NO. 1037422
COA NO. 851748

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LORI SHAVLIK,
Petitioner,

v.

SNOHOMISH COUNTY,
Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Snohomish County, defendant in the trial court and petitioner in the Court of Appeals, requests that this Court deny Lori Shavlik's Petition for Review ("Petition").

In this Public Records Act ("PRA") case, Shavlik sought to depose George Appel, a former deputy prosecuting attorney who is now a superior court judge. The trial court permitted the deposition over the County's objection; the County sought discretionary review. The Court of Appeals (also "COA") reversed, holding in an unpublished decision that the trial court should not have permitted the deposition, because Judge Appel's testimony was not relevant to Shavlik's PRA claims.

Further review by this Court is not warranted. Shavlik fails to establish any legal error or conflict between the COA decision and this Court's precedent or other published COA decision. Further, she cannot establish that this fact-specific matter on discretionary review is of substantial public interest.

This Court should deny review.

II. STATEMENT OF THE CASE

The facts are correctly set out in the unpublished opinion of the Court of Appeals.

The COA opinion focused primarily on the relevance of Judge Appel's testimony. The Court of Appeals explained that the Civil Rules govern the scope of discovery in a PRA case. Slip Op. at *9 (citing *Neigh. All. Of Spokane County v. Spokane County*, 172 Wn.2d 702, 261 P.3d 119 (2011)).

Applying the Civil Rules, the Court of Appeals determined that the trial court erred in concluding that records Judge Appel may have created or possessed, or had knowledge of, were relevant to Shavlik's PRA claims. The COA reasoned that Judge Appel's knowledge or possession of documents had no bearing on the whether County's search for records was adequate under the PRA, because Judge Appel was not involved in processing or making policy regarding Shavlik's records requests and Shavlik had not viewed the records the County made available.

Accordingly, the Court of Appeals determined the trial court abused its discretion by permitting Judge Appel's deposition. Slip Op. at *10.

III. REASONS TO DENY THE PETITION

The Court of Appeals opinion appropriately applied precedent to the effect that discovery in a PRA case is governed by the Civil Rules and appropriately evaluated whether Shavlik's proposed deposition was relevant to her PRA claims.

The Petition fails to identify a conflict with any decision by this Court or any published decision of the Court of Appeals. Further, this case does not involve a matter of substantial public interest.

Review is not warranted under RAP 13.4(b)(1), (2), or (4).

A. The decision does not conflict with Supreme Court precedent or a published decision of the Court of Appeals.

Shavlik fails to specifically explain why the Petition meets the criteria in RAP 13.4(b)(1) or (2).

1. The decision does not conflict with Supreme Court precedent.

In her Petition, Shavlik contends that her proposed deposition "easily falls within the *Neighborhood Alliance* framework." Petition at 8. She further suggests that the Court of Appeals improperly relied on *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 288 P.3d 384 (2012) and *Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 1004 (2014). But Shavlik's arguments do not establish that the Court of Appeals decision conflicts with any of these cases.

First, the Court of Appeals decision does not conflict with *Neighborhood Alliance*. The decision correctly recognized that the Civil Rules govern the scope of discovery. Slip Op. at *9. The decision then evaluated whether the Shavlik's proposed deposition of Judge Appel was relevant to her PRA claims. *Id*. The decision distinguished *Neighborhood Alliance* based on the facts of this case—in particular, that Judge Appel was not involved in the County's response to her records requests and

that Shavlik initiated her PRA suit without viewing the records the County produced and before the County had taken final action on the relevant requests.

Conversely, in *Neighborhood Alliance*, the disclosed documents "had discrepancies indicating the agency's search was inadequate," and the requestor sued after attempting to resolve the discrepancies. Slip Op. at *11. Accordingly, as the Court of Appeals observed, *Neighborhood Alliance* is distinguishable.

2. The decision does not conflict with a published decision of the Court of Appeals.

Shavlik also disagrees with the Court of Appeals' application of *Forbes* and *Hobbs*. But the Petition does not identify a conflict between the COA decision and either case.

