as of June 30, 2016. Update procedures were used to roll forward the total pension liability to the June 30, 2018 measurement date using the following actuarial assumptions, applied to all periods included in the measurement:

Salary Increases	3.50%-4.25%
Fixed Income and Variable Income Investment Returns	4.25-6.25%

Mortality rates were based on the RP-2000 Combined Healthy Table and Combined Disabled Table published by the Society of Actuaries. The Office of the State Actuary applied offsets to the base table and recognized future improvements in mortality by projecting the mortality rates using 100 percent Scale BB. Mortality rates are applied on a generational basis, meaning members are assumed to receive additional mortality improvements in each future year, throughout their lifetime.

Most actuarial assumptions used in the June 30, 2016, valuation were based on the results of the April 2016 Supplemental Plan Experience Study. Additional assumptions related to the fixed income and variable income investments were based on feedback from financial administrators of the Higher Education Supplemental Retirement Plans.

Material assumption changes during the measurement period include the discount rate increase from 3.58 percent to 3.87 percent and the variable income investment return assumption dropping from 6.75 percent to 6.25 percent.

Discount Rate. The discount rate used to measure the total pension liability was set equal to the Bond Buyer General Obligation 20-Bond Municipal Bond Index, or 3.87 percent for the June 30, 2018, measurement date.

Pension Expense. For the year ended June 30, 2018, the College reported $4,229 for pension expense in the State Board Retirement Plans. The components that make up pension expense for the College are as follows:

Proportionate Share (%)	**1.71%**
Service Cost	$ 65,393
Interest Cost	60,096
Amortization of Differences Between Expected and Actual Experience	(79,182)
Amortization of Changes of Assumptions	(20,966)
Changes of Benefit Terms	-
Administrative Expenses	-
Other Changes in Fiduciary Net Position	-
Proportionate Share of Collective Pension Expense	**25,340**
Current Year Benefit Payments	(22,213)
Amortization of the Change in Proportionate Share of TPL	1,102
Total Pension Expense	**$ 4,229**

Proportionate Shares of Pension Liabilities. The College's proportionate share of pension liabilities for fiscal year ending June 30, 2018 was 1.71%. The College's proportion of the net pension liability was based on a projection of the College's long-term share of contributions to the pension plan to the projected contributions of all participating College's, actuarially determined. The College's change in proportionate share of the total pension liability and deferred inflows and deferred outflows of resources are represented in the following table:

Proportionate Share (%) 2017	1.70%
Proportionate Share (%) 2018	1.71%
Total Pension Liability - Ending 2017	1,617,286
Total Pension Liability - Beginning 2018	1,624,141
Total Pension Liability - Change in Proportion	6,855
Total Deferred Inflow/Outflows - 2017	462,743
Total Deferred Inflow/Outflows - 2018	464,704
Total Deferred Inflows/Outflows - Change in Proportion	1,961
Total Change in Proportion	8,816

Plan Membership. Membership in the State Board Supplemental Retirement Plan consisted of the following as of June 30, 2016, the most recent actuarial valuation date:

Number of Participating Members

District	Inactive Members (Or Beneficiaries) Currently Receiving Benefits	Inactive Members Entitled To But Not Yet Receiving Benefits	Active Members	Total Members
Centralia College	6	1	107	114

Change in Total Pension Liability/ (Asset). The following table presents the change in total pension liability of the State Board Supplemental Retirement Plan at June 30, 2018, the latest measurement date for the plan:

Schedule of Changes in Total Pension Liability	**Amount**
Service Cost	65,393
Interest	60,096
Changes of Benefit Terms	-
Differences Between Expected and Actual Experience	(177,742)
Changes in Assumptions	(60,130)
Benefit Payments	(22,213)
Change in Proportionate Share of TPL	6,855
Other	-
Net Change in Total Pension Liability	(127,741)
Total Pension Liability - Beginning	1,617,286
Total Pension Liability - Ending	1,489,545

Sensitivity of the Total Pension Liability/(Asset) to Changes in the Discount Rate. The following table presents the total pension liability/(asset), calculated using the discount rate of 3.87 percent, as well as what the employers' total pension liability/(asset) would be if it were calculated using a discount rate that is 1 percentage point lower (2.87 percent) or 1 percentage point higher (4.87 percent) than the current rate (expressed in thousands):

1% Decrease (2.87%)	Current Discount Rate (3.87%)	1% Increase (4.87%)
$ 1,698,949	$ 1,489,545	$ 1,315,375

Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions. At June 30, 2018, the State Board Supplemental Retirement Plan reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

	Deferred Outflows of Resources	Deferred Inflows of Resources
Difference Between Expected and Actual Experience	-	474,529
Changes of Assumptions	-	127,898
Changes in College's proportionate share of pension liability	7,714	-
Total	7,714	602,427

Amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense in the fiscal years ended June 30:

Future Pension Expense	
2019	$ (99,046)
2020	(99,046)
2021	(99,046)
2022	(99,046)
2023	(99,046)
Thereafter	(99,482)
	$ (594,713)

D. Defined Contribution Plans

Public Employees' Retirement System Plan 3

The Public Employees' Retirement System (PERS) Plan 3 is a combination defined benefit/defined contribution plan administered by the state through the Department of Retirement Systems (DRS).

PERS Plan 3 has a dual benefit structure. Employer contributions finance a defined benefit component, and member contributions finance a defined contribution component. As established by chapter 41.34 RCW, employee contribution rates to the defined contribution component range from 5 percent to 15 percent of salaries, based on member choice. Members who do not choose a contribution rate default to a 5 percent rate. There are currently no requirements for employer contributions to the defined contribution component of PERS Plan 3.

PERS Plan 3 defined contribution retirement benefits are dependent on employee contributions and investment earnings on those contributions. Members may elect to self-direct the investment of their contributions. Any expenses incurred in conjunction with self-directed investments are paid by members. Absent a member's self-direction, PERS Plan 3 contributions are invested in the retirement strategy fund that assumes the member will retire at age 65.

Members in PERS Plan 3 are immediately vested in the defined contribution portion of their plan, and can elect to withdraw total employee contributions, adjusted by earnings and losses from investments of those contributions, upon separation from PERS-covered employment.

Teachers' Retirement System Plan 3

The Teachers' Retirement System (TRS) Plan 3 is a combination defined benefit/defined contribution plan administered by the state through the Department of Retirement Systems (DRS). Refer Note 11.B for TRS Plan descriptions.

TRS Plan 3 has a dual benefit structure. Employer contributions finance a defined benefit component, and member contributions finance a defined contribution component. As established by chapter 41.34 RCW, employee contribution rates to the defined contribution component range from 5 percent to 15 percent of salaries, based on member choice. Members who do not choose a contribution rate default to a 5 percent rate. There are currently no requirements for employer contributions to the defined contribution component of TRS Plan 3.

TRS Plan 3 defined contribution retirement benefits are dependent on employee contributions and investment earnings on those contributions. Members may elect to self-direct the investment of their contributions. Any expenses incurred in conjunction with self-directed investments are paid by members. Absent a member's self-direction, TRS Plan 3 contributions are invested in the retirement strategy fund that assumes the member will retire at age 65.

Members in TRS Plan 3 are immediately vested in the defined contribution portion of their plan, and can elect to withdraw total employee contributions, adjusted by earnings and losses from investments of those contributions, upon separation from TRS-covered employment.

Washington State Deferred Compensation Program

The College, through the state of Washington, offers its employees a deferred compensation plan created under Internal Revenue Code Section 457. The plan, available to all State employees, permits individuals to defer a portion of their salary until future years. The state of Washington administers the plan on behalf of the College's employees. The deferred compensation is not available to employees until termination, retirement or unforeseeable financial emergency. The College does not have access to the funds.

Note 17. Other Post-Employment Benefits

The College implemented Statement No. 75 of the Governmental Accounting Standards Board (GASB) *Accounting and Financial Reporting for Postemployment Benefits Other Than Pension* for fiscal year 2018 financial reporting. In addition to pension benefits as described in Note 16, the College, through the Health Care Authority (HCA), administers a single employer defined benefit other postemployment benefit (OPEB) plan.

Plan Description. Per RCW 41.05.065, the Public Employees' Benefits Board (PEBB), created within the HCA, is authorized to design benefits and determine the terms and conditions of employee and retired employee participation and coverage. PEBB establishes eligibility criteria for both active employees and retirees. Benefits purchased by PEBB include medical, dental, life, and long-term disability.

The relationship between the PEBB OPEB plan and its member employers, their employees, and retirees is not formalized in a contract or plan document. Rather, the benefits are provided in accordance with a substantive plan in effect at the time of each valuation. A substantive plan is one in which the plan terms are understood by the employers and plan members. This understanding is based on communications between the HCA, employers and plan members, and the historical pattern of practice with regard to the sharing of benefit costs.

The PEBB OPEB plan is administered by the state and is funded on a pay-as-you-go basis. In the state CAFR the plan is reported in governmental funds using the modified accrual basis and the current financial resources measurement focus. For all proprietary and fiduciary funds, the OPEB plan is reported using the economic resources measurement focus and the accrual basis of accounting. It has no assets. The PEBB OPEB plan does not issue a publicly available financial report.

Employees Covered by Benefit Terms. Employers participating in the PEBB plan for the state include general government agencies, higher education institutions, and component units. Additionally, there are 76 of the state's K-12 schools and educational service districts (ESDs), and 249 political subdivisions and tribal governments not included in the state's financial reporting who participate in the PEBB plan. The plan is also available to the retirees of the remaining 227 K-12 schools, charter schools, and ESDs, Membership in the PEBB plan for the state consisted of the following:

Summary of Plan Participants
As of June 30, 2017

Active Employees	123,379
Retirees Receiving Benefits*	46,180
Retirees Not Receiving Benefits**	6,000
Total Active Employees and Retirees	175,559

*Enrollment data for June, 2017 from Report 1: PEBB Total Member Enrollment for June 2017 Coverage report. PEBB Retirees only.

**This is an estimate of the number of retirees that may be eligible to join a post-retirement PEBB program in the future.

The PEBB retiree OPEB plan is available to employees who elect to continue coverage and pay the administratively established premiums at the time they retire under the provisions of the retirement system to which they belong. Retirees' access to the PEBB plan depends on the retirement eligibility of their respective retirement system. PEBB members are covered in the following retirement systems: PERS, PSERS, TRS, SERS, WSPRS, Higher Education, Judicial, and LEOFF 2. However, not all employers who participate in these plans offer PEBB to retirees.

Benefits Provided. Per RCW 41.05.022, retirees who are not yet eligible for Medicare benefits may continue participation in the state's non-Medicare community-rated health insurance risk pool on a self-pay basis. Retirees in the non-Medicare risk pool receive an implicit subsidy. The implicit subsidy exists because retired members pay a premium based on a claims experience for active employees and other non-Medicare retirees. The subsidy is valued using the difference between the age-based claims costs and the premium. In calendar year 2016, the average weighted implicit subsidy was valued at $304 per member per month, and in calendar year 2017, the average weighted implicit subsidy is projected to be $328 per adult unit per month.

Retirees who are enrolled in both Parts A and B of Medicare may participate in the state's Medicare community-rated health insurance risk pool. Medicare retirees receive an explicit subsidy in the form of reduced premiums. Annually, the HCA administrator recommends an amount for the next calendar year's explicit subsidy for inclusion in the Governor's budget. The final amount is approved by the state Legislature. In calendar year 2016, the explicit subsidy was up to $150 per member per month, and it remained up to $150 per member per month in calendar years 2017 and 2018. This will increase in calendar year 2019 to up to $168 per member per month.

Contribution Information. Administrative costs as well as implicit and explicit subsidies are funded by required contributions (RCW 41.05.050) from participating employers. The subsidies provide monetary assistance for medical benefits.

Contributions are set each biennium as part of the budget process. The benefits are funded on a pay-as-you-go basis.

For calendar year 2017, the estimated monthly cost for PEBB benefits for each active employees (average across all plans and tiers) is as follows (expressed in dollars):

Required Premium*		
Medical	$	1,024
Dental		79
Life		4
Long-term Disability		2
Total		1,109
Employer contribution		959
Employee contribution		151
Total	$	1,110

*Per 2017 PEBB Financial Projection Model 8.0. Per capita cost based on subscribers; includes non-Medicare risk pool only. Figures based on CY2017 which includes projected claims cost at the time of this reporting.

Each participating employer in the plan is required to disclose additional information with regard to funding policy, the employer's annual OPEB costs and contributions made, the funded status and funding progress of the employer's individual plan, and actuarial methods and assumptions used.

For information on the results of an actuarial valuation of the employer provided subsidies associated with the PEBB plan, refer to: http://leg.wa.gov/osa/additionalservices/Pages/OPEB.aspx

Total OPEB Liability

As of June 30, 2018, the state reported a total OPEB liability of $5.83 billion. The College's proportionate share of the total OPEB liability is $12,890,764. This liability was determined based on a measurement date of June 30, 2017.

Actuarial Assumptions. Projections of benefits for financial reporting purposes are based on the terms of the substantive plan (the plan as understood by the employer and the plan members) and include the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between the employer and plan members (active employees and retirees) to that point. The actuarial methods and assumptions used include techniques that are designed to reduce the effects of short-term volatility in actuarial accrued liabilities, consistent with the long-term perspective of the calculations.

The total OPEB liability was determined by an actuarial valuation as of January 1, 2017, using the following actuarial assumptions, applied to all periods included in the measurement, unless otherwise specified:

Inflation Rate	3%
Projected Salary Changes	3.75% Plus Service-Based Salary Increases
Health Care Trend Rates*	Trend rate assumptions vary slightly by medical plan. Initial rate is approximately 7%, reaching an ultimate rate of approximately 5% in 2080
Post-Retirement Participation Percentage	65%
Percentage with Spouse Coverage	45%

*For additional detail on the health care trend rates, please see Office of the State Actuary's 2017 OPEB Actuarial Valuation Report.

In projecting the growth of the explicit subsidy, the cap is assumed to remain constant until 2019, at which time the explicit subsidy cap is assumed to grow at the health care trend rates. The Legislature determines the value of cap and no future increases are guaranteed, however based on historical growth patterns, future increases to the cap are assumed.

Mortality rates were based on the RP-2000 Combined Healthy Table and Combined Disabled Table published by the Society of Actuaries. The Office of the State Actuary applied offsets to the base table and recognized future improvements in mortality by projecting the mortality rates using 100 percent Scale BB. Mortality rates are applied on a generational basis, meaning members are assumed to receive additional mortality improvements in each future year, throughout their lifetime.

Most demographic actuarial assumptions, including mortality and when members are expected to terminate and retire, were based on the results of the 2007-2012 Experience Study Report. The post-retirement participation percentage and percentage with spouse coverage, were reviewed in 2017. Economic assumptions, including inflation and salary increases, were based on the results of the 2015 Economic Experience Study.

Actuarial Methodology. The total OPEB liability was determined using the following methodologies:

Actuarial Valuation Date	1/1/2017
Actuarial Measurement Date	6/30/2017
Actuarial Cost Method	Entry Age
Amortization Method	The recognition period for the experience and assumption changes is 9 years. This is equal to the average expected remaining service lives of all active and inactive members.
Asset Valuation Method	N/A - No Assets

In order to calculate the beginning total OPEB liability balance under GASB 75, the January 1, 2017 actuarial valuation was projected backwards to the measurement date of June 30, 2016, while the ending balance was determined by projecting the January 1, 2017 valuation forward to June 30, 2017. Both the forward and backward projections reflect the plan's assumed service cost, assumed interest, and expected benefit payments.

Discount Rate. Since OPEB benefits are funded on a pay-as-you-go basis, the discount rate used to measure the total OPEB liability was set equal to the Bond Buyer General Obligation 20-Bond Municipal Bond Index, or 2.85 percent for the June 30, 2016 measurement date and 3.58 percent for the June 30, 2017 measurement date. Additional detail on assumptions and methods can be found on OSA's website: http://leg.wa.gov/osa/additionalservices/Pages/OPEB.aspx

Changes in Total OPEB Liability

As of June 30, 2018, components of the calculation of total OPEB lability determined in accordance with GASB Statement No. 75 for the College are represented in the following table:

Proportionate Share (%)		**0.2212694219%**
Service Cost	$	873,915
Interest Cost		409,347
Differences Between Expected and Actual Experience		-
Changes in Assumptions*		(1,996,803)
Changes of Benefit Terms		-
Benefit Payments		(208,610)
Changes in Proportionate Share		(525,921)
Other		-
Net Change in Total OPEB Liability		(1,448,071)
Total OPEB Liability - Beginning		14,338,835
Total OPEB Liability - Ending	**$**	**12,890,764**

*The recognition period for these changes is nine years. This is equal to the average expected remaining service lives of all active and inactive members.

Changes in assumptions resulted from an increase in the Bond Buyer General Obligation 20-Bond Municipal Bond Index discount rate resulting in an overall decrease in total OPEB liability for the measurement date of June 30, 2017.

Sensitivity of the Total Liability to Changes in the Discount Rate. The following represents the total OPEB liability of the College, calculated using the discount rate of 3.58 percent as well as what the total OPEB liability would be if it were calculated using a discount rate that is 1 percentage point lower (2.58 percent) or 1 percentage point higher (4.58 percent) than the current rate:

Discount Rate Sensitivity		
1% Decrease	Current Discount Rate	1% Increase
$ 15,728,323	$ 12,890,764	$ 10,694,948

Sensitivity of Total OPEB Liability to Changes in the Health Care Cost Trend Rates. The following represents the total OPEB liability of the College, calculated using the health care trend rates of 7.00 percent decreasing to 5.00 percent, as well as what the total OPEB liability would be if it were calculated using health care trend rates that are 1 percentage point lower (6.00 percent decreasing to 4.00 percent) or 1 percentage point higher (8.0 percent decreasing to 6.00 percent that the current rate:

Health Care Cost Trend Rate Sensitivity		
1% Decrease	Current Discount Rate	1% Increase
$ 10,413,963	$ 12,890,764	$ 16,214,851

OPEB Expense and Deferred Outflows of Resources and Deferred Inflows of Resources Related to OPEB

For the year ending June 30, 2018, the College will recognize OPEB expense of $979,780. OPEB expense consists of the following elements:

Proportionate Share (%)	**0.2212694219%**
Service Cost	$ 873,915
Interest Cost	409,347
Amortization of Differences Between Expected and Actual Experience	-
Amortization of Changes in Assumptions	(221,867)
Changes of Benefit Terms	-
Amortization of Changes in Proportion	(81,615)
Administrative Expenses	-
Total OPEB Expense	**$ 979,780**

As of June 30, 2018, the deferred inflows and deferred outflows of resources for the College are as follows:

Proportionate Share (%)	**0.2212694219%**	
Deferred Inflows/Outflows of Resources	**Deferred Inflows**	**Deferred Outflows**
Difference between expected and actual experience	$ -	$ -
Changes in assumptions	1,774,936	-
Transactions subsequent to the measurement date	-	204,004
Changes in proportion	652,916	-
Total Deferred Inflows/Outflows	**$ 2,427,852**	**$ 204,004**

Amounts reported as deferred outflow of resources related to OPEB resulting from transactions subsequent to the measurement date will be recognized as a reduction of total OPEB liability in the year ended June 30, 2019. Amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB will be recognized as OPEB expense in subsequent years for the College as follows:

Proportionate Share (%)		**0.2212694219%**
2019	$	(303,482)
2020		(303,482)
2021		(303,482)
2022		(303,482)
2023		(303,482)
Thereafter	$	(910,442)

The change in the College's proportionate share of OPEB liability and deferred inflows and deferred outflows of resources based on measurement date are representing in the following table:

Proportionate Share (%) 2016		**0.2332163102%**
Proportionate Share (%) 2017		**0.2212694219%**
Total OPEB Liability - Ending 2016	$	14,558,708
Total OPEB Liability - Beginning 2017		13,812,914
Total OPEB Liability Change in Proportion		(745,794)
Total Deferred Inflows/Outflows - 2016		219,873
Total Deferred Inflows/Outflows - 2017	$	208,610
Total Deferred Inflows/Outflows Change in Proportion		(11,263)
Total Change in Proportion	**$**	**(734,531)**

Note 18. Operating Expenses by Program

In the Statement of Revenues, Expenses and Changes in Net Position, operating expenses are displayed by natural classifications, such as salaries, benefits, and supplies. The table below summarizes operating expenses by program or function such as instruction, research, and academic support. The following table lists operating expenses by program for the year ending June 30, 2018.

Expenses by Functional Classification		
Instruction	$	9,166,470
Academic Support Services		4,755,839
Student Services		9,394,066
Institutional Support		4,093,292
Operations and Maintenance of Plant		2,308,093
Scholarships and Other Student Financial Aid		4,684,456
Auxiliary enterprises		2,550,798
Depreciation		2,279,928
Total operating expenses	**$**	**39,232,942**

Note 19. Vendor Payment Advance

In accordance with RCW 28B.50.143, the Washington State Treasurer advances the College an amount equal to 17% of the College's general fund (001) budgeted expenditures for the biennium. This advance is returned to the state Treasurer after the final reimbursement for the biennium is requested. In July 2017, the College repaid the 15/17 biennium advance in the amount of $164,700 and did not take an advance for the 17/19 biennium.

Note 20. Related-Party Transactions

Based on their inter-relationship, the College and the Foundation have a number of transactions with each other during the course of the year. Under a formal agreement between the College and Foundation, the College provides printing, postage, office space, staff services and supplies, which the value totaled a net of $229,405 for 2018, while the Foundation provides fundraising and financial services.

The Foundation distributed approximately $690,657 to the College for restricted and unrestricted purposes in 2018. Inter-entity transactions and balances between the College and Foundation are not eliminated for financial statement presentation purposes.

Note 21. Commitments and Contingencies

The College is engaged in various legal actions in the ordinary course of business. Management does not believe the ultimate outcome of these actions will have a material adverse effect on the financial statement.

SCHEDULES OF REQUIRED SUPPLEMENTARY INFORMATION

SCHEDULE OF PROPORTIONATE SHARE OF THE NET PENSION LIABILITY

Notes: These schedules will be built prospectively until they contain 10 years of data.

Public Employees' Retirement System (PERS) Plan 1

Measurement Date of June 30

	2017	2016	2015	2014
College's proportion of the net pension liability (NPL)	0.041015%	0.041476%	0.041307%	0.042578%
College proportionate share of the net pension liability	$ 1,946,195	$ 2,227,448	$ 2,160,741	$ 2,144,887
College covered payroll	$ 4,894,118	$ 4,607,963	$ 4,337,289	$ 4,268,619
College's proportionate share of the NPL as a percentage of its covered payroll	39.77%	48.34%	49.82%	50.25%
Plan's fiduciary net position as a percentage of the total pension liability	61.24%	57.03%	59.10%	61.19%

Public Employees' Retirement System (PERS) Plan 2/3

Measurement Date of June 30

	2017	2016	2015	2014
College's proportion of the net pension liability (NPL)	0.047747%	0.046496%	0.045305%	0.045865%
College proportionate share of the net pension liability	$ 1,658,979	$ 2,341,053	$ 1,618,774	$ 927,097
College covered payroll	$ 4,681,195	$ 4,338,193	$ 4,021,138	$ 3,925,044
College's proportionate share of the NPL as a percentage of its covered payroll	35.44%	53.96%	40.26%	23.62%
Plan's fiduciary net position as a percentage of the total pension liability	90.97%	85.82%	89.20%	93.29%

Teachers' Retirement System (TRS) Plan 1

Measurement Date of June 30

	2017	2016	2015	2014
College's proportion of the net pension liability (NPL)	0.013945%	0.012498%	0.012868%	0.013515%
College proportionate share of the net pension liability	$ 421,594	$ 426,711	$ 407,677	$ 398,619
College covered payroll	$ 707,857	$ 570,355	$ 546,996	$ 523,662
College's proportionate share of the NPL as a percentage of its covered payroll	59.56%	74.81%	74.53%	76.12%
Plan's fiduciary net position as a percentage of the total pension liability	65.58%	62.07%	65.70%	68.77%

Teachers' Retirement System (TRS) Plan 2/3

Measurement Date of June 30

	2017	2016	2015	2014
College's proportion of the net pension liability (NPL)	0.011616%	0.010351%	0.010172%	0.010603%
College proportionate share of the net pension liability	$ 107,209	$ 142,150	$ 85,832	$ 34,247
College covered payroll	$ 637,270	$ 513,872	$ 475,173	$ 452,004
College's proportionate share of the NPL as a percentage of its covered payroll	16.82%	27.66%	18.06%	7.58%
Plan's fiduciary net position as a percentage of the total pension liability	93.14%	88.72%	92.48%	96.81%

SCHEDULES OF REQUIRED SUPPLEMENTARY INFORMATION

SCHEDULE OF CONTRIBUTIONS

Notes: These schedules will be built prospectively until they contain 10 years of data.

