WASHINGTON STATE SUPREME COURT

ERIC HOOD, Appellant , v. CITY OF LANGLEY, Respondent.	No. 1035209 **MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW**

I. MOTION AND RELIEF SOUGHT

Pursuant to RAP 1.2 and RAP 18.8, appellant moves for an extension of time to file a Petition for Review.

II. FACTS RELEVANT TO MOTION

On October 4, 2024, Division 1 ordered that two of Hood's cases be consolidated and that a consolidated brief be filed on November 4, 2024. Appendix 1.

On October 7, 2024, this Court ordered Hood to file his Petition for Review on November 6, 2024. Appendix 2.

On October 7, 2024, Hood's attorney in one of the Division 1 cases moved to separate them. Appendix 3.

On October 8, 2024, Hood, acting pro se in the other Division 1 case, also requested that Division 1 separate the cases and requested an extension of to time to file either his opening or consolidated brief. Appendix 4.

As of the date of this motion, Division 1 has not responded to either Hood's or his attorney's motions.

III. GROUNDS FOR RELIEF

Two appellate briefs are currently scheduled to be filed two days apart. Because the scheduling of these briefs detracts from Hood's ability to adequately prepare either of them, an extension of time to file a Petition for Review is warranted. RAP 1.2, 18.8.

City would not be prejudiced by extension of time.

IV. CONCLUSION

For the above reasons, this Court should grant Hood an extension of 14 days after November 6, 2024 to file a Petition for Review.

This brief contains 236 words.

DATED this 24th day of October, 2024, by,

s/Eric Hood
Eric Hood
PO Box 1547
360.632.9134
Langley, WA 98260
ericfence@yahoo.com

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: Jessica Goldman.

Signed by: Date: October 6, 2024

s/Eric Hood

Eric Hood
PO Box 1547 360.632.9134
Langley, WA 98260
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Appendix

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750

October 4, 2024

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Case #: 862090
Eric Hood, Appellant v. City of Langley, Respondent
Island County Superior Court No. 19-2-00611-5

Counsel:

The following notation ruling by Court Administrator/Clerk Lea Ennis of the Court was entered on October 4, 2024:

> At direction of the panel, oral argument for case #862090 is stricken. Further, pursuant to RAP 3.3(b), the court on its own initiative hereby consolidates case #866869 under case #862090. All pleadings shall be filed under #862090.
>
> The record in each matter has been perfected and, absent further order of this court, no further supplementation will be permitted. The parties shall file a consolidated brief addressing each previously identified assignment of error in #862090 and any additional assignment of error for #866869. The consolidated briefs shall be filed under #862090.
>
> Appellant's consolidate brief shall be filed no later than November 4, 2024. Respondent's consolidated brief shall be filed 30 days after service of the appellant's brief. Any consolidated reply brief is due 30 days after service of respondent's brief. Any motions to file over-length briefs shall be filed with the consolidated brief.

Sincerely,

Lea Ennis
Court Administrator/Clerk

law

ERIN L. LENNON
SUPREME COURT CLERK

SARAH R. PENDLETON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON

TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

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October 7, 2024

LETTER SENT BY E-MAIL ONLY

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Re: Supreme Court No. 1035209 – Eric Hood v. City of Langley
Court of Appeals No. 850750 – Division I
Island County Superior Court No. 16-2-00107-1

Counsel and Eric Hood:

On October 7, 2024, this Court received the Petitioner's "MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW" and the "RESPONDENT'S OPPOSITION TO MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW" (with attached declaration). The matter has been assigned the above referenced Supreme Court case number.

The parties are advised that no ruling is being made at this time on the Petitioner's motion for an extension of time to file a petition for review. A Department of the Court will decide the Petitioner's motion for extension of time, but only if the Petitioner files a proposed petition for review in this Court by **November 6, 2024**. The content and style of the petition should conform with the requirements of RAP 13.4(c). I have enclosed for Petitioner a copy of Forms 9, 5, 6, and part F of Form 3 from the appendix to the rules.

Once the proposed petition for review is received, both the motion for extension of time and the proposed petition for review will be considered by a Department of the Court. The Court will make a decision without oral argument. The Court will only consider the petition for review if it first decides to grant the motion for extension of time. A motion for extension of time to file is normally not granted; see RAP 18.8(b).

Failure to file a proposed petition for review by **November 6, 2024,** will likely result in dismissal of this matter. It is noted that the proposed petition for review will need to be accompanied by a $200 filing fee.

The parties are referred to the provisions of General Rule 31(e) regarding the requirement to omit certain personal identifiers from all documents filed in this court. This rule provides that parties "shall not include, and if present shall redact" social security numbers, financial account numbers and driver's license numbers. As indicated in the rule, the responsibility for redacting the personal identifiers rests solely with counsel and the parties. The Clerk's Office does not review documents for compliance with the rule. Because briefs and other documents in cases that are not sealed may be made available to the public on the court's internet website, or viewed in our office, it is imperative that such personal identifiers not be included in filed documents.

Counsel are advised that future correspondence from this Court regarding this matter will most likely only be sent by an e-mail attachment, not by regular mail. This office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory. For the Petitioner this Court has an e-mail address of: ericfence@yahoo.com.

Sincerely,

Sarah R. Pendleton
Acting Supreme Court Clerk

SRP:bw

Enclosure as stated

COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION I

ERIC HOOD, Appellant, v. CITY OF LANGLEY, Respondent.	No. 862090, and No. 866869 Island Co. 19-2-00611-5 Island Co. 21-2-00226-15 **MOTION TO SEPARATE OR UN-CONSOLIDATE CASES**

I. IDENTITY OF MOVING PARTY

This motion is presented by appellant Eric Hood.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 1.2 and RAP 3.3, appellant Hood moves the Court to separate (or un-consolidate) two separate PRA cases that should not have been consolidated.

III. GROUNDS FOR RELIEF SOUGHT

A. Appeal No. 862090 arises out of a 2019 PRA case in Island County.

The appeal at issue in No. 862090 arises directly out of an Island County superior court ruling dismissing Hood's 2019

PRA case against the City of Langley. The superior court dismissed that case on December 18, 2023, and Hood appealed to this Court on January 7, 2024. Undersigned counsel represented Hood in the trial court in the 2019 case, and also represents Hood in appeal No. 862090. No party ever suggested that this appeal should be consolidated with any other case. This appeal has been fully briefed, including amicus briefing, and was previously set for oral argument on October 29, 2024.

B. Appeal No. 866869 arises out of a 2021 PRA case in Island County.

The other appeal at issue (No. 866869) arises out of the Island County superior court's denial of Hood's *pro se* CR 60(b) motion in Hood's 2021 PRA case. *See Notice of Appeal* (5/13/24). Undersigned counsel previously represented Hood in the 2021 case, which was dismissed by the superior court in February 2023. No immediate appeal was filed. Undersigned counsel withdrew in the 2021 superior court case on February 5, 2024 to enable Hood to pursue a CR 60(b) motion in the superior court *pro se*.

Hood's *pro se* CR 60(b) motion in the 2021 case was denied by the Island County superior court on April 16, 2024. Hood appealed, *pro se*, on May 13, 2024. *See Notice of Appeal* (5/13/24). Undersigned counsel does ***not*** represent Mr. Hood in this unrelated appeal from the 2021 superior court case. No party ever suggested that Hood's *pro se* appeal should be consolidated with any other case.

C. There is no reason to consolidate these appeals, which arise out of different Island County cases.

On September 16, 2024, Mr. Hood, *pro se*, filed a motion in his appeal from the 2021 case (No. 866869) requesting, *inter alia*, that Hood's *pro se* appeal of the 2021 case be stayed until after an opinion is issued in the appeal of the 2019 case (No. 862090). *Motion to File Overlength Brief* (No. 866869) at 17-18. Hood did ***not*** request that the case be consolidated with the 2019 case.

Nor did the City request consolidation. In opposition to Hood's motion for stay the City asserted that there was no legal or factual connection between these two cases. *Opposition* (No.

866869) at 13. In his reply, Hood renewed his request for a stay of his appeal in the 2021 case, but Hood did ***not*** suggest that the cases should be consolidated under RAP 3.3.

Undersigned counsel had no notice that this Court was even considering consolidation. If the City had actually moved to consolidate these two appeals Hood would have opposed such consolidation. As the City has noted there is no direct legal or factual link between the cases that would warrant consolidation under RAP 3.3.

By order dated October 4, 2024, the Court Administrator *sua sponte* consolidated appeals No. 869020 and 866869, and ordered the parties to prepare consolidated briefs. *Order* (October 4, 2024). Until this order was issued, undersigned counsel had no notice that consolidation of these two appeals had even been suggested.

The order dated October 4, 2024, incorrectly lists only the 2019 Island County case, while prior orders issued in only No. 866869 correctly note that the underling superior court case is

the 2021 Island County case. This suggests that this Court mistakenly assumed that both appeals arise out of the 2019 case, and that the October 4, 2024 order to consolidate was based on that incorrect assumption.

These cases should ***not*** be consolidated under RAP 3.3. Consolidation at this point will ***not*** "save time and expense" or provide for a fair review of the cases. On the contrary, consolidation of these cases will create large amounts of unnecessary work for everyone involved. Undersigned counsel represents Hood in his appeal in the 2019 case, but ***not*** in Hood's *pro se* appeal in the 2021 case. Furthermore, the briefing in both cases is completed.

Undersigned counsel did ***not*** represent Hood in his CR 60(b) motion in the 2021 superior court case, did ***not*** prepare the record in appeal No. 866869, and did ***not*** prepare the briefs. This Court's order to prepare consolidated briefs effectively requires undersigned counsel to re-write both of his briefs in the 2019 case in order to address an unrelated appeal from a different case

that counsel was not involved in. And there is no guarantee that this Court would even grant the necessary overlength brief.