The Court of Appeals decision cites to both *Forbes* (and *Neighborhood Alliance*, discussed above) to explain that the focus of the judicial inquiry in a PRA case is the search process rather than the search's outcome. Slip Op. at *10-11.

Shavlik's Petition argues the County "should have requested from [Judge Appel] a detailed explanation as to how he conducted his search." Petition at 13. But, as the trial court itself found, Judge Appel was not involved in responding to Shavlik's records requests or in County policymaking regarding public records production. Slip Op. at *10 ("To that end, the trial court found that 'Judge Appel was not involved in responding to [Shavlik]'s Public Records Requests or in establishing or implementing Snohomish County's policies and procedures concerning the production of public records—including in response to [Shavlik]'s Public Records Requests.'").

The Court of Appeals decision does not conflict with *Forbes.* Rather, it appropriately applies the reasoning in *Forbes* to the facts here.

The Petition further disputes the Court of Appeals' consideration of *Hobbs*, arguing that *Hobbs* was not decided during a pandemic "where the agency was using the pandemic

as an excuse to either charge [Shavlik] for the copying or making it impossible for her to scan or copy with her own equipment at no cost." Petition at 20-21.

This argument fails to demonstrate that the decision conflicts with *Hobbs*. Instead, Shavlik herself appears to suggest that *Hobbs* is distinguishable, and the Court of Appeals should not have applied its holding to the facts of this case. This reasoning does not create a conflict worthy of this Court's review under RAP 13.4(b)(2).

In sum, Shavlik's arguments do not establish that the Court of Appeals decision conflicts with Supreme Court precedent or a published decision of the Court of Appeals. Rather, the Petition merely reasserts arguments already rejected by the Court of Appeals.

B. This case does not present an issue of substantial public interest.

Shavlik also contends that review should be accepted under RAP 13.4(b)(4) as a matter of substantial public interest.

Specifically, she argues that "whether a government agency can use the pandemic as an excuse to [not] comply with a statute is of substantial public interest." Petition at 24. Shavlik cites to no authority (other than RAP 13.4(b)(4)) in support of this argument.

This argument misunderstands the case's procedural posture and has no merit. The Court of Appeals considered only whether the trial court abused its discretion in permitting Judge Appel's deposition. But Shavlik's argument regarding the importance and applicability of public policy interests appears targeted to the underlying claims in her PRA suit rather than the discovery matter at issue. Review is not warranted on this basis.

Further, even if Shavlik's arguments regarding the importance and applicability of public policy interests were targeted to the issue on appeal, she cannot establish a substantial public interest under the unique facts of this case, where her intended deposition did not seek relevant evidence.

Put simply, in contrast to other cases where the Supreme Court has identified a substantial public interest, Shavlik does not raise issues applicable to or likely to have an impact on other cases or litigants. *See, e,g., State v. Watson*, 155 Wn. 2d 574, 577 122 P.3d 903, 904 (2005) ("prime example" of a substantial public interest where issue on appeal had the potential to affect future litigants and criminal sentencing proceedings).

Shavlik's argument fails. The Petition for Review does not present an issue of substantial public interest.

IV. CONCLUSION

The Court of Appeals decision is consistent with established precedent of this Court and the Court of Appeals, and the issue presented on discretionary review does not present a question of substantial public interest.

The Court should deny the Petition for Review.

This brief contains 1,343 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted on January 23, 2025.

JASON J. CUMMINGS
Snohomish County Prosecuting Attorney

By: _____
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DECLARATION OF SERVICE

I hereby certify that on January 23, 2025, I served a true and correct copy of Answer to Petition for Review upon the person(s) listed below and by the following means:

Lori Shavlik loritanning@gmail.com	☐ U.S. Mail, postage prepaid ☐ Overnight Courier ➢ E-filing Portal ☐ Electronically via email:

I declare under the penalty of perjury and under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 23rd day of January, 2025.

Teresa Kranz, Legal Assistant

SNOHOMISH COUNTY PROSECTUOR'S OFFICE, CIVIL DIVISION, TORT

January 23, 2025 - 10:53 AM

Transmittal Information

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