NO. 103601-9

SUPREME COURT OF THE STATE OF WASHINGTON

DEREK E. GRONQUIST,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondent.

THE DEPARTMENT OF CORRECTIONS' ANSWER TO THE PETITION FOR DISCRETIONARY REVIEW

ROBERT W. FERGUSON
Attorney General

VANESSA JAMES WSBA #56304
Assistant Attorney General
Corrections Division OID #91025
PO Box 40116
Olympia WA 98504-0116
360-586-1445
Vanessa.James@atg.wa.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

This case presents no basis for review. Petitioner Derek Gronquist submitted a request for public records to the Department of Corrections (DOC). The trial court found that while DOC did violate the Public Records Act (PRA), it did not do so in bad faith. The Court of Appeals determined that a "finding that an agency acted in bad faith under the PRA does not require the commission of some intentional, wrongful act, but it does require the requestor to show more than negligence." Petition, App. A, 15. Importantly, the court concluded that regardless of the standard applied, Gronquist cannot show more than negligence, which does not meet any definition of bad faith. Additionally, the Court of Appeals declined to award Gronquist attorney fees on appeal because he failed to devote a separate section of his opening brief to this request, as required by RAP 18.1(b).

Although the Court of Appeals determined that Gronquist could not show any denial of records was the result of more than

negligence, Petitioner seeks this Court's review of the Court of Appeals' clarification of the bad faith standard that incarcerated individual requestors must meet in public records cases. Such a request for review under the facts here would be a purely academic exercise and would not change the outcome of the case. This Court does not engage in such advisory opinions and therefore should deny Petitioner's request. Given that the Court of Appeals determined that Gronquist could not show any denial of records was the result of more than negligence, even if this Court were inclined to address the definition of bad faith under RCW 42.56.565(1), this is not the case to do so because the parties agree that negligence is insufficient to meet bad faith.

Gronquist seeks review of the Court of Appeals' decision pursuant to RAP 13.4(b)(1), (2), and (4). But, Gronquist has failed to meaningfully engage with these criteria and, in any event, has not shown that the Court of Appeals' opinion is an issue of substantial public interest, is in conflict with a Supreme

Court decision, or presents a divisional split warranting review. This Court should deny Gronquist's petition for review.

II. COUNTERSTATEMENT OF THE ISSUES

This case does not meet the criteria for review under RAP 13.4, but if this Court were to grant review, the issues presented for review are as follows:

1. Whether the Court of Appeals correctly determined that DOC did not act in bad faith under any definition and thus presenting no issue that warrants review under RAP 13.4(b)?
2. While RCW 42.56.550 entitles a prevailing party to fees, is a party entitled to such when they fail to comply with the procedural rules for requesting such fees, such as RAP 18.1(b)?
3. The Court of Appeals considered the miscommunication between the agency and Gronquist among other factors in declining to find bad faith. Does this impose new burdens

on incarcerated requestors who already have the burden of proving bad faith?

III. STATEMENT OF THE CASE

A. DOC's Response to Gronquist's Request

On October 3, 2020, Gronquist mailed a PRA request to DOC's Public Records Unit (PRU), requesting "[a]ll invoices for payment of services submitted by contractors for the provision of legal services to prisoners under RCW 72.09.190 between July 1 and December 31, 2019." Petition, App. A, 3. At the time of the request, Gronquist was incarcerated at the Washington State Penitentiary. Petition, App. A, 3.

The PRU gave the request tracking number P-16139 and assigned the request to a Public Records Specialist. CP 218. The Public Records Specialist sent a letter to Gronquist acknowledging the request. CP 227. Included in the letter was DOC's interpretation of the request, which stated, "You write to request the following record(s): 1. All invoices for payment of services submitted by contract attorneys for the provision of legal

services to prisoners under RCW 72.09.190 between July 1, 2019 and December 31, 2019." The letter also stated that if Gronquist had any questions, he could contact the assigned Public Records Specialist. CP 227.