Public Employees' Retirement System (PERS) Plan 1

Measurement Date of June 30

	2018	2017	2016	2015	2014
Contractually Required Contributions (CRC)	$ 246,986	$ 246,716	$ 235,208	$ 189,844	$ 188,463
Contributions in relation to the CRC	$ 246,986	$ 246,716	$ 235,208	$ 189,844	$ 188,463
Contribution deficiency (excess)	$ -	$ -	$ -	$ -	$ -
Covered payroll	$ 4,802,607	$ 4,894,118	$ 4,607,963	$ 4,337,289	$ 4,268,619
Contributions as a percentage of covered payroll	5.14%	5.04%	5.10%	4.38%	4.42%

Public Employees' Retirement System (PERS) Plan 2/3

Measurement Date of June 30

	2018	2017	2016	2015	2014
Contractually Required Contributions (CRC)	$ 354,295	$ 291,635	$ 268,419	$ 201,813	$ 193,752
Contributions in relation to the CRC	$ 354,295	$ 291,635	$ 268,419	$ 201,813	$ 193,752
Contribution deficiency (excess)	$ -	$ -	$ -	$ -	$ -
Covered payroll	$ 4,730,298	$ 4,681,195	$ 4,338,193	$ 4,021,139	$ 3,925,044
Contributions as a percentage of covered payroll	7.49%	6.23%	6.19%	5.02%	4.94%

Teachers' Retirement System (TRS) Plan 1

Measurement Date of June 30

	2018	2017	2016	2015	2014
Contractually Required Contributions (CRC)	$ 62,308	$ 48,801	$ 30,313	$ 28,796	$ 26,725
Contributions in relation to the CRC	$ 62,308	$ 48,801	$ 30,313	$ 28,796	$ 26,725
Contribution deficiency (excess)	$ -	$ -	$ -	$ -	$ -
Covered payroll	$ 795,053	$ 707,857	$ 570,355	$ 546,996	$ 523,662
Contributions as a percentage of covered payroll	7.84%	6.89%	5.31%	5.26%	5.10%

Teachers' Retirement System (TRS) Plan 2/3

Measurement Date of June 30

	2018	2017	2016	2015	2014
Contractually Required Contributions (CRC)	$ 55,235	$ 42,800	$ 41,457	$ 27,033	$ 26,017
Contributions in relation to the CRC	$ 55,235	$ 42,800	$ 41,457	$ 27,033	$ 26,017
Contribution deficiency (excess)	$ -	$ -	$ -	$ -	$ -
Covered payroll	$ 717,901	$ 637,270	$ 513,872	$ 475,173	$ 452,004
Contributions as a percentage of covered payroll	7.69%	6.72%	8.07%	5.69%	5.76%

SCHEDULES OF REQUIRED SUPPLEMENTARY INFORMATION

SCHEDULE OF CHANGES IN TOTAL PENSION LIABILITY AND RELATED RATIOS

Notes: These schedules will be built prospectively until they contain 10 years of data.

State Board Supplemental Defined Benefit Plans

Measurement Date of June 30

Total Pension Liability	2017	2018
Service cost	92,089	65,393
Interest cost	59,742	60,096
Changes of benefit terms	-	-
Differences between expected and actual experience	(430,730)	(177,742)
Changes of assumptions	(101,653)	(60,130)
Benefit payments	(15,348)	(22,213)
Change in proportionate share of TPL	-	6,855
Other	(331)	-
Net Changes in Total Pension Liability	(396,231)	(127,741)
Total pension liability, beginning	2,013,517	1,617,286
Total pension liability, ending	1,617,286	1,489,545
College's proportion of the total pension liability (%)	1.701511%	1.708723%
Covered-employee payroll	9,196,442	9,936,416
Total pension liability as a percentage of covered payroll	17.585997%	14.990767%

Notes to Required Supplementary Information

The State Board Supplemental Retirement Plans are financed on a pay-as-you-go basis. State Board makes direct payments to qualifying retirees when the retirement benefits provided by the fund sponsors do not meet the benefit goals, no assets are accumulated in trusts or equivalent arrangements. Potential factors that may significantly affect trends in amounts reported include changes to the discount rate, salary growth and the variable income investment return.

SCHEDULE OF CHANGES IN TOTAL OPEB LIABILITY AND RELATED RATIOS

Notes: These schedules will be built prospectively until they contain 10 years of data.

Other Postemployment Benefits (OPEB)

Measurement Date of June 30

Total OPEB Liability	2018
Service cost	873,915
Interest cost	409,347
Changes in benefit terms	-
Difference between expected and actual experience	-
Changes in assumptions	(1,996,803)
Benefit payments	(208,610)
Change in proportionate share of TPL	-
Other	-
Net Changes in Total OPEB Liability	(922,150)
Total OPEB liability, beginning	13,812,914
Total OPEB liability, ending	12,890,764
College's proportion of the total OPEB liability (%)	0.221269%
Covered-employee payroll	9,417,486
Total OPEB liability as a percentage of covered payroll	136.881155%

Notes to Required Supplementary Information

The Public Employee's Benefits Board (PEBB) OPEB plan does not have assets in trusts or equivalent arrangements and is funded on a pay-as-you-go basis. Potential factors that may significantly affect trends in amounts reported include changes to the discount rate, health care trend rates, salary projections, and participation percentages.

ABOUT THE STATE AUDITOR'S OFFICE

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APPENDIX 5

No. 58362-3

COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION II

ERIC HOOD,

Appellant,

and

CENTRALIA COLLEGE,

Respondent.

REPLY BRIEF OF APPELLANT

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APPENDIX 5

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Rules

I. INTRODUCTION

Hood's complaint, dated March 8, 2023, claimed that his request for records made during litigation of his prior Public Records Act ("PRA") case against the College triggered the College's PRA obligations. Like many other complaints that explored the scope of the PRA, Washington State's notice pleading standard permits Hood's complaint to proceed, thus the trial court's dismissal was error.

Although the College admitted that Hood's complaint provided it with fair notice of Hood's new claim, it intransigently argues that Hood merely seeks to relitigate Hood's prior claims against the College. The College should be sanctioned.

II. ARGUMENT

Hood's prior case against the College ("*Hood 2020*") asked whether the College properly interpreted and responded to Hoods 2019 request for records. By contrast, Hood's complaint

dated March 8, 2023 (original 2023 complaint)[1] poses an entirely different question: Did Hood's requests for records made while litigating *Hood 2020* trigger the College's duties under the PRA?

This Court is *not* tasked with answering that question or with determining the merits of Hood's original 2023 complaint. Rather, this Court must determine a simple, specific question: Does Hood's original 2023 complaint "state a claim upon which relief can be granted [i.e., does] *any* set of facts […] exist that would justify recovery[?]" *Hoffer v. State*, 110 Wn. 2d 415, 420-21 (Wash. 1988) (emphasis in original).[2] If so, then the trial court's dismissal of Hood's original 2023 complaint was error.

The College admitted that Hood's original 2023 complaint involved a distinct set of facts, issues and claims from Hood's 2020 complaint, thus it was provided fair notice of Hood's new

---

[1] This appeal references three separate complaints, i.e., Hood's 2020 complaint involving a PRA request made in 2019, Hood's original 2023 complaint that bases this appeal, and Hood's amended 2023 complaint (denied by the trial court), which is *not* the basis of this appeal.

[2] *Hoffer*, which confirmed that Washington is a notice pleading state, has been cited at least 143 times, including by the Supreme Court, and all three Divisions.

claims. It nonetheless intransigently argues that the facts, issues and claims in the two cases are the same.

A. The College admitted Hood's original 2023 complaint provided it fair notice of his claim

The College's central argument to this Court is:

> On appeal, Hood attempts to raise a new claim: that his discovery requests from the 2020 PRA litigation automatically became PRA requests. *This argument was first introduced in a proposed amendment to Hood's 2023 complaint.*

Resp. Br., p. 13 (emphasis added)

False. *Before* Hood filed his amended complaint, the College's motion to dismiss Hood's original 2023 complaint stated:

> Hood argues that the College knew or should have known during discovery in the prior litigation that he wanted certain records and therefore provided them to him.

CP 9:21. This statement admits that the College knew that Hood "introduced" his "argument" in his original 2023 complaint, the only complaint that is the subject of this appeal. *Resp. Br.*, p. 13

Even if the College had not acknowledged that new claim, Hood's original 2023 complaint sufficiently articulated it. CP 2-8. Hood's original 2023 complaint first recited facts related to *Hood 2020*, including quoting Hood's 2019 PRA request, which does *not* mention "Board minutes." CP 2-4 (3.1-3.11). It then alleged that the College failed to respond to Hood's requests for "Board minutes," "other audit-related records" and "Board records," that were made *during litigation* of *Hood 2020*. CP 6 (3.15-3.17). It emphatically stated that the resolution of *Hood 2020* did *not* oblige the College to disclose its "Board minute and other records" in response to Hood's 2019 PRA request. CP 6 (3.18).

It claimed:

> [The College] intentionally withholds records that Hood both identified and indicated that he wanted while litigating case No. 20-2-00050-24, including Board minutes discussing the audit.

CP 6 at 3.19.

Finally, Hood requested the trial court to "order the College to promptly and properly respond to Mr. Hood's public records request." CP 8.

The College chose not to answer Hood's original 2023 complaint, i.e., it intentionally failed to:

> inform the adverse party of the issues he must be prepared to meet [or make] denials in specific form [or] formulate issues by means of defenses addressed to the allegations of the complaint.

S*hinn Irrigation Equip., Inc. v. Marchand*, 1 Wash.App. 428, 430-432, 462 P.2d 571 (1969), (citation omitted).

Instead, the College filed a motion to dismiss that restated the central claim of Hood's original 2023 complaint, viz., "the College knew or should have known during discovery in the prior litigation that [Hood] wanted certain records and therefore provided them to him." CP 9:21.

The College confirmed its understanding of Hood's central claim in reply to its motion for summary judgment:

> Hood seeks to convert his Request for Production (RFP) into a Public Records Request [because College] knew or should have known that he wanted

> certain records requested during discovery in a prior litigation to also be produced under the PRA.
>
> Hood's effort to convert a Request for Production into a PRA request that forms the basis for this PRA lawsuit […]
>
> Even if the Court were to conclude that Hood's discovery requests promulgated in Mr. Hood's previous PRA lawsuit were to constitute a valid PRA request….

SCP 371-373.

All of these statements show that the College certainly understood that Hood's original 2023 complaint made a new claim, viz., that Hood's requests for records made during the course of litigation in *Hood 2020* triggered the College's PRA obligations. In short, the College admitted that Hood's original 2023 complaint gave it "fair notice of what the plaintiff's claim is and the grounds upon which it rests. . . ." *Mills v. Orcas Power Light Co*., 56 Wn. 2d 807, 811 n.2 (Wash. 1960), quoting *Conley v. Gibson*, 355 U.S. 41, 47, 2 L.Ed. 2d 80, 78 S.Ct. 99. For this reason alone, Hood's original 2023 complaint must proceed.

Even if the College had not acknowledged its understanding of Hood's central claim:

> It is well established that pleadings are to be liberally construed; their purpose is to facilitate proper decision on the merits, not to erect formal and burdensome impediments to the litigation process.

State v. Adams, 107 Wn. 2d 611, 620 (Wash. 1987) (citations omitted). *And see West v. City of Tacoma*, 456 P.3d 894, 906 (Wash. Ct. App. 2020)*; Dewey v. Tacoma Sch. Dist*. 10, 95 Wn. App. 18, 23, 974 P.2d 847 (1999); CR 8(f) ("All pleadings shall be so construed as to do substantial justice").

The College's cagey decision to not answer but instead intentionally misconstrue Hood's original 2023 complaint cannot justly base a motion or a decision to dismiss. This Court should find that the College was provided fair notice of Hood's claim, misled the trial court otherwise, and that the trial court erred in dismissing Hood's original 2023 complaint under CR 12(b)(6).

B. Like other PRA cases involving the scope of the PRA, Hood's claims should be considered.

Every PRA case cited by the College concerned whether a *request of some kind* was governed by the PRA:

- *Beal v. City of Seattle*, 209 P.3d 872, 877 (Wash. Ct. App. 2009) (whether "new documents or a synthesis of existing documents is [….]subject to the PRA").
- *Brittig v. Mason Cnty. Fire Dist. #6*, No. 57408-0-II, 19 (Wash. Ct. App. Aug. 8, 2023) (whether email requesting a stipulation to amend "put the District on fair notice that it needed to supplement its response to [a prior request]".
- *Germeau v. Mason Cnty.*, 271 P.3d 932, 941 (Wash. Ct. App. 2012) ("whether Germeau's letter triggered any obligation by the County to comply with the PRA.")
- *O'Dea v. City of Tacoma*, 19 Wn.App. 2d 67, 80, 493 P.3d 1245 (2021) (Whether PRA requests received for the first time by an agency in a complaint triggered the agency's duties under the PRA.)

- *Wood v. Lowe*, 102 Wn. App. 872, 876 (Wash. Ct. App. 2000) ("whether it was a public disclosure request under [the PRA] or a personnel file request under RCW 49.12.")
- *Kilduff v. San Juan Cnty.*, No. 82711-1-I, 2022 WL 1763722, *11 (Wash. Ct. App. May 31, 2022) (unpublished). (Whether a request [that] "had *already been submitted*" triggers an agency's duties under *O'Dea*.) (emphasis added).[3]

Like these cases, Hood's original 2023 complaint concerns whether a request of some kind triggers an agency's PRA duties. *Unlike* Hood's original 2023 complaint, the claims in the above cases were allowed to proceed, i.e., they obviously were not dismissed pursuant to CR 12(b)(6). In all those cases, courts considered, pursuant to *Hoffer, supra,* the merits of the complaint. Instead of dismissing Hood's original 2023 complaint, the trial

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[3] The courts in *Hood 2020* determined that the College's Board minutes were *not* responsive to Hood's 2019 PRA request, thus Hood's request for those minutes was made for the first time during litigation of *Hood 2020*. College's comparison of Hood's request with *Kilduff* is inapt because Hood's litigation requests had *not* "already been submitted."

court should have considered whether requests for records made during the course of litigation, including a request for production that the College admitted was outside the scope of discovery, are governed by the PRA. This issue deserves the same consideration as did the issues in *all* the PRA cases cited by the College.

Because this issue has not been discovered or briefed it is not before this Court. "Under notice pleading, plaintiffs use the discovery process to uncover the evidence necessary to pursue their claims." *Putman v. Wenatchee Valley Med. Ctr. PS*, 166 Wash.2d 974, 983, 216 P.3d 374 (2009). Federal courts confirm that notice pleading relies not on initial pleadings but on "liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims" *Alvarez v. Hill*, 518 F.3d 1152, 1157 (9th Cir. 2008).

Whether Hood's 2020 litigation requests triggered the College's obligations under the PRA is an issue that must be fully briefed prior to a court's disposition. Thus, Hood asked this

Court to consider whether "a new PRA claim *can* arise from requests for public records made during the course of litigation." *App. Br.*, p. 13 (emphasis added). By contrast, the College (*Resp. Br.*, p. 17-24) improperly treated this "hypothetical situation" as if it had been fully briefed. *Brown v. MacPherson's*, 86 Wn. 2d 293, 298 n.2 (Wash. 1975). In short, The College's arguments regarding the merits of Hood's claim are at best premature and should be ignored.

C. The College's intransigence merits sanctions

Despite admitting that the facts, claims and issues in Hood's original 2023 complaint are new (*see* section A, *supra,* citing CP 9:21, SCP 361:17, SCP 363:21) the College's motion to dismiss misleadingly asserted that Hood was merely trying to relitigate *Hood 2020*. CP 9-21.

Because the College understood that Hood's new claim involved new facts and new unconsidered issues that did not even exist until *Hood 2020* was finally dismissed, it also understood

that its arguments involving preclusion and statute of limitations did not apply. It nonetheless wasted everyone's time by arguing to the trial court and to this Court that Hood's 2023 claims were identical to his 2020 complaint, precluded and time barred. *Id.*, and *Resp. Br.*, p. 13-18, 23-24.

Hood sought to address the College's misleading assertions to the trial court by moving to amend his original 2023 complaint so as to "notify the [College] of additional evidence and allegations that support Hood's causes of action." SCP 244. Hood's amendment was unnecessary.[4] Consequently, Hood did not submit his (denied) amended complaint or related briefings for this Court's review. The College's submission of those briefings is diversionary and unnecessary for this Court to determine whether the trial court erred in dismissing Hood's original 2023 complaint.

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[4] CR 15(a) (amendments should be granted as a "matter of course") *and see Mills v. Orcas Power Light Co*., 56 Wn. 2d 807, 811 n.2 (Wash. 1960), ("claimant [is not required] to set out in detail the facts upon which he bases his claim.")

Those supplemental briefs are, however, relevant to the College's intransigence. In addition to Hood's original 2023 complaint, the supplemental briefs show that:

> [Hood's new claims were] *not* based on the September 2019 request […] Hood sued the College [in March of 2023] because Hood's November 16, 2020 separate and broader request triggered College's duty to respond under the Public Records Act in accordance with *O'Dea v. City of Tacoma,* 53613-7-II (Wash. Ct. App. Aug. 24, 2021). That duty has not been litigated. The proposed attached amended complaint *more specifically addresses the factual circumstances* under which the College's duties arose.

SCP 242-243 (emphasis in original).

> The issue articulated in *both* Hood's original and amended complaint in this action is whether Hood's November 16, 2020 request for all audit-related records, including Hood's repeated requests for the College's Board minutes, should have triggered College's obligations under the PRA.

SCP 362 (emphasis in original).[5]

---

[5] Hood repeated those arguments in this Court. *Op. Br.*, p. 18 ("While the College was justified in withholding the Board minutes in response to Hood's 2019 PRA request, no authority permits its withholding of the Board minutes in response to Hood's Litigation Requests" *and id*., p. 22 ("Hood is not challenging the College's response to his 2019 PRA request, but rather

No matter how many times or in how many ways Hood showed that his original 2023 complaint is not an attempt to re-litigate *Hood 2020*, the College persistently ignored the plain language and intent of Hood's original 2023 complaint, his briefings in both courts, ***and its own admissions,*** *supra*. (CP 9:21, SCP 371-373).

The College *continues* to misrepresent to this Court that Hood's central claim *"*was first introduced in a proposed amendment to Hood's 2023 complaint." *Resp. Br*., p. 13. That misrepresentation cannot be reconciled with its admitted, confirmed understanding that Hood's original 2023 complaint involved

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its response to his Litigation Requests" *and id*., p. 28 ("But Hood is not relitigating either the issue or the facts of his 2020 complaint. Hood is not challenging this Court's prior determination that the Board minutes and other audit related records are not responsive to his 2019 PRA request. Hood has no interest in relitigating the College's interpretation of his 2019 PRA request which was fully determined in *Hood 2020*.")

whether "the College knew or should have known during discovery in the prior litigation that he wanted certain records and therefore provided them to him." CP 9:21.

The College also misrepresented that the trial court dismissed Hood's original 2023complaint on the basis of preclusion and statute of limitations. CP 13. In fact, the bases of the trial court's decision are unknown as it granted the College's motion to dismiss without comment. CP 222.

Merriam-Webster defines intransigence as "a steadfast adherence to an opinion, purpose, or course of action in spite of reason, arguments, or persuasion."[6] The obvious purpose of the College's intransigence is to mislead courts. Pursuant to RAP 18.1, this Court should award consulting attorney fees to Hood or otherwise sanction the College because its intransigence misled the trial court and "made trial more difficult and increased legal costs" in both courts. *In re Marriage of Pennamen,* 135 Wn.

[6] www.merriam-webster.com/thesaurus/intransigence

App. 790, 807, 146 P.3d 466 (2006). *And see In re E.J.S.*, 16 Wn. App. 2d 776, 785-86, 483 P.3d 110.

III. CONCLUSION

In accordance with Washington State notice pleading, Hood's original 2023 complaint stated a claim upon which relief can be granted and admittedly provided the College with fair notice of new facts, claims and issues that did not exist until *Hood 2020* was dismissed. Thus, Hood's original 2023 complaint should proceed. The College's intransigent arguments merit sanctions.

This document contains 2598 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 19th day of January, 2024.

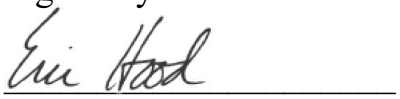
s/ Eric Hood
Eric Hood, pro se

APPENDIX 5

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury according to the laws of the State of Washington that on the date below the foregoing was delivered to the following persons via email: Matthew Barber.

Signed by:



Date: January 19, 2024

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APPENDIX 5

ERIC HOOD

January 19, 2024 - 4:07 PM

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Appellate Court Case Title:	Eric Hood, Appellant v Centralia College, Respondent
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APPENDIX 6

No. 58362-3-II

COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION II

ERIC HOOD, an individual

Appellant,

and

CENTRALIA COLLEGE, a public agency,

Respondent.

MOTION FOR RECONSIDERATION

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APPENDIX 6

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APPENDIX 6

I. IDENTITY OF PETITIONER

Eric Hood ("Hood"), pro se, is the movant.

II. RELIEF SOUGHT

The validity of this Court's "fair notice test" or the propriety of its application to Hood's case was not heard by the trial court. "We will not review an issue, theory, argument, or claim of error not presented at the trial court level." *Lindblad v. the Boeing Company*, 108 Wn. App. 198, 207 (Wash. Ct. App. 2001). "An argument not presented in the trial court will not be considered for the first time on appeal." *Braman v. Kuper*, 51 Wn. 2d 676, 677 (Wash. 1958). The "fair notice test" ("Test") is not part of the PRA and has not been reviewed, adopted or applied by any other higher court in a published opinion. Because this Court based its opinion on an unbriefed, unlegislated and untested Test, this Court should remand for full briefing on (i) whether the Test is valid and (ii) was properly applied to Hood's case.

Alternatively, this Court should remand on the basis that Hood's litigation requests met the Supreme Court's minimum requirement that a request need only be reasonably clear and made pursuant to the PRA, as held by this Court.

Hood at least prevailed on his claim that his 2023 Complaint for Violations of the Public Records Act was improperly dismissed under CR 12(b)(6), thus is entitled to all costs he incurred, including all attorney fees.

III. RELEVANT PARTS OF THE RECORD

Hood references the Court's *Opinion* dated April 4, 2023 ("Op.") indicated Court Papers, and websites or appended court documents of which this Court may take judicial notice**.**

IV. GROUNDS FOR RELIEF

When a requester suspects that an agency has not provided fullest assistance in making its records available, the Public Records Act ("PRA") "allow[s] requestors to expeditiously find out if they are entitled to obtain public records." *O'Neill v. City*

of Shoreline, 170 Wash.2d 138, 153, 240 P.3d 1149 (2010). Yet years after Hood unambiguously identified records that he unambiguously requested during litigation of his 2020 lawsuit, this Court's Test permits the College's continued withholding of them.

After devising its multi-factor Test in *Germeau v. Mason County*, 166 Wn. App. 789, 271 P.3d 932 (2012), this Court held that an agency's PRA obligations are triggered if a request for records meets only two requirements.

> [A]lthough there is no official format for a valid PRA request, "a party seeking documents must, at a minimum, [(1)] provide notice that the request is made *pursuant to the [PRA]* and [(2)] identify the documents with reasonable clarity to allow the agency to locate them." *Hangartner,*151 Wash.2d at 447, 90 P.3d 26.

Belenski v. Jefferson Cnty., 187 Wash. App. 724, 740 (Wash. Ct. App. 2015) (brackets in original, emphasis added), referencing *Hangartner v. City of Seattle*, 151 Wn. 2d 439, (Wash. 2004). This Court's finding that Hood's litigation requests did not

provide fair notice -- because they did not pass the Test -- conflicts with its holding in *Belenski.*

In addition, this Courts Test effectively serves as an unlegislated claim of exemption that encourages an agency to litigate, even when it certainly knows that a requester is dissatisfied with the original response and wants additional records. *See* e.g., *Germeau, supra, and see Brittig v. Mason Cnty. Fire Dist.* #6, No. 57408-0-II, (Wash. Ct. App. Aug. 8, 2023, unpublished) both litigated approximately four years, *and see Hood v. Centralia* (ongoing).

A. Hood's 2023 complaint notified the College that Hood wanted additional records pursuant to the PRA that he identified with sufficient clarity

After summarizing Hood's six "litigation requests," Op. p. 3-6, this Court found that:

> Hood's 2023 complaint, read in context, sufficiently raises the issue argued in his opening brief—that his "litigation requests" made in the course of the 2020 litigation were also public records requests separate from the 2019 public records request.

> […]
> This [complaint] language was clear enough to put the College on notice that Hood was, at least in part, claiming PRA penalties and attorney fees for the failure to adequately respond to his "litigation requests" made in the course of his 2020 litigation.

Op. p. 9

Hood's 2023 complaint did not copy any of his litigation requests, but this Court understood that it "put the College on notice" that it had violated the PRA. *Id*. This Court's determination is consistent with its holding in *Belenski, supra*. The following shows that Hood's litigation requests, which based his 2023 complaint, also provided notice that Hood sought identifiable records pursuant to the PRA.

B. Hood's litigation requests met the minimum notice required by the Supreme Court

"Pursuant to" is defined as "[i]n compliance with," "in accordance with," "as authorized by," and "under." *Black's Law Dictionary* 1272 (8th ed.2004). And see *A Dictionary of Modern Legal Usage* 721 (2d. ed. 1995), which adds "in carrying out."

> Because the relevant definition of a term depends on the context in which the term is used, how broadly or narrowly these definitions of "pursuant to" will be applied depends upon the breadth of the subject that follows the preposition "to."

Getz v. Peace, 934 N.W.2d 347, 355 (Minn. 2019) (citations and quotations omitted)

Here, "pursuant to" refers to a statute whose breadth and authority this Court has repeatedly recognized and confirmed:

> Pursuant to the PRA, courts shall take into account the policy that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials. We construe the PRA's disclosure provisions liberally and exemptions narrowly. The legislature enacted the PRA to ensure broad disclosure of public records.

