No. 1037953
(COA NO. 86195-6)

THE SUPREME COURT
OF THE STATE OF WASHINGTON

RAMIRO VALDERRAMA,

Petitioner-Plaintiff,

v.

CITY OF SAMMAMISH,

Respondent-Defendant.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The City of Sammamish ("City") worked diligently for over a year to fulfill the Public Records Requests ("PRRs") submitted by Petitioner Ramiro Valderrama ("Valderrama"). In doing so, the City followed this Court's precedent in *Nissen v. Pierce County*, 183 Wn.2d 863, 357 P.3d 45 (2015), to the letter. The trial court and the Court of Appeals, Division I, agreed that, as a matter of law, the City conducted an adequate search for records responsive to Valderrama's request(s), consistent with its obligations under the Public Records Act ("PRA"), chapter 42.56 RCW and *Nissen*. Valderrama's Petition—which seeks a third bite at the same apple—presents no issue for this Court to review.

As noted by Division I, the City's efforts included working closely with current and former members of the City Council—through its own attorneys and outside counsel—to identify responsive records on their personal devices and obtain affidavits/declarations, as well as supplying Valderrama with regular updates and seeking clarification from him where

appropriate. By the time Valderrama filed this lawsuit, the City had produced hundreds of pages of records from current and former councilmembers and dozens of *Nissen* affidavits/ declarations attesting to the efforts the officials made to search their personal devices.

Valderrama failed to create a question of material fact because he could not produce evidence to support his theory that the City's extensive search efforts were inadequate. His only basis for review now is that he claims—without supporting evidence—that this case presents a factual scenario not addressed in *Nissen*. Specifically, Valderrama offers a compilation of immaterial and unsupported character attacks against a current City councilmember, Kent Treen, and argues that the City should have inferred from these accusations that Treen executed his *Nissen* affidavits/declarations in "bad faith." Essentially arguing that Treen lied under oath in his declarations and deposition, Valderrama contends that to meet its search obligations, the City needed to initiate litigation against Treen and compel an intrusive

forensic examination of his personal device to verify the accuracy of its elected official's sworn statements and testimony.

Valderrama's argument conflicts with an elected official's constitutional right to privacy that *Nissen* emphasized must be balanced with government accountability. *See Nissen*, 183 Wn.2d at 884-85.

Valderrama also mischaracterizes Division I's decision ("Decision"), repeatedly asserting that the Court agreed he presented "disputed evidence" of Treen's "bad faith." But the Court held no such thing. Conversely, reiterating *Nissen* and refuting each of Valderrama's assertions point-by-point, Division I held that Valderrama failed to demonstrate any "bad faith" by any councilmember.

This case is not appropriate for review. Valderrama has not shown that the Decision conflicts with this Court's directions in *Nissen*. Nor has Valderrama shown that this case presents an issue of substantial public interest in need of this Court's determination.

This Court should deny Valderrama's Petition for Review.

II. STATEMENT OF FACTS

A. Valderrama Submitted PRA Requests Seeking Communications on "Encrypted Applications" on Councilmembers' Personal Devices.

In January 2022, Valderrama submitted three similar PRA Requests to the City. The first two, designated by the City as PRRs 4241 and 4244, are not before this Court. *See* CP 3232 (trial court noting that Valderrama "conceded that there were no outstanding issues with the City's responses to PRR 4241 and 4244"). The City thus focuses on his third request.

1. Valderrama Submitted PRR 4280, Seeking Communications on "External Channels" Between Councilmembers and the Public.

On January 28, 2022, Valderrama submitted a third similar PRA request, which the City identified as PRR 4280. CP 517, 532. As amended by Valderrama the following day, PRR 4280 sought "all communications" between councilmembers and Sammamish residents using "external channels":

> Council Members have been using external channels for communication with citizens/residents including but not limited to: WhatsApp, Signal, Slack, Telegram, etc. I would like to receive copies of all communications and copies of telephone call logs/ lists of calls made to citizens from all Council Members since 2019 with any resident using any of these or similar channels inc. WeChat etc. channels.

CP 534.