The Public Records Specialist determined that the PRU did not have access to the requested records and assigned the task of locating the responsive records to the Business Services unit of DOC. CP 219. The task of searching for records was assigned to the fiscal analysts in the Business Services unit who were familiar with contractor payments. CP 677. They understood the request to be for the invoices, referred to as A-19 forms, from contract attorneys for the specified date range. CP 677.

A fiscal analyst ran an expenditure report with accounting coding in the Business Services payments system. CP 678. After the fiscal analyst searched for records in the file server, his email, and the Business Services payments system, he compiled a list of hard copy invoices to search for at DOC Headquarters. CP 678. Another fiscal analyst and the Disbursements and

Purchasing Manager used the list to search for the hard copy invoices at Headquarters. CP 678.

Although the Business Services staff members understood Gronquist's request to be for the A-19 forms, they also included many of the accompanying monthly reports that are kept with the invoices in the same physical file. CP 678.

Ultimately, after this multi-step search, the Public Records Specialist prepared and sent the final letter and 242 pages of records to Gronquist on April 20, 2021. CP 220. The Public Records Specialist included in the final closing letter that if Gronquist wished to appeal DOC's response to his records request, he could do so by submitting the appeal portion of the form to the Public Disclosure Appeals Office. CP 220. Gronquist never contacted DOC to express concerns about records that he believed he should have received. CP 221. Gronquist did not respond to the final letter and did not appeal DOC's response to P-16139. CP 221.

Gronquist filed suit on March 11, 2022. CP 1. DOC first learned that Gronquist was unsatisfied with the response to his records request through the filing of this lawsuit. So, DOC conducted additional searches in an attempt to address Gronquist's concerns. CP 221. After additional searches, DOC sent supplemental responsive documents to Gronquist. CP 1465.

B. Procedural History

The trial court concluded that DOC violated the PRA, but did not act in bad faith as the standard for bad faith is higher than negligence, which is all that Gronquist could show. Petition, App. A, 7. Gronquist appealed the decision.

The Court of Appeals affirmed the finding that DOC violated the PRA as well as the finding that DOC did not do so in bad faith. The court found that the standard for bad faith requires evidence that the agency either intentionally conducted an inadequate search in a manner calculated to not discover the record or intentionally withheld a record for an improper

purpose, with the knowledge that doing so violated the PRA. Petition, App. A, 19.

The court concluded that Gronquist could not meet the bad faith standard as he could show no more than negligence. Petition, App. A, 2. Additionally, the court denied Gronquist's request for attorney fees on appeal. Petition, App. A, 26. The court recognized that a prevailing party is entitled to reasonable fees but stated that Gronquist failed to devote a separate section of his opening brief to this request, as required by RAP 18.1(b). Because of this, the court denied his request for appellate attorney fees. Petition, App. A, 26.

Gronquist now seeks discretionary review of the Court of Appeals' decision.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

Gronquist failed to show that the Court of Appeals' decision involves an issue of substantial public interest that should be decided by the Supreme Court, or conflicts with a decision from this Court or the Court of Appeals.

RAP 13.4(b)(1), (2), (4). This Court should deny review of Gronquist's Petition because the Court of Appeals determined Gronquist has not shown that DOC acted in bad faith under any definition. Instead, he has shown only negligence, which is not sufficient to permit penalties under RCW 42.56.565. The Court of Appeals determined that the bad faith standard incarcerated individual requestors are required to prove is higher than negligence or recklessness by taking into account existing case law and legislative intent. Further, the Court of Appeals' decision not to award Gronquist appellate attorney fees is in full accordance with the Rules of Appellate Procedure and thus does not present an issue warranting review.

A. Gronquist Failed to Show DOC Acted in Bad Faith Under Any Standard

The Court of Appeals determined that Gronquist did not carry his burden of proving DOC acted in bad faith under any bad faith standard, rendering this case inappropriate for the Court's review. The court determined that "[a] finding that an agency acted in bad faith under the PRA does not require the

commission of some intentional, wrongful act, but it does require the requestor to show more than negligence, which is all that Gronquist has done." Petition, App. A, 15. Therefore, regardless of the specific bad faith definition used, Gronquist did not meet his burden on this issue.