Nor is there any reason for the City to incur the significant cost of re-briefing these appeals. The City has already filed both a *Brief of Respondent* and a *Response to Amicus Curiae* in the 2019 case (No. 862090). The 2019 case (No. 862090) is ready for oral argument, and should be ***un-consolidated*** from Hood's *pro se* appeal from the 2021 case (No. 886869)

IV. CONCLUSION

For all these reasons, the Court should separate (or un-consolidate) these two separate PRA cases that should not have been consolidated.

///

///

RESPECTFULLY SUBMITTED this 7th day of October, 2024.

By: 

William John Crittenden
WSBA No. 22033

WILLIAM JOHN CRITTENDEN
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12345 Lake City Way NE 306
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CERTIFICATE OF SERVICE

The undersigned certifies that on the 7th day of October, 2024, a true and correct copy of this pleading was served on the parties as follows:

Via Email and Filing in Appellate Portal.

jessicag@summitlaw.com

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Summit Law Group
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ERIC HOOD, pro se
Eric Hood
P.O. Box 1547
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By: 

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WILLIAM JOHN CRITTENDEN

October 07, 2024 - 12:27 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	86209-0
Appellate Court Case Title:	Eric Hood, Appellant v. City of Langley, Respondent
Superior Court Case Number:	19-2-00611-5

The following documents have been uploaded:

- 862090_Motion_20241007122513D1708415_7806.pdf
  This File Contains:
  Motion 1 - Other
  The Original File Name was 2024 10 07 Motion to Un-consolidate Cases.pdf

A copy of the uploaded files will be sent to:

- christinekruger@dwt.com
- ericfence@yahoo.com
- ericstahl@dwt.com
- jessicag@summitlaw.com
- sharonz@summitlaw.com
- ucopian@gmail.com

Comments:

Motion to UN-consolidate cases

Sender Name: William Crittenden - Email: bill@billcrittenden.com
Address:
8915 17TH AVE NE
SEATTLE, WA, 98115-3207
Phone: 206-361-5972

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Court of Appeals No. # 866869

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION I

ERIC HOOD

Appellant

v.

CITY OF LANGLEY,

Respondent.

APPELLANT'S MOTION TO EXTEND TIME TO FILE

Eric Hood, Pro Se
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I. MOTION AND RELIEF SOUGHT

Pursuant to RAP 18.8(a), Appellant Eric Hood (Hood) requests extension of time to file his consolidate brief, from November 4, 2024 to November 22, 2024. Alternatively, if Court reinstates its Order dated September 30, 2024 Hood requests time to file his opening brief to November 22, 2024.

II. FACTS RELEVANT TO MOTION

P The basis of this case, *Hood v. Langley* (2021), no. 866869, is City's misrepresentation, including misrepresenting that its search for records related to its termination of its police chief was adequate. Appendix 1, p. 17.

On September 30, 2024, this Court denied Hood's motion to stay this case until after it decides whether City's search for records related to its termination of its police chief, was adequate. *Hood v. Langley* (2019) no. 862090. Appendix 2.

On October 4, 2024 this Court ordered that this case, *Hood v. Langley* (2021) no. 866869, be consolidated with case no. 862090 and ordered that a consolidate brief be filed on November 4, 2024. Appendix 3.

On October 6, 2024, Hood spent time reviewing records and drafting a motion to extend time to file a Petition for Review in *Hood v. Langley* (2016), no. 850750, which relates to City's dishonesty. The basis of Hood's motion was that he was unaware of this Court's final ruling in *Hood v. Langley* (2016), no. 850750. Appendix 1.

The same day, City claimed to this Court that Hood was aware of this Court's final ruling in case no. 850750, because, in the introductory portion of a 23-page brief it filed on September 26, 2024, City had *mentioned* an Order, dated "August 6, 2024" regarding case no. 850750, though no order was issued on that date in that case. *Compare* 10/7/24 *Opp.*, p. 2, with 10/7/24 *Goldman Decl.*, Appendix 2, p. 4 *and with Order* in case no. 850750, dated **July 1, 2024**. Appendix 4 of this brief.

City's claim that its 9/26/24 brief made Hood aware of this Court's July 1, 2024 Order presumes that Hood was somehow obligated to trust City counsel, which has repeatedly misrepresented facts and case law to Hood and courts. *See e.g.,* Appendix 1 and Appendix 5. Even if City believes that its

"citation" to a non-existent order constituted notice, Hood was not aware of the *Order* until October 6, 2024. 10/8/24 *Declaration of Eric Hood*.

On October 7, 2024, Hood moved to extend his Petition for Review. Appendix 6. The same day, the Supreme Court ordered that Hood file his Petition for Review on November 6, 2024, two days after Hood is required by this Court to file a consolidate review. Appendix 7.

On October 7, 2024, Hood's attorney, William Crittenden, who represents Hood in case no. 862090 moved to separate case no. 866869, where Hood is pro se, from case no. 862090. Appendix 8.

On October 7, 2024, Hood went to a medical clinic, which required nearly two hours of his time. Hood spent the remainder of his workday reviewing and responding to the events above. Hood spent the morning of October 8, 2024 drafting this motion.

Hood must prepare for and present at hearing on October 11, 2024 in an unrelated matter

Hood will be unable to work on October 12-13 and 19-21, 2024 due to family events.

The above events detract from Hood's ability to properly prepare a consolidate brief by November 4, 2024. If this Court separates the cases and reinstates its former order, then the same events detract from Hood's time to submit an opening brief on October 17, 2024. Furthermore, the brief Hood will file, whether consolidate or opening, is not time sensitive and City will not be prejudiced by an extension.

III. GROUNDS FOR RELIEF

This Court may, "on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice[.]" RAP 18.8(a). Hood's circumstances constitute good cause for extension of time.

'The Rules of Appellate Procedure were designed to allow flexibility so as to avoid harsh results." *State v. Graham,* 454 P.3d 114, 116 (Wash. 2019), citing RAP 18.8. "Washington law

shows a strong preference for deciding cases on the merits." *Yorkston v. Whatcom County,* 11 Wn.App.2d 815,824,461 P.3d 392, (Div. 1 2020), citing, *Luckett v. Boeing Co.,* 98 Wn.App.307,313,989 P.2d 1144 (1999).

It appears that this Court mistakenly consolidated case no. 86686 and case no. 862090. Hood is uncertain when this Court will decide the motion to separate, Appendix 8, or whether Hood will have to respond to additional frivolous motions for sanctions from the City. If this Court does separate the cases, then Hood is uncertain whether the Court will stay this case, *Hood v. Langley* (2021), no. 866869, until after it rules in case no. 862090 (where Hood is represented by Mr. Crittenden) or reinstate its Order requiring Hood to file his opening brief in this case by October 17, 2024. These uncertainties warrant an extension of time.

Hood thus requests that Court separate case no. 86686 and, for reasons previously argued, reconsider staying it until after case no. 862090 is decided.

If this Court separates the two cases but does not stay, then for reasons discussed above, Hood requests that this Court extend Hood's opening brief in case no. 86686 until November 22, 2024.

Because the requested extension will "serve the ends of justice," RAP l.2(a), Hood's motion should be granted pursuant to RAP 18.8(a).

VI. CONCLUSION

Based on the foregoing, Hood's motion should be granted.

WORD COUNT: 456

Dated this 8th day of October, 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 the below date in Langley, WA, I emailed the foregoing documents to counsel for Respondent.

By: Date: October 8, 2024

s/ Eric Hood

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360.632.9134
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Court of Appeals No. #: 866869

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION I

ERIC HOOD

Appellant

v.

CITY OF LANGLEY,

Respondent.

MOTION TO FILE OVERLENGTH BRIEF, JUDICIALLY NOTICE RELEVANT PUBLIC RECORDS, STAY, AND SEPARATELY ARGUE WHETHER PRO SE LITIGANTS IN PRA CASES SHOULD RECEIVE ATTORNEY FEES.

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Table of Contents

TABLE OF AUTHORITIES

I. INTRODUCTION

The basis of this appeal is that the City of Langley ("City") misrepresented to the trial court, among other things, that Eric Hood ("Hood") received emails sent from records@langleywa.org in May of 2020 requesting payment for records, ignored them, and thereby abandoned his Public Records Act ("PRA") request.

The City had little difficulty asserting its misrepresentations contained in multiple briefs and declarations comprising over 2000 pages, including City's 100-page motion for judicial review and dismissal By contrast, *proving* misrepresentation requires detailed explanation and multiple references and comparisons of multiple documents, some of which are not in the court record. Hood therefore requests permission to file an overlength opening brief to adequately address the breadth and sheer number of City's misrepresentations.

For the same reason, Hood requests that this Court judicially notice public records supporting Hood's claims that the City misrepresented facts and law to the trial court. Specifically, Hood requests this court judicially notice the record in *Hood v. Langley* (2019) Court of Appeals, Division I, no. 862090, and emails involving Hood and City's former attorney, *Declaration of Eric Hood*, Exhibit 1, attached.

Hood requests the Court stay this case until after this Court decides *Eric Hood v City of Langley*, Division I, no. 862090, as its decision there will impact its decision here.

Finally, Hood requests permission to separately brief whether a pro se litigant should be permitted attorney fees.

II. ISSUES

1. Whether to permit Hood to file an overlength brief that will adequately detail the City's misrepresentations to the trial court.
2. Whether to judicially review public records supporting Hood's claims that City's misrepresentations persuaded the

trial court to erroneously dismiss Hood's motion under CR 60(b).