After providing Valderrama with the appropriate and timely initial response, the City asked its councilmembers to search for responsive records and complete *Nissen* affidavits. CP 543, 554. The City began providing installments thereafter at least monthly. CP 517-21, 1999-2000.

2. Valderrama Modified PRR 4280 Over Time.

In May 2022, after receiving four installments of records, Valderrama asserted that then-Mayor Christie Malchow's responses had thus far been non-responsive. CP 1999-2000, 2110. The City immediately responded to Valderrama and suggested that it might help Malchow determine which records

were responsive if he clarified the two instances of "etc." and the term "similar channels" in PRR 4280. CP 2110, 2136-37. Valderrama did not respond to the City. CP 2136. Instead, he emailed Malchow directly (simply copying the City) that his request sought only communications on "encrypted channels/devices" that he specifically named:

> Christie:
>
> You are being very disingenuous. My January PRR request (shown below) was **simply and only for** communication and call logs councilmembers had with citizens/ residents on encrypted channels/ devices which I named. NO other Councilmember seems to have had a problem with this simple request.
>
> If you have not had any, simply state NONE and sign the affidavit like others have. I was told this should be closed out today please do so today – I believe you are the last one pending.

CP 2570 (emphasis in original).

In June 2022, the City again asked Valderrama to clarify his request, explain what he meant by the term "encrypted

devices/channel," and confirm whether he wanted SMS text messages. CP 2136. When Valderrama finally responded, confirming that he was not seeking emails or personal SMS text messages, he failed to meaningfully clarify his terms. Rather, he broadened his request by adding new applications:

> The encrypted devices would be special phones calling - the encrypted messaging and phone channels would include: calls and messages on: WhatsApp, Signal, Slack, Telegram, **WeChat, Line, Messenger (Facebook), etc. or similar** - ***not the daily city or personal emails***. Also not asking for Council personal phone line SMS messages.

CP 2136 (emphasis added).

Contrary to his email to Malchow a month earlier, wherein Valderrama claimed that the request was limited to communications on applications "named" in the request (CP 2570), he was now claiming it encompassed three additional applications. Further, he kept the request vague by ending the expanded list with "etc. or similar." CP 2136. The City continued

to provide Valderrama installments of records at least monthly over the next three months. CP 1962-69, 2000.

For the first eight months after submitting his requests, Valderrama expressed no disagreement with *who* the City was obtaining records and affidavits from. CP 516-20, 1956-69, 1951-54. Indeed, in May, June, and July 2022, Valderrama represented that he believed the only councilmember with outstanding records in response to PRR 4280 was Malchow. CP 800-04, 2563, 2581, 1951-55.

In September 2022, however, after Valderrama involved legal counsel, his attorney began accusing the City of violating the PRA by not obtaining records from certain other former councilmembers. *See* CP 5, 359, 1948, 2267, 2269. The City worked to obtain the additional declarations and provide them to Valderrama. *See* CP 1948-49, 1969-72, 1985-93, 2001, 2267, 2269, 2271.

In November 2022, nine months after submitting his requests, Valderrama again "restated" PRR 4280:

> **My PRR 4280 request restated continues for:**
>
> Council Members have been using external channels for communication with citizens/residents including but not limited too [*sic*]: WhatsApp, Signal, Slack, Telegram, WeChat, Slack, Facebook Messenger etc – or any similar encrypted channel.

CP 2175.

B. The City Undertook Exhaustive Efforts to Respond to Valderrama's Ever-Evolving Requests.

By the time Valderrama restated his request in November 2022, the City had produced eleven installments of records and at least twelve affidavits/declarations. CP 395-96, 1972, 1999-2000. The City worked diligently to respond to the restated PRR 4280 and the new issues raised by Valderrama's counsel over the next four months, providing another six installments. CP 1949, 1972-85, 2000.