CP 205 (ellipses, brackets, citations, and quotation marks omitted). And see *Nissen v. Pierce Cnty.*, 183 Wash. 2d 863, 874 (Wash. 2015) ("this broad construction is deliberate.")

An analysis of Hood's litigation requests shows that they were indeed made "pursuant to the PRA" and provided "reasonable clarity." *Hangartner*,151 Wash.2d at 447, 90 P.3d 26.

1. First litigation request -- 2020 complaint

This Court found that Hood's 2020 complaint, his first litigation request, sought "records responsive to Hood's [2019] request." Op. p. 16. The Court's conclusion that this language did not "suggest" he was making a "new" request pursuant to the PRA (*id*.,) was possible only by omitting that Hood's complaint also stated, "Complaint for Violations of the Public Records Act […] *pursuant to RCW 42.56.550(1)*," and claimed that "Hood's records request encompassed records *other than the documents it provided him*." CP 179 and 182 (emphasis added).

This "language" of Hood's 2020 complaint did far more than merely suggest that Hood requested records in addition to what the College had already produced: it warned the College that it faced penalties *pursuant to the PRA* if it did not produce them. Upon receiving Hood's complaint, especially paragraphs After reading Hood's 2020 complaint paragraphs 3.14 and 3.15, CP 182, the College "[had the initial burden of proving, beyond material doubt, that its search was adequate." *Neighborhood*

Alliance of Spokane County v. Spokane County, 172 Wn.2d 702, 261 P.3d 119 (2011) at 721. This burden required the College to "identify the document[s] itself and explain" why they were withheld. *Neighborhood Alliance*, 172 Wn. 2d 702, at 715.

Instead, the College flatly denied any withholding. CP 187 (3.14-3.15). The College's denial and refusal to identify any withheld records implied that it had completely satisfied Hood's 2019 PRA request. Thus, the College ***necessarily*** understood that Hood's 2020 complaint, which demanded additional records, made a "new public records request." Op. p. 16. In short, the "language" of Hood's "Complaint for Violations of the Public Records Act […] pursuant to RCW 42.56.550(1)" demanding additional records notified the College that Hood sought additional records "pursuant to the PRA." *Hangartner*,151 Wash.2d at 447, 90 P.3d, 26.

The College certainly knew that Hood wanted more than the few documents it produced in response to Hood's 2019 PRA request. The College did *not* seek clarification of Hood's first

litigation request, showing that it identified records with "reasonable clarity." *Hangartner*,151 Wash.2d at 447, 90 P.3d 26.

2. Second and third litigation requests -- discovery

Because an agency solely controls access to its records, requesters can identify *only* those records the agency makes available. This Court accordingly noted the obvious fact underlying any allegation of silent withholding, viz., "Hood did not identify what the missing records were in his 2020 complaint." Op. p. 3. The College nonetheless knew from Hood's first litigation request, that Hood wanted records in addition to the several documents the College produced to him in 2019. Knowing that Hood wanted additional records *required* the College, at the very least, to re-examine its interpretation of his request for "all records it got from the auditor and all records of any response to the audit or to the audit report," Op. p. 2, and

determine if it had additional records. RCW 2.56.100 (requiring that agencies "fully assist" a requester.)

Because the College disclosed no additional records, denied understanding that Hood's encompassed any other records, denied withholding, and did not ask for clarification of Hood's first litigation request, Hood propounded discovery to obtain additional records. Op. p. 3.

Hood's discovery definition of "record" incorporated PRA language. *Compare* Appendix, pages from 06/03/21 *Declaration of Eric Hood*, Exhibit 15, definition #7, ("including but not limited to") followed by a list of record types *with* RCW 42.56.010(3).

Hood's definition of "related to" quoted Division II's holding in a PRA case:

> The definitions of "agency" and "public record" are each comprehensive on their own and, when taken together, mean the PRA subjects virtually any record related to the conduct of government to public disclosure. This broad construction is deliberate and meant to give the public access to information about every aspect of state and local government. See LAWS OF 1973, ch. 1, § 1(11). As we

> so often summarize, the PRA is a strongly worded mandate for broad disclosure of public records. *Nissen v. Pierce Cty.*, 183 Wash.2d 863, 357 P.3d 45, 54 (Wash. 2015).

Id., definition #24.

The obvious intent of Hood's second litigation request, viz., request for production 23 for "all records related to the audit," was to compare them to the College's production of records in response to his 2019 PRA request. *This Court recognized that intent*. CP 214-217 (Court analyzed records "not produced by the College when he made his records request.")

Despite understanding that intent, this Court nonetheless found that Hood's second litigation request, merely "mimicked his 2019 public records request and again sought records "related to the ... audit." Op. p. 16. It subsequently found:

> request for production 23 explicitly drew on non-PRA legal authority, the civil rules of discovery [and failed] *to distinguish his "litigation requests" as independent from his 2019 public records request.*

Op. p. 19 (emphasis added)

The italicized portion of the above finding is only possible by ignoring the intent of RP 23 and by omitting that Hood *actually* asked for,

> all records *related* to the … audit … that have not been previously produced, whether or not the College considers them responsive to Plaintiff's [2019 PRA request].

CP 197 (emphasis added by this Court).

The College itself "distinguish[ed]" Request for production 23 as "independent" from his 2019 records request. Op. p. 10.

> This request would include all records provided to the auditor, as well as all other records that provide factual support for the data provided to the auditor. Such information would also include Personally Identifiable Information. […]

CP 65. *And see* CP 112 ("This request encompassed a much broader set of documents than initially requested by Mr. Hood.")

Thus, Hood's second litigation request was universally understood to have been propounded to determine whether College must disclose additional records pursuant to the PRA.

Again, because the College had denied any withholding in response to Hood's 2019 request and explicitly distinguished Request for production 23, it *necessarily* understood that this second litigation request for additional records was a "new" PRA request. Op. p. 16. The College confirmed that it was a new request by claiming it "had no obligation to provide them until requested in discovery." CP 113.

That obligation was necessarily *pursuant to the PRA* because the College considered Hood's second litigation request to be "outside the scope of discovery." CP 65. Since the College's response to that second litigation request was not governed by discovery rules, the PRA necessarily provided authority, *because there is no other*. The Court's finding that Hood's discovery request "explicitly drew on non-PRA legal authority" ignores not only the College's admitted "obligation" but also that "the PRA requires courts to uphold its policies above others when there is a conflict among competing objectives or statutes." *Wash. Pub. Emps. Ass'n, UFCW Local*

365 v. Wash. State Ctr. for Childhood Deafness & Hearing Loss, 450 P.3d 601, 610 (Wash. 2019). *And see* RCW 42.56.030 ("[PRA] shall govern.")

This Court's finding also ignores that discovery cannot be propounded in the absence of a lawsuit and must be "relevant to the subject matter involved in the pending action [and if irrelevant] not be had." CR 26(b)(1) and CR 26(c)(1.) In other words, discovery does not stand alone but is,

> a *mechanism* for making relevant information available to the litigants [and to] obtain the fullest possible knowledge of the issues and facts before trial.

Physicians Ins. Exch. v. Fisons Corp., 122 Wn. 2d 299, 341-342 (Wash. 1993) (emphasis added).

Although Hood's second litigation request was made under the civil discovery rules, its universally understood *purpose* was to compel the College to disclose, *pursuant to the PRA*, documents "other than the documents it had [previously] provided." CP 179. It thus certainly "drew on" the authority of

the PRA (Op. p. 10). In other words, Hood's discovery was the *mechanism* by which Hood wielded the authority of the PRA.

Hood's discovery request did not fully realize its purpose for two reasons. First, although the College considered the scope of Hood's second litigation request to be broader than Hood's 2019 PRA request, CP 67, and knew that Hood "continue[d] to be interested in other documents 'related to' the audit," CP 73, it nonetheless *ignored* the files of its Board. Hood did not have "the full cooperation of the [College]." *Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn. 2d 299, 342 (Wash. 1993). Second, Hood *repeatedly* told the courts that the College's discovery search was deficient. CP 98-99 ("College's *post*-lawsuit search…in response to [Hood's] discovery, was also inadequate" because it failed to search its Board files, identify board members who maintained audit records, or disclose board minutes regarding audit.) *And see* CP 148-149. Despite Hood's pleas, courts did *not* enforce the College's compliance with CR 26. See *Fisons,* 122 Wash.2d at 345, 858 P.2d 1054 ("A motion to

compel compliance with the rules is not a prerequisite to a sanctions motion"). Since the courts did not recognize the authority of CR 26, they *necessarily* knew that Hood's second litigation request was made under the authority of the PRA. *There is no other authority.*

In summary, Hood's PRA complaint and hence the PRA was the ultimate authority under which Hood requested additional records *through* the mechanism of discovery. The purpose, relevance, and "context" Op. p. 19, of Hood's discovery was to effectuate the mandate of the PRA, i.e., the PRA *authorized* Hood to propound discovery, an authority that both the College and the courts recognized. Hood's second litigation request was thus made "pursuant to the PRA." *See Belenski* and *Hangartner, supra*. Because College did not ask for clarification of Hood's second litigation request and understood its breadth and reach, CP 67 and CP 73-74, Hood's second litigation request was reasonably clear.

Hood's third litigation request essentially asked the College to interpret Hood's PRA request broadly, i.e., in accordance with the common meaning of "response" and College's knowledge of what records were involved in an SAO audit. Op. p. 4. The arguments made regarding Hood's second litigation request, *supra*, apply to his third one.

4. Fourth litigation request -- citation to case law requiring disclosure

Hood citations to PRA case law unambiguously notified the College that he wanted, *pursuant to the PRA*, records that he unambiguously identified.

> Hood's opening brief informed the College that he had discovered audit-related records on the College's website, i.e., College Board minutes discussing the audit and that its search for records in response to his 2020 RP was inadequate […] College contrarily claimed it was not obligated to produce the Board minutes because, "they are not responsive [to Hood's September 23, 2019 PRA request]." Id., p. 12. Hood's citation to *Neighborhood Alliance, supra,* notified College that even if it believed Hood's 2019 PRA request did not encompass the Board minutes, Hood nevertheless sought them *under the authority of the PRA*. […] Hood's opening brief in the Court of Appeals confirmed that Hood sought [additional

> records that Hood identified] *pursuant to the PRA* by citing *O'Dea v. City of Tacoma*, 53613-7-II (Wash. Ct. App. Aug. 24, 2021)

CP 160-161 (emphasis added). Hood's citation to both the court record and case law gave notice that Hood wanted unambiguously identified records "pursuant to the PRA." *Id*.

Hood's fifth and sixth litigation requests reiterated his previous ones, thus need not be discussed here.

B. This Court's Test is contrary to statute

> The PRA's mandate of liberal construction requires the court to view with caution any interpretation of the statute that would frustrate its purpose.

Kilduff v. San Juan Cnty., 194 Wash. 2d 859, 874 (Wash. 2019) (citations and quotation marks omitted).

Analyzing Hood's litigation requests in accordance with the PRA's broad mandate shows that they were made "pursuant to the PRA" and identified records with reasonable clarity, i.e., they met the "minimum" required by *Hangartner* and *Belenski, supra*. Even if they didn't, the Test should not have been applied in this case because it conflicts with statutory language.

Because an agency solely controls (i) its records and (ii) all information about its records, including its searches of them, it solely bears the burden of proof to show that it fully assisted a requester in accessing them. RCW 42.56.100 and RCW 42.56.550. These requirements do not cease when a requester files a lawsuit under the PRA, if anything they are enhanced.

> [Being] "in a litigation mode" [does not] excuse an agency from fulfilling an independent duty to respond under the PRA.

O'Dea v. City of Tacoma, 493 P.3d 1245, 1253 (Wash. Ct. App. 2021)

Despite the unambiguous language of both statute and case law favor permits the College to withhold records that Hood clearly identified and repeatedly requested, essentially because Hood made his requests during litigation. But "litigation mode" does not excuse a failure to provide fullest assistance. *Id*. The College knew Hood wanted additional records, including its Board minutes. Rather than "fully assist" Hood in obtaining

them, it withheld them even after Hood repeatedly and certainly identified them. RCW 42.56.100

This Court's application of its exclusionary Test swept aside the requirements that agencies must liberally construe the PRA in favor of disclosure *and* fully assist a requester. RCW 42.56.030 and RCW 42.56.100. A liberal construal starts with the plain language that

> [e]ach agency, in accordance with published rules, shall make available for public inspection and copying all public records […]
>
> The PRA's disclosure provisions must be liberally construed and its exemptions narrowly construed. RCW 42.56.030. […]

Rental Housing Ass'n v. City of Des Moines, 165 Wn. 2d 525, 535 (Wash. 2009).

"The language [of RCW 42.56.550(4)] allows for any kind of civil action." *Cantu v. Yakima Sch. Dist. No. 7*, 514 P.3d 661, 680 (Wash. Ct. App. 2022) In this case, the "civil action" was Hood's litigation requests made during the litigation of his 2020

complaint. Thus, compliance with the PRA in these circumstances meant:

> taking into account prior requests by the plaintiff and communication between the requester and the agency. […]We consider the totality of circumstances to determine if [agency] was providing "the fullest assistance to inquirers and the most timely possible action on requests for information." RCW 42.56.100.

Id., at 681.

Nowhere does the plain language of statute or the clear intent of rulings contemplate, let alone permit this Court's Test to ignore these statutory provisions.

Contrary to the exclusionary nature of said Test, the Legislature made clear that:

> The intent of [the PRA] is to make clear that . . . agencies having public records should rely *only upon statutory exemptions or prohibitions* for refusal to provide public records. […]The Legislature […] does not want judges any more than agencies to be wielding broad and malleable exemptions.

Progressive Animal Welfare Society v. Univ.of Washington, 125 Wn. 2d 243, 259-60 (Wash. 1994), quoting Laws of 1987, ch. 403, § 1, p. 1546. (Emphasis in original.) Just as courts may not

devise exemptions that frustrate the PRA's mandate, they cannot devise tests that do the same.

Rather, as this Court plainly stated in accordance with the plain language of RCW 42.56.080(2), "Agencies shall, upon request for identifiable public records, make them promptly available to any person." *Gronquist v. Department of Corrections*, No. 39651-3-II, 6 (Wash. Ct. App. Mar. 4, 2011).

C. This Court's Test is based on untenable holdings

Many of the cases on which this Court relied in devising its Test, first articulated in *Germeau v. Mason Cnty.*, 271 P.3d 932, (Wash. Ct. App. 2012) are either inapt or untenable.

The first characteristic, "the request's language," *Germeau*, 271 P.3d at 941, relied exclusively on *Wood v. Lowe,* 102 Wash.App. 872, 879, 10 P.3d 494 (2000):

> Here, Ms. Wood requested […] (2) "any other information" or (3) "documentation" related to Ms. Wood's employment or the prosecutor's office generally. We can quickly dispose of the second and third requests. First, Ms. Wood's request for "information" is not a

> request for an "identifiable public record." Bonamy, 92 Wn. App. at 411-12. Second, her request for "documentation" lacks any meaningful description helpful for the person charged with finding the record. See Bonamy, 92 Wn. App. at 411 (reasoning request "for general policy guidelines" too broad). Consequently, both requests fall outside the scope of the PDA

Wood, 102 Wash.App. at 879, 10 P.3d 494. Division III's discussion regarding "information" may be reasonable. But its "quick dispos[al]" of Wood's request for "documentation" conflicts with the PRA's plain language:

> A request for all or substantially all records […] is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.

RCW 42.56.080. In other words, a request for "all records" *is* "valid" if it regards a particular topic, e.g., Wood's employment.

In accord with this statute and contrary to Wood, the Supreme court had no issue with a request for "'any and all documents constituting, associated with, and related to' the unfunded grant proposal. " *Progressive Animal Welfare Society*

v. University of Washington, 125 Wn. 2d 243, 268 n.12 (Wash. 1994). Similarly, it found that "all material relating to [a particular] study and any other such studies [was] clear and unambiguous." *Yousoufian v. Office of Ron Sims*, 165 Wn. 2d 446 (Wash. 2009*) at 439, 465*- 465. The only issue it had with "all material related to the investigation and possible settlement of [someone's] death" was that the request asked for exempt records, not that it failed to identify records. *Soter v. Cowles Publ'g Co.*, 162 Wn. 2d 716, 726 (Wash. 2007).

RCW 42.556.080 and Supreme Court rulings support that Wood's request for "documentation" "related to" her "employment" *was* valid because it requested "records regarding a particular topic." Contrary to Division III's holding in *Wood, supra*, Wood's request for identifiable records provided a "meaningful description" and thus was valid. Because this Court exclusively relied on the untenable holding in *Wood,* the "language" "characteristic" of this Court's Test is equally untenable.

This Court's "format" characteristic, *Germeau v. Mason Cnty.*, 271 P.3d 932, 941 (Wash. Ct. App. 2012) relied on *Hangartner v. City of Seattle*, 151 Wash.2d 439, 447–48, 90 P.3d 26 (2004). There the Supreme Court found that a

> request for *"all* books, records, [and] documents of every kind" was too broad [because] by requesting *all* of an agency's documents, the [PRA's] identification requirement would be essentially meaningless.

Id., (emphasis in original).

"Format"[1] is confused with what *Hangartner* actually discussed, viz., the request's "vague [or] overbroad" language, *id*., thus there is *no* basis for this Court's "format" characteristic. Consequently, the PRA should govern Hood's presentation of his litigation requests. "No official format is required for making a records request." RCW 42.56.080(2).

The Court relied on *Parmelee v. Clarke*, 148 Wash.App. 748, 754–56, 201 P.3d 1022 (2008) regarding its "recipient of the request" characteristic. There, inmate Parmelee's failure to

[1] *See* https://www.merriam-webster.com/dictionary/format

submit his request to a specific "public disclosure coordinator," as required by Department of Corrections "policy," relieved the DOC of its duty to provide the requested record. *Parmelee v. Clarke*, 148 Wn. App. 748, 755-756 (Wash. Ct. App. 2008). The Court reasoned that because the DOC "has numerous offices and institutions located throughout the state," the request may not have been received by the proper employee. *Id.*

This factor is *not* reasonable if a proper person in an agency *actually receives* a request. That is, the "totality of the circumstances," not a hypothetical factor divorced from those circumstances, should govern in a PRA case. *Neighborhood Alliance v. County of Spokane*, 172 Wash. 2d 702, 735 (Wash. 2011). This Court's "recipient" "characteristic" gives agencies an opportunity to unreasonably apply it to any request, regardless of circumstances or agency size.

Here, Hood's litigation requests were admittedly "sent to the College, its counsel, or the courts" and hence to the College." Op. p. 18. The College certainly knew that Hood wanted

additional records, thus even if the "recipient" "characteristic" was reasonable, it did not apply in Hood's circumstances.

Only one of this Court's "characteristic" factors is potentially relevant here, viz., whether Hood requested "documents under an independent, non-PRA authority." Op., p. 18. Hood's discussion of his litigation requests, section B, *supra*, addressed this factor. The basis of this factor was again *Wood*, where "the real concern was not *whether* Ms. Wood could access her file but when she could do so." *Wood v. Lowe*, 102 Wn. App. 872, 880-81 (Wash. Ct. App. 2000) (emphasis in original). Whether *and* when Hood will receive the records he requested from an agency that recognizes no authority under which it should disclose them is at issue here.

D. Because this Court's Test is contrary to the PRA's broad mandate, it would not withstand scrutiny by the Supreme Court

This Court's restrictive and exclusionary Test contradicts the "PRA's mandate for broad public access to information to

maintain control over the instruments that [the people] have created." *Sargent v. Seattle Police Dep't*, 314 P.3d 1093, 1101 (Wash. 2013) (citations and quotation marks omitted). Division II's Test thus acts as a prohibited *judicial* "exhaustion requirement." *Kilduff.*, 194 Wash. 2d at 878.

The broader issue raised by the Test is the grounds on which an agency may withhold public records. This issue was recently addressed by the Supreme Court, which overturned this Court's ruling in *Cousins v. Dep't of Corr*., 25 Wn. App. 2d 483, 523 P.3d 884 (2023). No longer may agencies, in unquestioning adherence with this Court's "bright-line rule" regarding closing letters "undermine the PRA's central tenets to preserve the accountability to the people of public officials and institutions." Appendix 2, p, 32-37 (citations and quotation marks omitted).

The validity of this Court's Test has not been reviewed by other appellate courts. In addition to being unlegislated, the Test shares many of the problems associated with this Court's "bright line rule," including that the Test:

- has not "balanced the PRA's strong mandate for broad public disclosure with the need for certainty…." *Id.,* p. 20;
- would be rejected by the Supreme Court because it "prioritizes finality for agencies over all other relevant interests." *id*., p. 26;
- is not "in accordance with the Advisory Model Rules [or] consistent with legislative intent." *id*., p. 35;
- incorrectly assumes that a requester has the "same understanding" as the agency. *id*., p. 36;
- does not ensure that "every person who makes a PRA request is entitled to 'the fullest assistance . . . and the most timely possible action.' RCW 42.56.100." *id*., p. 37;
- "interpret[s]the PRA in a way that would tend to frustrate [its]purpose." *id*., p. 37;
- does not have "consistency." *id*., p. 37;
- does not "assum[e] that the requester is a lay person with no specialized knowledge or expertise." *id*., p. 37.

This Court must therefore permit full briefing regarding the validity and application of its Test. Alternatively, it should abandon its Test and instead, as in *Cousins*, hold that an agency tell a requester "in plain language targeted to a lay audience" whether or not the agency is responding to a request for public records pursuant to the PRA. *Id*., p. 39.

At present, this Court's Test effectively encourages an agency to withhold records, obfuscate, and litigate, even when it certainly knows that a requester wants additional records. Should this Court reconsider and find for Hood, then agencies would understand that, in response to a PRA lawsuit where withholding is claimed, they should first determine whether their search was adequate, including whether the request that based the lawsuit was broadly construed, and disclose additional records. Based on that determination, the agency could then admit or deny that the additionally disclosed records are responsive to the original request.

If the agency admits they are responsive, then it can minimize potential liability and litigation. See *West v. Office of Governor,* No. 82057-5-I (Wash. Ct. App. Mar. 15, 2021) (agency immediately remedied an admittedly deficient response to a PRA request.)

If an agency denies withholding, and instead considers that a requester's claim of withholding refers to records "distinct from" the PRA request that based the complaint and hence a "new" request (Op. p. 16) then it should properly respond to the new request *as* a PRA request. Then it would have a solid basis for proceeding to disposition on the merits.

Whether an agency admits or denies, litigation is minimized and the goal of transparency is met. This remedy, which properly burdens an agency rather than a requester, would increase transparency and avoid the "unworkable" results foreseen by this Court. Op., p. 19.

E. Hood is entitled to attorney fees and costs

Hood previously briefed this issue to this Court and incorporates those arguments here. *See* Appendix 3.

Because courts do not award attorney fees to pro se non-lawyers, agencies are motivated to engage in misconduct. CP 219. (College propounded irrelevant discovery). *And see* CP 9-22 (arguing that Hood's 2023 complaint was time barred and precluded, despite knowing and admitting otherwise).

Pursuant to RCW 42.56.550(4), prevailing PRA litigants should be awarded *all* costs reasonably incurred, including personal costs related to time spent litigating and consulting attorney fees. Appendix 3. In support of this proposition, Courts have found that:

1) "pro se briefs are held to the same standard " as licensed attorneys in Washington courts, *In re Meippen*, 193 Wash. 2d 310, 320 (Wash. 2019 (Wiggins, J., dissenting);

2) litigants with "pro bono publico" RPC 6.1 attorneys are entitled to reasonable attorney fees. *MOSM, LLC v. Deegan*, No. 58920-6-II (Wash. Ct. App. Mar. 5, 2024)

3) "negative value" suits, discourage professional representation. *Hamilton v. Wal-Mart Stores, Inc.*, 39 F.4th 575, 588 n. 6 (9th Cir. 2022) ("cases where the cost of bringing suit outweighs the damages a plaintiff could expect to recover") or "undesirable" cases, *Cronin v. Cent. Valley School Dist*., 456 P.3d 843, 856 (Wash. Ct. App. Div. 3 2020) (people forced to sue without an attorney to vindicate their rights.)

All of these considerations weigh in favor of granting Hood's attorney fees and costs.

Moreover, Hood *prevailed* on the sole issue of his appeal, viz., whether his 2023 Complaint for Violations of the Public Records Act was improperly dismissed under CR 12(b)(6). CP 369-370. A prevailing party *must* be compensated:

> RCW 42.56.550(4) mandates provision of "all costs, including reasonable attorney fees, incurred in connection with such legal action" to the party who prevails against an agency *in a PRA claim*. This language includes attorney's fees incurred on appeal and hence Sargent is entitled to an award of attorney's fees *to the extent that he prevailed here*.

Sargent v. Seattle Police Dep't, 314 P.3d 1093, 1105 (Wash. 2013) (emphasis added.) Because Hood "prevailed" on his "claim" that his complaint was improperly dismissed he is entitled to attorney fees, including consulting attorney's fees, which were "costs" that Hood "incurred." *Id.*

V. CONCLUSION

Based upon the foregoing, Division 2 should reconsider its decision.

Respectfully submitted this 28th day of May, 2022.

Pursuant to RAP 18.17(b), this brief contains 5455 words.

s/Eric Hood
Eric Hood, pro se

APPENDIX 6

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury according to the laws of the State of Washington that on the date below the foregoing was delivered to the following persons via email to Respondent counsel.