It is evident that Gronquist failed to show bad faith by DOC in denying him records. The superior court described DOC's conduct as gross negligence when it made its initial incorrect finding of bad faith. VRP 1/20/23, 10:3-7. Gronquist has never shown more than negligence. DOC's conduct in this case stands in stark contrast to the conduct in *Francis*, where the agency produced only non-responsive records and spent only fifteen minutes working on the request. *Francis v. Wash. State Dep't of Corr.*, 178 Wn. App. 42, 50, 313 P.3d 457 (2013). Unlike *Francis*, here DOC conducted multiple follow-up inquiries with the Business Services department and ultimately produced the records that Business Services staff members gathered. In a good faith attempt to address his concerns after

litigation, DOC produced additional records to Gronquist. VRP 3/17/23, 6:1-12. The Court of Appeals agreed with the superior court that DOC's diligence in fulfilling the records request throughout the litigation showed that it was willing to produce the records, but that it simply did not know that it had not produced all the responsive records. Petition, App. A, 23. DOC's efforts to locate and produce additional records even after the court made a finding regarding the PRA violation further demonstrates that DOC did not act in bad faith.

Gronquist still claims that it is "undisputed that the Department silently withheld records here." Petition, 20. At no point has DOC agreed that it silently withheld documents from Gronquist. Far from being undisputed, the court agreed with DOC that Gronquist's definition of silent withholding is contrary to case law. Silent withholding occurs when an agency fails to produce a document that it knows exists and would be responsive to a request. *Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wn.2d 243, 270, 884 P.2d 592 (1994) (plurality

opinion). Gronquist has never shown that DOC silently withheld responsive documents.

Because Gronquist has failed to meet his burden, this case is not appropriate for this Court's review under any of the RAP 13.4(b) criteria.

B. The Court of Appeals' Decision Appropriately Considered Case Law in Clarifying the Bad Faith Standard, Precluding Review Under RAP 13.4(b)

Here, the Court of Appeals determined that a finding of bad faith does not require the commission of some intentional, wrongful act, but it does require the requestor to show more than negligence. Petition, App. A, 2. As Gronquist has not shown more than negligence, thus failing to meet any standard of bad faith, he has not raised an issue of substantial public interest. The opinion is not in conflict with any Supreme Court precedent. Finally, the court's bad faith definition builds on precedent and does not present a divisional split warranting this Court's review.

1. There is no issue of substantial public interest that should be determined by the Supreme Court

The Petition does not present an issue of substantial public interest. To determine whether a case presents an issue of continuing and substantial public interest, the Court considers three factors: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question. *State v. Beaver*, 184 Wn.2d 321, 330, 358 P.3d 385, 390 (2015). *See also In re Pers. Restraint of Flippo*, 185 Wn.2d 1032, 380 P.3d 413, 413-14 (2016) (decision regarding the imposition of legal financial obligations has the potential to affect a number of proceedings and is an issue of substantial public interest if review will avoid unnecessary litigation and confusion on a common issue).

Importantly, the court here determined that, by any definition of bad faith, an inmate requestor must show that the agency's actions amount to more than negligence. Petition, App. A, 2. The court found that Gronquist has failed to do so.

Petition, App. A, 2. Still, Gronquist seeks this Court's review of the bad faith standard. Effectively, Petitioner asks that the Court review the bad faith standard in inmate requestor cases here where the outcome will remain untouched regardless of the definition used. Petitioner disagrees with the outcome of the trial court and Court of Appeals but offers no specific reason why this case involves an issue of substantial public importance. As there is none, this case does not warrant review.