The City's laborious efforts included, but were not limited to:

- extensive communications with current and former councilmembers to: ask and then prompt them for responses; provide guidance on the scope of responsive records; offer technical assistance in locating and producing records; provide draft *Nissen* affidavits/declarations for them to complete; and follow up, including seeking supplementations after Valderrama or his counsel raised new issues and/or expanded the scope of PRR 4280;
- extensive communications with Valderrama to: seek clarifications; respond to his numerous follow-up questions and demands; provide installments; and keep him apprised of the City's progress; and
- retaining outside attorneys to: further communicate with and/or assist former and/or current councilmembers; obtain responsive records and/or *Nissen* affidavits/declarations from former and/or

current councilmembers; review and redact records; and respond to Valderrama's counsel.

See CP 393-405, 514-21, 701-27, 1950-99; *see also* CP 3233 (trial court noting that "at oral argument, Valderrama's attorney agreed that there was no dispute regarding the itemized descriptions of efforts undertaken by the [public records officers] and attorneys on behalf of the City to work with current and former councilmembers to search their devices and provide signed Nissen declarations").

The above efforts resulted in production of 24 installments and hundreds of pages of records. CP 1999-2001. And, although there were only six councilmembers in office when Valderrama submitted PRR 4280, the City provided him 43 affidavits (including seventeen just for PRR 4280) from twelve current or former councilmembers in response to his requests. CP 231-33, 2001-04, 2668-93. These productions included multiple affidavits from Treen. CP 2004.

In his initial affidavits, Treen inaccurately checked the box indicating that he did not search his personal devices and accounts because he did not use them for City business. CP 2773, 2779, 2785. He subsequently provided corrected declarations, explaining that he checked that box mistakenly and clarifying that he conducted searches for the requested records and what those searches entailed. CP 2776-77, 2782-83, 2788-90. Treen also explained his searches further when Valderrama's counsel deposed him. CP 103-04. Significantly, in both his declarations and deposition testimony, Treen confirmed that he did not utilize any of the requested "encrypted" applications to communicate with Sammamish residents regarding City-related business and therefore, he had no responsive records. CP 102-03, CP 2776-77, 2782-83, 2788-90.

C. **Procedural History.**

In March 2023, with PRR 4280 still open (CP 1946, 1949), Valderrama filed this lawsuit, alleging violations of the PRA.

CP 1. After extensive discovery, the parties filed cross motions for summary judgment. CP 362-91, 1464-85.

Following cross-briefing and oral argument, the trial court denied Valderrama's motion for partial summary judgment and granted summary judgment in the City's favor. CP 3231-46. Division I thereafter affirmed. *Valderrama v. City of Sammamish*, 561 P.3d 288 (Wn. App. 2024). Valderrama then sought review from this Court.

III. REASONS WHY REVIEW SHOULD BE DENIED

This Court grants review only if the criteria set forth in RAP 13.4(b) are met. These include: "(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; … or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b). While premising his petition on subparts (1) and (4), Valderrama fails to show either a conflict with this Court's precedent or an issue of substantial public interest that would

warrant this Court's determination. This Court should deny review.

A. The City Complied with Its PRA Obligations.

1. In Response to a PRR, an Agency Must Conduct an Adequate Search.

The PRA requires government agencies to produce public records upon request unless an enumerated exemption applies. *Sanders v. State*, 169 Wn.2d 827, 836, 240 P.3d 120 (2010). After receiving a records request, an agency must respond in one of the following ways within five business days: (1) provide the record; (2) provide an internet address and link on the agency's web site to the specific records; (3) acknowledge receipt of the request and provide a reasonable estimate of time needed to respond; (4) acknowledge receipt and ask the requester to provide clarification if the request is unclear, but provide a reasonable estimate of time needed to respond if the request is not clarified; or (5) deny the request, with a proper claim of

exemption. RCW 42.56.520(1); *see also Belenski v. Jefferson Cty*., 186 Wn.2d 452, 456-57, 378 P.3d 176 (2016).

A public records request must be for identifiable records. RCW 42.56.080(1); *Fisher Broad-Seattle TV, LLC v. City of Seattle*, 180 Wn.2d 515, 522, 326 P.3d 688 (2014). A record is identifiable when the requester gives "a reasonable description enabling the government employee to locate the requested records." *Bonamy v. City of Seattle*, 92 Wn. App. 403, 410, 960 P.2d 447 (1998). The PRA does not "require public agencies to be mind readers." *Id*. at 409. An agency may ask the requester to clarify an unclear request and, if the request is not clarified, the agency needs only respond to the portion that is clear. RCW 42.56.520(3).