3. Whether to stay this case pending this Court's decision in Hood v City of Langley2019 Court of Appeals No. 862090.

4. Whether the parties should separately brief the issue of whether pro se litigants in PRA cases are entitled to attorney fees.

III. EVIDENCE RELIED UPON

In addition to referenced court papers, the attached *Declaration of Eric Hood* exhibits public records supporting Hood's claim that the City's misrepresentations improperly persuaded the trial court to rule in City's favor.

IV. FACTS RELEVANT TO JUDICIAL NOTICE

A. This Court has good cause to judicially notice *Eric Hood v City of Langley* (2019)

On July 20, 2018, Hood submitted a PRA request to the City for "any records related to the City's decision to terminate [Police Chief] Dave Marks[…]" CP 330.

After City produced some records, Hood suspected silent withholding, as had occurred in response to his 2016 PRA request. [1] Hood sued. CP 196-199.

City's responses to Hood's discovery in the 2019 case *id*., did not convince Hood that City had "already produced all identifiable records" related to Marks' termination. CP 152:22. Hood therefore submitted a PRA request to City on January 30, 2020. CP 6. Hood requested specific records he believed City withheld by quoting verbatim text from "records previously produced," e.g., Hood requested "'Sheriff Mark Brown's letter [regarding Dave Marks] to Mayor Callison on November 29, 2017.'" CP 7-8. *Id*.

City's response to Hood's January 30, 2020 PRA request bases the lawsuit Hood served City in April 2021, CP 27=32, and hence this appeal. As in Hood's 2019 case, in response to Hood's January 30, 2020 PRA request, the City did not search

[1] *Hood v. City of Langley*, 7 Wn. App. 2d 1030, (Wash. Ct. App. 2019) (In response to Hood's PRA request City told Hood that it had made "calendars […] available.") After litigating for nearly eight years, City was found "liable under the act during the period of March 2016 to February 2019 [for withholding the calendars]." *Hood v. City of Langley*, No. 85075-0-I, 4 (Wash. Ct. App. Jul. 1, 2024))

the files of a use of force consultant. CP 181-182 (describing search). Because the adequacy of City's search is at issue here, CP 2168 and 2174, referring to trial court conclusion #2, CP 2243, this Court has good cause to judicially notice *Hood v City of Langley* (2019), Division I, No. 862090.

B. This court has good cause to judicially notice emails between Hood and City's attorney

On July 12, 2021, in answer to Hood's complaint allegation that City "has not provided the first installment or any other installments of records responsive to Hood's January 2020 records requests." CP 29, City claimed it "lacks sufficient information to form a belief as to the truth of [Hood's allegation, *supra*.]" CP 40, about 74 days after it was served. CP 34.

On October 6, 2021, the City's second attorney in this matter, Ann Marie Soto, notified Hood's attorney that the City:

> undertook a review of its prior actions under the Public Records Act and determined that it had not completed its response [to Hood's January 30, 2020 PRA request]. The City then immediately resumed gathering the responsive records for production to Mr. Hood and on September 8, 2021, informed him that the first installment was available upon receipt of payment, which I understand the city is still waiting for.

CP 87.

On October 6, 2021, Hood stated to his attorney, City mayor, City insurer and Soto, "I have no record of having been informed of an installment or request for payment." CP 2179.

On October 6, 2021, Soto using her own email, stated to Hood,

> Attached are the emails to you from the City that I was cc'd on emails "regarding *your* [i.e., Hood's January 30, 2020 PRA] request [that are dated] 9/8 and 9/20[2021]. I will follow up with the City regarding whether there were *any* bouncebacks or other communications to you regarding this request that I was not copied on.

Id., (emphasis added). The attached emails were (i) a September 8, 2021 email sent directly from records@langleywa.org asking for payment for a "1st installment" in response to Hood's "Public Records Request dated January 30th, 2020." CP 530, and (ii) a September 20, 2021 email from clerk@langleywa.org, which did not mention payment. CP 564.

On October 11, 2021,

> **[Soto] confirmed with the City that no other emails were sent to [Hood] regarding the January 30, 2020 request aside from the ones already forwarded, nor did they receive any bounce backs.**

CP 2181. (emphasis added).

On October 19 and 28, 2021, the City, using *only* records@langleywa.org, directly emailed Hood a request for payment for a second installment to Hood. CP 566, 929. Hood did not respond to these emails.

On November 17, 2021, the City, again using *only* records@langleywa.org, directly emailed Hood to remind him of its October 28, 2021 payment request. Hood did not respond to this email.

On November 19, 2021, Soto emailed Hood's attorney, stating,

> City is eager to resolve these cases without further unnecessary delay or legal expense [...] City informed Mr_ Hood that the second installment for the 2021 PRR is available upon receipt of payment last month but has not yet heard from him or received payment.

CP 52-53.

On November 19, 2021, Hood listed emails he had received from the City in October of 2021 and stated to Soto,

> None of them mention a "second installment" or request payment for same. Please clarify your statement and/or send me the information you believe I previously received.

Attached *Declaration of Eric Hood*, Exhibit 1, p. 4 (emphasis added).

On November 22, 2021, Hood and Soto had the following email exchange:

> [**Soto**] Here are again the emails the City previously sent to you regarding the second installment. *The City has not received any bounce backs or "undeliverable email" messages in response to these emails. You may wish to check your email spam or filter settings as this seems to keep happening.*
>
> [**Hood**] [With reference to City's *mailed* May 19, 2020 letter, CP 518, Hood's emailed reply on May 21, 2020, CP 520, and emails to former City attorney Myers on September 19, 2020, CP 21-22] Ms. Happel never forwarded me the "notification that your email delivery failed", thus, I was unable to follow up with my email provider and of course Myers did not respond. *I have repeatedly checked my inbox, spam and trash folders and email filter. All emails I have received from <records@langleywa.org> are dated on or before March 18, 2020, and that email address is not filtered. Please consider that the remedy to this problem, like many others, may require greater responsiveness on the City's part.* In the future, please correspond via mail and/or send from an address *other* than <records@langleywa.org>.
>
> [**Soto**] I was not implying any blame, simply acknowledging that *this has happened a few times which could have been due to your email filter given that the City had not received a bounce-back. The reason I noted this issue in my letter was to ensure that you are receiving the*

> *City's emails as the City had not heard from you, hence a concern that you had not actually received the emails.* As you can see, the City has been following up on its messages, clearly in an attempt to provide you with adequate notice regarding your PRR. I will check with the City on sending correspondence from another City email, but *they will also begin sending a copy via mail.*

Id, p. 1-3 (emphasis added).

City directly conveyed its payment request for a second installment to Hood by email *other* than records@langleywa.org. *Id.*, and see CP 943 (email from clerk@langleywa.org). Hood promptly paid it. CP 944.

On December 1, 2021, the City again using *only* records@langleywa.org, directly emailed Hood about a third installment. CP 951 Hood did *not* respond to this email. Later that same day, City directly emailed Hood a copy of the December 1, 2020 email from clerk@langleywa.org to "make sure that you receive this." CP 307.

On January 19 and February 3, 2022, City, again using *only* records@langleywa.org, directly emailed Hood regarding a third instalment of records. CP 2095. Hood did *not* respond to these emails.

On February 16, 17, 23, March 9 and 14, 2022, using emails *other than* records@langleywa.org City sent emails to Hood regarding records and requests for payment. CP 302-313. Hood promptly replied and paid. *Id.*

City's direct communications with Hood, *supra,* some of which were not cc'd to Soto, violated a court order that City not "communicat[e] directly" with Hood,) CP 79-80, paragraphs 4-5.

On May 18, 2022, precisely twenty eight days before hearing, the City filed a motion for judicial review and dismissal claiming that (i) Hood "abandoned" his January 30, 2020 PRA request by failing to pay for a first installment, CP 191, (ii) the City reopened it after Hood sued, and (iii) adequately searched. *Id*. And see CP 147, 247, 297, 323 (motion and declarations amounting to approximately 2000 pages).

Hood's case was dismissed on February 13, 2022. CP 2234.

On February 8, 2024, Hood filed his motion under CR 60(b). CP 2155.

On March 25, 2024, at hearing on Hood's CR 60(b), City repeated its claim that "after May, 2020, Mr. Hood successfully received email from records@langleywa.org many times." VRP 14. However, City claimed *for the first time* that

> [T]he *only way* [Hood could have been informed] about the amount he owed for copying costs was via email from this exact same account.[…] *City did not notify him of these charges in any other manner*. […]

Id. (emphasis added).

On April 16, 2024, Hood's motion was denied. CP 2331.

Because the City presented its "only way" claim *after* parties had fully briefed Hood's CR 60(b) motion, this Court has good cause to judicially notice the November 19 and 22, 2021 emails. Hood Decl., Exhibit 1.

ARGUMENT

A. Whether to take judicial notice

> [When] the nature of the proceeding was such that the trial or the appellate court could infer that prior proceedings had taken place in the case before it […] the record of those proceedings [may be] noticed judicially.

Swak v. Dep't of Labor & Indus., 40 Wn.2d 51-54, 240 P.2d 560 (1952). Although this case is " independent and separate," *id*.,

City would not be prejudiced by judicial notice of *Hood v City of Langley* (2019), Division I, No. 862090 because it has not been "adjudicated." *Id*. This Court's judicial notice of issues and facts briefed therein, many of which are identical to those here, would promote judicial economy.

With regard to the emails in *Hood Declaration*, Ex. 1,

> ER 201(b) authorizes the court to take judicial notice of a fact that is "not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Rodriguez v. Loudeye Corp., 144 Wash. App. 709, 725-26, 189 P.3d 168 (2008) (ellipses in original). The emails are public records that City possesses, thus nothing prevents this Court's judicial notice of them.