Signed by:

s/Eric Hood Date: May 28, 2024

Eric Hood
Langley, WA 98260
5256 Foxglove Lane, PO Box 1547
360.632.9134
ericfence@yahoo.com

APPENDIX 1

Relevant pages from Declaration of Eric Hood, dated May 28, 2021, Thurston County Superior Court case # 20-2-02234-34

6. "Person" shall include any individual, corporation, partnership, association, d/b/a, or any other entity of any kind.

7. "Document" or "Record" shall be interpreted in the broadest possible manner and including any written, printed, typed, photocopied, photographic or recorded matter of any kind or character, or any recorded material, however produced or reproduced, whether prepared by you or otherwise, including, but not limited to, all drafts, contracts, diaries, journals, calendars, appointment books, logs, desk pads, correspondence, communications, tapes, memoranda, emails, texts, instant messages, social media postings, notes, studies, reports, manuals, guidelines, rules, instructions, operating procedures, drawings, graphs, charts, lists, minutes or meeting notes, calculations, estimates, entries in books of account, working papers, computer tapes, diskettes, thumb drives, computer files (including information stored on hard drives or disk drives), CD-ROMs, DVD-ROMS, photographs, negatives, slides, video or audio tapes, telegrams, notes of telephone conversations, and notes of any oral communications, and also including every copy of a document that is nonidentical to the original (whether because of notes made on or attached to such copy or otherwise). *"Document" or "record" specifically includes e-mail and any other communication, computer file, metadata (including metadata for non-email electronically generated documents), or other matter stored or maintained in a computer database, hard drive, or other electronic storage, regardless of storage location.*

If a document has been prepared and several copies or additional copies have been made, and the copies are not identical (such as in the case where several drafts of the same document are prepared), each non-identical copy is a separate "document" and must be produced for inspection and copying. Also, if the document is an e-mail and that e-mail is one in a series of e-mail communications exchanged between parties to an e-mail correspondence, each e-mail in the correspondence constitutes a separate document for purposes of this discovery request.

18. "Relating to" or "relates to" shall mean, without limitation, embodying mentioning, or concerning, directly or indirectly, the subject matter identified in a particular Interrogatory. This term as used herein parallels the meaning implied by the Supreme Court:

> The definitions of "agency" and "public record" are each comprehensive on their own and, when taken together, mean the PRA subjects virtually any record related to the conduct of government to public disclosure. This broad construction is deliberate and meant to give the public access to information about every aspect of state and local government. See LAWS OF 1973, ch. 1, § 1(11). As we so often summarize, the PRA is a strongly worded mandate for broad disclosure of public records.

Nissen v. Pierce Cty., 183 Wash.2d 863, 357 P.3d 45, 54 (Wash. 2015) (citations and quotation marks omitted).

19."Private email address" or "private email account" shall mean any email address or account not assigned by the College to a College employee, agent, board member, or representative, that is used to create, store, edit, send, receive, read or otherwise interact with College records in ways permitted by the email address or account.

20. "Disclosed" shall mean produced to Plaintiff or in the case of an exempt record, properly identified on an exemption log.

21. "Search duties" or "search duties performed" shall mean to identify each file location searched for responsive records by each identified employee who searched for records, no matter what format the files existed in at the time of the search; to give an estimate of the amount of time spent searching for records; to provide the date(s) on which the search(es) was performed; to describe the search terms queried; and provide any search parameters used such as date ranges and file locations included in the search.

22. "E-mail accounts" shall mean all e-mail accounts assigned or owned by the College, used by the College's officers, agents, and employees to send and receive e-mail correspondence related to the College's official business.

23. "Complaint" shall mean Plaintiff's complaint, case #2020223434

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
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APPENDIX 2

Cousins v DOC, No. 101769-3, dated April 1, 2024

APPENDIX 6

FILE
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

TERRY COUSINS, Petitioner, v. STATE OF WASHINGTON and DEPARTMENT OF CORRECTIONS, Respondents.	)	No. 101769-3 En Banc Filed: April 11, 2024

YU, J. — This case concerns Terry Cousins' efforts to obtain public records pertaining to her sister, who died in the custody of the Department of Corrections (DOC). Cousins commenced this action in January 2021, alleging that DOC's response to her public records request violated the Public Records Act (PRA), ch. 42.56 RCW. We must decide whether Cousins' PRA action is barred by the one-year statute of limitations, RCW 42.56.550(6). The answer is no. In accordance with *Belenski v. Jefferson County*, 186 Wn.2d 452, 378 P.3d 176 (2016), we hold that the limitations period did not start running until DOC issued its final "closing letter" in June 2021.

Belenski holds that the PRA's one-year limitations period starts to run when an agency provides its "final, definitive response" to a PRA request. *Id.* at 462. A sufficient closing letter from an agency can, and usually will, satisfy *Belenski*'s final, definitive response test. However, an agency's use of the word "closed" is not determinative. Instead, a closing letter must be objectively "sufficient to put [a nonattorney requester] on notice" that the one-year limitations period had started running because the agency does "not intend to disclose records or further address [the] request." *Id.* at 461. To assess the sufficiency of a closing letter, courts and agencies should consult the attorney general's advisory model rules on public records compliance (Advisory Model Rules), ch. 44-14 WAC, and the guidance provided in today's opinion.

Here, DOC produced multiple installments of records responsive to Cousins' PRA request and then sent Cousins a letter in January 2019 stating that her request was "now closed" (January 2019 closing letter). Clerk's Papers (CP) at 44. The January 2019 closing letter properly invited Cousins to ask follow-up questions, as all closing letters should do. *See* WAC 44-14-04006(1). Cousins promptly asked about specific records she believed were missing, and she repeatedly followed up when DOC initially failed to fully answer her questions. Eventually, DOC reopened Cousins' original PRA request to conduct an additional search, leading to the production of hundreds of pages of previously undisclosed responsive records,

followed by a *second* letter stating that the request was "now closed" in June 2021 (June 2021 closing letter). CP at 1440.

DOC argues that the January 2019 closing letter was its final, definitive response, making Cousins' PRA action untimely. On this record, we cannot agree. Instead, we hold that the June 2021 closing letter was DOC's final, definitive response to Cousins' PRA request.

DOC was certainly not required to reopen Cousins' PRA request after issuing the January 2019 closing letter. Indeed, after issuing a sufficient closing letter, an agency may choose to answer follow-up questions by simply reiterating that the statute of limitations has started running because the agency does not intend to further address the request. In this case, however, DOC selected a different course of action. First, when Cousins timely asked questions following the January 2019 closing letter, DOC chose to provide a partial, ambiguous answer that was not sufficient to put Cousins on notice that DOC did not intend to further address her request. As a result, the January 2019 closing letter failed to provide Cousins with a final, definitive response to her PRA request.

When Cousins persisted in her efforts to communicate with DOC, DOC ultimately chose to reopen her original PRA request, conduct an additional search, and produce additional responsive records before closing the request again in June 2021. This second and final closing letter was DOC's final, definitive response,

triggering the PRA's one-year limitations period in accordance with *Belenski*. Records produced after the June 2021 closing letter may be relevant to DOC's liability or penalties, but they did not restart the limitations period.

Thus, Cousins' PRA action is not barred by the statute of limitations. We decline to reach her alternative argument regarding the discovery rule of accrual, and we reject DOC's alternative argument that Cousins' action must be dismissed as premature. We reverse and remand to the trial court for further proceedings.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Because the issues in this case are heavily fact dependent, it is necessary to provide a detailed timeline. This case is before us on DOC's motion for summary judgment, and the facts are undisputed except where noted otherwise. We "construe the facts in the light most favorable to [Cousins,] the nonmoving party." *Sanders v. State*, 169 Wn.2d 827, 845, 240 P.3d 120 (2010).

A. Renee Field's death in DOC custody

This case begins with the death of Cousins' sister, Renee Field, in DOC custody. In January 2016, Field experienced "sudden-onset neck and head pain" and later developed "visual changes and right side numbness." CP at 472, 481. However, she was never given "a comprehensive evaluation by a physician or advanced practitioner." *Id.* at 475.

On March 6, 2016, Field experienced a severe headache with "shooting pain on the right side of the head and neck." *Id.* at 473. She was given medication and sent "back to her living unit in a wheelchair because she was unable to walk." *Id.* at 481. Overnight, Field fell out of bed and had a seizure. Instead of calling an ambulance, a DOC physician assistant transferred Field to a different corrections facility. Field arrived there in a state of medical emergency, and staff called 911. Field was taken by ambulance to an outside hospital where doctors attempted surgery, but she "died on March 14, 2016 . . . from a ruptured aneurysm, a stroke, hydrocephalus, and respiratory failure." *Id.* at 482.

Following an investigation, the Office of Corrections Ombuds concluded that the medical care Field received from DOC "did not meet community healthcare standards, and her death could have been prevented." *Id.* at 475. The Washington Medical Commission also imposed sanctions against the DOC physician assistant for "contribut[ing] to [Field's] death." *Id.* at 487.

B. Cousins' PRA request to DOC

1. Request, initial response, and production of first two installments

Cousins is the personal representative of Field's estate. On July 21, 2016, Cousins submitted a PRA request to DOC through counsel, seeking "[a]ny and all records regarding Renee A. Field . . . from January 1, 2014 to present." *Id.* at 36. The request was assigned to Public Records Specialist Gaylene Schave.

On July 25, 2016, Schave e-mailed Cousins a tracking number for her PRA request, PDU-43037,[1] and explained that Field's medical and chemical dependency records would be processed separately in their respective departments rather than DOC's centralized public records unit. Schave told Cousins to expect additional correspondence by October 11, 2016. Meanwhile, the medical and chemical dependency departments reviewed their records, producing the medical records in August 2016 and the chemical dependency records in February 2017.

In late September 2016, Cousins' PRA request was reassigned to Public Records Specialist Sheri Izatt. On October 28, Izatt sent a cost bill for the first installment (Installment 1). Cousins' counsel asked to cancel the PRA request, which Izatt confirmed. However, the following week, counsel e-mailed to "re-open" the request and asked Izatt to communicate directly with Cousins. *Id.* at 40. Izatt responded that the records would be released when the costs were paid. On November 15, Cousins e-mailed Izatt to confirm that she was sending payment, and asked to verify that her PRA request included "video or audio recordings" from the corrections facilities. *Id.* at 1274. Izatt did not respond.

Cousins sent payment, and DOC sent Installment 1 to her on November 22, 2016. Izatt promised further correspondence by February 28, 2017, but later

[1] The record variously refers to this request as "PRU-43037," "16-43037," "PDU-43037," and "P-43037." CP at 44, 586, 1256, 1444.

extended the deadline. New counsel appeared on Cousins' behalf in early February, and Izatt later sent counsel a cost bill for the next installment. Cousins paid the bill, and Installment 2 was produced on April 17, 2017. At this point, her PRA request had been pending for approximately nine months.

2. Cousins notifies DOC that specific records are allegedly missing

Upon reviewing Installments 1 and 2, Cousins came to believe that some records were missing, such as e-mail attachments. On May 24, 2017, Cousins e-mailed Izatt through counsel with a list of documents that "appear to have been omitted from the first and second installment of records," including specific reports, letters, and attachments that were referenced in other records but had not been produced.[2] *Id.* at 491. The May 2017 e-mail explicitly stated, "To the extent any of the requested records is not covered by our current public records request, Tracking No. PDU-43037, *please consider this letter our formal public records request seeking those records*." *Id.* at 492 (emphasis added).

There is no indication that DOC opened a new PRA request for the allegedly missing records. Instead, Izatt responded that Cousins' original PRA "request [was] still open" and that DOC was "still in the process of gathering records." *Id.* at 499. Izatt further explained that "e[-]mails were maintained via hardcopy and

[2] The merits of Cousins' PRA action are not before us. We express no opinion as to whether, or when, these allegedly missing records should have been produced.

did not maintain the attachments," but she promised that responsive records "will be in future installments." *Id.* at 500.

3. Additional installments and January 2019 closing letter

Over the next 14 months, DOC produced Installments 3 through 6. In October 2017, between Installments 3 and 4, Cousins asked Izatt to communicate directly with her again rather than through counsel. Thereafter, Izatt worked directly with Cousins, but DOC's internal file for Cousins' PRA request continued to list Cousins' former counsel as the sole requester. By the time Installment 6 was produced in September 2018, Cousins' PRA request had been pending for over two years. DOC still had not produced any of the allegedly missing records Cousins had identified in May 2017.

On October 31, 2018, Izatt sent Cousins a cost bill for Installment 7. Cousins timely sent payment, but her check was never cashed. On December 10, Izatt entered a notation in DOC's internal file that the request was closed for nonpayment. Unaware of the closure, Cousins e-mailed Izatt to ask about Installment 7. When Izatt responded that the costs had not been paid, Cousins promptly re-sent the payment, as directed by Izatt. DOC received Cousins' payment and produced Installment 7 on January 17, 2019.

Installment 7 included a cover letter from Izatt explicitly stating that Cousins' payment "was received on January 14, 2019." *Id.* at 44. However, Izatt

never updated DOC's internal file with this information. As a result, the internal file continued to state that Cousins' request was closed for nonpayment in December 2018, with no subsequent entries until July 2020. In deposition, Izatt said that she "forgot" to update DOC's internal file but suggested that it was unimportant because it was "just notes to other staff." *Id.* at 561. In fact, as discussed below, the inaccuracies in DOC's internal file concerning the identity of the requester and Cousins' payment history caused significant confusion for the records specialist who took over after Izatt, to Cousins' detriment.

The final line of Izatt's cover letter for Installment 7 states, "PRU-43037 is now closed. However, if you should have any questions related to this request, you may contact me at the address below (or via e-mail . . .)." *Id.* at 44. According to DOC, this January 2019 closing letter was its final, definitive response to Cousins' PRA request. The letter did not explain why DOC had closed the request or, indeed, what it meant for a request to be "closed."

Cousins thought the January 2019 closing letter reflected DOC's view that it "had found all responsive records to [her] request," which Cousins believed was a mistake because DOC had not yet addressed the allegedly missing records she had identified in May 2017. *Id.* at 105. Relying on the letter's explicit invitation to ask questions, Cousins e-mailed Izatt.

4. Cousins promptly asks DOC about the allegedly missing records

On January 22, 2019, five days after the closing letter, Cousins e-mailed Izatt to ask about (1) Field's medical and chemical dependency records and (2) the allegedly missing records she had identified in May 2017. Izatt responded that she would look into the medical and chemical dependency records but did not address Cousins' second question about the allegedly missing records. Cousins promptly sent a follow-up e-mail, asking again about the "specific reports that [she] requested *in addition to* the medical or chemical dependency records," with the May 2017 e-mail included for reference. *Id.* at 594 (emphasis added).

The next day, January 23, Izatt e-mailed Cousins the dates on which the medical and chemical dependency records had been produced. Once again, Izatt failed to address the allegedly missing records. Izatt did restate the language of Cousins' "initial request" from July 2016, but this was not responsive to Cousins' question. *Id.* As discussed above, Izatt had assured Cousins that the allegedly missing records identified in May 2017 would be produced in "future installments" of her original PRA request, "PDU-43037." *Id.* at 500.

Cousins sent another follow-up e-mail, reiterating that she sought "the specific documents [she] requested after the second installment." *Id.* at 593. Izatt did not respond. On February 1, Cousins e-mailed Izatt again, explaining that she

had been waiting nearly three years for her request to be fulfilled. In response, Izatt re-sent her e-mail from January 23.

Because Izatt had answered Cousins' question about the medical and chemical dependency records, but had not yet addressed the allegedly missing records, Cousins believed that she and Izatt were still "conversing about what records were missing and where they were." *Id.* at 1525. Moreover, based on the gaps in communication and delays in production for Installments 1 through 7, described above, Cousins believed that Izatt's failure to promptly respond indicated that Izatt was looking into the allegedly missing records. However, Cousins never heard from Izatt again.

Izatt ended her employment with DOC in April 2019. Cousins e-mailed Izatt again in October 2019, but no one responded. Cousins asserts that she did not even receive an automated reply stating that Izatt's e-mail account had been disabled, although DOC disputes this. Cousins also called DOC's public records unit and left voice messages twice. *Id.* at 117 (October 24, 2019, at 10:59 AM), 118 (October 25, 2019, at 4:11 PM).

On October 29, 2019, Public Records Specialist Paula Terrell responded to Cousins' voice messages by e-mail. Terrell told Cousins that she was not the requester based on the inaccurate information in DOC's internal file, which continued to list Cousins' former counsel as the sole requester. Cousins responded

immediately, providing a detailed timeline of her former attorneys and urging Terrell to "[p]lease check [her] records." *Id.* at 62.

The following week, Terrell re-sent the January 2019 closing letter and told Cousins that "[t]his request is and remains closed." *Id.* Cousins responded that she already had the January 2019 closing letter, but no one had answered her follow-up questions about the allegedly missing records identified in May 2017. Without addressing those records, Terrell invited Cousins to "respond with any questions [she] may have regarding [her] closed public records request, PRU-43037." *Id.* Terrell did not explain why the request was closed, what it meant for a request to be "closed," or what Cousins could hope to accomplish by asking about allegedly missing records in a closed request.

On November 14, 2019, Cousins e-mailed Terrell a list of outstanding items, including the allegedly missing records she had identified in May 2017. Relying on the inaccurate information in DOC's internal file, Terrell responded that Cousins' PRA request "was closed due to [DOC] not receiving payment" for Installment 7. *Id.* at 65. As explained above, Cousins had, in fact, made payment, but Izatt never updated DOC's internal file with this information.

Because Cousins knew she had paid for, and received, Installment 7, she e-mailed Terrell again in "disbelief." *Id.* at 1537. Cousins reiterated that her PRA request "was closed due to [DOC's] assumption that [her] request was completely

filled," which Cousins believed was incorrect because she had "not received all of the records as stated in [her] earlier e[-]mail." *Id.* at 65. Terrell never responded. In deposition, Terrell did not explain why she stopped communicating, saying only that there was a "lapse" in "responding to [Cousins] and reopening the request." *Id.* at 571. Terrell admitted that she should have reopened the request at that time, and she could not recall why she did not do so.

Cousins believed Terrell was still working on her PRA request because Cousins had thoroughly explained the situation and answered all of Terrell's questions, and Terrell "did not come back and say no, I'm not working on it." *Id.* at 1540. Nevertheless, according to DOC, the PRA's one-year limitations period expired in January 2020 while Cousins waited for a response to the questions Terrell had explicitly invited her to ask.

5. DOC reopens Cousins' original PRA request

When Terrell failed to respond, Cousins e-mailed her again in July 2020, using the same e-mail thread from November 2019. At this point, Terrell finally realized that she was mistaken in thinking that Cousins' PRA request had been closed for nonpayment. Moreover, after reviewing the file, Terrell believed that there had been "a misunderstanding" between Cousins and Izatt in January 2019, and that Cousins' PRA request should be reopened. *Id.* at 581.

According to DOC's internal file, Terrell "re-opened" Cousins' original PRA request ("16-43037") on July 15, 2020, to "conduct an additional search." *Id.* at 590, 586. That same day, Terrell e-mailed Cousins to verify the records she was seeking. Cousins verified the list of records and, on July 30, Terrell confirmed that responsive records would be provided pursuant to Cousins' original request, "PRU-43037." *Id.* at 548. Terrell cautioned that if Cousins had "additional records to add to this request, it may be that we treat those additional requested records as a new request," but Cousins promptly clarified that this was *not* "a new request for 'additional' documents." *Id.* at 551, 1380. Terrell admitted in deposition that the records were not new and that they should have been "included in [the] any and all requests that [Cousins] originally did in 2016." *Id.* at 580.

On August 26, 2020, Terrell sent the list of records to DOC staff, using the subject line "PDU-43037 records request."[3] *Id.* at 727. From August 2020 to June 2021, staff actively searched for and successfully located numerous responsive records, including some of the records that Cousins had identified in May 2017. In October 2020, DOC produced "Installment #8 of PRU-43037," followed by Installments 9 and 10 in November and December, respectively. *Id.* at 1402.

[3] On the same day, a different records specialist allegedly opened "a new request" with "a new and different tracking number," which Cousins disputed "[b]ecause it wasn't a new request." CP at 6, 1541. There is no indication that DOC followed up on this "new" request.

C. Cousins commences her PRA action while DOC continues producing records

In January 2021, after receiving Installment 10, Cousins filed a complaint against the State of Washington and DOC, alleging "denial of access to public records without justification or exemption, intolerable delay, a failure to conduct an investigation to identify responsive records, and a lack of any explanation as to why these public records continue to be withheld." *Id.* at 7-8. DOC filed its answer in February 2021, asserting the statute of limitations as an affirmative defense. While Cousins' lawsuit was pending, DOC continued searching for records, producing Installments 11 through 15 from February to May 2021.

On June 23, 2021, DOC produced Installment 16, which included over 300 pages of previously undisclosed responsive records bearing the notation, "Printed: 8/30/2016 11:45:02 AM." *Id.* at 120-425. According to Izatt, these documents had likely been "waiting in the queue to be reviewed somewhere in the records office" since the August 2016 print date. *Id.* at 562. She could not explain why they were not produced earlier.

Installment 16 was accompanied by a cover letter stating, "This public records request, PDU-43037[ ]is *now* closed" (June 2021 closing letter). *Id.* at 1440 (emphasis added). Cousins' litigation counsel e-mailed counsel for DOC, asserting that specific responsive records had not been produced. "[I]n an attempt to address [the] concerns regarding this request . . . without waiving any argument

in the ongoing litigation," DOC produced "[I]nstallment #17" in August 2021, with a cover letter stating that "P-43037 remains closed." *Id.* at 1444. DOC's own filings state that Installments 8 through 17 included hundreds of pages of previously undisclosed responsive records. *See id*. at 1493-1517.

D. Summary judgment and appeal

In September 2021, one month after producing Installment 17, DOC moved for summary judgment based on the statute of limitations. DOC acknowledged that it "did reopen [Cousins'] request and provide additional installments" starting "[i]n the summer of 2020." *Id.* at 94. Nevertheless, DOC argued that "[a]ny PRA claims accrued when the request was closed" in January 2019, and its subsequent "production of additional records does not change the result." *Id.* at 96-97. In support of its motion, DOC relied heavily on *Dotson v. Pierce County*, 13 Wn. App. 2d 455, 464 P.3d 563, *review denied*, 196 Wn.2d 1018 (2020).

Dotson was the first published appellate opinion to apply the final, definitive response test this court adopted in *Belenski*. Like DOC in this case, the agency in *Dotson* produced responsive records, then sent the requester a letter "'closing'" her PRA request. *Id.* at 461 (quoting record). However, unlike DOC, the agency in *Dotson* specified *why* the request was being closed, stating that the requester had "'received responsive documents.'" *Id.* (quoting record). In addition, unlike

Cousins, the requester in *Dotson* did not ask any "questions regarding the produced records or amend her PRA request" in response to the closing letter. *Id.* at 462.

Several months later, the agency in *Dotson* discovered additional responsive records in the ordinary course of business and provided them to the requester. *Id.* at 462-63. The requester filed a PRA action less than one year after the additional records were provided but more than one year after the closing letter. *Id.* at 462. The Court of Appeals held that the action was time barred, reasoning that the closing letter was the agency's final, definitive response because it sufficiently "alert[ed] Dotson that there would be no forthcoming documents." *Id.* at 471.

Here, DOC argued that Cousins' case was "[j]ust like" *Dotson*. CP at 96. Therefore, according to DOC, the PRA's one-year limitations period started running with the January 2019 closing letter, notwithstanding the subsequent production of Installments 8 through 17. Cousins opposed summary judgment, urging the trial court to distinguish *Dotson* or, alternatively, to apply equitable tolling. Cousins also moved for a show cause hearing on the merits of her PRA claims. *See* RCW 42.56.550(1)-(2). Following oral argument, the trial court granted summary judgment to DOC, ruling that the decision was "constrained by established case[ ]law, specifically the Court of Appeals' decision in *Dotson*." CP

at 1802. The trial court further declined to apply equitable tolling, denied Cousins' show cause motion as moot, and dismissed her PRA action.[4]

Cousins appealed, arguing that *Dotson* was both factually distinguishable and incorrectly decided. Alternatively, Cousins argued that her PRA action was timely filed in accordance with the discovery rule of accrual. She did not appeal the trial court's decision denying equitable tolling. DOC urged the appellate court to affirm the trial court's ruling on the statute of limitations or, in the alternative, to affirm dismissal on the basis that Cousins' action was premature.

The Court of Appeals affirmed in a split, published opinion. *Cousins v. Dep't of Corr.*, 25 Wn. App. 2d 483, 523 P.3d 884 (2023). The majority interpreted *Belenski* to establish a "bright line rule" that the PRA's limitations period is always triggered when an agency tells a requester "that the request is closed." *Id.* at 493. Acknowledging "that the facts here are different than in *Dotson*," the majority nevertheless held that "the different facts do not change the result." *Id.* at 492-93. The majority also declined to apply the discovery rule of accrual. *Id.* at 495. A partial dissent rejected "[t]he majority's bright line rule,"

[4] In an oral ruling, the trial court appeared to address the underlying merits of Cousins' PRA claims. *See* CP at 1794. However, counsel asked to confirm that "the Court did not reach the actual merits," and the trial court agreed. *Id.* at 1796. The written order did not reach the merits, instead denying Cousins' show cause motion "as moot." *Id.* at 1802 (capitalization omitted). "[I]n the event of a conflict, a written order will control over an oral ruling." *State v. Sims*, 193 Wn.2d 86, 99, 441 P.3d 262 (2019). Therefore, the merits of Cousins' PRA action were not decided by the trial court and are not before us on review. The record also references a "Motion to Strike," but that motion is not in the record, so we do not address it. CP at 1800.

arguing that the "drastically different facts" presented in Cousins' case "warrant a different result" and warning that the majority "creates incentives that are contrary to the purpose of the [PRA]." *Id.* at 499 (Glasgow, C.J., dissenting in part).