A requester may bring an action under the PRA only for two causes, to challenge an agency's alleged: (1) denial of "an opportunity to inspect or copy a public record," and/or (2) estimate of time to respond to the request. RCW 42.56.550(1)-(2).

A claim relating to an agency's alleged denial of "an opportunity to inspect or copy a public record" may be premised on an alleged failure to adequately search for records because the "failure to perform an adequate search is tantamount to a denial of the request." *West v. City of Tacoma,* 12 Wn. App. 2d 45, 79, 456 P.3d 894 (2020).

2. The Adequacy of a Search May Be Determined on Summary Judgment.

An adequate search under the PRA requires agencies to search in a manner that is *reasonably* calculated to uncover all relevant documents. *Neighborhood Alliance of Spokane Cty. v. Spokane Cty.*, 172 Wn.2d 702, 721, 261 P.3d 119, 138 (2011) (emphasis added). "This is not to say, of course, that an agency must search every possible place a record may conceivably be stored, but only those places where it is reasonably likely to be found." *Id*.

To establish that its search was adequate in a motion for summary judgment, "the agency may rely on

reasonably detailed, nonconclusory affidavits submitted in good faith." *Block v. City of Gold Bar*, 189 Wn. App. 262, 271, 355 P.3d 266 (2015). The affidavits should include the search terms (if applicable) and the type of search performed and should establish that all places likely to contain responsive materials were searched. *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 868, 288 P.3d 384 (2012), *rev. den*., 177 Wn.2d 1002 (2013). This procedure satisfies the agency's burden to show its search was adequate "beyond material doubt." *Neighborhood Alliance*, 172 Wn.2d at 721.

The Court then conducts a fact-specific inquiry to determine if an agency's search was reasonable. *Id*. It bases that determination on the scope of the agency's search, not on whether the requester has presented alternative searches they believe would have more accurately produced the requested records. *Tacoma*, 12 Wn. App. 2d at 79 (citing *Hobbs v. State*, 183 Wn. App. 925, 944, 335 P.3d 1004 (2014)). The issue of whether a search was reasonably calculated, and therefore

adequate, is separate and apart from whether additional responsive documents exist but are not found. *Id*. (citing *Neighborhood Alliance*, 172 Wn.2d at 720). A search may be adequate and still fail to identify responsive records. *Id*. (noting that the "mere fact that a record is eventually found does not itself establish the inadequacy of an agency's search").

Once "an agency makes a prima facie showing it has conducted an adequate search, the requester must rebut that showing." *Neighborhood Alliance*, 172 Wn.2d at 741. Speculative claims about the existence and discoverability of other documents will not overcome agency testimony, which is accorded a presumption of good faith, even on summary judgment. *See Forbes*, 171 Wn. App. at 867-68.

3. The City Complied with Its Obligation to Perform an Adequate Search Under This Court's Precedent.

In *Nissen*, this Court directly addressed a public agency's obligations when a PRA request implicates materials held on public employees' or officials' personal devices. *Nissen*, 183

Wn.2d at 883. The Court held that the agency employees and agents must search their own "files, devices, and accounts for records responsive to a relevant PRA request" and then "produce any public records" to the agency for review and disclosure. *Id.* at 883-86. The employees or agents may then submit "'reasonably detailed, nonconclusory affidavits' attesting to the nature and extent of their search," to show the agency conducted an adequate search. *Id.* (quoting *Neighborhood Alliance*, 172 Wn.2d at 721).

The City followed precisely the procedure outlined by *Nissen* and conducted adequate searches for records responsive to Valderrama's requests: it asked its current (and former) elected officials to search their personal devices and accounts for responsive records, obtained affidavits and/or declarations[1] from them that comply with *Nissen*'s standards, and then disclosed any

[1] GR 13 allows a declaration to be utilized in lieu of an "affidavit." *See also Scott v. Petett*, 63 Wn. App. 50, 57, 816 P.2d 1229 (1991).

responsive records and affidavits/declarations to Valderrama. *See Nissen*, 183 Wn.2d at 886-87. The record, which spans more than 1,600 pages, demonstrates the City's extensive efforts in this regard and its elected officials' good-faith searches. *See* § II, B, *supra*; CP 2668-793. The City met its adequate search obligations and was entitled to summary judgment. *Id*. at 884-85.