Gronquist presents an argument that the Court of Appeals' decision conflicts with the legislative history of the PRA. Contrary to his claims, the Court of Appeals' interpretation of bad faith is consistent with the legislative history of the bad faith requirement. In 2011, faced with increasing abuse by inmates of the Public Records Act, the Legislature passed Substitute Senate Bill 5025. This provision, codified as RCW 42.56.565(1), restricts an inmate's ability to obtain penalties for public records requests. *Faulkner v. Wash. Dep't*

of Corr., 183 Wn. App. 93, 105-06, 332 P.3d 1136 (2014) (citing S.B. 5025, 62nd Leg. Reg. Sess. §1(5) (Wash. 2011)). RCW 42.56.565(1) prohibits a court from awarding daily penalties to an inmate "unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record." Under this statute, an inmate seeking PRA penalties has the burden of persuasion to show DOC acted with bad faith in denying the requester the opportunity to inspect or copy a public record. *See Adams v. Wash. State Dep't of Corr.*, 189 Wn. App. 925, 952, 361 P.3d 749 (2015).

Moreover, the Court of Appeals did consider the Legislature's intent. The court concluded that the showing of bad faith an inmate requestor must make is at least as rigorous as in non-inmate PRA cases, "in light of the legislature's decision to limit an inmate's ability to recover penalties under the PRA to situations in which the inmate demonstrates bad

faith on the part of the agency—a showing non-inmate requestors are not required to make." Petition, App. A,16-17.

Gronquist fails to support his inclusion of RAP 13.4(b)(4) in his request for review. As there is no matter of substantial public importance, this Court should deny his request.

2. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court

Although Gronquist includes RAP 13.4(b)(1) in his list of reasons why the Court should grant review, he does not explain how the court's decision conflicts with a decision of the Supreme Court. In fact, Gronquist acknowledges that this Court has not interpreted the bad faith provision of RCW 42.56.565(1). Petition, 9. This case does not present a conflict under RAP 13.4(b)(1) that warrants this Court's review.

Rather than disagree with a decision of this Court, the Court of Appeals reviewed existing bad faith precedent in conjunction with this Court's decision in *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3d 735 (2010). In *Yousoufian*, this Court "opined that the traditional culpability definitions

found in the Washington Pattern Instructions 'do not lend themselves to the complexity of PRA penalty analysis.'" Petition, App. A, 17 (quoting *Yousoufian*, 168 Wn.2d at 463). Here, the court took note of the range of culpability identified by this Court in *Yousoufian*: "negligent, reckless, wanton, bad faith, or intentional noncompliance." Petition, App. A, 17 (quoting *Yousoufian*, 168 Wn.2d at 468). The Court of Appeals concluded that "[f]rom the plain language of this range, it is clear that the [S]upreme [C]ourt considers bad faith to be the highest level of culpability other than intentional noncompliance, higher than negligent or even wanton conduct." Petition, App. A, 17. Thus, the Court of Appeals showed deference to the Supreme Court's analysis of culpability standards in clarifying the bad faith definition in inmate requestor cases.

Rather than conflict with any decision of the Supreme Court, the Court of Appeals here took into consideration how the Supreme Court assesses bad faith in putting forward its clarified

standard of bad faith. This case does not warrant review under RAP 13.4(b)(1).

3. The court's bad faith definition builds on precedent and does not present a divisional split warranting this Court's review

The Court of Appeals considered bad faith case law including *Francis* and *Faulkner* in reaching its decision, negating Gronquist's claim that the Court "ignored" prior decisions.

In its analysis of bad faith, the court took into account several other cases as well as legislative history to form a bad faith standard that best reflects the existing precedent and intention of the Legislature. Despite Gronquist's contentions, the court did analyze the *Francis* decision. The court expanded on the *Francis* decision that concluded, "the legislature plainly intended to afford prisoners an effective records search, while insulating agencies from penalties as long as they did not act in bad faith." *Francis*, 178 Wn. App. at 60. The court referred to the *Francis* decision that held that "the failure to conduct a reasonable search or the failure to follow policies in a search" do

not, alone, constitute bad faith. Petition, App. A, 18 (quoting *Francis*, 178 Wn. App at 63 n.5).

The Court of Appeals distinguished the facts here from those of *Francis*. Petition, App. A, 20. Here, DOC showed "documented confusion as to what Gronquist was requesting." Petition, App. A, 20. Further, DOC overproduced records to be more inclusive in an effort to ensure that it did fulfill his request. Petition, App. A,14. This contrasts with *Francis*, where the agency did have sufficient clarity regarding the request, lacked proper training and supervision, and demonstrated a lack of compliance with PRA procedural requirements. Petition, App. A, 18.