Cousins petitioned for review, asking this court to distinguish or overrule *Dotson* or, in the alternative, to adopt the discovery rule of accrual for PRA actions. We granted review without limitation and accepted two joint amici briefs, one supporting Cousins and the other supporting DOC.[5]

ISSUES

A. When does an agency letter "closing" a PRA request trigger the one-year statute of limitations in RCW 42.56.550(6)?

B. Is Cousins' PRA action barred by the one-year statute of limitations?

C. If Cousins' PRA action is not barred by the statute of limitations, should dismissal be affirmed on the alternative basis that the action is premature?

ANALYSIS

This case requires us to interpret the statute of limitations for seeking judicial review of agency actions in PRA cases. The statute provides, "Actions under this section must be filed within one year of the agency's claim of exemption

[5] Cousins is supported by the American Civil Liberties Union of Washington, the Human Rights Defense Center, the Washington Coalition for Open Government, Columbia Legal Services, and the Washington Employment Lawyers Association. DOC is supported by the Washington State Association of Municipal Attorneys, the Washington Association of County Officials, and the Washington Association of Prosecuting Attorneys.

or the last production of a record on a partial or installment basis." RCW 42.56.550(6). When interpreting the PRA, "[o]ur review is de novo." *Rental Hous. Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 536, 199 P.3d 393 (2009) (citing RCW 42.56.550(3)).

The PRA has included a statute of limitations since its original enactment in 1973, and the language of the current statute has not changed since 2005. LAWS OF 1973, ch. 1, § 41; LAWS OF 2005, ch. 483, § 5(6). However, this court has interpreted it only twice, first in 2009 with *Rental Housing*, 165 Wn.2d 525, and later in 2016 with *Belenski*, 186 Wn.2d 452. Therefore, we take this opportunity to further develop our precedent and to address, as a matter of first impression, whether an agency's "closing letter" may trigger the PRA's limitations period.

DOC supports the bright-line rule adopted by the Court of Appeals' majority, which holds that the statute of limitations *always* starts running "when an agency notifies the requester that the request is closed." *Cousins*, 25 Wn. App. 2d at 485. Cousins argues that the statute of limitations should *never* start running with "an agency's 'closing' of a request," particularly "where the agency later produces responsive records." Am. Pet. for Discr. Rev. at 2. DOC emphasizes the importance of certainty and finality, while Cousins emphasizes the PRA's strong mandate for broad disclosure of public records. Our task is to balance these

important, and sometimes competing, interests by "determin[ing] and enforc[ing] the intent of the legislature." *Rental Hous.*, 165 Wn.2d at 536.

We hold that a sufficient closing letter will generally trigger the PRA's statute of limitations; the subsequent production of records may be relevant to liability or penalties but ordinarily will not restart the limitations period. However, to trigger the limitations period, a closing letter must be *sufficient*; an agency's use of the word "closed," without more, is not determinative. Instead, the closing letter must satisfy *Belenski*'s final, definitive response test in accordance with the attorney general's Advisory Model Rules and the guidance provided in today's opinion. An insufficient or premature closing letter may not trigger the limitations period at all or it may provide a basis for equitable tolling.

A closing letter is sufficient if it provides at least the following information to the requester, in plain language targeted to a lay audience: (1) how the PRA request was fulfilled and why the agency is now closing the request, (2) that the PRA's one-year statute of limitations to seek judicial review has started to run because the agency does not intend to further address the request, and (3) that the requester may ask follow-up questions within a reasonable time frame, which may be specified by the agency. If the requester asks timely follow-up questions, the agency is not required to search for additional records, although it may choose to do so. However, if the agency does not intend to further address the request, it

must explicitly say so and reiterate that the statute of limitations has started to run. The final, definitive response test is an objective inquiry, so the agency's subjective intent and the requester's subjective understanding are not relevant.

In this case, DOC sent Cousins a purported "closing letter" in January 2019. However, when Cousins asked timely follow-up questions, DOC initially chose to ignore one of her questions, creating ambiguity as to whether Cousins' PRA request was still being processed. As a result, the January 2019 closing letter was not DOC's final, definitive response to Cousins' PRA request. DOC later chose to reopen Cousins' original PRA request and produce additional records before closing the request again in June 2021. Therefore, we hold that the June 2021 closing letter was DOC's final, definitive response triggering the one-year limitations period. Cousins' PRA action is not barred by the statute of limitations.[6]

A. A sufficient closing letter that satisfies *Belenski*'s final, definitive response test will ordinarily trigger the PRA's limitations period

To resolve the issues before us, it is first necessary to review our precedent interpreting the PRA's statute of limitations. Although our precedent is limited, it reflects a consistent effort to balance the interests of certainty and finality with the PRA's strong mandate for public disclosure, culminating in our adoption of *Belenski*'s final, definitive response test. We affirm that *Belenski* provides the

[6] In light of this holding, we need not reach Cousins' alternative argument regarding the discovery rule of accrual, and we decline to do so.

correct analytical framework for all PRA cases, and we largely affirm *Dotson*'s application of *Belenski* to the closing letter in that case, with certain clarifications. However, *Dotson* did not adopt, and we decline to recognize, a bright-line rule that *Belenski* is necessarily satisfied by the word "closed." Instead, an agency's closing letter will trigger the PRA's limitations period if, *but only if*, the letter satisfies the final, definitive response test in accordance with the attorney general's Advisory Model Rules and the guidance provided in today's opinion.

1. Overview of this court's precedent

Guided by legislative intent, our precedent interpreting RCW 42.56.550(6) has sought to balance the "theme of finality" reflected in the statute of limitations with the PRA's "strongly-worded mandate for broad disclosure of public records." *Belenski*, 186 Wn.2d at 460; *Rental Hous.*, 165 Wn.2d at 535. Most recently, this balanced approach led us to adopt *Belenski*'s "final, definitive response" test. 186 Wn.2d at 462. The same balanced approach guides our decision today.

We first interpreted the PRA's statute of limitations in *Rental Housing*. There, an agency "refused to provide hundreds of pages" of records, asserting various exemptions. 165 Wn.2d at 528. However, the refusal letter "did not describe individual documents and did not provide a privilege exemption log." *Id.* at 529. The requester asked for "a privilege log specifically describing each

withheld individual document and the basis for withholding," which the agency "attempted to provide" six months later. *Id.* at 529, 533.

The requester in *Rental Housing* commenced a PRA action more than one year after the agency's initial refusal letter but less than one year after the agency sent the privilege log. *Id.* at 533-34. The agency moved to dismiss, arguing that the limitations period started running from the initial refusal letter because that letter made a "claim of exemption" as contemplated by the statute. *Id.* at 534-36; *see* RCW 42.56.550(6).

Rental Housing rejected the agency's position. Instead, we considered the statutory language, prior case law, and relevant regulations to conclude that "a claim of exemption requires a detailed privilege log." *Rental Hous.*, 165 Wn.2d at 536. However, we did not treat the words "privilege log" as conclusive. Instead, we looked to the record to determine whether the agency's initial refusal letter *functioned* as "a valid claim of exemption" by "includ[ing] the sort of 'identifying information' a privilege log provides." *Id.* at 538 (quoting *Progressive Animal Welfare Soc'y v. Univ. of Wash*, 125 Wn.2d 243, 271 n.18, 884 P.2d 592 (1994) (plurality opinion)). We concluded that the refusal letter "was insufficient to constitute a proper claim of exemption and thus did not trigger the one-year statute of limitations." *Id.* at 539.

Thus, *Rental Housing* took a functional approach to balance the interests at stake. The agency argued that this approach would "undermine[ ] the public policy favoring statutes of limitation," including "certainty and finality, and protecting against stale claims." *Id.* at 540. However, we held these interests were better served by "liberally construing the PRA to effectuate open government—as we must." *Id.*; *see* RCW 42.56.030.

We next considered the statute of limitations in *Belenski*. On its face, the PRA's statute of limitations lists only two types of agency responses: (1) "the agency's claim of exemption" or (2) "the last production of a record on a partial or installment basis." RCW 42.56.550(6). However, the agency in *Belenski* responded differently, asserting that it had "'no responsive records.'" 186 Wn.2d at 455 (quoting record). The requester sued two years later, after learning that responsive records did exist, but the agency believed it "need not provide them." *Id.* Thus, we were asked to determine "the appropriate starting point for the statute of limitations when an agency's response does not fall strictly within the two types of responses listed in RCW 42.56.550(6)." *Id.* at 459.

The requester argued that the PRA's limitations period starts running *only* when the agency provides one of the "two very specific agency responses" listed in the statute. *Id.* *Belenski* rejected this interpretation because "there are many other ways an agency may respond, whether permitted under the statute or not." *Id.*

Instead, *Belenski* considered the broader language and purposes of the PRA to conclude that the agency responses listed in the statute are illustrative examples, not a "definitive list." *Id.* at 460. Therefore, we held "that the legislature intended to impose a one year statute of limitations beginning on an agency's final, definitive response to a public records request," even where the agency's response does not strictly fit within the statutory language. *Id.*

Based on the specific facts presented, *Belenski* held the agency's assertion that it had no responsive records constituted a "final, definitive response" because it "was sufficient to put [the requester] on notice that the [agency] did not intend to disclose records or further address this request." *Id.* at 461. Even if the agency's answer was not "truthful or correct," it could trigger the statute of limitations because, if the requester "was unsatisfied with this answer, he could sue . . . as soon as [the agency] gave this response." *Id.* In this way, *Belenski* effectuated the legislature's intent to establish a "theme of finality . . . for all possible responses under the PRA, not just the two expressly listed in RCW 42.56.550(6)." *Id.* at 460.

Nevertheless, *Belenski* recognized "legitimate concerns" that giving conclusive effect to an agency's "dishonest response" could be "fundamentally unfair in certain circumstances." *Id.* at 461. Such an approach "could incentivize agencies to intentionally withhold information and then [attempt to] avoid liability due to the expiration of the statute of limitations . . . contrary to the broad

disclosure mandates of the PRA." *Id.* Therefore, to balance the legislature's dual interests in finality and broad public disclosure, *Belenski* remanded to the trial court "to determine whether the doctrine of equitable tolling applies to toll the statute of limitations in this case." *Id.* at 462.

Belenski and *Rental Housing* are certainly "distinguishable" from each other on the facts and issues presented. *Id.* at 461 n.2. Nevertheless, both opinions balanced the PRA's strong mandate for broad public disclosure with the need for certainty and finality in PRA actions. The result of this balanced approach was *Belenski*'s final, definitive response test. We take the same approach in resolving the issues now before us.

2. *Dotson* does not adopt a bright-line rule that all purported "closing letters" automatically trigger the PRA's limitations period

Neither *Rental Housing* nor *Belenski* considered whether, or under what circumstances, an agency's "closing letter" may trigger the PRA's statute of limitations. The seminal case addressing that question is the Court of Appeals' opinion in *Dotson*, 13 Wn. App. 2d 455, which is central to the parties' arguments in this case. The parties interpret *Dotson* to create a bright-line rule that the PRA's limitations period is automatically triggered whenever an agency issues a purported "closing letter." We cannot agree with the parties' interpretation of *Dotson*, and we take this opportunity to clarify *Dotson*'s holdings.

Dotson primarily addressed an issue that was left open by this court's opinion in *Belenski*. As discussed above, *Belenski* adopted the final, definitive response test in the context of "an agency's response [that] does not fall strictly within the two types of responses listed in RCW 42.56.550(6)." 186 Wn.2d at 459. *Belenski* further suggested, albeit in dicta, that the same analysis should apply in all PRA cases because it would be "absurd" to apply different statutes of limitations "based on how the agency responded." *Id.* at 460-61. This dicta from *Belenski* was directly at issue in *Dotson*.

As discussed above, the agency in *Dotson* produced records responsive to a PRA request, issued a letter closing the request, and then subsequently produced additional records that were inadvertently discovered in the ordinary course of business. The question was whether the limitations period started to run with the closing letter (as the agency argued) or with the agency's subsequent production of the "last installment of responsive records" (as the requester argued). *Dotson*, 13 Wn. App. 2d at 470. The requester pointed to "the plain language" of the statute of limitations and argued that *Belenski* "controls only where RCW 42.56.550(6) does not clearly apply." *Id.* at 470-71.

Thus, the primary issue in *Dotson* was not *how* to apply *Belenski*, but whether *Belenski* applied at all. *Dotson* concluded that it did and held that the closing letter triggered the limitations period because it was "'was sufficient' to put

Dotson 'on notice that the County did not intend to disclose records or further address [the] request.'" *Id.* at 471 n.7 (alteration in original) (quoting *Belenski*, 186 Wn.2d at 461). We denied review in *Dotson*, so this our first opportunity to interpret and apply its holdings.

Both parties, the trial court, the Court of Appeals, and amici supporting Cousins[7] all appear to interpret *Dotson* to impose an "extratextual 'bright line rule' under which the statute of limitations on a PRA claim begins to run as soon as the agency sends a letter asserting the request is 'closed.'" Amicus Curiae Br. of Am. Civ. Liberties Union of Wash. et al., at 2; *see also* CP at 1802; *Cousins*, 25 Wn. App. 2d at 491-93; Suppl. Br. of Pet'r at 15-16; Suppl. Br. of DOC at 17-18. DOC supports this bright-line rule, arguing that the statute of limitations started running in this case with the January 2019 closing letter. *See* Suppl. Br. of DOC at 18 (citing *Dotson*, 13 Wn. App. 2d at 470-72). Cousins argues that *Dotson*'s alleged bright-line rule should be rejected because it "bestows preclusive effect on something called a 'closing letter,' a term that is found nowhere in the statute or regulations, even where the agency subsequently produces additional documents." Am. Pet. for Discr. Rev. at 16. The parties' arguments on this point are misplaced.

No language in *Dotson* sets forth a bright-line rule that the PRA's limitations period is always triggered by every purported "closing letter." Instead, *Dotson*

[7] Amici supporting DOC do not address *Dotson*.

explicitly considered the particular "closing language chosen by the [agency]" in that case, as well as the requester's failure to ask follow-up "questions regarding the produced records or amend her PRA request." 13 Wn. App. 2d at 471, 462. In doing so, *Dotson* correctly made a case-specific holding by properly applying *Belenski*'s final, definitive response test to the particular facts presented. *Dotson* does not purport to adopt a bright-line rule for all closing letters in all cases, and we decline to interpret it in that way.

Indeed, if *Dotson* had adopted a bright-line rule that an agency's use of the word "closed" will always trigger the PRA's statute of limitations, we would reject it. As discussed further below, such a rule would improperly prioritize finality for agencies over all other relevant interests, including certainty for requesters and the PRA's strong mandate for broad public disclosure. Our opinions in *Rental Housing* and *Belenski* require a more balanced approach, and we interpret *Dotson* in accord with this precedent.

Thus, we clarify that *Dotson* did not adopt a bright-line rule but, instead, properly reached a case-specific result by applying *Belenski* to the particular facts presented. *Dotson*'s analysis supports the following propositions: (1) *Belenski*'s final, definitive response test applies in all PRA cases, (2) a sufficient closing letter can satisfy the final, definitive response test, and (3) following a sufficient closing

letter, the production of additional records does not ordinarily restart the limitations period. We now expressly adopt each of these holdings.

3. Subject to equitable tolling, a sufficient closing letter will trigger the PRA's limitations period, even if additional records are later produced

Having reviewed the principles established by *Rental Housing*, *Belenski*, and *Dotson*, we now address the proper analytical framework to determine whether a closing letter is sufficient to trigger the PRA's one-year statute of limitations. We reaffirm *Belenski*'s final, definitive response test, subject to equitable tolling. We further recognize that a closing letter will ordinarily trigger the limitations period if, *but only if*, the letter is objectively sufficient to satisfy the final, definitive response test. The subsequent production of records may be relevant to liability or penalties but will generally not restart the limitations period.

a. The limitations period for all PRA actions is determined in accordance with *Belenski*'s final, definitive response test

As discussed above, *Belenski* suggested in dicta that the final, definitive response test should apply in all PRA actions because it would be "absurd" to apply different statutes of limitations "based on how the agency responded." 186 Wn.2d at 460-61. *Dotson* agreed, rejecting the requester's argument that *Belenski* "controls only where RCW 42.56.550(6) does not clearly apply, or in cases where the responding agency claimed it had no records." 13 Wn. App. 2d at 471. We

now affirm that *Belenski*'s final, definitive response test provides the applicable framework for measuring the statute of limitations in all PRA actions.

Cousins does not ask this court to overrule or limit *Belenski*. However, she argues that the limitations period for her PRA action should be measured from "'*the last production of a record* on a partial or installment basis'" based on "[t]he plain language of RCW 42.56.550(6)." Am. Pet. for Discr. Rev. at 14 (quoting RCW 42.56.550(6)). In Cousins' view, this occurred when DOC produced Installment 17 in August 2021. Therefore, Cousins argues, DOC's prior closing letters from January 2019 and June 2021 should be disregarded as "incorrect and legally meaningless." *Id.* at 16. We disagree with Cousins on this point.

In essence, Cousins argues that an agency response that *is* listed in the statute automatically supersedes an agency response that is *not* listed in the statute—regardless of which one occurred first. *Dotson* explicitly rejected this interpretation, and correctly so, because it is inconsistent with the analysis set forth in *Belenski*. *See* 13 Wn. App. 2d at 471-72.

It is certainly true that "[w]here the meaning of statutory language is plain on its face, we must give effect to that plain meaning as an expression of legislative intent." *Rental Hous.*, 165 Wn.2d at 536. However, we do not read specific statutory phrases in isolation. Instead, we must "look at the [PRA] in its

entirety in order to enforce the law's overall purpose," taking guidance from prior case law interpreting the same statutory language. *Id.*

As discussed above, our case law recognizes that the PRA's broad public disclosure mandate must be balanced with the "valuable purposes" served by the statute of limitations, including "certainty and finality, and protecting against stale claims." *Id.* at 540. We recognized in *Belenski* that the proper balance can be achieved only by reading the two types of agency responses listed in RCW 42.56.550(6) as illustrative rather than "a definitive list." 186 Wn.2d at 460.

As a result, *Belenski* does not distinguish between agency responses based on whether they fit within the statutory examples. To the contrary, "the legislature intended to impose a one year statute of limitations beginning on an agency's final, definitive response to a public records request . . . for *all* possible responses under the PRA." *Id.* (emphasis added). Regardless of the type of response an agency gives, the inquiry remains the same: When did the agency provide a final, definitive response "sufficient to put [the requester] on notice that the [agency] did not intend to disclose records or further address this request"? *Id.* at 461.

Belenski's reasoning is firmly grounded in the plain language of the statute, which "does not use terms like 'either' or 'only' to limit the triggering events." *Id.* at 460. Moreover, *Belenski* properly recognizes that the legislature does not intend to create "absurd results—leaving either no statute of limitations or a different

statute of limitations to apply based on how the agency responded." *Id.* at 460-61. In addition, the legislature has not amended the statute in the years since *Belenski* was decided, strongly indicating that our interpretation was consistent with legislative intent. *See State v. Blake*, 197 Wn.2d 170, 190-92, 481 P.3d 521 (2021) (discussing principles of legislative acquiescence).

Thus, we reaffirm that the legislature intended to create a single, uniformly applicable standard for measuring when the statute of limitations has started to run in a PRA action. The correct standard is *Belenski*'s final, definitive response test, regardless of whether an agency's response fits within the examples listed in RCW 42.56.550(6). Cousins' approach would improperly elevate the statute's illustrative examples above other types of agency responses, undermining the uniform application of *Belenski* and limiting agencies' flexibility to respond in a manner appropriate to the specific PRA request at issue. Therefore, we decline to adopt Cousins' approach and, instead, we apply the final, definitive response test.

b. A *sufficient* closing letter ordinarily satisfies the final, definitive response test

Belenski holds that an agency's final, definitive response to a PRA request need not conform to the types of responses explicitly listed in RCW 42.56.550(6) in order to trigger the limitations period. However, to constitute a final, definitive response, the agency's response must be objectively sufficient to put a reasonable, nonattorney requester on notice that the one-year limitations period has started to

run because the agency does not intend to disclose additional records or further address the request. 186 Wn.2d at 461. It is clear that a sufficient closing letter can, and usually will, meet this standard. Nevertheless, an agency's use of the word "closed," without more, is not determinative. When assessing the sufficiency of closing letters, courts and agencies should consult the attorney general's Advisory Model Rules and the guidance in today's opinion.

Preliminarily, Cousins appears to argue that closing letters should rarely, if ever, trigger the PRA's statute of limitations. She correctly points out that the PRA does not explicitly address closing letters and that the word "closed" is not defined within the PRA. *See* Am. Pet. for Discr. Rev. at 16; RCW 42.56.010 (definitions). However, the attorney general's Advisory Model Rules have explicitly encouraged the use of closing letters for nearly 20 years. *See* WAC 44-14-04006, -04007; Wash. St. Reg. 06-04-079.

The Advisory Model Rules provide that a request "can be closed" by an agency only when the request "has been fulfilled." WAC 44-14-04006(1). Fulfillment may occur in a number of ways:

> [W]hen a requestor has inspected all the requested records, all copies have been provided, a web link has been provided (with assistance from the agency in finding it, if necessary), an entirely unclear request has not been clarified, a request or installment has not been claimed or reviewed, or the requestor cancels the request.

Id. When a request is fulfilled, the agency "should provide a closing letter stating the scope of the request and memorializing the outcome," including an explanation of how the request was fulfilled (inspection, providing copies, etc.). *Id.* "The closing letter should also ask the requestor to promptly contact the agency if [they] believe[ ] additional responsive records have not been provided." *Id.* When the closure process is complete, "[a]n agency has no obligation to search for records," although the agency should provide any "later-discovered records to the requestor." WAC 44-14-04007.

The Advisory Model Rules are not binding, but the legislature has clearly expressed its intent for agencies and courts to consult the Advisory Model Rules when interpreting the PRA. *See* RCW 42.56.570; *Kilduff v. San Juan County*, 194 Wn.2d 859, 872-73, 453 P.3d 719 (2019); *Rental Hous.*, 165 Wn.2d at 539; *Cantu v. Yakima Sch. Dist. No. 7*, 23 Wn. App. 2d 57, 91 & n.10, 514 P.3d 661 (2022). Therefore, we must conclude that the use of closing letters in accordance with the Advisory Model Rules is consistent with legislative intent, and we reject Cousins' suggestion that closing letters are inherently suspect.

At the same time, we reject any bright-line rule giving determinative effect to the word "closed." An experienced public records specialist or judicial officer might automatically understand the word "closed" as a legal term of art, meaning "that the agency no longer intends to disclose additional records or further address

a request." *Cousins*, 25 Wn. App. 2d at 493. However, agencies and courts cannot assume that a requester has, or should have, the same understanding.

A person need not have any training in the law or the PRA to request public records from an agency, and every person who makes a PRA request is entitled to "the fullest assistance . . . and the most timely possible action." RCW 42.56.100. A bright-line rule giving determinative effect to the word "closed" would undermine the PRA's "'central tenets'" to preserve "'the accountability to the people of public officials and institutions.'" *Wade's Eastside Gun Shop, Inc. v. Dep't of Lab. & Indus.*, 185 Wn.2d 270, 277, 372 P.3d 97 (2016) (quoting *Progressive Animal Welfare Soc'y*, 125 Wn.2d at 251, and citing RCW 42.56.030). We "must avoid interpreting the PRA in a way that would tend to frustrate that purpose." *Worthington v. WestNET*, 182 Wn.2d 500, 507, 341 P.3d 995 (2015).

Moreover, as discussed above, *Belenski* requires a consistent, uniform approach to triggering the statute of limitations "for all possible responses under the PRA." 186 Wn.2d at 460. Such consistency is necessary to preserve the "valuable purpose" of "certainty and finality" reflected in the statute of limitations. *Rental Hous.*, 165 Wn.2d at 540. The only way for courts to consistently apply *Belenski*, without putting nonattorneys at a disadvantage, is to conduct an objective inquiry assuming that the requester is a lay person with no specialized knowledge or expertise.

Indeed, although we largely affirm *Dotson*, as discussed above, we must correct a portion of its analysis suggesting that *Belenski* imposes a subjective inquiry. In deciding whether the agency's closing letter was a final, definitive response, *Dotson* addressed the requester's "concerns of 'gamesmanship'" and what the agency "intended" for the letter to mean. 13 Wn. App. 2d at 471. An agency's subjective intent, like a requester's subjective understanding, is irrelevant to *Belenski*'s final, definitive response test. Subjective intent affects some issues that may arise in a PRA action, including equitable tolling and statutory penalties, but those are separate issues that should not be conflated with the objective inquiry required by *Belenski*. *See Fowler v. Guerin*, 200 Wn.2d 110, 121, 515 P.3d 502 (2022) (equitable tolling); *Neigh. All. of Spokane County v. Spokane County*, 172 Wn.2d 702, 717, 261 P.3d 119 (2011) (penalties).

In sum, we hold that a sufficient closing letter will ordinarily trigger the PRA's one-year statute of limitations pursuant to *Belenski*'s final, definitive response test. In accordance with the attorney general's Advisory Model Rules, agencies must refrain from closing a request until the request has been fulfilled pursuant to applicable regulations. *See* WAC 44-14-04006(1). When the agency has a good faith belief that a PRA request is subject to closure, the agency may satisfy *Belenski*'s final, definitive response test with a sufficient closing letter.