The emails show that *two* City attorneys/officers of the court misrepresented to Hood *and* the trial court that City (i) received no bounced back emails, (ii) knew that emails from records@langleywa.org were not received by Hood, (iii) continued to use records@langleywa.org to send payment notices to Hood, and (iv) feigned a desire to settle before (v) filing a motion in which City relied on its misrepresentations to

dismiss Hood's case. In addition, the City *intentionally* omitted these significant emails from its motion for judicial review though City was required to provide "fullest assistance" to Hood and *solely* bore the "burden of proof." RCW 42.56.100 and .550(1). These emails support Hood's argument that the City's misrepresentations persuaded the trial to rule that City did not violate the PRA, thus this Court should notice them.

B. Whether to permit overlength opening brief

Courts may interpret rules "to promote justice." RAP 1.2. A party may move to "waive or alter the provisions of any of these rules." RAP 18.8. Briefing length is at this Court's discretion. RAP 18.17(c).

Section IV B, *supra*, word count of approximately 1251 words, provides only *some* facts regarding only *one* of City's misrepresentations. While Hood cited some emails at length for purposes of clarity and convenience, this Court's understanding would be better served by truncated quotation and explanation of court papers that Hood merely cited. *Id.*

City made *multiple* misrepresentations contained in multiple briefs, including its 100-page motion for judicial review and dismissal. To adequately address them, Hood requests permission to file an overlength opening brief. Hood estimates that an additional 5000 words should suffice.

C. Whether to stay

"A court's determination on a motion to stay proceedings is discretionary." *Serv. Emps. Int'l Union Local 925 v. Univ. of Wash.*, 423 P.3d 849, 860 (Wash. Ct. App. 2018)

"[T]o to insure effective and equitable review," RAP 8.3, this Court may stay this case until after it adjudicates *Hood v. Langley* (2019). There, the primary issue is whether the City can be found to have adequately searched if it ignored the files of its use of force consultant.

The City ignored the files of its use of force consultant in response to Hood's January 30, 2020 PRA request but nonetheless misrepresented that its search was "adequate." CP 192. "Because the City litigated in bad faith, the Court should reject the City's arguments that it adequately searched [and]

vacate its findings and conclusions," CP 2169, including that City's search was "reasonabl[e]." CP 2243.

Because the adequacy of City's search in this case will be impacted by this Court's conclusions in *Hood v. Langley* (2019), proceedings here should be stayed until after that decision is issued. A stay would also moot whether to permit judicial review of *Hood v. Langley* (2019). City would not be prejudiced by a stay.

D. Whether to separately brief pro se attorney fees

Hood previously argued this issue. Appendix 1. Because its adaptation to the circumstances here would significantly add to the length of Hood's opening brief, Hood requests that this issue be separately briefed. *See* RAP 1.2 *and* RAP 18.8, *supra*.

VI. CONCLUSION

In accordance with the foregoing, Hood's *Motion* should be granted.

WORD COUNT: 2655, not including attached declaration and appendices.

Dated this 16th day of September, 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 the below date in Langley, WA, I emailed the foregoing documents to counsel for City of Langley

By: /s/ Eric Hood Date: September 16, 2024
ERIC HOOD

APPENDIX 1

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 1

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APPENDIX 1

Codes

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.

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 1

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

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

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
PO Box 1547
Langley, WA 98260
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

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.

Certificate Hash:	70B9B779783F2B461CF5F2DB907D6EC973E89492
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APPENDIX 1
ERIC HOOD

January 25, 2023 - 1:10 PM

Transmittal Information

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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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September 30, 2024

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Case #: 866869
Eric Hood, Appellant v. City of Langley, Respondent
Island County Superior Court No. 21-2-00226-0

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on September 30, 2024:

> This is a public records act case. To file a motion to file an over-length brief with the brief, appellant should also file the brief, so this Court may evaluate whether an over-length brief is appropriate.
>
> Appellant may also include argument regarding judicial notice and attorney fees in appellant's opening brief.
>
> A stay of this appeal pending No. 86209-0-I is denied at this time as the impact of a decision in No. 86209-0 on this matter is uncertain.

Sincerely,

Lea Ennis
Court Administrator/Clerk

law

ERIN L. LENNON
SUPREME COURT CLERK

SARAH R. PENDLETON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON

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October 7, 2024

LETTER SENT BY E-MAIL ONLY

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Re: Supreme Court No. 1035209 – Eric Hood v. City of Langley
Court of Appeals No. 850750 – Division I
Island County Superior Court No. 16-2-00107-1

Counsel and Eric Hood:

On October 7, 2024, this Court received the Petitioner's "MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW" and the "RESPONDENT'S OPPOSITION TO MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW" (with attached declaration). The matter has been assigned the above referenced Supreme Court case number.

The parties are advised that no ruling is being made at this time on the Petitioner's motion for an extension of time to file a petition for review. A Department of the Court will decide the Petitioner's motion for extension of time, but only if the Petitioner files a proposed petition for review in this Court by **November 6, 2024**. The content and style of the petition should conform with the requirements of RAP 13.4(c). I have enclosed for Petitioner a copy of Forms 9, 5, 6, and part F of Form 3 from the appendix to the rules.

Once the proposed petition for review is received, both the motion for extension of time and the proposed petition for review will be considered by a Department of the Court. The Court will make a decision without oral argument. The Court will only consider the petition for review if it first decides to grant the motion for extension of time. A motion for extension of time to file is normally not granted; see RAP 18.8(b).

Failure to file a proposed petition for review by **November 6, 2024,** will likely result in dismissal of this matter. It is noted that the proposed petition for review will need to be accompanied by a $200 filing fee.

The parties are referred to the provisions of General Rule 31(e) regarding the requirement to omit certain personal identifiers from all documents filed in this court. This rule provides that parties "shall not include, and if present shall redact" social security numbers, financial account numbers and driver's license numbers. As indicated in the rule, the responsibility for redacting the personal identifiers rests solely with counsel and the parties. The Clerk's Office does not review documents for compliance with the rule. Because briefs and other documents in cases that are not sealed may be made available to the public on the court's internet website, or viewed in our office, it is imperative that such personal identifiers not be included in filed documents.

Counsel are advised that future correspondence from this Court regarding this matter will most likely only be sent by an e-mail attachment, not by regular mail. This office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory. For the Petitioner this Court has an e-mail address of: ericfence@yahoo.com.

Sincerely,

Sarah R. Pendleton
Acting Supreme Court Clerk

SRP:bw

Enclosure as stated

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]

---

[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.

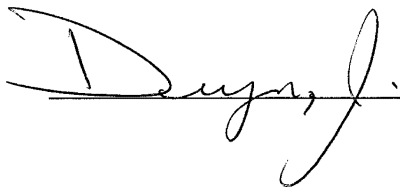
Thus, the trial court did not err by denying the City's motion for sanctions. Accordingly, the City's appellate assertion fails.[6]

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.

Court of Appeals No. 850750

WASHINGTON COURT OF APPEALS
DIVISION ONE

ERIC HOOD,

Appellant/Cross-Respondent,

v.

CITY OF LANGLEY

Respondent/Cross-Appellant.

PLAINTIFF'S MOTION FOR RECONSIDERATION

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IV. GROUNDS FOR RELIEF

Trial court abused its discretion.

A. Trial court did not expressly consider certain Yousoufian factors and omitted or misinterpreted relevant facts

The penalty factors considered by trial court and this Court included:

> 17. **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 trial court must consider." *Yousoufian*, 168 Wn.2d at 460. *The evidence amply demonstrates City's good faith and honesty in responding to Mr. Hood's initial January 5, 2016 request* ***and*** *his January 15, 2016 email.*
>
> 18. **City promptly brought in a lawyer to assist**. […]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 City's outside counsel.
>
> 19. **City's explanation for noncompliance is reasonable.** This Court found City's explanation for noncompliance *before March 1, 2016* eminently reasonable. 7/28/22 Letter Ruling at 7.
>
> 21. **The Court finds that 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 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 City produced the calendar that is the sole issue remaining from Mr. Hood's lawsuit. City itself could not have been guided by O'Dea.
>
> 24. **City did not act with negligence, recklessness, wantonly or in bad faith, nor did it intentionally fail to comply with the PRA.** City was not intransigent.

Op. p. 12 (quoting trial court ruling) (boldface in original, italic emphasis added).

This Court's finding that "the trial court entered an order that *expressly considered* 9 out of the 16 Yousoufian II mitigating and aggravating factors," *Id*., p. 11, is inaccurate. In assessment #17, supra, trial court misquoted mitigating factor (3) which states, "the agency's good faith, honest, timely, and strict compliance with all PRA procedural requirements and exceptions." *Yousoufian v. Office of Sims, 168 Wn. 2d 444, 467 (Wash. 2010)* The trial court's alteration omitted the crucial words "timely," "strict" and "all," and converted the adjectival modifiers of "compliance," i.e., "good faith" and "honest," into nouns.

Its alterations significantly changed the meaning of this factor.

The question prompted by the trial court's alteration was "did City act in good faith and honesty and comply with PRA procedural requirements?" Answering that question allowed courts to (i) separate the adjectival modifiers "good faith" and "honest" from "compliance," (ii) omit "timeliness" and "strictness" from their assessment and (iii) consider only some procedural requirements and exceptions. Thus its decision was based on "untenable grounds." *Op*., p. 7

To "expressly" consider mitigating factor (3), the trial court should have asked, "considering all relevant evidence, did City in good faith, honestly, timely and strictly comply with all PRA procedural requirements and exceptions?" Similarly, with regard to Yousoufian aggravating factor (5), which trial court altered (*see* penalty assessment #24, *supra*), the proper question to ask was "Did City negligently, recklessly, wantonly, in bad

faith, or intentionally fail to comply with the PRA." *Yousoufian*, 168 Wn.2d at 468.