The Court of Appeals then analyzed Division III's decision in *Faulkner*, which itself built on and expanded the *Francis* definition of bad faith. Petition, App. A, 18. The *Faulkner* decision held that "[i]n the PRA context, bad faith incorporates a higher level of culpability than simple or casual negligence. . . . to establish bad faith, an inmate must

demonstrate a wanton or willful act or omission by the agency." *Faulkner*, 183 Wn. App. at 103. Here, the court found that *Faulkner* embraced the holding in *Francis* by finding that "[p]enalties are owed when an agency acts unreasonably with utter indifference to the purpose of the PRA," and that the agency's conduct in *Francis* was an example of a wanton act made in bad faith. Petition, App. A, 18 (quoting *Faulkner*, 183 Wn. App. at 105). The court also noted that *Faulkner* holds that the bad faith requirement for the PRA "allows penalties for inmates only when the conduct of the agency defeats the purpose of the PRA and deserves harsh punishment." Petition, App. A, 18 (quoting *Faulkner*, 183 Wn. App. at 106).

The court found the decision in *Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 707, 726, 354 P.3d 249 (2015), instructive. There, the City's conduct of openly flouting the purpose of the PRA to cover up misbehavior was clearly in bad faith as contemplated by the Legislature. Petition, App. A, 19. The court recognized that by including the

requirement that an inmate requestor show bad faith as a condition to the award of a monetary penalty for a PRA violation, the Legislature intended to make it more burdensome for inmate requestors to obtain penalty awards than for non-inmate requestors. Petition, App. A, 19-20. This led the court to reject the lower standards of gross negligence and recklessness.

After analyzing *Francis*, *Faulkner*, and *Cedar Grove*, the court built on existing precedent to provide its clarified definition. The court stated that a finding of bad faith requires "evidence that the agency either intentionally conducted an inadequate search in a manner calculated to not discover the record or intentionally withheld a record for an improper purpose, with the knowledge that doing so violated the PRA." Petition, App. A, 19. Accordingly, the opinion does not present a conflict with a published decision of the Court of Appeals that warrants review under RAP 13.4(b)(2).

Yet, Gronquist argues that the court erred by not relying on *Faulkner*, *Francis*, and *Adams*. Petition, 12. Importantly, "one

division of the Court of Appeals should give respectful consideration to the decisions of other divisions of the same Court of Appeals but one division is not bound by the decision of another division." *Matter of Arnold*, 190 Wn.2d 136, 154, 410 P.3d 1133, 1142 (2018). The court did analyze *Francis* and *Faulkner*. Notably, both *Adams* and *Faulkner* are Division III cases. Thus, the court was not bound by these other bad faith standards. Gronquist provides no explanation as to why the court should have relied on other divisions' bad faith standards.

In sum, this is not a case where there is an obvious and "ongoing split in the Court of Appeals" that "requires [the Court's] review in this case" pursuant to RAP 13.4(b)(2). *Cf. State v. Cornwell*, 190 Wn.2d 296, 302, 412 P.3d 1265, 1268 (2018) (resolving conflict between two divisions as to whether any probation violation warrants a search of all the individual's property because probationers do not have a reasonable expectation of privacy in their residences, vehicles, or personal belongings).

The Court of Appeals' decision here does not conflict with binding bad faith precedent. The court distinguished this case from the facts of *Francis* and found that DOC's documented confusion as to Gronquist's request and belief that all responsive records were produced until the start of litigation precluded a finding of bad faith. Given that the facts here do not support a finding of bad faith under any standard and thus the outcome will remain unchanged, there is no basis to grant Gronquist's Petition pursuant to RAP 13.4(b)(2).