B. Valderrama Fails to Demonstrate a Conflict with This Court's Precedent.

Under RAP 13.4(b)(1), the only decision of this Court that Valderrama claims the Decision conflicts with is *Nissen*. His argument seeking this Court's review relies on a single sentence in *Nissen* that presumes good faith. Pet. at 14-18. After outlining the affidavit procedure, this Court wrote:

> When done in good faith, this procedure allows an agency to fulfill its responsibility to search for and disclose public records without unnecessarily treading on the constitutional rights of its employees.

Nissen, 183 Wn.2d at 886–87. Valderrama fails to show a conflict with this sentence, and the record presents no evidence that the searches were not conducted in good faith.

1. Valderrama Failed to Rebut the Presumption that Treen Executed His Affidavits/Declarations in Good Faith.

Valderrama tries to manufacture a conflict by claiming that "the Court of Appeals recognized that this case involves bad faith affidavits by elected officials." Pet. at 15. He further claims that "the Court of Appeals recognized that Valderrama raised disputed facts regarding Treen's bad faith concerning statements made in his affidavit: 'In any event, Valderrama is correct that this evidence presents a disputed issue of fact as to whether Treen sought to delete information from his cell phone.'" Pet. at 15-16 (quoting *Valderrama*, 561 P.3d at 298).[2]

[2] The City focuses on Treen because he is the sole focus of Valderrama's Petition. In two footnotes, however, Valderrama asks this Court to consider the additional arguments he made at pp. 41-55 of his opening brief at the Court of Appeals. The City submits that this is an improper attempt to avoid this Court's length limitations. To the extent the Court is inclined to consider

Valderrama's characterization of what Division I "recognized" is disingenuous. The Court was not referring to statements in Treen's affidavits in the quoted passages. It was referring to a dispute over what Treen meant when he reportedly asked a City information technology employee (a year after Valderrama submitted PRR 4280) for help "scrubbing" his phone. *Valderrama,* 561 P.3d at 298. The employee apparently "assumed" Treen was asking to delete information from his personal phone, while Treen testified that he was trying to obtain information from his City-issued phone. *Id.*; *see also* CP 1876-77; *cf.* CP 97-98. Division I recognized that this presented a dispute of fact as to what Treen wanted the employee to help him do, not—as to what Valderrama misrepresents—"bad faith." *Id.*

Valderrama thus wrongly conflates a question about Treen's intentions in this conversation with a question about whether he executed his *Nissen* affidavits in good faith. There is

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the additional pages, the City requests that the Court also consider the City's Respondent's Br. at pp. 42-60, 66-68.

no evidence that Treen ever deleted information from his phone or that anything Treen declared in his *Nissen* affidavits was in any way inconsistent with the employee's testimony. Treen also testified that he never destroyed or deleted any records that were or could be related to City business. CP 92, 98, 106. Nowhere in the Decision did the Court recognize a question of fact about Treen's good faith in executing his affidavits.

Moreover, the Court correctly held that the question of fact it recognized—regarding Treen's intentions when he mentioned "scrubbing" his phone—was not material. *Valderrama,* 561 P.3d at 298. Valderrama argued that the implications of Treen's request required the City to take further action regarding Treen's personal devices. But the Court observed that the City took further action by seeking Treen's permission to conduct an examination of his devices. Treen refused. *Id*.

The Court of Appeals then provided a lengthy discussion regarding *Nissen* and why it does not require the City, if it believed Treen had asked for help in deleting information from

his phone, to compel a forensic examination of his devices against his will. The Court explained that *Nissen* "suggested that such an infringement on employees' privacy rights is unnecessary to conduct an adequate search." *Id*. It further noted that *Nissen* "recognized that its procedure for obtaining public records from employees' private devices 'might be criticized as too easily abused or too deferential to employees' judgment.'" *Id*. (quoting *Nissen*, 183 Wn.2d at 887). However, the Court read *Nissen* as reasoning "that the procedure is not uniquely deferential because 'an employee's judgment would often be required to help identify public records on a cell phone, even in an in camera review.'" *Id*. (quoting *Nissen*, 183 Wn.2d at 887). Recognizing the imperfections in the process, Division I reaffirmed *Nissen*'s holding that the process "strikes an acceptable balance between personal liberty and government accountability." *Id*. (citing *Nissen*, 183 Wn.2d at 884).