In addition, as shown below, this Court inaccurately found that trial court findings were "amply supported." *Op*. p. 15. Consequently, its decision rested on "unsupported" facts. *Op*. p. 7.

Holistically reviewing trial court's factual findings according to the actual language of *Yousoufian* factors and in accordance with the record shows it abused its discretion.

B. Trial court improperly assessed City's initial response to Hood's January 5, 2016 PRA request

Trial court found that *before* Hood requested records, i.e., in response to a *prior* PRA request to a *prior* mayor who employed *other* legal counsel:

> City had been advised by legal counsel that [former] Mayor McCarthy's daily appointment calendars were not public records subject to disclosure. […] City took the position, in response to [a prior and different PRA request], that Mayor McCarthy's electronic daily

> calendars were not public records. […] Apparently because the concluding email in the string from the advising lawyer cited cases addressing both notebooks and calendars as not being public records, City declined to provide them both on grounds that they were not public records.

CP 1389. According to trial court, City withheld the calendars in response to the prior PRA request because its prior legal counsel, Patricia Taraday, "advised" the prior mayor McCarthy that the calendars were not public records.

Trial court's "decision […] rests on facts unsupported in the record." *Op*. p. 7. In her "concluding email" dated December 15, 2015, Taraday did *not* "advise" McCarthy about the calendars. CP 98. Rather, she cited case law holding that calendars are not public records when they "are not circulated or intended for distribution within agency channels, are not under agency control, and may be discarded at the writer's sole discretion." *Id.,* (citing *Yacobellis v City of Bellingham*, 55 Wn App 706, 712, 780 P 2d 272 (1989)). Taraday *did* "advise" McCarthy that "the electronic calendars should be provided." CP

100.[1] Taraday provided that *correct* advice because McCarthy had told her "my calendars are electronic on my iPhone and computer and are kept by my administrative assistant and I believe could be provided for the years that I have served as mayor." CP 101.

In other words, Taraday's "advice" and citation to *Yacobellis* indicated to McCarthy that calendars *are* public records. ***Contrary*** **to legal advice, case law and personal knowledge indicating that his calendars were public records, McCarthy erroneously directed City clerk to withhold the calendars in response to the prior PRA request.** CP 103.

Under a new mayor, the City responded to Hood's January 5, 2016 PRA request on January 8, 2016. CP 1388-9 (trial court ruling referring to City Clerk *Mahler Decl*., CP 69-73).[2] Hood

---

[1] City knew the "calendars were maintained by [McCarthy's] administrative assistant in electronic format and [McCarthy] considered the electronic calendars to be public records.") CP 1885, *and see id*., fn (citing *Yacobellis* in this Courts former opinion.)

[2] *And see* this Court's opinion, CP 1880 ("[O]n January 8, 2016, [City] indicated all of McCarthy's records were available for [Hood's] inspection, including his laptop."

refers to City's response before Hood submitted a new PRA request on January 15, 2016 as City's "initial response.") **City did *not* seek legal current advice before closing its response to *Hood's* January 5, 2016 PRA request**. CP 69-73.

> Years later, during deposition, the clerk testified that she
>
> responded to [Hood's] January 5, 2016 public records request based on Mayor McCarthy's direction that counsel for City had advised City that his daily calendars were not public records.

CP 1390.

But City clerk Mahler, who handled Hood's request, and prior mayor McCarthy do *not* aver that McCarthy had correctly construed Taraday's advice or that his "direction" should have been applied to *Hood's* request. CP 69-73, CP 94-96. Nor does Mahler aver that she sought direction from a *current* mayor or counsel in response to Hood's later, distinct PRA request. *Id.*

Trial court stated that it did not know "[W]hen City's position regarding Mayor McCarthy's electronic calendars - that is, were they public records or not public records – changed." CP

1390. That question is irrelevant because Taraday had clearly indicated and advised that the calendars were public. City instead conveniently relied on a prior mayor's misconstrual of correct legal advice and *Yacobellis* as the basis for withholding the calendars from Hood. "Administrative inconvenience or difficulty does not excuse strict compliance with the PRA" *Rental Housing Ass'n v. City of Des Moines*, 165 Wn. 2d 525, 535 (Wash. 2009). *And see* RCW 42.56.550(3).

City withheld the calendars and told Hood on January 11, 2016, "I have not redacted or exempted anything from those files, so no exemption log is provided. I have no other records other than what we are making available to you." CP 1389. City neglected to say that electronic calendars existed, and even if it had, refused access to its electronic records.

City's initial response did not honestly, timely and strictly comply with all PRA procedural requirements and exceptions, including RCW 42.56.210(3).

> Records are either "disclosed" or "not disclosed." *A record is disclosed if its existence is revealed to the requester in response to a PRA request, regardless of whether it is produced.*
>
> *Disclosed records are either "produced" (made available for inspection and copying) or "withheld" (not produced).* […] Withholding a nonexempt document is "wrongful withholding" and violates the PRA.
>
> *A document is never exempt from disclosure; it can be exempt only from production.* An agency withholding a document must claim a "specific exemption," i.e., which exemption covers the document. RCW 42.56.210(3).

Sanders v. State, 169 Wn. 2d 827, 836 (Wash. 2010) (emphasis added, citations omitted).

Even if City somehow believed that the calendars were exempt, honest, strict, timely and good faith compliance with RCW 42.56.210(3) obliged City to "disclose," *supra*, the calendars to Hood at least before January 11, 2016, when it confirmed that it had completed its response. Instead,

> City did not, in fact, search the laptop for Mayor McCarthy's daily calendars in response to Mr. Hood's January 5, 2016 public records request [and] did not provide Mr. Hood with copies of Mayor McCarthy's daily calendars accessible on the laptop until February 5, 2019,

> shortly after the January 2019 Appellate Decision was issued.

CP 1390.

Even if City's decision to ignore *Yacobellis*, rely on a prior mayor's misdirection, not seek new legal counsel, shun public records laws, and withhold the calendars in response to Hood's PRA request somehow showed good faith, "good faith reliance on an exemption [does not] exonerate an agency that mistakenly relies upon that exemption." *Spokane Research & Def. Fund v. City of Spokane,* 155 Wash.2d 89, 101, 117 P.3d 1117 (2005). (citations omitted). Trial court's penalty assessment does *not* reflect that City's initial response intentionally and silently withheld records in violation of RCW 42.56.210(3). This is an abuse of discretion. 7/1/24 *Op*., p. 7. ("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.")

City's initial response also did not comply with other procedural requirements. City was required to make records "promptly available." RCW 42.56.080(2).City's withholding of calendars for approximately three years was neither "prompt" per statute nor "timely" per *Attorney's Guild v. Kitsap County*, 156 Wn. App. 110, 119 (Wash. Ct. App. 2010).

RCW 42.56.080(2) also required that City "honor" Hood's request. To honor a PRA request means to "regard or treat [it] with honor" or "give special recognition to [it]," and to "fulfill the terms of" the PRA.[3] City instead relied on a prior mayor's misdirection instead of legal advice and case law indicating the calendars *should* be disclosed.

RCW 42.56.100 required City to fully assist Hood in accessing the records he requested. City instead did not even mention the existence of the calendars and did not find a way for

[3] This court may judicially notice the common definitions of "honor" at https://www.merriam-webster.com/dictionary/honor?src=search-dict-hed

Hood to view them. CP 1880 ("would not allow Hood to search McCarthy's laptop.")

RCW 42.56.520(1) required City to provide the calendars or deny them. It did neither.

Agency inconvenience or difficulty does not excuse access to requested records. RCW 42.56.550(3). City's flawed response cannot be excused because a "testy" City Clerk had "other responsibilities." CP 1272. "The clerk did not allow Mr. Hood to search the laptop for himself on January 15th, 2016," *before* he made a new PRA request for electronic records that referenced him. CP 1270. Why? because it was inconvenient. *Id.* (She "did not then have time to supervise him.")

To summarize *supported* facts regarding City's initial response to Hood's PRA request:

(i) rather than seek current legal advice about whether the calendars were exempt from production City conveniently relied on a prior mayor's misconstrual of correct legal advice and case law;

(ii) City did *not* "disclose" the calendars pursuant to *Sanders supra*, or search for them;

(iii) City falsely told Hood on January 8 and January 11, 2016 that all responsive records were available; and

(iv) City forbade Hood's access to its electronic records.

City's repetition of its mistaken response to a *prior* request showed at least negligence because City knew that its response to *Hood's* request, i.e., "***future*** *management* [*of mayor's records should be*] *consistent with public records laws*." CP 69 (emphasis added).

Even though City *subsequently* disclosed the calendars, trial court's penalty assessment omitted or misinterpreted facts regarding City's initial response, including its decision to silently withhold the calendars contrary to its prior attorney's advice and *Yacobellis*. Instead, trial court based its assessment on its mistaken presumption that City received bad legal advice and on events occurring after Hood made a second PRA request on

January 15, 2016. But what happened after the City closed its initial response does not mitigate that initial response:

> ***Subsequent events do not affect the wrongfulness of the agency's initial action to withhold the records if the records were wrongfully withheld at that time.*** *Penalties may be properly assessed for the time between the request and the disclosure, even if the disclosure occurs for reasons unrelated to the lawsuit.*

Spokane Research, 155 Wn.2d at 103-4 (Wash. 2005) (citations omitted, emphasis added.)