C. The Court of Appeals Determined Gronquist is Not Entitled to Appellate Attorney Fees After He Failed to Comply with RAP 18.1(b)

Gronquist requested attorney fees for the first time in his Reply brief, contravening the Rules of Appellate Procedure. Before the Court of Appeals, Gronquist argued in his reply brief that he should be entitled to attorney fees on appeal. Petition, App. A, 26. Because Gronquist failed to comply with RAP 18.1(b) by not including a separate section for this request in his opening brief, the Court of Appeals denied his request for

attorney fees on appeal. Gronquist does not explain under which RAP 13.4(b) criteria this issue falls. This Court should decline to consider his request for appellate attorney fees because it does not satisfy any criteria under RAP 13.4(b).

1. Gronquist is not entitled to attorney fees under RAP 18.1

Gronquist does not state under which RAP 13.4(b) criteria this issue falls, but it is clear that the Court of Appeals' decision comported with precedent as well as the Rules of Appellate Procedure. RAP 18.1(a) states that if a party has the right to recover reasonable attorney fees or expenses, "the party must request the fees or expenses as provided in this rule." The "party must devote a section of its opening brief to the request for the fees or expenses." RAP 18.1(b); *Health Pros Nw., Inc. v. State*, 10 Wn. App. 2d 605, 625, 449 P.3d 303, 313 (2019). This requirement is mandatory. *In re Washington Builders Ben. Tr.*, 173 Wn. App. 34, 87, 293 P.3d 1206, 1233 (2013). This rule requires "more than a bald request for attorney fees on appeal." *Id.* (quoting *Thweatt v. Hommel*, 67 Wn. App. 135, 148, 834 P.2d

1058, 1065 (1992)). Rather, argument and citation to authority are required under the rule to advise the court of the appropriate grounds for an award of attorney fees and costs. *Dobson v. Archibald*, 1 Wn.3d 102, 116, 523 P.3d 1190 (2023).

In his Opening Brief in the Court of Appeals, Gronquist merely stated, "award reasonable attorney fees and costs to Appellant pursuant to RAP 18.1" in his request for relief. Gronquist provided no further argument or facts in support. *See* Opening Brief, 6. Gronquist asks the Court to award him fees irrespective of the RAP requirements in awarding fees.

The Court of Appeals determined that Gronquist did not fulfill the requirements of RAP 18.1(b). Accordingly, the court concluded that Gronquist was not entitled to attorney fees on appeal after he failed to devote a separate section of his opening brief to the request. Thus, this issue does not warrant the Court's review under any of the RAP 13.4(b) criteria.

2. The Court of Appeals' decision to not disturb the fees awarded by the trial court does not warrant this Court's review

The Court of Appeals noted Gronquist's request in his reply brief for the court to remand the issue of attorney fees to the trial court for a "fresh analysis." Petition, App. A, 25 (quoting Reply Br. of Appellant, 64). Yet, the court did not engage with this issue because it concluded that DOC did not act in bad faith. The court also declined to consider this request because Gronquist raised it for the first time in a reply brief.

While the court did state in dicta that "[p]recedent is less clear on whether an inmate requestor is entitled to attorney fees absent a finding that the agency acted in bad faith," the court did not provide analysis of this issue. Petition, App. A, 26. Finding that this matter of Gronquist's request for remand to the trial court on the issue of attorney fees was not properly before it, the court declined to reverse the attorney fee award at the trial court and left the attorney fees awarded below undisturbed.

Gronquist argues that the Court of Appeals' opinion casts doubt on the right to attorney fees if an inmate requestor prevails on a PRA claim without showing bad faith. Yet, because the Court of Appeals did not issue a ruling on this matter, this argument is not properly before this Court. And again, Gronquist does not explain how this issue meets any of the criteria under RAP 13.4(b) and warrants review by this Court.

D. The Court of Appeals Did Not Impose a New Burden on Inmate Requestors by Considering Gronquist's Failure to Communicate with DOC

Finally, Gronquist raises a public policy issue regarding one of the factors the Court of Appeals considered when finding no bad faith. Gronquist again does not engage with the criteria of RAP 13.4(b) and does not provide explanation or argument as to why this issue warrants this Court's review.