The Court of Appeals thus faithfully applied *Nissen*. What Valderrama argues—that an agency must compel a forensic

examination of an elected official's personal device based upon a suspicion that the official has not conducted an adequate search—would conflict with this Court's refusal to "read the PRA as a zero-sum choice between personal liberty and government accountability." *Nissen*, 183 Wn.2d at 884.

2. The Presumption of Good Faith Does Not Conflict with *Nissen*.

Valderrama also argues that the Decision conflicts with *Nissen* because it "can be read as" lessening the burden on agencies by recognizing a "presumption that a city's search is compliant with the PRA when any affidavit is provided by an official using private devices to conduct city business, even when there is evidence that the affidavit was not made in good faith." Pet. at 17-18. The presumption of good faith in agency affidavits was recognized in this state's published jurisprudence before this Court decided *Nissen*. *See, e.g.*, *Forbes*, 171 Wn. App. at 867. It derives from federal jurisprudence applying the same presumption to agency affidavits issued under the Freedom of

Information Act. *See Trentadue v. F.B.I.*, 572 F.3d 794, 808 (10th Cir. 2009) ("Agency affidavits are accorded a presumption of good faith, which cannot be rebutted by purely speculative claims about the existence and discoverability of other documents.") (quoting *SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1200 (D.C. Cir. 1991)).

Division I's application of that established presumption here is consistent with *Nissen*. Valderrama's claim is purely speculative: that because Treen might have asked someone for help with deleting information from his phone, he might not have been acting in good faith when he executed affidavits saying that he did not have communications with the public about City business on encrypted applications on his phone. To the extent the Decision "can be read" as holding that this speculation cannot overcome the presumption of good faith, or otherwise compel an involuntary forensic examination of an elected official's personal device, Valderrama does not show that such reasoning would conflict with *Nissen*. To the contrary, it is consistent with

Nissen's holding that the affidavit procedure, with its imperfections, strikes the proper balance between personal liberty and government accountability. *Nissen*, 183 Wn.2d at 884. Review is thus unwarranted under RAP 13.4(b)(1).[3]

C. Valderrama Fails to Raise an Issue of Substantial Public Interest Meriting This Court's Review.

Valderrama likewise fails to show that review is warranted under RAP 13.4(b)(4). The issue of substantial public interest Valderrama purports to identify is whether an agency must "conduct a further search for public records when presented with evidence that a public official provided a *Nissen* affidavit in bad faith." Pet. at 2-3. His request is not supported by either the facts or the law.

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[3] In a footnote, Valderrama claims that the need for review is "further evidenced" by certain City policies. Pet. at 18, n.4. Valderrama fails to explain how those policies establish a conflict between the Decision at issue here and this Court's precedent. In any event, as noted by Division I, Valderrama made no argument regarding the City's policies to the trial court. *Valderrama*, 561 P.3d at FN 5.

1. Valderrama Fails to Establish Facts to Justify Review.

Valderrama's proposed factual basis for this issue is again built entirely on his accusations against Treen. Valderrama references three incidents he believes show "bad faith" by Treen. None support his theory.

The first is the immaterial "scrubbing" testimony, which the City has addressed above.

The second is a text message that a former City Manager allegedly sent Treen in August 2020—eighteen months *before* Valderrama submitted PRR 4280—suggesting that Treen should delete certain emails. Pet. at 9; CP 1808. But there is no evidence that Treen ever deleted the emails in question, and Valderrama was clear that PRR 4280 did not seek email correspondence. CP 2136.

The third is that Treen initially signed affidavits in which he checked a box saying he had not searched his personal devices because he did not use them for City business. Pet. at 10.