This Court reviews "the trial court's overall penalty decision holistically, to determine whether trial court's assessment was inadequate or adequate *in light of the totality of relevant circumstances*." *Op*., p. 8 (citations, brackets and quotation marks omitted, emphasis added.) Therefore, this Court cannot justly ignore trial court's failure to properly assess City's initial response.

Trial court ignored the inadequacy of City's initial response because City claimed that Hood narrowed his request on January 15, 2016. But that claim does not mitigate City's

initial response or excuse trial court for "rest[ing] on facts unsupported in the record." *Op*. p. 7. Nor does that claim prevent this holistically-minded Court from reconsidering its review of trial court's penalty assessment as follows:

Penalty assessment #17.

City's initial response to Hood's January 5, 2016 PRA request did not comply with RCW 42.56.080 (2), .100, .210(3), .520(1), .550(3) or .550(4). Thus, it did not demonstrate "good faith and honesty and compli[ance] with the PRA's procedural requirements" (Penalty assessment #17). It *also* did not demonstrate the actual factor, i.e., "good faith, honest, timely, and strict compliance with all PRA procedural requirements and exceptions" *Yousoufian*, 168 Wn.2d at 468.

Penalty assessment #18.

City did not seek legal counsel in its initial response to Hood's PRA request.

Penalty assessment #19.

Rather than respond to Hood's PRA request in a manner "consistent with public records laws," CP 69, City relied on a prior mayor's misconstrual of legal advice in response to a prior PRA request as a justification for withholding the calendars in response to Hood's later request. This was not a reasonable "explanation for noncompliance before March 1, 2016," which included the period of time on and before January 15, 2016. Assessment #19, *supra*.

Penalty assessment #21.

After having been given advice and case law indicating that the calendars were public, City conveniently but dishonestly stated it had made all requested records "available" to Hood.

Penalty assessment #24.

In disregard of legal advice and case law indicating that the electronic calendars were public *and* its obligation to manage mayoral records "consistent with public records laws," CP 69, City instead "reckless[ly]" relied on a prior mayor's misdirection

and withheld the calendars in its initial response. *Faulkner v. Wash. Dep't of Corr.*, 332 P.3d 1136, 1141 (Wash. Ct. App. 2014).

C. Trial court improperly assessed City's response after January 15, 2016

Trial court's mistaken finding that City received bad advice cannot be extended to a "***PRA*** lawyer" who counseled City on and after January 15, 2016. Assessment #18, *supra*. "PRA lawyer" Jeff Myers' actions must be holistically viewed in light of his certain knowledge that the calendars should have been disclosed to Hood on January 8, 2016. A holistic review must also consider that Myers was required to "fully" assist Hood. RCW 42.56.100.

City knew that Hood's original and first amended complaints repeatedly requested the calendars and alleged silent withholding *after* January 15, 2016.[4] CP 1881 fn. To *fully* assist

[4] Hood's January 26, 2016 complaint twice repeated Hood's request for the calendars and alleged that City violated RCW 42.56.210(3). CP 495, 499, 505. Hood's February 10, 2016 complaint directly requested the calendars four times and alleged "City silently withholds [electronic] records." CP 526, 533, 545, 551, 556

Hood "consistent with public records laws" (CP 69) Myers should have produced the calendars *and* explained that City believed Hood no longer wanted them.

Myers also should have asked if Hood wanted the calendars *before* City closed Hood's January 15, 2016 PRA request for all electronic records that referenced Hood.[5]

In short, "PRA lawyer" Myers knew that Hood repeatedly requested the calendars *and* repeatedly alleged silent withholding weeks before Hood filed his February 16, 2016 operative complaint. CP 1881, fn. Rather than fully assist, Myers ignored Hood.

Hood's operative complaint, repeated Hood's request for the calendars *four* more times, CP 3, 22, 28, 33, and again alleged City silently withheld electronic records. CP 10.

On February 19, 2016, rather than disclose or even mention the existence of the electronic calendars, Myers

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[5] CP 1392-1393 and see CP 1227-1235 (Myers knew the calendars referenced Hood's former litigation with City and thus were responsive to Hood's January 15, 2016 PRA request.)

definitively forbade Hood's access to all City's electronic files and asked Hood to "clarify what identifiable record you are seeking." CP 184-185. This was disingenuous as Hood had already repeatedly identified the calendars and been forbidden access to electronic records.

Because a requester has no access to an agency's files, an agency should determine which records are withheld even if a request does not specifically name them. *Violante v. King County Fire District No. 20*, 114 Wn. App. 565, 571 & n.14, 59 P.3d 109 (2002). The Supreme Court expressly rejected the notion that "it is the requester who must ask for more, without necessarily knowing which records they are owed." *Kilduff v. San Juan Cty.*, 453 P.3d 719, 724 (Wash. 2019). An "agency must not shift the burden to the requester […]" *Block v. City of Gold Bar*, 355 P.3d 266, 277 (Wash. Ct. App. 2015) (citations and quotation marks omitted.) When an agency burdens a requester, then it "incorrectly attempts to shift its burden onto Plaintiff ….T]he agency bears the burden, beyond material doubt, of

showing its search was adequate." *Jin Zhu v. N. Cent. Educ. Serv. Dist. ESD 171*, no. 2:15-CV-00183-JLQ, 36 (E.D. Wash. Aug. 22, 2016) (emphasis in original, citations and quotation marks omitted).

Myers and *both* courts knew that Hood had *directly* requested the calendars ten (10) times between January 15 and March 1, 2016. According to trial court, however, it was not until March 1, 2016, that Hood's "email to [Myers] put City on notice that Hood then wanted [the calendars]…." CP 2434.

On March 1, 2016, Hood clarified that his January 5, 2016 request was unrelated to his January 15, 2016 request, and that he expected to review "files on that laptop." CP 187 (internal quotation marks omitted). Hood then asked:

> Does City now claim that certain records responsive to my January 5, 2016 request are exempt? If so, please identify every such exempt record in strict accordance with the PRA.

CP 188.

By (i) requesting access to the laptop files, (ii) clarifying that Hood's requests were separate and unrelated *and* (iii) asking Myers to identify every record that City had exempted, Hood, without naming the calendars, certainly "specified" them because they were the only electronic records that City silently withheld. CP 2435fn. Even if Hood did not name the calendars, which was not possible *because* they had been silently withheld, Hood properly "burden[ed]" City to identify them. RCW 42.56.550(1). Myers never responded, a violation of RCW 42.56.100 (agencies "*shall provide* […] *the most timely possible action on requests for information*." Emphasis added.)

In summary, Myers

(i) knew the calendars were electronic, public, and silently withheld;

(ii) forbade Hood's access to unnamed electronic records (i.e., calendars) that Hood had repeatedly alleged were silently withheld;

(iii) did not disclose or even mention the calendars, though Hood certainly identified them ten times after January 15, 2016;

(iv) disingenuously asked Hood to identify what records were withheld;

(v) refused to tell Hood that the electronic calendars had been withheld;

(vi) knew, but refused to acknowledge that Hood did not narrow his request;

Trial court found Myers' conduct honest on the basis that:

> Had Mr. Myers […] misrepresented facts to the Court, that would be a basis for a finding of agency dishonesty.

CP 2435, fn.

Trial court here should have "consider[ed] the undisputed facts from the point of view of the requesting party." *Cantu v. Yakima Sch. Dist. No. 7*, 514 P.3d 661, 680 (Wash. Ct. App. 2022). This is because a requester has no access to an agency's records or thoughts other than what it provides. Although it is "at best problematic [to speculate about] how the agency would have

responded had the requesting party behaved differently" *Violante v. King County Fire Dist*, 114 Wn. App. 565, 570 (Wash. Ct. App. 2002), trial court ignored Myers' disingenuousness and instead faulted Hood:

> And, despite the Court's renewed search, *the Court has not found any response from Mr. Hood specifying the records that he was still seeking* […]

CP 2435, fn.

According to trial court, it was not enough that Hood had already requested the calendars ten times after January 15, 2016, alleged silent withholding *and* burdened a "PRA lawyer" with identifying the only responsive electronic records (calendars) that City silently withheld. Nor was it enough that:

> Mr. Hood's communications in 2016 and his briefing in 2017 [indicated] that what Mr. Hood still wanted from City was each and *every public record that the former mayor had ever had in his possession to which he was entitled.*

Id. (emphasis added).

Trial court's burdening of Hood also shows that it misinterpreted the record. Assume arguendo: City has a bag of

items, including marbles. Hood asks to see all the items. City shows him everything except the marbles, which it does not even mention, thus Hood does not know they exist. Hood subsequently asks Myers to show Hood all items that City previously withheld. Ergo, Hood "specified" the marbles. Contrary to trial court's ruling, Hood specified "the records he was still seeking" as best as possible to an agency that silently withheld them.

For nearly eight years City responded with feigned obtuseness to Hood's specification of the calendars. Trial court's burdening Hood with naming the silently withheld calendars and ignoring Myer's disingenuousness is an abuse of discretion: Hood did not have the burden of proof. RCW 42.56.550(1).

In summary, the record shows, and this Court should now find the following:

a) Myers' February 19, 2016 request that Hood identify the calendars was disingenuous because City had *not* searched for, mentioned, or "disclosed" the repeatedly requested

calendars (*see Sanders, supra*) and forbade Hood's access to the laptop where the calendars were stored;

b) Myers' declaration that "[Hood] did not provide *any* further clarification or identify what specific records he was seeking off the laptop." CP 574 (Myers declaration, referenced CP 2435 fn.) was misrepresentation. As shown, Hood properly burdened Myers to identify all records City silently withheld. Since the *only* records it silently withheld were the calendars, then Hood did "specif[y] the records that he was still seeking." CP 2435, fn, i.e., "identif[ied] what specific records he was seeking…." CP 574.

c) Myers dishonestly *and* in violation of RCW 42.56.100 failed to respond to Hood's March 1, 2016 request that Myers identify records the City had exempted.