Sufficient closing letters must be written in plain language targeted to a lay audience and should include at least the following information: (1) how the PRA request was fulfilled and why the agency is now closing the request, (2) that the PRA's one-year statute of limitations to seek judicial review has started to run because the agency does not intend to further address the request, and (3) that the requester may ask follow-up questions within a reasonable time frame, which may be explicitly specified by the agency.

If the requester asks timely follow-up questions, the agency is not required to search for additional records, although it may choose to do so. However, if the requester asks timely follow-up questions and the agency does not intend to further address the request, the agency should explicitly say so and reiterate that the statute of limitations has started to run. An insufficient or premature closing letter may not trigger the statute of limitations, or it may provide a basis for equitable tolling, depending on the particular circumstances presented.

c. Absent equitable tolling, records produced subsequent to a sufficient closing letter do not restart the limitations period

Finally, Cousins argues that even if a closing letter *could* trigger the statute of limitations, "the subsequent production of records [means] the 'closing letter' is at best incorrect and legally meaningless, and at worst is a dishonest response from the agency." Am. Pet. for Discr. Rev. at 16. We cannot agree.

The attorney general's Advisory Model Rules are instructive on this point, providing that "[a]n agency has no obligation to search for records responsive to a closed request. Sometimes an agency discovers responsive records after a request has been closed. An agency should provide the later-discovered records to the requestor." WAC 44-14-04007. There is no indication that providing such later-discovered records restarts the PRA's statute of limitations, and we hold that it does not, unless equitable tolling applies. Contrary to Cousins' suggestion, this approach promotes full agency disclosure rather than inhibiting it.

Dotson provides a practical example. As explained by the Court of Appeals, "the additional records produced [in *Dotson*] were discovered accidentally in the regular course of business and in response to Dotson's summary judgment motion." *Cousins*, 25 Wn. App. 2d at 492 (citing *Dotson*, 13 Wn. App. 2d at 462-63). If producing those additional records automatically restarted the limitations period, as Cousins argues it should, agencies would clearly be discouraged from producing later-discovered records.

We must promote "a culture of compliance among agencies and a culture of cooperation among requestors," in part by encouraging agencies to "work[ ] with requesters after the agency has provided the requester with the agency's final, definitive response." WAC 44-14-00001; Br. of Amicus Submitted on Behalf of Wash. State Ass'n of Mun. Att'ys et al. 7; *see also* Suppl. Br. of DOC at 16-18.

Cousins' approach essentially treats all closing letters as contingent and subject to revocation, regardless of whether they were properly issued in the first instance. This would undermine cooperative efforts and eliminate much of the certainty and finality the PRA's statute of limitations is meant to promote.

Where an agency issues a sufficient closing letter but subsequently produces additional responsive records, the subsequent production may be relevant to assessing the agency's liability and penalties, as well as equitable tolling in appropriate cases. However, the subsequent production will not ordinarily restart the limitations period.

In sum, we reaffirm *Belenski*'s final, definitive response test. A sufficient closing letter in accordance with the Advisory Model Rules will ordinarily satisfy *Belenski*, even if the agency subsequently produces additional responsive records. We must now consider the record presented in this case to determine when DOC provided its final, definitive response to Cousins' PRA request.

B. Cousins' PRA action is not barred by the statute of limitations because the June 2021 closing letter was DOC's final, definitive response

In this case, DOC argues that its January 2019 closing letter was the final, definitive response to Cousins' PRA request. Cousins argues that neither of DOC's closing letters was a final, definitive response, so the limitations period did not start to run until DOC produced Installment 17 in August 2021. We disagree with both parties and hold that DOC's June 2021 closing letter was its final,

definitive response to Cousins' PRA request. Therefore, her January 2021 PRA action is not barred by the statute of limitations.

As discussed, the sufficiency of a closing letter should be assessed in accordance with the guidance provided by today's opinion and the attorney general's Advisory Model Rules. Of course, today's opinion was not available to DOC while it was processing Cousins' PRA request. Therefore, it is not surprising that neither of the closing letters DOC sent to Cousins in January 2019 and June 2021 strictly complies with the standards set forth in today's opinion. However, this fact is not determinative, as we do not claim to impose a retroactive standard of strict compliance.

Indeed, such an approach would be entirely inconsistent with the balanced, functional approach taken by our precedent, as discussed above. *See Rental Hous.*, 165 Wn.2d at 538 (analyzing whether refusal letter *functioned* as a claim of exemption by "includ[ing] the sort of 'identifying information' a privilege log provides"); *Belenski*, 186 Wn.2d at 461 (analyzing whether response *functioned* as a final, definitive response "to put [the requester] on notice that the [agency] did not intend to disclose records or further address this request"). Therefore, we must determine whether the January 2019 or June 2021 closing letters functioned as a final, definitive response by sufficiently putting Cousins on notice that DOC did not intend to produce additional records or further address her request. As

discussed above, the sufficiency of a closing letter must be considered objectively, applying the standard of a reasonable lay person.[8]

DOC argues, and the trial court and Court of Appeals agreed, that the January 2019 closing letter was DOC's final, definitive response to Cousins' PRA request. However, as discussed above, this was based on the mistaken view that *Dotson* establishes a bright-line rule that *all* purported "closing letters" satisfy the final, definitive response test. Instead, as clarified in today's opinion, *Doston* held that the *specific* closing letter in that case was sufficient. Here, the closing letter DOC sent to Cousins in January 2019 was not sufficient.

Contrary to the Advisory Model Rules, and unlike the closing letter in *Dotson*, DOC's January 2019 closing letter simply stated that Cousins' request was "closed," without explaining what that meant or why the request had been closed. CP at 44. *Contra* WAC 44-14-04006(1); *Dotson*, 13 Wn. App. 2d at 461 (closing letter explaining that the requester had "'received responsive documents'"). We emphasize again that although the word "closed" may be familiar to courts and agencies as a term of art, it is not defined in the PRA, and it may not hold any legal

[8] At the trial court, DOC sought a "credibility determination[ ]" that Cousins did *not* subjectively believe her request was still open following the January 2019 closing letter based on her alleged "experience submitt[ing] PRA requests." CP at 1743. Such a determination may be relevant to other issues in this case, which are not before us, but it is irrelevant to the objective inquiry required by *Belenski*'s final, definitive response test.

significance to a reasonable lay person. Therefore, DOC's use of the word "closed," in itself, was not sufficient to trigger the statute of limitations.

Nevertheless, the January 2019 closing letter properly invited Cousins to ask follow-up questions. CP at 44; *cf.* WAC 44-14-04006(1); *Dotson*, 13 Wn. App. 2d at 462. With this added language, the January 2019 closing letter was sufficient to put a reasonable, nonattorney requester on notice that DOC would not further address the PRA request, *unless they had additional questions*.

Cousins did have additional questions pertaining to (1) medical and chemical dependency records and (2) the allegedly missing records she had identified in May 2017. *Contra Dotson*, 13 Wn. App. 2d at 462 (requester asked no follow-up questions). She e-mailed DOC within five days of the January 2019 closing letter. DOC promptly answered Cousins' question about the medical and chemical dependency records but repeatedly ignored Cousins' specific questions about the allegedly missing records. This ambiguous, partial response was *not* objectively sufficient to put a reasonable lay person on notice that DOC did not intend to further address Cousins' request.

To the contrary, any reasonable person would expect DOC's final, definitive response to include *some* answer to Cousins' timely follow-up questions. Even a simple statement that "DOC does not intend to produce additional records" could provide Cousins with all the information she needed to file a PRA action. *See*

Strickland v. Pierce County, No. 75203-1-I, slip op. at 6 (Wash. Ct. App. Jan. 29, 2018) (unpublished) ("[T]he public records officer responded by letter that 'we have already provided you all of the records in the possession of this office.'"), https://www.courts.wa.gov/opinions/pdf/752031.pdf; *cf. Belenski*, 186 Wn.2d at 461.

However, without some kind of answer from DOC, Cousins could not know if DOC was denying her request for the allegedly missing records, or if DOC believed that the allegedly missing records did not exist, or if DOC was still in the process of locating and reviewing the allegedly missing records to be produced in a future installment. Thus, a direct answer to Cousins' timely follow-up questions—*any* answer—was necessary for Cousins to know whether there was any basis to "sue to hold [DOC] in compliance with the PRA." *Belenski*, 186 Wn.2d at 461. Because DOC chose to ignore Cousins' questions, the January 2019 closing letter did not function as its final, definitive response to her PRA request.

DOC's June 2021 closing letter was similar to the January 2019 closing letter. *See* CP at 1440. Nevertheless, under the circumstances presented here, and in light of the fact that DOC did not yet have the guidance provided in today's opinion, we conclude that the June 2021 closing letter was sufficient to satisfy *Belenski*'s final, definitive response test. By that time, Cousins had already commenced her PRA action and was represented by litigation counsel. Moreover,

Cousins did not ask any follow-up questions after receiving the June 2021 closing letter, although her litigation counsel did so, leading to the production of Installment 17. For the reasons discussed above, Installment 17 may be relevant to DOC's liability or penalties, but it did not restart the limitations period. As noted, the issue of equitable tolling is not before us in the case.

Thus, the one-year statute of limitations for Cousins' PRA action started to run with the June 2021 closing letter. Because Cousins commenced her PRA action in January 2021, the action is not barred by the statute of limitations.

C. We reject DOC's alternative argument that Cousins' PRA action must be dismissed as premature

Finally, DOC raised an alternative argument at the trial court and the Court of Appeals, which neither court reached. DOC argued that if the limitations period did not start running until the summer of 2021, then Cousins' PRA action should be dismissed as "premature under *Hobbs v.* [*Wash.*] *State* [*Auditor's Off.*], 183 Wn. App. 925, 936, 335 P.3d 1004 (2014)." Resp't's Br. at 32 (Wash. Ct. App. No. 56996-5-II (2022)); *see* CP at 97. We reject DOC's argument on this point. *See* RAP 13.7(b).[9]

[9] "If the Supreme Court reverses a decision of the Court of Appeals that did not consider all of the issues raised which might support that decision, the Supreme Court will either consider and decide those issues or remand the case to the Court of Appeals to decide those issues."

Hobbs holds that "a requester may only initiate a lawsuit to compel compliance with the PRA *after* the agency has engaged in some final action denying access to a record." 183 Wn. App. at 935-36. *Hobbs* was decided in the specific context "when a person has 'been denied an opportunity to inspect or copy a public record by an agency.'" *Id.* at 936 (quoting RCW 42.56.550(1)). As the Court of Appeals later clarified, *Hobbs* "was not addressing 'the situation where an agency completely ignores a records request for an extended period.'" *Cantu*, 23 Wn. App. 2d at 90-91 (quoting *Hobbs*, 183 Wn. App. at 937 n.6).

Here, Cousins' PRA action is based, at least in part, on DOC's alleged "intolerable delay" in responding to her PRA request, a situation not addressed in *Hobbs*. CP at 7. DOC does not distinguish between Cousins' various PRA claims, arguing that her *entire* "lawsuit [is] premature and subject to dismissal without prejudice under *Hobbs*." Resp't's Br. at 33 (Wash. Ct. App. No. 56996-5-II (2022)). *Hobbs* does not support dismissal of Cousins' entire PRA action. Therefore, we reject DOC's alternative argument.

CONCLUSION

When interpreting and applying the PRA's statute of limitations, we must balance the PRA's strong mandate for broad disclosure of public records with the interests of certainty and finality underlying all limitations periods. Although we decline to adopt a bright-line rule for all purported "closing letters," we recognize

that a *sufficient* closing letter will ordinarily satisfy *Belenski*'s final, definitive response test, thereby triggering the PRA's one-year limitations period.

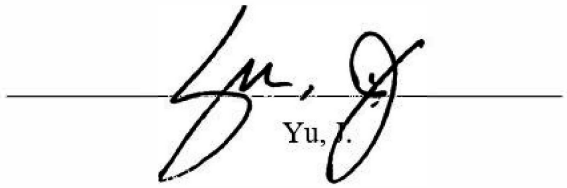
To ensure their closing letters are sufficient, agencies should provide at least the following information, in plain language targeted to a lay audience: (1) how the PRA request was fulfilled and why the agency is now closing the request, (2) that the PRA's one-year statute of limitations to seek judicial review has started to run because the agency does not intend to further address the request, and (3) that the requester may ask follow-up questions within a reasonable time frame, which may be specified by the agency. If the requester asks timely follow-up questions, the agency is not required to locate additional records, although it may choose to do so. However, if the agency does not intend to further address the request, it must explicitly say so and reiterate that the PRA's one-year statute of limitations has started to run.

In this case, DOC sent a letter in January 2019 telling Cousins that her request was now closed and inviting Cousins to ask follow-up questions, which she did. DOC promptly answered one of Cousins' questions but repeatedly ignored the other. Had DOC simply answered *both* of Cousins' questions by explicitly stating that no additional records would be produced, the January 2019 closing letter might have functioned as its final, definitive response. Instead, DOC provided an ambiguous partial response that was objectively insufficient to notify Cousins that

DOC did not intend to further address her PRA request. Therefore, the January 2019 closing letter did not satisfy *Belenski*'s final, definitive response test.

DOC eventually chose to reopen Cousins' request, searched for additional records and produced multiple installments, and then issued a second closing letter in June 2021. We hold that the June 2021 closing letter was DOC's final, definitive response to Cousins' PRA request, notwithstanding DOC's subsequent production of Installment 17. These later-produced records may affect DOC's liability or penalties, but they did not restart the limitations period.

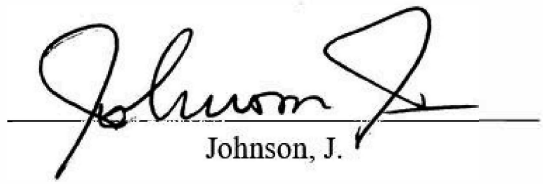
Thus, Cousins' January 2021 PRA action is not barred by the statute of limitations. We reject DOC's alternative argument that the action must be dismissed as premature, and we decline to reach Cousins' alternative argument regarding the discovery rule of accrual. We reverse the Court of Appeals and remand to the trial court for further proceedings.


Yu, J.

WE CONCUR:


González, C.J.


Gordon McCloud, J.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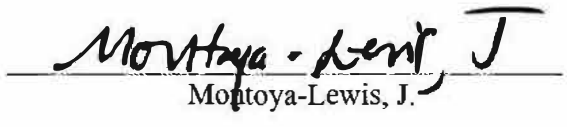
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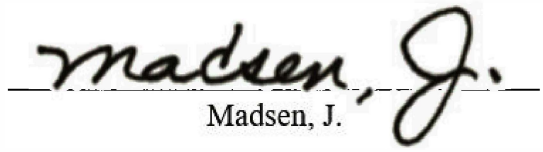
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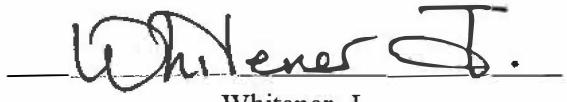
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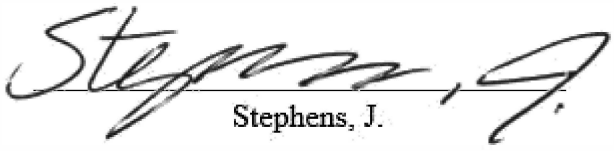
Stephens, J.


Lawrence-Berrey, J.P.T.

APPENDIX 3

Second Motion For Additional Evidence On Review, No. 101464-3, dated January 25, 2023

APPENDIX 6

Supreme Court No. 101464-3

THE STATE OF WASHINGTON

SUPREME COURT

ERIC HOOD

Appellant

v.

CENTRALIA COLLEGE,

Respondent.

SECOND MOTION FOR ADDITIONAL EVIDENCE ON REVIEW

Eric Hood, Pro Se
PO Box 1547
Langley, WA 98260
360.632.9134

APPENDIX 6

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I. INTRODUCTION

Petitioner Eric Hood, pro se, moves to provide evidence that he was awarded attorney fees in a civil case in King County Superior Court because it is material to this Court's consideration of Division II's opinion denying Hood's request for attorney fees.

II. ISSUE

Will Hood's additional evidence inform this Court's consideration of an "issue of substantial public interest" (RAP 13.4(b)) relevant to Division II's denial of Hood's attorney fees?

III. EVIDENCE RELIED UPON

The *Declaration Of Eric Hood In Support Of Second Motion For Additional Evidence On Review*, attached.

IV. FACTS

On January 9, 2023, the King County Superior Court awarded Hood "ATTORNEY'S FEES." Exhibit A (caps in original). The court found that:

> Plaintiff represented himself and has documented the time he spent attempting to enforce the contract and in seeking default. The Plaintiff seeks an hourly rate of his professional work, which is significantly less than a lawyer would have charged. Further, from the record in this case and the documentation submitted, much of the hours spent were seeking to collect the debt from the Defendant in lieu of pursuing a judgment. The Court finds under the circumstances of this case that these are reasonable fees.

Id.

V. ARGUMENT

A. The plain language of RCW 42.56.550(4) entitles Hood to attorney fees

This Court previously held that:

> Our primary duty in interpreting any statute is to discern and implement the intent of the legislature. Our starting point must always be the statute's plain language and ordinary meaning. When the plain language is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and we will not construe the statute otherwise. Just as we cannot add words or clauses to an unambiguous statute

> when the legislature has chosen not to include that language, we may not delete language from an unambiguous statute: Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. The plain meaning of a statute may be discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question (noting that application of the statutory definitions to the terms of art in a statute is essential to discerning the plain meaning of the statute). Where we are called upon to interpret an ambiguous statute or conflicting provisions, we may arrive at the legislature's intent by applying recognized principles of statutory construction. A kind of stopgap principle is that, in construing a statute, a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.

State v. J.P., 149 Wash.2d 444, 450, 69 P.3d 318 (2003) (quotation marks, brackets and citations omitted).

RCW 42.56.550(4) states:

> Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

42.56.550(4).

Division II stated, "pro se litigants are not entitled to attorney fees under RCW 42.56.550(4)." *Opinion*, p. 30.

In previously ruling that attorney fees are not due to "any person" (*id*.), Division II held that

> the plain language of RCW 42.56.550(4) […] awards "reasonable *attorney* fees," not fees in lieu of attorney fees to non-attorneys who represent themselves in PRA actions. Second […] a non-lawyer defendant litigating a PRA action pro se incurs no attorney fees and is not entitled to receive an attorney fee award himself under RCW 42.56.550(4).

West v. Thurston Cnty., 275 P.3d 1200, 1217-18 (Wash. Ct. App. 2012) (emphasis in original). Without basis or reasoning, Division II's circular opinion merely weighted the word "attorney" over "person." As shown, the weight it assigned is contrary to both grammar (and hence the plain meaning of "attorney fees") and to legislative intent.

If, as Division II argues, the legislature intended that fees in a PRA action are reserved exclusively for an attorney or attorneys, then the statute would instead read "attorney's fees" or "attorneys' fees." *See* for example,

> *Any person who prevails* against a public agency in any action in the courts for a violation of this chapter *shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action.*

RCW 42.30.120(4) (emphasis added).

The added emphasis shows the two statutes are nearly identical in structure. The possessive apostrophe in "attorney's fees" (*id*.) clearly means fees that belong exclusively to an attorney. By contrast, the possessive apostrophe is deliberately omitted in RCW 42.56.550(4). Thus the "attorney" in "attorney fees" is intended adjectivally, i.e., to modify the word "fees." *Id*.

As used by Division II, the phrase "'in lieu of' means `in the place of' or `instead of.'" *Conroy v. Keith Cty. Bd. of Equalization*, 846 N.W.2d 634, 641 (Neb. 2014) (quoting Webster's Third New International Dictionary of the English Language, Unabridged 1306 (1993)). The plain meaning of "in lieu of" is mutually exclusionary. *First Alex Bancshares, Inc. v. United States*, 830 F. Supp. 581, 585 (W.D. Okla. 1993).

In short, Division II reads into the statute something that is not there, namely, that "attorney fees" means "attorney's fees."

In the language of the statute, the word "attorney" is a general *qualifier* of the word "fees" and thus refers to the *kind* of fees associated with work that an attorney performs, not the work of only a person who passed the bar. RCW 42.56.550(4). Thus,

statutory language signifies that people who work comparably to an attorney are entitled to fees for their "professional work." *Hood Decl*., Exhibit A.

This interpretation accords with the deliberate inclusion of the term "any person" of which attorneys are but a tiny percentage. 42.56.550(4). It also accords with the not uncommon situation where persons who do work that requires the kind of knowledge possessed by attorneys, e.g., judges, are not always required to be attorneys. See, e.g., *State v. Davis*, 2016 MT 102, 383 Mont. 281, 371 P.3d 979, (permitting trials before a non-lawyer judge.)[1]

The concept that attorney fees should be awarded to "any person" is also consistent with the PRA's construction, i.e., "The people insist on remaining informed so that they may maintain control over the instruments that they have created." RCW

[1] "While Montana's rules are not the norm in America, they're also not unheard of. Twenty-eight states require all judges presiding over misdemeanor cases to be lawyers, including large states like California and Florida. In 14 of the remaining 22 states, a defendant who receives a jail sentence from a non-lawyer judge has the right to seek a new trial before a lawyer-judge."
https://www.theatlantic.com/politics/archive/2017/02/when-your-judge-isnt-a-lawyer/515568/

42.56.030. There is no implication in this construction that an attorney is required to "maintain control" or that attempts to "maintain control" should be borne at a requester's expense by requiring a requester to hire an attorney. Rather, the opposite is implied. See section 2, *infra*.

In summary, the plain language "reasonable attorney fees" within the context of the PRA and in light of legislative intent favors weighting "any person" over "attorney." RCW 42.56.550(4). Thus, "any person who prevails," who has done the professional work of an attorney, "shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action." *Id*.

B. Entitling a pro se requester to attorney fees is of substantial public interest because it would deter frivolous agency litigation

When determining whether an issue meets the substantial interest standard, courts have examined its level of impact. See e.g. *State v. Watson,* 155 Wn.2d 574, 577, 122 P.3d 903, 904 (2005).

> We consider the following criteria in determining whether or not a sufficient public interest is involved:
> (1) the public or private nature of the question presented;
> (2) the desirability of an authoritative determination which will provide future guidance to public officers; and
> (3) the likelihood that the question will recur.

In re Det. of Swanson, 115 Wn.2d 21, 24-25, 793 P.2d 962, 804 P.2d 1 (1990)

Since the majority of "private" citizens must potentially litigate obtain public records, then the issue of awarding attorney fees to non-attorneys is of substantial "public interest." *Id*. (1). The Court's determination of this issue will certainly inform "public officers" in every agency of their potential liability should non-attorneys be permitted attorney fees in their efforts to obtain records. *Id*. (2). Finally, the sheer number of non-attorneys who must or potentially must litigate to obtain public records makes it likely that some of them will challenge Division II's holdings. *Id*., (3).

If agency attorneys knew that frivolously responding to a non-attorney might increase an agency's culpability, then they might think twice before propounding irrelevant discovery. *See*

e.g., *Hood v. Columbia Cnty.*, 21 Wash. App. 2d 245, 255 (Wash. Ct. App. 2022) (it is not requester's but "the *agency's* motivation that is relevant because "agency culpability [is] the focus in determining daily penalties ...." *Neigh. Alliance* , 172 Wash.2d at 717, 261 P.3d 119." (Emphasis in original). *And see* Division II's *Opinion*, p. 28, (Centralia College's discovery "had no bearing on whether the College reasonably interpreted Hood's PRA request and conducted an adequate search for responsive documents.")

Similarly, agency attorneys who feared CR 11 sanctions might carefully investigate the facts before signing pleadings. *See* Hood's *Motion for Additional Evidence on Review* dated 11/16/2022, p. 3-5 (attorney signed an Answer that denied withholding two weeks *after* producing responsive records.)

This Court recognized that "the legislature expressly provided a speedy and expedient procedure for resolving disputes." *Neighborhood Alliance v. County of Spokane*, 172 Wash. 2d 702, 729 (Wash. 2011). And see *Kilduff v. San Juan*

County, 453 P. 3d 719 (Wash. 2019) ("Our cases emphasize the importance of speedy review of PRA claims. […] It does not follow that the PRA would permit agencies to draw out what is meant to be an expeditious process.")

Similarly, it does not follow that the legislature intended requesters be compelled to hire an attorney or pass the bar in order to obtain public records. Instead, the Attorney General's Office (AGO) advises that:

> The act provides a speedy remedy for a requestor to obtain a court hearing on whether the agency has violated [RCW 42.56.550].... The purpose of the quick judicial procedure is to allow requestors to expeditiously find out if they are entitled to obtain public records. To speed up the court process, a public records case may be decided merely on the "motion" of a requestor and "solely on affidavits."

WAC 44-14-08004(1) (footnote omitted).

This model rule refers to a "speedy remedy" resolved by "motion" (*singular*) of a "requester." *Id*. Compare that language and its obvious intent to the docket in this case showing *dozens* of pleadings filed in three courts by the College's AGO attorneys.

Protracted litigation by agency attorneys in response to a pro se non-attorney's lawsuit is routine. The overall effect, if not intent of such protracted litigation is to discourage or intimidate a requester, delay or obstruct a requester's access to records, which is certainly not in the public's interest.