However, Treen later executed supplemental declarations, explaining that he initially checked the box in question by mistake. CP 2776-77, 2782-83, 2792. The supplemental declarations clarified Treen's efforts and explained that, regarding PRR 4280, he did not locate any public records responsive to Valderrama's request, and the only communications on the searched applications (to the extent there were any) were personal, related to family or campaign matters, or activities undertaken as a Sammamish resident. CP 2792-93.

Valderrama's only basis for disputing these statements is from the vague recollection of a citizen, Michael Scoles, who worked on Treen's campaign and stated that he was on a Slack group that allegedly included Treen. While Scoles speculated that some City business might have been discussed in that group, he could not recall any specific instance of any such discussion. CP 1870. He also admitted that his only involvement with the people in the group was campaign-related and that it was not his place to discuss City business with them. CP 1871-72. Scoles

tried to retrieve these alleged Slack messages but could not access his account. *Id*.

Treen's testimony is consistent. Treen explained that his searches for communications with Scoles revealed campaign or other personal communications (CP 2777, 2783), neither of which are public records. *Nissen*, 183 Wn.2d at 881; *West v. Puyallup*, 2 Wn. App. 2d 586, 589, 410 P.3d 1197 (2018). He did not recall being on any Slack group with Scoles and never signed into that application. CP 91, 103. He nevertheless checked his phone, found the Slack application, and could not open it. CP 103.

Scoles' testimony does not contradict Treen on any material point, and the facts do not establish "bad faith," nor raise the question Valderrama proposes for review.

2. Valderrama Fails to Show Public Interest.

Valderrama also fails to show that this issue would be appropriate for this Court's review, even in a hypothetical case where the proper factual predicate was established. According to

Valderrama, *Nissen* implied that more action by an agency would be necessary if there was reason to believe an employee executed an affidavit in "bad faith." Valderrama premises this theory on *Nissen*'s statement that the PRA "must offer the public a way to obtain those records." Pet. at 19.

What Valderrama ignores is that the quoted language prefaces *Nissen*'s discussion of the affidavit procedure. *Nissen* stated that the PRA must provide the public a way to obtain public records stored on personal devices and then immediately outlined the affidavit procedure. *Id*. at 884-87. In other words, the affidavit procedure *is* the process that this Court identified as the public's "way to obtain those records." *Nissen*, 183 Wn.2d at 884.

Nissen also emphasized: "Whether stored in a file cabinet or a cell phone, the PRA has never authorized 'unbridled searches' of every piece of information held by an agency or its employees to find records the citizen believes are responsive to

a request." *Id.* at 885 (quoting *Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004)).

Setting aside any theoretical scenario, here there is affirmative sworn testimony by Treen that he did not find any responsive records after conducting thorough searches. This testimony indisputably meets the test outlined by *Nissen* and confirms that Valderrama's Petition is simply a request for the Court to *reconsider*—not extend—*Nissen*. At bottom, Valderrama asks this Court to decide that the City was required to compel an involuntary, unbridled forensic search of its elected official's personal device purely because the Petitioner does not believe that official's sworn statements—the very action this Court has already explicitly stated the PRA "has never authorized." *Nissen*, 183 Wn.2d at 885.

Because *Nissen* already answered Valderrama's question, review is unnecessary.

IV. CONCLUSION

This Court should decline Valderrama's Petition for Review.

RESPECTFULLY SUBMITTED this 14th day of February, 2025.

I certify that the foregoing Answer to Petition for Review contains 4,996 words, excluding words contained in the title sheet, table of contents and authorities, certificate of service, signature blocks, any pictorial images or appendices, and this certificate.

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CERTIFICATE OF SERVICE

On said day below I electronically served a true and accurate copy of the Answer to Petition for Review in Supreme Court of Washington, Cause No. 1037953 to the following parties:

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

Dated this 14th day of February, 2025 at Seattle, Washington.

/s/ *Linda Vandiver*
Linda Vandiver,
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OGDEN MURPHY WALLACE, PLLC

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Appellate Court Case Number:	103,795-3
Appellate Court Case Title:	Ramiro Valderrama v. City of Sammamish

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