Had trial court properly considered the facts from Hood's point of view and considered the PRA's requirements, it would have concluded that Myers wantonly and dishonestly withheld the calendars from Hood. Myers made a misrepresentation to

trial court, thus trial court's decision otherwise "rest[ed] on facts unsupported in the record." *Op*. , p. 7.

With regard to City's response after January 15, 2016, this Court should therefore reconsider trial court assessments #17, 19, 21 and 24 *supra,* as follows:

Penalty assessment #17.

Even if City believed that had Hood narrowed his request on January 15, 2016, City's failure to disclose or even mention the existence of the calendars in response to Hood's repeated requests for them after January 15, 2016 did *not* comply with RCW 42.56.080 (2), .100, .210(3), .520(1) or .550(4). City's response after January 15, 2016 thus did not demonstrate "good faith and honesty and compli[ance] with the PRA's procedural requirements" (Penalty assessment #17) or demonstrate "good faith, honest, timely, and strict compliance with all PRA procedural requirements and exceptions" *Yousoufian, supra*.

Penalty assessment #19.

Hood's repeated requests for the calendars combined with his allegations of silent withholding of electronic records starting on January 26, 2016 sufficiently informed Myers that Hood wanted the calendars, especially as City had produced all electronic records referencing Hood except the calendars on January 27, 2016. CP 1270, 1880. City's explanation for noncompliance "before March 1, 2016," assessment 19, *supra,* was unreasonable.

Penalty assessment #21.

As of January 15, 2016, Myers knew that:

- City withheld the calendars in response to Hood's January 5, 2016 PRA request on the basis that its prior mayor had misconstrued legal advice and case law;
- City should have disclosed the calendars to Hood on January 8, 2016 and thus had falsely told Hood that it had made all records available;

- "[a]n agency has a duty to provide only identified public records that are requested. RCW 42.56.070." CP 123;
- City was required to provide fullest assistance;
- City had the burden of proof to "identify the document[s] itself and explain" why it withheld them. (*Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 261 P.3d 119 (2011) at 715).

City's "PRA lawyer" knew all of this but disingenuously demanded that Hood identify records City silently withheld. Although Hood certainly specified the calendars, Myers litigated for years on the basis that Hood had narrowed his request. Myers' conduct was dishonest. Neither Myers nor the courts needed *O'Dea* to recognize such dishonesty or its ongoing consequences.

Penalty assessment #24.

This Court previously found that "Hood [did not] indicate in his January 15 email that it constituted a modification of the January 5 request." CP 1887. Nor did City seek confirmation of

"an intent to narrow the [January 5] request…." *Id.* In other words, City *presumed* that Hood's had narrowed his January 5 request so as to exclude the calendars. City's *failure to confirm* its presumption must be viewed in light of the fact that silently and intentionally withheld the calendars from Hood because (i) it relied, *contrary* to its prior attorney's advice and *Yacobellis*, on its prior mayor's misdirection and (ii) didn't seek current legal advice. Viewed holistically, City's *presumption* was negligent and its *failure to confirm* its presumption was reckless. Although Hood repeatedly requested the calendars after January 15 and certainly "specified" them on March 1, 2016, City continued to litigate for eight years on the basis that Hood narrowed his request. This showed "intentional noncompliance with the PRA." *Yousoufian*, 168 Wn.2d at 468.

D. Trial courts alteration of penalty factors and failure to support its findings with supported facts merits remand

> [The Supreme Court] established a framework to guide trial courts' determination of penalties within the range provided under the PRA.

Sargent v. Seattle Police Dep't, 314 P.3d 1093, 1103 (Wash. 2013)

As shown, trial court significantly modified certain Yousoufian factors and omitted or misinterpreted relevant facts to City's undeserved advantage.

> A trial court] abuse[s] its discretion by not conducting its analysis within the Yousoufian 2010 framework. [Therefore] remand is the appropriate remedy […] to consider all mitigating and aggravating factors outlined in Yousoufian 2010.

Id.

E. This court should review trial court's consideration of agency dishonesty

City realized, as early as January 15, 2016, that it had botched its response to two PRA requests for calendars because

its overworked clerk disregarded legal advice and case law urging it to disclose the calendars. She instead relied on a prior mayor's misdirection. Rather than admit its mistake, City's attorney, Myers, concocted the unsupported claim that Hood narrowed his request so as to exclude the calendars. This was the foundation for City's subsequent defense.

This Court should reconsider its decision to "decline Hood's request for de novo review of trial court's consideration of "agency dishonesty." *Op.*, p. 10. A holistic review of trial courts' penalty assessment shows that City's response to Hood's January 5, 2016 PRA request showed dishonesty even *before* Hood made his request. Because agency dishonesty founded City's entire response, it was not necessary for Hood to ask the court to review other penalty factors.

Moreover, a strict adherence to *Hoffman* should not outweigh the primary Court Rule that all rules be "construed and administered to secure the just [...] determination of every action." CR 1. Here, trial court's failures to consider relevant

evidence and review agency dishonesty effectively permits City to conclude that lying and covering up trumps the PRA.

V. CONCLUSION

Based upon the foregoing, Division I should reconsider its decision.

Pursuant to RAP 18.17(b), this brief contains 4993 words.

Respectfully submitted this 21st day of July, 2024, by

s/Eric Hood
Eric Hood, pro se

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 via email to Respondent counsel.

Signed by:

s/Eric Hood_____ Date: July 21, 2024

Eric Hood
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ERIC HOOD

July 21, 2024 - 11:01 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	85075-0
Appellate Court Case Title:	Eric Hood, Appellant v. City of Langley, Respondent
Superior Court Case Number:	16-2-00107-1

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COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION I

ERIC HOOD, Appellant , v. CITY OF LANGLEY, Respondent.	No. 850750 Island Co. 16-2-00107-1 **MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW**

I. MOTION AND RELIEF SOUGHT

Pursuant to RAP 1.2 and RAP 18.8, appellant moves the Court for an extension of time to file a Petition for Review.

II. FACTS RELEVANT TO MOTION

On July 1, 2024, this Court issued its *Opinion* in this case.

On July 21, 2024, Hood filed, pro se, his *Motion for Reconsideration*.

On August 8, 2024, this Court called for an answer in a cover letter addressed to Hood.

On August 16, 2024, City filed *Respondent's Answer To Motion For Reconsideration*.

On October 5, 2024, Hood remarked to William Crittenden, Hood's former attorney in this case, that this Court had not yet issued a decision on Hood's *Motion for Reconsideration*.

On October 6, 2024, Mr. Crittenden forwarded to Hood for the first time this Court's *Order Denying Motion For Reconsideration*, dated August 26, 2024. The Court's accompanying cover letter was *not* addressed to Hood.

Hood became aware of and was provided this Court's *Order Denying Motion For Reconsideration* for the first time on October 6, 2024.

III. GROUNDS FOR RELIEF

The basis of this Court's 8/26/24 *Order* was not stated, thus whether the Court unintentionally did not send its 8/26/24 *Order* to Hood is unclear. If Court's action was unintentional, then Hood argues as follows:

RAP 1.2(a) should be "construed "liberally" to avoid "dismiss[ing] a case solely on the basis of "noncompliance". *In*

re Fero, 190 Wash. 2d 1, 13 (Wash. 2018) *And see In re Carlstad*, 150 Wn. 2d 583, 597 (Wash. 2003) (Sanders, dissenting, on basis that untimeliness was "due to circumstances beyond his control.") Because Hood was not aware of this Court's 8/26/24 *Order* until October 6, 2024, an extension of time to file a Petition for Review is warranted. RAP 1.2, 18.8

If this Court intentionally did not send Hood its 8/26/24 *Order* based on City's claim that Hood was "not permitted to file" his motion because he "is represented here by a PRA lawyer," *Answer*, p. 2, then Hood argues as follows.

> "A "decision terminating review" is defined as having three characteristics: (1) it is filed after review is accepted by the appellate court filing the decision, (2) it terminates review unconditionally, and (3) it is "(i) a decision on the merits."

Personal Restraint of Lord, 123 Wn. 2d 737, 739 (Wash. 1994).

This Court's 7/1/24 *Opinion* terminated Mr. Crittenden's representation of Hood. In addition, City's claim that Hood was not permitted to file is contradicted by its claim that Hood is "now pro se," *Answer*, p. 1, and "Mr. Hood" should be

sanctioned. *Id.*, p. 32. City's citation to a criminal case in which a defendant who was *appointed* counsel filed briefs or asked advice has no application or relevance here, and no civil case supports the City's conflicting claims. *Answer,* p. 2.

City's conflicting claims and misrepresentation of case law did not provide a just basis for this Court to intentionally not send its 8/26/24 *Order* to Hood.

City would not be prejudiced by extension of time.

IV. CONCLUSION

For all these reasons, the Court should grant Hood an extension of 30 days after October 7, 2024 to file a Petition for Review of its decisions in this case.

This brief contains 530 words.

DATED this 6th day of October, 2024, by,

s/Eric Hood
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ericfence@yahoo.com

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: Jessica Goldman.