Finally, since courts have the discretion to award no penalties, an award of attorney fees might be the *only* deterrent to a non-compliant agency. See e.g., *Hikel v. City of Lynnwood*, 389 P. 3d 677 - Wash: Court of Appeals, 1st Div. 2016 (Hikel, though "not entitled to a penalty […] is, however, entitled to attorney fees." And see *Progressive Animal Welfare Society v. University of Washington*, 125 Wn. 2d 243, 250 (Wash. 1994). ("The trial court awarded attorney fees to PAWS as the prevailing party, but declined to award a penalty.") While *PAWS* was remanded to determine attorney fees, appeals are generally not successful and few requesters would risk spending money to pay an attorney on appeal when attorney fees were already denied.

In summary, permitting non-attorney pro se litigants to recover attorney fees promotes legislative intent, accords with plain legislative language, would deter frivolous defensive actions and thus would expedite access to public records, which is of "substantial public interest." RAP 13.4

C. To obtain public records from resistant agencies, professional knowledge is increasingly necessary

In awarding a pro se *attorney* his fees, Division I stated,

> Lawyers who represent themselves must take time from their practices to prepare and appear as would any other lawyer. Furthermore, overall costs may be saved because lawyers who represent themselves are more likely to be familiar with the facts of their cases.

Leen v. Demopolis, 62 Wn. App. 473, 487 (Wash. Ct. App. 1991). The same is true for a non-attorney pro se requester.

Moreover, the preparation and research regarding the PRA is becoming ever more burdensome. Agencies confronted by "[c]hanging and complex public records laws […] rely on the help of expensive, yet *necessary*, legal counsel." *See* 2016 SAO

publication "The Effect of Public Records Requests on State and Local Governments"[2] p. 4-5 (emphasis added).

Changing and complex records laws affect requesters at least as much as agencies but *agencies* rarely, if ever, litigate pro se. Rather, pro se requesters contend with attorneys funded by agencies who "spent more than $10 million in the most recent year alone" (i.e., in 2015). *Id*. In order to have even a remote chance of prevailing against this veritable fortress, requesters, who may lack knowledge of other aspects of the law, must have a professional knowledge of the PRA. In short, the complexity of litigation and agency contentiousness requires that requesters perform like an attorney. They are thus entitled to attorney fees.

In summary, requesters who seek to obtain records confront sophisticated attorneys funded by deep pocketed agencies. Said attorneys, as exemplified by this case, protract and complexify litigation, thereby making "speedy judicial review" an illusion and delaying or obstructing access to public records.

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[2] https://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1017396&isFinding=false&sp=false

To make records more accessible, since 1973 the legislature recognized *without modification* that "any person" is entitled to attorney fees, whether or not they employ an attorney. Initiative Measure No. 276, approved November 7, 1972. Formerly RCW 42.17.340. Thus, person Hood is entitled to attorney fees for his work obtaining public records.

D. Rules on Appeal permit Hood's evidence

Additional evidence may be taken by an appellate court if the following criteria are met:

> The appellate court may direct that additional evidence be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through post judgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

RAP 9.11(a)

Hood's above arguments show that criteria (1) – (2) apply to the facts of this case. Hood was obviously unable to present

this new evidence to the trial court, thus (3) and (6) apply. Because an award of attorney fees in the trial court or appellate court would require additional motions practice in those venues, Hood *and* College would incur "unnecessary expense" thus (4)-(5) apply.

In addition, this Court may waive RAP 9.11(a) when, as here, "new evidence" fosters an "unusual situation." *Washington Federation of State Employees, Council 28 v. State*, 99 Wash.2d 878, 884-886 665 P.2d 1337 (1983).

Circumstances here are analogous to *Washington Federation*. First, Hood submitted "new evidence" (*id*.) that was created as a direct result of a decision made by an "authority." *Id*. Moreover the evidence shows that his argument to award attorney fees to non-attorney pro se litigants is not merely "hypothetical." *Id.* That is, since attorney fees were permitted to a non-attorney pro se litigant in a civil case in a lower court, then they should, for the similar reasons articulated by that lower court, be permitted here.

Rules may also be waived to "serve the ends of justice, pursuant to RAP 1.2 and 18.8." *Sears v. Grange Insurance*, 111 Wn. 2d 636, 640 (Wash. 1988). RAP 1.2 permits Courts to interpret rules "to promote justice." Under RAP 18.8, a party may move to "waive or alter the provisions of any of these rules."

VI. CONCLUSION

Hood's award of attorney fees in a superior court (Exhibit A) is (i) relevant to this Court's consideration of Division II's opinion denying Hood's attorney fees and (ii) of substantial public interest to the public, thus Hood's *Motion* should be granted.

Dated this 25th day of 2023, by

s/Eric Hood

WORD COUNT: 2787, not including attached declaration (91 words) and exhibit.

APPENDIX 6

CERTIFICATE OF SERVICE

I certify under the penalty of perjury under the laws of the State of Washington that on the below date in Langley, WA, I emailed the foregoing documents to counsel for Centralia College

By: s/ Eric Hood Date: January 25, 2023

APPENDIX 6

Supreme Court No. 101464-3

THE SUPREME COURT
OF THE STATE OF WASHINGTON

ERIC HOOD

Appellant

v.

CENTRALIA COLLEGE,

Respondent.

DECLARATION OF ERIC HOOD IN SUPPORT OF SECOND MOTION FOR ADDITIONAL EVIDENCE ON REVIEW

Eric Hood, Pro Se
PO Box 1547
Langley, WA 98260
360.632.9134

APPENDIX 6

COMES NOW Eric Hood, and hereby declares as follows: I am the pro se plaintiff in this action. I am over the age of eighteen and competent to testify. I brought this action against Centralia College. I make this declaration based on personal knowledge.

1. Exhibit A is a true and correct copy of a Judgment I received in a case I litigated without the assistance of an attorney.

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

Dated this 25th day of January, 2023, in Langley, WA by

s/Eric Hood
Eric Hood

APPENDIX 6

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

ERIC HOOD, **Plaintiff,** **vs.** **RICHARD GARCIA,** **Defendant.**	**NO. 22-2-00149-6** **JUDGMENT**

I. JUDGMENT SUMMARY

Pursuant to RCW 4.64.030, the following information is furnished concerning this judgment:

JUDGMENT CREDITOR:	ERIC HOOD
JUDGMENT DEBTOR:	RICHARD GARCIA
JUDGMENT:	$3,300
ATTORNEY'S FEES:	$12,697.76
PLAINTIFF'S COSTS:	$954.92
TOTAL JUDGMENT:	$16,952.68

Eric Hood
PO Box 1547
Langley, WA 98260
360.632.9134
ericfence@yahoo.com

INTEREST ON JUDGMENT: The total judgment shall accrue interest at the rate of 12% per annum from the date of this judgment.

II. FINDINGS ON ATTORNEY FEES

This matter came before the court for entry of a judgment against defendant Richard Garcia. The Court held a reasonableness hearing on December 7 and 20, 2023, and heard argument from the parties and considered all materials on file in this case.

The Court makes the following findings:

The contract provides the Defendant is responsible for attorney fees in case of default.

The contract caps interest at $300. Therefore the total amount owing per the contract is $3,300.

Plaintiff represented himself and has documented the time he spent attempting to enforce the contract and in seeking default. The Plaintiff seeks an hourly rate of his professional work, which is significantly less than a lawyer would have charged. Further, from the record in this case and the documentation submitted, much of the hours spent were seeking to collect the debt from the Defendant in lieu of pursuing a judgment. The Court finds under the circumstances of this case that these are reasonable fees. Plaintiff also documented his court costs and costs of this litigation at $954.92. The Court finds these sufficiently proven. Defendant produced no evidence during this case or during these hearings.

III. JUDGMENT

Having considered the court record in this matter and being otherwise fully informed, now therefore, hereby orders, judges, and decrees that Plaintiff Eric Hood is awarded judgment against Defendant Richard Garcia in the amount of $16,952.68. The total judgment

Eric Hood
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360.632.9134
ericfence@yahoo.com

is $16,952.68 and shall bear interest at a rate of 12% per annum from the date of entry until the same is paid in full.

Dated this _____ day of _____2023.

_____

Judge Adrienne McCoy

Presented by:

s/Eric Hood,
Eric Hood, plaintiff

\

Eric Hood
PO Box 1547
Langley, WA 98260
360.632.9134
ericfence@yahoo.com

APPENDIX 6

King County Superior Court
Judicial Electronic Signature Page

Case Number:	22-2-00149-6
Case Title:	HOOD vs GARCIA
Document Title:	OTHER RE JUDGMENT
Signed By:	Adrienne McCoy
Date:	January 09, 2023

Judge: Adrienne McCoy

This document is signed in accordance with the provisions in GR 30.

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Certificate Issued by:	C=US, E=KCSCSEFILING@KINGCOUNTY.GOV, OU=KCDJA, O=KCDJA, CN="Adrienne McCoy: tLEgyDst7BG/DpRxb3q3pA=="

APPENDIX 6

ERIC HOOD

January 25, 2023 - 1:10 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,464-3
Appellate Court Case Title:	Eric Hood v. Centralia College
Superior Court Case Number:	20-2-02234-6

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- krystal@f2vm.com

Comments:

Sender Name: Eric Hood - Email: ericfence@yahoo.com
Address:
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APPENDIX 6

ERIC HOOD

May 28, 2024 - 8:50 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	58362-3
Appellate Court Case Title:	Eric Hood, Appellant v Centralia College, Respondent
Superior Court Case Number:	23-2-00846-1

The following documents have been uploaded:

- 583623_Motion_20240528084815D2433006_6288.pdf
  This File Contains:
  Motion 2 - Publish
  The Original File Name was 2024 05 28 final mpub.pdf
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  Motion 1 - Reconsideration
  The Original File Name was 2024 05 28 Final Mrec.pdf

A copy of the uploaded files will be sent to:

- EDUOlyEF@ATG.WA.GOV
- Justin.Kjolseth@atg.wa.gov
- ericfence@yahoo.com;ucopian@gmail.com
- matthew.barber@atg.wa.gov

Comments:

Sender Name: Eric Hood - Email: ericfence@yahoo.com
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Note: The Filing Id is 20240528084815D2433006

APPENDIX 7

RETURN OF SERVICE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

Case Number: _____

Plaintiff: **ERIC HOOD**
vs.
Defendant: **CENTRALIA COLLEGE**

Service Documents:
SUMMONS; COMPLAINT FOR VIOLATIONS OF THE PUBLIC RECORDS ACT

Received by GARY'S PROCESS SERVICE, INC. on the 14th day of May, 2024 at 9:28 am to be served on **CENTRALIA COLLEGE C/O WASHINGTON ATTORNEY GENERAL, SERVICEATG@ATG.WA.GOV**.

I, Caroline Turpen, do hereby affirm that on the **14th day of May, 2024** at **9:28 am, I:**

personally delivered at the time and place set forth above, a true and correct copy of the **SUMMONS; COMPLAINT FOR VIOLATIONS OF THE PUBLIC RECORDS ACT** leaving same with BY EMAILING SERVICEATG@ATG.WA.GOV .

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. That I am a resident of Washington. I am a competent person 18 years of age or older and not a party to or attorney in this proceeding and am authorized to serve the process described herein. I certify that the person, firm, or corporation served is the identical one named in this action. I hereby declare that the above statement is true to the best of my knowledge and the belief, and that it is made for use as evidence in court and is subject to penalty for perjury.

Caroline Turpen
Process Server

5/15/24
Date

GARY'S PROCESS SERVICE, INC.
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(425) 277-0302

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APPENDIX 7

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

ERIC HOOD, Plaintiff, vs. CENTRALIA COLLEGE, Defendant.	NO. COMPLAINT FOR VIOLATIONS OF THE PUBLIC RECORDS ACT

COMES NOW, the Plaintiff, herein and for claims against the Defendant complains and alleges as follows:

I. INTRODUCTION

1.1 This is a complaint brought under the Public Records Act (PRA), 42.56 et seq., for Defendant Centralia Colleges violations of Plaintiff Eric Hood's rights under the Act, including its withholding of records that Hood repeatedly requested.

II. JURISDICTION AND VENUE

2.1 Jurisdiction: This Court has jurisdiction pursuant to RCW 42.56.550.

2.2 Venue: Venue is Thurston County Superior Court in accordance with RCW 42.56.550 and RCW 4.92.010.

III. PARTIES

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ericfence@yahoo.com

3.1 Eric Hood is one of the "people of this state [who] do not yield their sovereignty to the agencies that serve them a person [and] insist on remaining informed so that they may maintain control over the instruments that they have created." RCW. 42.56.030.

3.2 Centralia College is a State agency with a duty to ensure that its records are accessible and to practice the model rules published by the State Attorney General.

IV. FACTUAL ALLEGATIONS

4.1 On March 8, 2023, Hood sued the College for violating the PRA. Case No. 23-2-00846-34. Hood's complaint alleged that his requests for College public records made during the course of a prior lawsuit, i.e., "litigation requests" triggered the Colleges' duty to respond under the PRA.

4.2 On March 10, 2023, Hood made a request to the College's public records officer for "all records College got from the auditor and all records of any response to the audit or to the audit report. " Hood provided additional details to prevent any misunderstanding:

> Your response should include all board records, including minutes, that mention or reference the audit or the report, and any emails from the auditor that mention or relate to the audit or the audit report. It should also include any records that the SAO requested from the College and that were sent to the SAO during the course of the audit, including "equipment inventories, banking statements, financial aid disbursements and other voluminous spreadsheets and reports" that "the SAO would have been looking at." Please do not disclose any records that the College disclosed to me in response to my September 23, 2019 records request. Please do not disclose any records that College provided to me in response to my discovery requests in Hood v Centralia, cause #20-2-02234-34.

4.3 Hood made additional requests on the same day, which he sequentially numbered:

> 2. Please disclose all attorney invoices and all records of College costs associated with Hood v Centralia, cause #20-2-02234-34.
>
> 3. Please disclose all internal records that mention or refer to me or to cause #20-2-02234-34.
>
> 4. Please disclose all College communications from or to any other agencies that mention or refer to me or to cause #20-2-02234-34.

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5. Please disclose all records of actual, proposed or pending changes to the College's public records policy since November 2, 2020.

6. Please disclose all records of public records act training received by any College employee after November 2, 2020.

4.4 On March 16, 2023, Hood made additional sequentially numbered requests:

7. With regard to audits of the college performed by the State auditor's office, please disclose all records that reference, mention, or explain the distinction between formal and informal audit records that respond to management letters. The date range is prior to November 4, 2019.

8. With regard to an audit of the college performed by the State auditor's office, please disclose all records that reference, mention or explain the distinction between an audit and an audit report. The date range is prior to November 4, 2019.

4.5 For all of the above requests, Hood provided the following instructions:

Please consider each of the above to be a separate records request and segregate your responses accordingly.

If you disclose records in installments, please prioritize your disclosures according to the numerical order of my requests.

Please send records via email or via fileshare (I have OneDrive and Dropbox).

4.6 On March 17, 2023, the College responded to Hood by letter attached to an email copied to the College's president and attorney. The letter copied Hood's requests 1-6, *supra*, and asked for clarification.

4.7 Although Hood had requested electronic copies of records, the College's March 17, 2023 letter asked if Hood wanted copies, and anticipated a first installment of records by May 1, 2023.

4.8 Hood replied to the College's questions and provided clarification by email on the same day.

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4.9 By email dated March 22, 2023, the College copied Hood's requests 7 and 8, *supra*, renumbered them as as 1 and 2, and asked questions about them. College also asked if Hood wanted a cost estimate for copies and anticipated a first installment by July 1, 2023.

4.10 By email dated March 23, 2023, Hood replied to the College's March 22, 2023 questions, provided clarification by referring the College to its own records or statements, and claimed that its questions were disingenuous and did not provide fullest assistance. Hood also referred the College to the State Attorney General's model rules.

4.11 By email dated April 19, 2023, Hood copied his March 23, 2023 email regarding his requests 7 and 8 *supra*, and again confirmed that he wanted copies of the requested records and a cost estimate.

4.12 On June 12, 2023, more than five business days after having received Hood's March 10, 2023 PRA requests, the College asked for the date range of Hood's March 10, 2023 PRA requests that Hood had numbered 2-4, *supra*.

4.13 The same day, Hood sent an email to the College that copied his requests 2-4, *supra*, and provided a date range and other instructions.

4.14 Hood received no further communications from the College regarding his requests 1-8 *supra*.

4.15 On June 16, 2023, the trial court granted the College's motion to dismiss Hood's 2023 lawsuit.

4.16 Hood appealed the trail court's June 16, 2023 decision.

4.17 On April 4, 2024, Division II issued an opinion regarding Hood's 2023 lawsuit against the College. It found that:

> [Hood's 2023 complaint sufficiently raised the argument that his "litigation requests" are new public records requests [and thus] put the College on notice that Hood was, at least

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in part, claiming PRA penalties and attorney fees for the failure to adequately respond to his "litigation requests" made in the course of his 2020 litigation.

Hood v. Centralia Coll., No. 58362-3-II (Wash. Ct. App. Ap. 23, 2024).

4.17 The College produced no records to Hood in response to his complaint dated March 8, 2023.

4.18 College did not provide a cost estimate for any of Hood's requests that Hood numbered 1-8, *supra,* shown in paragraphs 4.1-4.5.

4.19 The College did not provide a first installment of records to Hood on May 1, 2023 in response to his requests numbered 1-6 *supra*.

4.20 The College did not provide a first installment of records to Hood on July 1, 2023 in response to his requests numbered 7 and 8, *supra*.

4.21 As of the date of this complaint, the College did not produce any records in response to any of Hood's requests that Hood numbered 1-8, *supra,* paragraphs 4.1-4.5.

4.22. On information and belief, the College silently withholds records responsive to Hood's complaint dated March 8, 2023.

4.23 On information and belief, the College silently withholds records responsive to Hood's public records requests dated March 10 and 16, 2023.

V. CAUSE OF ACTION

5.1 Plaintiff realleges and incorporates by reference each allegation of paragraphs 1.1 through 4.23, inclusive, as if alleged herein.

5.2 The College is subject to the Public Records Act.

5.3 Hood's complaint dated March 8, 2023 provided fair notice to the College that Hood had requested, pursuant to the Public Records Act, audit-related records that Hood had identified during the course of his prior litigation.

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5.4 Hood's requests described in paragraphs 4.2-4.5, *supra*, made on March 10 and March 16, 2023, requested identifiable classes of public records, and were made pursuant to the Public Records Act.

5.5 The College has a statutory duty to "honor requests received in person during an agency's normal office hours, or by mail or email, for identifiable public records unless exempted by provisions of [the Public Records Act." RCW 42.56.080(2).

5.6 The College has a statutory duty to respond within five business days of receiving a public records request by

> (a) [p]roviding the record[s]; (b) [p]roviding an internet address and link on the agency's web site to the specific records requested...; (c) [a]cknowledging that the agency...has received the request and providing a reasonable estimate of the time the agency...will require to respond to the request; (d) Acknowledging that the agency […] has received the request and asking the requestor to provide clarification for a request that is unclear […]; or (e) [d]enying the public record request.

RCW 42.56.520(1).

5.7 For any record it withholds, the College has a statutory duty to provide "a statement of the specific exemption authorizing the withholding of the record...and a brief explanation of how the exemption applies to the record withheld." RCW 42.56.210(3).

5.8 The College has a duty to conduct an adequate search for responsive records.

5.9 The College has a statutory duty to "adopt and enforce reasonable rules and regulations … consonant with the intent of this chapter to provide full public access to public records [and] to protect public records from damage or disorganization […]. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information." RCW 42.56.100.

5.10 The College has a statutory duty to adequately train its employees pursuant to RCW 42.56.150.

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5.11 The College has a statutory duty to provide a "summary of the applicable charges before any copies are made." RCW 42.56.120

5.12 Upon information and belief, the College, at a minimum, breached its duties referenced in paragraphs 5.4 through 5.11.

VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

6.1 For declaratory judgment specifying that the College failed in its duty of transparency under the PRA either due to intentional misconduct or recklessness.

6.2 For positive injunctive relief directing the College to comply with all provisions of RCW 42.56, including disclosing all records to which Plaintiff is entitled;

6.3 For maximum statutory penalties for any violation of any provision of RCW 42.56;

6.4 For an award of reasonable attorneys' fees and costs, as required by law and;

6.5 For such other and further relief as the court deems just and proper.

DATED this 10th day of May, 2024 by,

s/ Eric Hood
Eric Hood

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FILED
7/1/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ERIC HOOD, an individual,

Appellant/Cross-Respondent,

v.

CITY OF LANGLEY, a public agency,

Respondent/Cross-Appellant.

DIVISION ONE

No. 85075-0-I

UNPUBLISHED OPINION

DWYER, J. — Eric Hood appeals from the order of the superior court imposing a lower range Public Records Act[1] monetary penalty against the City of Langley as a result of the City's violation of the act in responding to his records request. On appeal, Hood asserts that the superior court abused its discretion by imposing a penalty in the lower statutory range. In so asserting, Hood challenges only the court's application of law to one out of the nine penalty factors that the court considered in imposing the lower-end penalty. Because we do not conduct piecemeal evaluations of such penalty factors and because, reviewed holistically, the trial court's penalty determination in this matter plainly does not evince a manifest abuse of discretion, we affirm the superior court's ruling.

[1] Ch. 42.56 RCW.

The City of Langley, for its part, appeals from the superior court's order denying the City's motion for sanctions against Hood based on his filing of a motion for reconsideration, itself filed in response to the court's order imposing the penalties here in question. Because the trial court did not err in denying the City's motion for sanctions, we also affirm that ruling.

I

In early January 2016, Eric Hood e-mailed the City of Langley requesting numerous records associated with its former mayor.[2] A records custodian for the City responded shortly thereafter, indicating that the City had records that were responsive to his request and inviting Hood to schedule a time to visit city hall to review them. Over the next month, Hood and the records custodian communicated back-and-forth regarding his records request. Hood visited city hall twice in order to examine the records made available to him.

During this time, however, Hood requested and was denied permission to search on the former mayor's laptop for responsive electronic records, including, as pertinent here, the former mayor's digital calendar. Hood then e-mailed the City asking to review the former mayor's electronic records. The records custodian later responded to that e-mail, providing certain electronic records located in the laptop's hard drive and a log explaining the City's redactions to those records. Hood then requested to search the laptop's files himself. The records custodian replied that, although she did not currently have time to

[2] More specific background in this case was previously set forth in Hood v. City of Langley, No. 77433-6-1, slip. op. at 1-4 (Wash. Ct. App. Jan. 28, 2019) (unpublished), https://www.courts.wa.gov/opinions/pdf/774336.pdf.

supervise his search of the laptop, if he could specify what records he was looking for on the laptop, she could then determine whether it contained responsive records.

In February 2016, Hood, representing himself, sued the City alleging that its response to his records request violated the Public Records Act.

One month later, in March 2016, Hood sent another e-mail to the City, with this e-mail purportedly clarifying that, in his prior correspondence with the City, he had not intended to narrow his original records request.[3]

More than one year later, in May 2017, the City moved for summary judgment, which the trial court granted.

Hood appealed the trial court's summary judgment order to this court. In January 2019, we reversed and remanded the matter for further proceedings, concluding that there were "issues of fact as to the adequacy of the City's search and compliance" with the act, that "[t]here is a genuine issue of fact as to whether the City performed an adequate search for responsive electronic documents before the City issued its January 8, 2016, response," including an adequate search for the former mayor's electronic calendars stored on his laptop, and that "there is a genuine issue of fact as to whether Hood intended to narrow his January 5, 2016, request, as the City contends, or whether the January 15, 2016, request was a new request, as Hood contends." Hood v. City of Langley, No.

[3] It appears that, likely due to the voluminous record in this matter, neither party brought Hood's March 2016 e-mail to the attention of the trial court during the 2017 summary judgment proceeding nor to this court during Hood's subsequent appeal from that proceeding. It was not until 2022 that the City learned that it had received Hood's March 2016 e-mail when it was originally sent and subsequently informed the trial court of this.

77433-6-1, slip. op. at 1, 6-11 (Wash. Ct. App. Jan. 28, 2019) (unpublished), https://www.courts.wa.gov/opinions/pdf/774336.pdf.

One month later, in February 2019, the City provided Hood with a copy of the former mayor's digital calendar.

More than three years later, in the spring of 2022, Hood filed a motion for partial summary judgment requesting that the trial court determine that the City had violated the Public Records Act in responding to his records request with regard to the former mayor's digital calendars. In July 2022, the trial court granted Hood's motion. Thereafter, the trial court determined that the City had fair notice of the scope of Hood's request as of March 2016, thereby finding the City liable under the act during the period of March 2016 to February 2019.

In November 2022, the City requested that, in light of its violation of the act, the trial court determine a reasonable attorney fee award against it and whether imposition of penalties was warranted. The trial court granted the City's request, issuing an award of attorney fees to Hood and, as pertinent here, imposing a penalty of $5,315.00 against the City—"a daily penalty of $5 multiplied by 1,063 days"—after finding that four mitigating factors supported a lower range penalty and that no aggravating factors supported increasing the amount of the penalty imposed against the City.

Hood asked the trial court to reconsider the penalty portion of its order, which the court denied. The City, in response to Hood's motion for reconsideration, filed a motion for sanctions, which the court also denied.

Hood and the City now appeal.