The Court of Appeals determined that regardless of whether it applied the bad faith standard from *Francis* or from *Faulkner*, Gronquist failed to satisfy either standard. Among the factors the court considered was the fact that Gronquist did not

inform DOC that the production was incomplete until after initiating litigation. By failing to communicate with DOC, Gronquist "made it difficult to prove that the failure to produce certain documents was the result of anything but miscommunication and human error." Petition, App. A, 19. Now, Gronquist argues that the court has imposed a new burden on inmate requestors.

Yet, by their nature, PRA cases are fact-specific inquiries, and whether an agency acted in bad faith under the PRA presents a mixed question of law and fact, in that it requires the application of legal precepts to factual circumstances. *Francis*, 178 Wn. App. at 51. As such, the court was entitled to consider the circumstances of the request in determining whether Gronquist met his burden of showing bad faith. Gronquist does not explain why this issue warrants review under RAP 13.4(b). The Court of Appeals did not depart from existing precedent in conducting a fact-specific inquiry in DOC's search and

production of records. As such, review of this issue is unwarranted.

When DOC received Gronquist's request, DOC interpreted his request for "invoices" to be requesting only the A-19 forms and not monthly reports. Petition, App. A, 4. DOC searched for and produced records according to its interpretation of Gronquist's request. Gronquist argued that DOC's interpretation of "invoices," which differed from his own, is evidence of bad faith. Yet, the court pointed to the communications from DOC to Gronquist that included DOC's interpretation of his request. Gronquist did not appeal the production of documents he believed to be nonresponsive, nor did he clarify his request and seek a resolution before proceeding to litigation. Petition, App. A, 20. In declining to find bad faith, the court found that DOC did not knowingly or even negligently withhold documents it knew to be responsive, but rather that the parties understood the word "invoice" to mean different things. Petition, App. A, 13.

The Court of Appeals correctly applied the law to the factual circumstances of this case and determined Gronquist's failure to communicate with DOC was a factor that precluded the court from finding bad faith. Review of this issue is not supported by the RAP 13.4(b) criteria.

V. CONCLUSION

Gronquist has not shown that the criteria for accepting review under RAP 13.4(b) are satisfied. This Court should deny review.

This document contains 4,987 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 13th day of January, 2025.

ROBERT W. FERGUSON
Attorney General

s/ Vanessa James
VANESSA JAMES WSBA #56304
Assistant Attorney General
Corrections Division OID #91025
Vanessa.James@atg.wa.gov

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed The Department of Corrections' Answer to the Petition for Discretionary Review with the Clerk of the Court using the electronic filing system which will send notification to the following electronic filing participant:

Anika Ades, WSBA# 60298
Braden Pence, WSBA# 43495
Macdonald Hoague & Bayless, P.S.
anikaa@mhb.com
bradenp@mhb.com

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

EXECUTED this 13th day of January, 2025 at Olympia, WA.

s/ Victoria Oller
VICTORIA OLLER
Paralegal 1
Corrections Division
PO Box 40116
Olympia WA 98504-0116
360-586-1445
Victoria.Oller@atg.wa.gov

CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

January 13, 2025 - 4:17 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,601-9
Appellate Court Case Title:	Derek E. Gronquist v. WA State Department of Corrections
Superior Court Case Number:	22-2-00514-6

The following documents have been uploaded:

- 1036019_Answer_Reply_20250113160432SC419328_5784.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was BRIEF.pdf

A copy of the uploaded files will be sent to:

- Estera.Gordon@millernash.com
- LucasW@mhb.com
- anikaa@mhb.com
- bradenp@mhb.com
- brian.esler@millernash.com
- christinekruger@dwt.com
- ericstahl@dwt.com
- kathy@johnstongeorge.com
- kristin.martinezclark@millernash.com
- scot@johnstongeorge.com

Comments:

Sender Name: Victoria Oller - Email: victoria.oller@atg.wa.gov
Filing on Behalf of: Vanessa James - Email: vanessa.james@atg.wa.gov (Alternate Email:)

Address:
Corrections Division
PO Box 40116
Olympia, WA, 98104-0116
Phone: (360) 586-1445

Note: The Filing Id is 20250113160432SC419328