Signed by: Date: October 6, 2024

s/Eric Hood

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October 06, 2024 - 9:18 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	85075-0
Appellate Court Case Title:	Eric Hood, Appellant v. City of Langley, Respondent
Superior Court Case Number:	16-2-00107-1

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October 7, 2024

LETTER SENT BY E-MAIL ONLY

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Re: Supreme Court No. 1035209 – Eric Hood v. City of Langley
Court of Appeals No. 850750 – Division I
Island County Superior Court No. 16-2-00107-1

Counsel and Eric Hood:

On October 7, 2024, this Court received the Petitioner's "MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW" and the "RESPONDENT'S OPPOSITION TO MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW" (with attached declaration). The matter has been assigned the above referenced Supreme Court case number.

The parties are advised that no ruling is being made at this time on the Petitioner's motion for an extension of time to file a petition for review. A Department of the Court will decide the Petitioner's motion for extension of time, but only if the Petitioner files a proposed petition for review in this Court by **November 6, 2024**. The content and style of the petition should conform with the requirements of RAP 13.4(c). I have enclosed for Petitioner a copy of Forms 9, 5, 6, and part F of Form 3 from the appendix to the rules.

Once the proposed petition for review is received, both the motion for extension of time and the proposed petition for review will be considered by a Department of the Court. The Court will make a decision without oral argument. The Court will only consider the petition for review if it first decides to grant the motion for extension of time. A motion for extension of time to file is normally not granted; see RAP 18.8(b).

Failure to file a proposed petition for review by **November 6, 2024,** will likely result in dismissal of this matter. It is noted that the proposed petition for review will need to be accompanied by a $200 filing fee.

The parties are referred to the provisions of General Rule 31(e) regarding the requirement to omit certain personal identifiers from all documents filed in this court. This rule provides that parties "shall not include, and if present shall redact" social security numbers, financial account numbers and driver's license numbers. As indicated in the rule, the responsibility for redacting the personal identifiers rests solely with counsel and the parties. The Clerk's Office does not review documents for compliance with the rule. Because briefs and other documents in cases that are not sealed may be made available to the public on the court's internet website, or viewed in our office, it is imperative that such personal identifiers not be included in filed documents.

Counsel are advised that future correspondence from this Court regarding this matter will most likely only be sent by an e-mail attachment, not by regular mail. This office uses the e-mail address that appears on the Washington State Bar Association lawyer directory. Counsel are responsible for maintaining a current business-related e-mail address in that directory. For the Petitioner this Court has an e-mail address of: ericfence@yahoo.com.

Sincerely,

Sarah R. Pendleton
Acting Supreme Court Clerk

SRP:bw

Enclosure as stated

COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION I

ERIC HOOD, Appellant, v. CITY OF LANGLEY, Respondent.	No. 862090, and No. 866869 Island Co. 19-2-00611-5 Island Co. 21-2-00226-15 **MOTION TO SEPARATE OR UN-CONSOLIDATE CASES**

I. IDENTITY OF MOVING PARTY

This motion is presented by appellant Eric Hood.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 1.2 and RAP 3.3, appellant Hood moves the Court to separate (or un-consolidate) two separate PRA cases that should not have been consolidated.

III. GROUNDS FOR RELIEF SOUGHT

A. Appeal No. 862090 arises out of a 2019 PRA case in Island County.

The appeal at issue in No. 862090 arises directly out of an Island County superior court ruling dismissing Hood's 2019

PRA case against the City of Langley. The superior court dismissed that case on December 18, 2023, and Hood appealed to this Court on January 7, 2024. Undersigned counsel represented Hood in the trial court in the 2019 case, and also represents Hood in appeal No. 862090. No party ever suggested that this appeal should be consolidated with any other case. This appeal has been fully briefed, including amicus briefing, and was previously set for oral argument on October 29, 2024.

B. Appeal No. 866869 arises out of a 2021 PRA case in Island County.

The other appeal at issue (No. 866869) arises out of the Island County superior court's denial of Hood's *pro se* CR 60(b) motion in Hood's 2021 PRA case. *See Notice of Appeal* (5/13/24). Undersigned counsel previously represented Hood in the 2021 case, which was dismissed by the superior court in February 2023. No immediate appeal was filed. Undersigned counsel withdrew in the 2021 superior court case on February 5, 2024 to enable Hood to pursue a CR 60(b) motion in the superior court *pro se*.

Hood's *pro se* CR 60(b) motion in the 2021 case was denied by the Island County superior court on April 16, 2024. Hood appealed, *pro se*, on May 13, 2024. *See Notice of Appeal* (5/13/24). Undersigned counsel does ***not*** represent Mr. Hood in this unrelated appeal from the 2021 superior court case. No party ever suggested that Hood's *pro se* appeal should be consolidated with any other case.

C. There is no reason to consolidate these appeals, which arise out of different Island County cases.

On September 16, 2024, Mr. Hood, *pro se*, filed a motion in his appeal from the 2021 case (No. 866869) requesting, *inter alia*, that Hood's *pro se* appeal of the 2021 case be stayed until after an opinion is issued in the appeal of the 2019 case (No. 862090). *Motion to File Overlength Brief* (No. 866869) at 17-18. Hood did ***not*** request that the case be consolidated with the 2019 case.

Nor did the City request consolidation. In opposition to Hood's motion for stay the City asserted that there was no legal or factual connection between these two cases. *Opposition* (No.

866869) at 13. In his reply, Hood renewed his request for a stay of his appeal in the 2021 case, but Hood did ***not*** suggest that the cases should be consolidated under RAP 3.3.

Undersigned counsel had no notice that this Court was even considering consolidation. If the City had actually moved to consolidate these two appeals Hood would have opposed such consolidation. As the City has noted there is no direct legal or factual link between the cases that would warrant consolidation under RAP 3.3.

By order dated October 4, 2024, the Court Administrator *sua sponte* consolidated appeals No. 869020 and 866869, and ordered the parties to prepare consolidated briefs. *Order* (October 4, 2024). Until this order was issued, undersigned counsel had no notice that consolidation of these two appeals had even been suggested.

The order dated October 4, 2024, incorrectly lists only the 2019 Island County case, while prior orders issued in only No. 866869 correctly note that the underling superior court case is

the 2021 Island County case. This suggests that this Court mistakenly assumed that both appeals arise out of the 2019 case, and that the October 4, 2024 order to consolidate was based on that incorrect assumption.

These cases should ***not*** be consolidated under RAP 3.3. Consolidation at this point will ***not*** "save time and expense" or provide for a fair review of the cases. On the contrary, consolidation of these cases will create large amounts of unnecessary work for everyone involved. Undersigned counsel represents Hood in his appeal in the 2019 case, but ***not*** in Hood's *pro se* appeal in the 2021 case. Furthermore, the briefing in both cases is completed.

Undersigned counsel did ***not*** represent Hood in his CR 60(b) motion in the 2021 superior court case, did ***not*** prepare the record in appeal No. 866869, and did ***not*** prepare the briefs. This Court's order to prepare consolidated briefs effectively requires undersigned counsel to re-write both of his briefs in the 2019 case in order to address an unrelated appeal from a different case

that counsel was not involved in. And there is no guarantee that this Court would even grant the necessary overlength brief.

Nor is there any reason for the City to incur the significant cost of re-briefing these appeals. The City has already filed both a *Brief of Respondent* and a *Response to Amicus Curiae* in the 2019 case (No. 862090). The 2019 case (No. 862090) is ready for oral argument, and should be ***un-consolidated*** from Hood's *pro se* appeal from the 2021 case (No. 886869)

IV. CONCLUSION

For all these reasons, the Court should separate (or un-consolidate) these two separate PRA cases that should not have been consolidated.

///

///

RESPECTFULLY SUBMITTED this 7th day of October, 2024.

By: 

William John Crittenden
WSBA No. 22033

WILLIAM JOHN CRITTENDEN
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CERTIFICATE OF SERVICE

The undersigned certifies that on the 7th day of October, 2024, a true and correct copy of this pleading was served on the parties as follows:

Via Email and Filing in Appellate Portal.

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ERIC HOOD, pro se
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By: 

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WILLIAM JOHN CRITTENDEN

October 07, 2024 - 12:27 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	86209-0
Appellate Court Case Title:	Eric Hood, Appellant v. City of Langley, Respondent
Superior Court Case Number:	19-2-00611-5

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Motion to UN-consolidate cases

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SUPREME COURT

Court of Appeals No. # 866869

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION I

ERICHOOD

Appellant

v.

CITY OF LANGLEY,

Respondent.

ERRATA REGARDING APPELLANT'S MOTION TO EXTEND TIME TO FILE

Eric Hood, Pro Se
PO Box 1547
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ERRATA

Hood inadvertently, erroneously stated, "City's claim that its 9/26/24 brief made Hood aware of this Court's July 1, 2024 Order presumes that Hood was somehow obligated to trust City counsel, which has repeatedly misrepresented facts and case law to Hood and courts." *Appellant's Motion To Extend Time To File*, p. 3.

The sentence should read "City's claim that its 9/26/24 brief made Hood aware of this Court's August 26, 2024 Order presumes that Hood was somehow obligated to trust City counsel, which has repeatedly misrepresented facts and case law to Hood and courts."

WORD COUNT: 92

Dated this 10th day of October, 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 the below date in Langley, WA, I emailed the foregoing documents to counsel for Respondent.

By: Date: October 10, 2024
s/ Eric Hood
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ERIC HOOD

October 10, 2024 - 6:24 PM

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Appellate Court Case Number:	86686-9
Appellate Court Case Title:	Eric Hood, Appellant v. City of Langley, Respondent
Superior Court Case Number:	21-2-00226-0

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ERIC HOOD

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Appellate Court Case Title:	Eric Hood v. City of Langley
Superior Court Case Number:	16-2-00107-1

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