II

Hood asserts that the trial court abused its discretion in imposing a penalty against the City in the lower range of penalties available for a Public Records Act violation. The trial court erred, Hood contends, because the court applied an incorrect legal standard to one out of the nine judicially created penalty factors that the court considered in exercising its discretion as to the amount of the penalties that it would impose. Because the legislature has conferred considerable discretion to trial courts when determining Public Records Act penalties, because our Supreme Court has repeatedly emphasized that such a determination must be reviewed holistically for its overall reasonableness and that no one penalty factor should control appellate review of any such determination, and because a holistic review of the trial court's determination in this matter reveals that no abuse of discretion occurred, Hood's assertion fails.

A

RCW 42.56.550(4) provides that "it shall be *within the discretion of the court* to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record." (Emphasis added.) Accordingly, our Supreme Court instructed,

> "the plain language of the [Public Records Act (PRA)] confers great discretion on trial courts to determine the appropriate penalty for a PRA violation." Wade's Eastside Gun Shop, Inc. v. Dep't of Labor & Indus., 185 Wn.2d 270, 278, 372 P.3d 97 (2016). "Since enacting the PRA, the legislature has afforded courts more—not less—discretion in setting penalties for PRA violations," first by changing the penalty range from not more than $25 to between $5 and $100, and then by removing the mandatory minimum penalty.

> Id. at 278-79 (citing LAWS OF 1992, ch. 139, § 8; LAWS OF 2011, ch. 273, § 1).
>
> In recognition of this statutory grant of discretion, it is now well settled law that "'[t]he trial court's determination of appropriate daily penalties is properly reviewed for an abuse of discretion.'" [Yousoufian v. Office of Ron Sims, 168 Wn.2d 444, 458, 229 P.3d 735 (2010) (Yousoufian II)] (quoting Yousoufian v. Office of King County Exec., 152 Wn.2d 421, 431, 98 P.3d 463 (2004) (Yousoufian I)); see also Wade's, 185 Wn.2d at 277; Sargent v. Seattle Police Dep't, 179 Wn.2d 376, 397, 314 P.3d 1093 (2013); King County v. Sheehan, 114 Wn. App. 325, 350-51, 57 P.3d 307 (2002).
>
> To guide trial courts in their exercise of discretion, we set forth "relevant factors for trial courts to consider in their penalty determination" in Yousoufian II. 168 Wn.2d at 464. We specified seven "mitigating factors that may serve to decrease the penalty" and nine "aggravating factors that may support increasing the penalty." Id. at 467-68.

Hoffman v. Kittitas County, 194 Wn.2d 217, 224, 449 P.3d 277 (2019) (footnotes omitted).

The factors provided by the court were as follows:

> [M]itigating factors that may serve to decrease the penalty are (1) a lack of clarity in the PRA request; (2) the agency's prompt response or legitimate follow-up inquiry for clarification; (3) the agency's good faith, honest, timely, and strict compliance with all PRA procedural requirements and exceptions; (4) proper training and supervision of the agency's personnel; (5) the reasonableness of any explanation for noncompliance by the agency; (6) the helpfulness of the agency to the requestor; and (7) the existence of agency systems to track and retrieve public records.
>
> Conversely, aggravating factors that may support increasing the penalty are (1) a delayed response by the agency, especially in circumstances making time of the essence; (2) lack of strict compliance by the agency with all the PRA procedural requirements and exceptions; (3) lack of proper training and supervision of the agency's personnel; (4) unreasonableness of any explanation for noncompliance by the agency; (5) negligent, reckless, wanton, bad faith, or intentional noncompliance with the PRA by the agency; (6) *agency dishonesty*; (7) the public importance of the issue to which the request is related, where the importance was foreseeable to the agency; (8) any actual personal economic loss to the requestor resulting from the agency's

> misconduct, where the loss was foreseeable to the agency; and (9) a penalty amount necessary to deter future misconduct by the agency considering the size of the agency and the facts of the case.

Yousoufian, 168 Wn.2d at 467-68 (emphasis added) (footnotes omitted).

And in Hoffman, the court reiterated that it intended for those factors

> to "provide[ ] guidance to trial courts, more predictability to parties, and a framework for meaningful appellate review." [Yousoufian II, 168 Wn.2d] at 468. But we "emphasize[d] that the factors may overlap, are offered only as guidance, may not apply equally or at all in every case, and are not an exclusive list of appropriate considerations. *Additionally, no one factor should control*." Id. And we cautioned that *"[t]hese factors should not infringe upon the considerable discretion of trial courts to determine PRA penalties*." Id. In other words, Yousoufian II articulated guidelines for trial courts deciding whether to impose a penalty (and if so, how much) for a PRA violation.

194 Wn.2d at 225 (emphasis added).

Therefore, as our Supreme Court instructed, "our task is to review the trial court's overall penalty assessment for abuse of discretion.'" Hoffman, 194 Wn.2d at 228.

> "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons." Yousoufian II, 168 Wn.2d at 458. "A trial 'court's decision is "manifestly unreasonable" if "the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take.'"'" Id. at 458-59 (quoting Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (quoting State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting State v. Lewis, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990)))). "A decision is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." Rohrich, 149 Wn.2d at 654 (quoting State v. Rundquist, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)); see also State v. Sisouvanh, 175 Wn.2d 607, 623, 290 P.3d 942 (2012).

Hoffman, 194 Wn.2d at 229.

Again, we review the trial court's "overall penalty decision 'holistically,'" to determine whether "'the trial court's assessment [was] inadequate [or adequate] in light of the totality of relevant circumstances.'" Hoffman, 194 Wn.2d at 228 (second alteration in original) (quoting Hoffman v. Kittitas County, 4 Wn. App. 2d 489, 497-49, 422 P.3d 466 (2018), aff'd, 194 Wn.2d 217, 449 P.3d 277 (2019)).

B

Hood asserts that the trial court abused its discretion in imposing a low-end Public Records Act penalty against the City of Langley. We disagree.

1

Hood contends that the trial court abused its discretion by applying an incorrect legal standard to the "agency dishonesty" factor, one of the nine factors that the trial court considered in imposing its penalty determination. In so doing, Hood urges us to engage in a de novo review of the trial court's consideration of that single Yousoufian II factor. Because we do not engage in a piecemeal review of a trial court's penalty determination, we decline Hood's request to do so.

Our Supreme Court's decision in Hoffman is instructive. There, the court explained that

> Hoffman asks us to engage in de novo review of two of the Yousoufian II factors that guide trial courts as they exercise this discretion, "the agency's good faith, honest, timely, and strict compliance with all PRA procedural requirements and exceptions," a mitigator, and the agency's "negligent, reckless, wanton, bad faith, or intentional noncompliance with the PRA," an aggravator. 168 Wn.2d at 467-68 (footnote omitted)
>
> But as we have said before, RCW 42.56.550(4)'s grant of discretion in awarding PRA penalties "is meaningful only if

> appellate courts review the trial court's imposition of that penalty under an abuse of discretion standard of review." Yousoufian I, 152 Wn.2d at 431. "[A]n appellate court's 'function is to review claims of abuse of trial court discretion with respect to the imposition or lack of imposition of a penalty, not to exercise such discretion ourselves.'" Id. at 430 (quoting Sheehan, 114 Wn. App. at 350-51). The Yousoufian II factors are judicially crafted guidelines that overlay a statutory grant of trial court discretion. They "may overlap, *are offered only as guidance*, may not apply equally or at all in every case, and are not an exclusive list of appropriate considerations." Yousoufian II, 168 Wn.2d at 468 (emphasis added).
>
> Hoffman correctly notes our holding that "'[w]hen determining the amount of the penalty to be imposed the existence or absence of [an] agency's bad faith is the principal factor which the trial court must consider.'" Id. at 460 (second alteration in original) (internal quotation marks omitted) (quoting Amren[v. City of Kalama], 131 Wn.2d [25,] 37-38[, 929 P.2d 389 (1997)]). But that alone does not entitle him to de novo review of this Yousoufian II factor. He ignores our holding that a trial court abuses its discretion by focusing exclusively on bad faith without considering either the remaining Yousoufian II factors or any other appropriate considerations. Sargent, 179 Wn.2d at 397-98; see also Yousoufian II, 168 Wn.2d at 460-61 (stating that "no showing of bad faith is necessary before a penalty is imposed" and that "a strict and singular emphasis on good faith or bad faith is inadequate to fully consider a PRA penalty determination"). Engaging in de novo review of the bad faith factor would risk distorting its role as one piece of a holistic, discretionary determination of the appropriate penalty amount.
>
> Trial courts' adherence to the guidelines we set forth in Yousoufian II helps ensure that they do not abuse their discretion. Cf. Sargent, 179 Wn.2d at 397-98 (holding that the trial court abused its discretion by focusing exclusively on agency bad faith). Articulating the basis for a penalty award in terms of the Yousoufian II framework helps trial courts spell out their reasoning in a way that facilitates meaningful appellate review. Yousoufian II, 168 Wn.2d at 468. But appellate review is undertaken using an abuse of discretion standard—not by engaging in piecemeal de novo review of individual Yousoufian II factors.

Hoffman, 194 Wn.2d at 227-28.

Given that, we decline Hood's request to engage in a piecemeal de novo review of a single Yousoufian II factor. Our Supreme Court has repeatedly

emphasized: "'no one factor should control.'" Hoffman, 194 Wn.2d at 225 (quoting Yousoufian II, 168 Wn.2d at 468). We will thus not risk distorting the statutorily conferred discretion granted to the trial court—nor the standard of review set forth by our Supreme Court—for the sake of single-mindedly evaluating a single factor. To do so neither gives meaning to the intention of our legislation in conferring such discretion, nor aligns with the intention of our Supreme Court to provide "'guidance to trial courts, more predictability to parties, and a framework for meaningful appellate review.'" Hoffman, 194 Wn.2d at 225 (quoting Yousoufian II, 168 Wn.2d at 468). Thus, we decline Hood's request for de novo review of the trial court's consideration of the "agency dishonesty" factor.[4]

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[4] Hood nevertheless urges us to determine whether the trial court erred in relying on a decision from Division Two of this court, O'Dea v. City of Tacoma, 19 Wn. App. 2d 67, 493 P.3d 1245 (2021), as support for its finding that the City did not act dishonestly in this matter. Given all of the foregoing analysis, the following is provided for guidance only.

As applicable here, the panel in O'Dea ruled that a public agency is placed on "fair notice" of a Public Records Act request when such request is made in the context of litigation. Significantly, the panel elected to publish that portion of its decision. 19 Wn. App. 2d at 71, 81-83, 91-92. In so doing, the panel plainly believed that the "fair notice" portion of its "decision . . . clarifie[d] . . . an established principle of law." State v. Fitzpatrick, 5 Wn. App. 661, 668-69, 491 P.2d 262 (1971); see also RAP 12.3(d); RCW 2.06.040.

> Subsequent to the issuance of that decision, the trial court herein found as follows: **The Court finds that the City did not act with any dishonesty.** This Court was guided by O'Dea, 19 Wn. App. 2d 67, which it found to be persuasive of the conclusion that an agency can be notified during a lawsuit of the meaning of a never-received or previously unclear PRA request. 7/28/22 Letter Ruling at 8. In O'Dea, the court found that the city had notice of an outstanding PRA request when it was referenced in a complaint filed with the court. Notably, O'Dea was decided more than two years after the City produced the calendar that is the sole issue remaining from Mr. Hood's lawsuit. The City itself could not have been guided by O'Dea.

The trial court did not err in its application of O'Dea. Division Two of this court issued its ruling in O'Dea years after Hood's records request, the City's response to his request, and the City's eventual production of the digital calendar in question. The O'Dea panel's election to publish its decision in part signals its belief that the published portion of the opinion clarified a principle of law. The panel clearly signaled that its decision was precedential, i.e., that it stated a new development in the law. Fitzpatrick, 5 Wn. App. at 668-69. From this, the trial court properly reasoned that, prior to the O'Dea decision, the City could not have reasonably known that it was the state of the law that an e-mail from Hood occurring in the context of litigation constituted a

Given the foregoing, the remaining issue for us to review with regard to the trial court's imposition of penalties in this matter is whether the trial court's overall penalty assessment reflects a manifest abuse of discretion. It does not.

Neither party challenges the trial court's factual findings in this matter. Therefore, the factual findings set forth in the trial court's ruling are verities on appeal. Hoffman, 194 Wn.2d at 219-20 (citing Yousoufian II, 168 Wn.2d at 450)). Moreover, when an appellant "does not challenge any of the factual findings underlying the trial court's penalty assessment, our review is limited to the legality of the trial court's approach and overall reasonableness of its selected remedy." Hoffman, 4 Wn. App. 2d at 498.

Here, the trial court entered an order that expressly considered 9 out of the 16 Yousoufian II mitigating and aggravating factors. The trial court first found that four mitigative factors were present in this matter.

> 13. **The City promptly responded, followed up with, and was helpful to Mr. Hood.** The City complied with the PRA's five-day response requirement. RCW 42.56.520(1). In fact, the City responded within three days of Mr. Hood's January 5, 2016 request. The City notified Mr. Hood that all of the records responsive to his request were available for his review, to wit: "6 boxes, 25 binders and on a laptop located here at Langley City Hall." This response was proper under the PRA. Hoffman, 4 Wn. App. 2d at 499 (The County "responded within five working days . . . . While the response of the sheriff's office to Hoffman's initial PRA request was incomplete, that was not an independent aggravating factor. It is instead what caused the PRA violation in

clarification of the scope of his public records request. As a corollary, the trial court also reasoned that the City could not have modified the timing of its production of the record in question in response to the ruling in O'Dea. Thus, in determining that there was an absence of "agency dishonesty" in this matter, in reliance on O'Dea, the trial court did not incorrectly apply the law.

the first place. . . . No further enhancement was required based on lack of timely compliance."); West v. Thurston [County], 168 Wn. App. 162, 190, 275 P.3d 1200 (2012) (approving the trial court's finding that "the County timely responded to West's PRA request within four days, even though this initial response wrongly denied West's request"); Hood v. Nooksack, No. 82081-8-I, 18 Wn. App. 2d 1050, *7 n.11 (Aug. 2, 2021) (unpublished) ("The PRA does not authorize a separate penalty for conducting an inadequate search.").

14. When Mr. Hood emailed the City with follow-up questions on January 10, 2016, the City responded the next day. When he visited the City's offices and inspected the voluminous hard copy records responsive to his request, the City's Clerk copied the records he identified for copying.[5]

16. On January 27, 2016, within less than a month, the City completed its response to Mr. Hood's narrowed January 5, 2016 request and so advised him.

17. **The City acted with good faith and honesty and complied with the PRA's procedural requirements.** "When determining the amount of the penalty to be imposed the existence or absence of [an] agency's bad faith is the principal factor which the trial court must consider." Yousoufian, 168 Wn.2d at 460. The evidence amply demonstrates the City's good faith and honesty in responding to Mr. Hood's initial January 5, 2016 request and his January 15, 2016 email.

18. **The City promptly brought in a lawyer to assist**. West, 168 Wn. App. at 190 (approving the trial court's finding that "the County demonstrated adequate training and supervision of the County's personnel with respect to PRA requests because the County assigned the responsibility to respond to Mr. West's PRA request to a licensed, practicing attorney who has specific knowledge of the issues presented in" the case) (quotation marks & brackets omitted). The City engaged a PRA lawyer to look at the January 15, 2016 email and provide [the records custodian] advice. Mr. Hood sent his March 1, 2016 email providing notice of his ''un-narrowed" January 5, 2016 request to the City's outside counsel.

19. **The City's explanation for noncompliance is reasonable.** This Court found the City's explanation for noncompliance before March 1, 2016 eminently reasonable. 7/28/22 Letter Ruling at 7. "Mr. Hood's January 5, 2016 public records request is fairly characterized as seeking everything but the kitchen sink related to Mayor McCarthy." Id. at 6. "[I]t was reasonable for [the records custodian] to regard her conversation with Mr. Hood on January 15, 2016, during the hours-long sessions

[5] The superior court judge, when signing the proposed amended order in this matter, excised paragraph 15 from that proposed order.

of tangible document production as a clarification and/or modification of his initial public records request." Id. "(T]his Court also finds that the City had no reason to know that Mr. Hood had a different idea, or would come to have a different idea, than [the records custodian] about the significance of his January 15, 2016 email as an initial matter." Id. at 6-7. See also Hood v. S. Whidbey School Dist., 2016 WL 4626249, No. 73165-3-1, 195 Wn. App. 1058, *17 (unpublished) (Sept. 6, 2016) (approving the trial court's finding that the agency's "explanations for particular oversights in its searches and productions were 'reasonable and fully understandable in light of the numerous broad and overlapping requests with which it was faced'"), review denied, 187 Wn.2d 1020 (2017). This Court also recognized that in March 2016 and thereafter, the former mayor's calendar was "fairly regarded as a minor point" as "the principal bone of contention between the parties in the 2017 summary judgment briefing was the production (and destruction) of Mayor McCarthy's personal journals," 7/28/22 Letter Ruling at 7, issues on which Mr. Hood lost in this lawsuit.

The court next found that no aggravating factors were present.

21. **The Court finds that the City did not act with any dishonesty.** This Court was guided by O'Dea, 19 Wn. App. 2d 67, which it found to be persuasive of the conclusion that an agency can be notified during a lawsuit of the meaning of a never-received or previously unclear PRA request. 7/28/22 Letter Ruling at 8. In O'Dea, the court found that the city had notice of an outstanding PRA request when it was referenced in a complaint filed with the court. Notably, O'Dea was decided more than two years after the City produced the calendar that is the sole issue remaining from Mr. Hood's lawsuit. The City itself could not have been guided by O'Dea.

22. **The calendar was of no public importance.** The calendar was of no foreseeable public importance. "An agency should not be penalized under this factor, however, unless the significance of the issue to which the request is related was foreseeable to the agency." Yousoufian, 168 Wn.2d at 462; see also Hood v. S. Whidbey School Dist., 195 Wn. App. 1058 at *17 (approving the trial court's finding that there was no public importance as "'the overwhelming majority of Hood's requests were directly related to his personal challenge to his nonrenewal as a teacher,'" the very issue that drove Mr. Hood to make his January 5, 2016 PRA request to the City about former Mayor McCarthy, the individual who long ago fired him at South Whidbey School District).

23. **Mr. Hood did not experience any foreseeable personal economic loss as a result of the delay in receiving**

> **the calendar**. The delay in Mr. Hood's receipt of the calendar caused him no personal economic loss. Moreover, an agency should "be penalized for such a loss only if it was a foreseeable result of the agency's misconduct. In short, actual personal economic loss to the requestor is a factor in setting a penalty only if it resulted from the agency's misconduct and was foreseeable." Yousoufian, 168 Wn.2d at 461-62; accord Zink[v. City of Mesa], 4 Wn. App. 2d [112,] 126 [419 P.3d 847 (2018)] ("compensating a plaintiff should be a factor in increasing a penalty only if an economic loss to the record requestor was a foreseeable result of the agency's misconduct"). There was no foreseeable economic loss here.
>
> 24. **The City did not act with negligence, recklessness, wantonly or in bad faith, nor did it intentionally fail to comply with the PRA**. The City was not intransigent.

Given all that, the trial court found that "[n]o penalty above the bottom end of the statutory range is necessary to deter future misconduct considering the City's size and the facts of this case." This was so, the court found, because "Langley is a small City with only 1,147 residents[,] the penalty needed to deter a small city and that necessary to deter a larger public agency is not the same," and

> [t]he sole PRA violation here arose from Mr. Hood's unclear communications with the City (or his after-the-fact interpretations of those communications), not with the City's process for responding to PRA requests. The City responded to the request nearly seven years ago by way of a [records custodian] who long ago left her job with the City.

Therefore, "[b]ased on consideration of all of these factors, the entire statutory penalty range, the facts as found by this Court, and the City's size," the trial court imposed against the City "a daily penalty of $5 multiplied by 1,063 days, for a penalty of $5,315.00."

The trial court did not abuse its discretion. No part of the trial court's decision appears to be manifestly unreasonable, or to have been based on

untenable grounds or reasons. Indeed, the trial court's determination—including its consideration of the vagueness of Hood's request, the manner in which the City responded to that request, the public importance of the record in question, the length of time that Hood went without the record in question, the absence of a need for further deterrence, and the City's small size—was clearly a determination that a reasonable judge could make based on the facts before the trial court in this matter. Moreover, the trial court's findings are amply supported by the record and the court provided well-reasoned legal analysis in support of its ruling.

Thus, the trial court did not abuse its discretion by imposing a low-end Public Records Act penalty against the City of Langley. Accordingly, Hood fails to establish an entitlement to appellate relief on this claim.

III

The City, for its part, asserts that trial court erred by denying its motion to impose sanctions against Hood for his request that the trial court reconsider the portion of its order regarding Public Records Act penalties. The trial court did not err in so ruling.

We may affirm a trial court's ruling on any ground supported by the record. Wash. Fed. Sav. & Loan Ass'n v. Alsager, 165 Wn. App. 10, 14, 266 P.3d 905 (2011) (citing King County v. Seawest Inv. Assocs., LLC, 141 Wn. App. 304, 310, 170 P.3d 53 (2007)).

Here, in April 2022, the City asked the trial court to determine whether the City had violated the Public Records Act in responding to Hood's records

request. In July 2022, the trial court determined that the City had violated the act. In so doing, the court relied on a portion of the ruling in O'Dea—that a public agency has fair notice of a public records request when that request occurs in the context of litigation—as part of determining the specific timing of the City's violation of the act in response to Hood's records request.

In November 2022, the City asked the trial court to determine a reasonable amount to award Hood for attorney fees and whether a penalty should be imposed against the City in light of the violation found. In that pleading, the City urged the trial court to adopt a penalty award at the low-end of the statutory range. In so doing, the City argued that the Yousoufian II mitigating factor pertaining to "the reasonableness of any explanation for noncompliance by the agency" supported a lesser penalty, based on the proposition that the City could not have been guided by the "fair notice" ruling in O'Dea because the decision was issued long after the City had already complied with the act with regard to Hood's records request.

In response, Hood argued that O'Dea did not establish the existence of such a mitigating factor, averring that the City's noncompliance was not reasonable. In a separate section of his response, Hood argued that the City had acted dishonestly for the purpose of imposing a greater penalty. Notably, he did not present the trial court with an argument regarding the "agency dishonesty" factor predicated on O'Dea.

In January 2023, the trial court issued an order granting the City's motion regarding an award of attorney fees and imposition of penalties arising from the

City's violation of the Public Records Act. In so doing, the trial court, for the first time, relied on O'Dea for the purpose of finding that the "agency dishonesty" aggravating penalty factor was not present in this matter.

In February 2023, Hood filed a motion for reconsideration requesting that the court reconsider its reliance on O'Dea for the purpose of the "agency dishonesty" factor. Shortly thereafter, the City filed a motion for sanctions arising from Hood's recently filed motion for reconsideration. The trial court denied the City's request for sanctions.

The trial court did not err by denying the City's motion for sanctions. The record reflects that Hood filed a motion for reconsideration of the court's reliance on O'Dea for the purpose of determining the Yousoufian II "agency dishonesty" factor. At that point in the litigation, however, Hood had neither presented the trial court with—nor had the City's arguments presented him with the opportunity—to present the trial court with argument concerning whether O'Dea should be relied on for the purpose of the court's consideration of the "agency dishonesty" penalty factor. Indeed, the trial court's partial summary judgment ruling relied on O'Dea for the purpose of establishing the timing of the City's Public Records Act violation, and the City's motion for a penalty determination relied on O'Dea not for the purpose of establishing the absence of "agency dishonesty" but, rather, for the purpose establishing the reasonableness of its explanation for its noncompliance with the act. Therefore, at the time that Hood filed the motion for reconsideration in question, the court had not yet been presented with argument relating to whether the court properly relied on O'Dea

for the purpose of the court's "agency dishonesty" penalty factor ruling. Hence, given the evolving legal theories presented to the court, it was not unreasonable for the trial court to deny the City's request for sanctions.

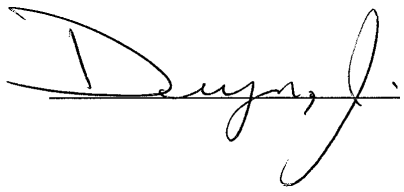
Thus, the trial court did not err by denying the City's motion for sanctions. Accordingly, the City's appellate assertion fails.[6]

IV

Hood requests an award of attorney fees should he prevail on appeal. The Public Records Act authorizes an award of attorney fees to a prevailing party. RCW 42.56.550(4). However, Hood is not the prevailing party in this matter with regard to the issue arising from the Public Records Act. Hood also requests an award of attorney fees pursuant to RAP 18.9(a) arising from the City's appeal of the trial court's order denying the City's request for sanctions. However, given the nature of this matter, the City's appeal was not frivolous.

Thus, Hood does not establish an entitlement to an award of attorney fees. We deny his requests.

Affirmed.



[6] The City also asserts that the trial court erred by not providing any explanation of its basis for denying its motion for sanctions. Again, we may affirm the trial court's ruling on any ground supported by the record. Alsager, 165 Wn. App. at 14 (citing Seawest Inv. Assocs., LLC, 141 Wn. App. at 310). As set forth above, the record contains an adequate basis to affirm the trial court's denial of the City's motion for sanctions. The City next asserts that the trial court abused its discretion by not, sua sponte, imposing sanctioning against Hood pursuant to the court's inherent authority to do so in response to a party's bad faith delay or disruption of the proceedings. Again, for the reasons stated herein, the City's assertion is unavailing.

WE CONCUR:

Díaz, J.

ERIC HOOD

July 22, 2024 - 1:58 PM

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