IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

AMANDA THORNEWELL,
Plaintiff-Appellant,

v.

SEATTLE SCHOOL DISTRICT NO.1,
Defendant-Appellee.

PETITION FOR DISCRETIONARY REVIEW

Ryan P. Ford, WSBA No. 50628
Michael L. Smith, WSBA No. 57816
Attorneys for Appellant

CEDAR LAW PLLC
113 Cherry St., PMB 96563
Seattle, WA 98104
(206) 607-8277
ryan@cedarlawpllc.com
mike@cedarlawpllc.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES AND REGULATIONS

OTHER AUTHORTIES

INTRODUCTION

The Court of Appeals' decision affirming the Trial Court's dismissal of Petitioner Amanda Thornewell's lawsuit in favor of Respondent Seattle Public Schools ("District") is contrary to statutory and decisional law relating to the Public Records Act ("PRA"). The appellate court held the District did not violate the PRA notwithstanding (a) the District affirmatively determined an inapplicable "investigation" exemption applied to a group of otherwise responsive records; (b) it withheld all such investigatory records for nearly 11 months; but (c) it never once informed Thornewell it was applying said exemption.

The appellate court's ruling is in conflict with this Court's prior decisions regarding the PRA, including *Gipson v. Snohomish County*, 194 Wn. 2d 365 (Wash. 2019), as well as the language and spirit of the PRA. This case also involves an issue of substantial public interest that should be determined by the Supreme Court, as it directly impacts our citizenry's ability to secure timely and transparent access to those agencies and

persons who serve the public. This is especially true of this case because the evidence demonstrates this is not a proverbial "one-off" matter; it is a pattern and practice, a standard operating procedure, the District employs to deprive requestors of timely and complete disclosure of and access to public records.

IDENTITY OF PETITIONER

Petitioner is Amanda Thornewell, Plaintiff in the case below.

COURT OF APPEALS DECISION

Thornewell seeks review of the Court of Appeals' November 25, 2024 unpublished ruling affirming the trial court's decision granting the District's partial motion for summary judgment and denying Thornewell's motion for summary judgment. *See Amanda Thornewell v. Seattle Sch. Dist. No. 1*, No. 85998-6-I, 2024 WL 4880759. The appellate court denied Thornewell's motion for reconsideration on December 27, 2024.

ISSUES PRESENTED

1. Did the District Violate the PRA Where, Consistent with Its Standard Operating Procedure, It Internally Asserted a Legally-Inapplicable Exemption to Thornewell's March 2020 PRR, It Did Not Inform Thornewell of Such and Did Not Disclose The Existence of or Produce Said Records for Nearly a Year, But Only Did so After its Investigation Concluded?

STATEMENT OF THE CASE

A. The Underlying Issues and the March 2020 PRR.

In January 2020, a District High School Assistant Principal confronted Thornewell's son with an armed police officer, demanding he not report on bullying and hazing amongst the swim team. (CP[1] 127-128 288-289, 294-312). That same month, Thornewell filed a complaint with the District's Office of Student Civil Rights ("OSCR"). (CP 288-293). At the time, Christina "Tina" Meade was the District's Student Civil Rights Compliance Officer. (CP 126-128, 132). Ms. Meade supervised

[1] Clerk's Papers

OSCR investigator Robert Veliz, who was assigned Thornewell's complaint. (CP 453-465, 531-534).

On March 4, 2020, Thornewell's counsel submitted a PRA request on her behalf ("March 2020 PRR") containing five requests and requesting "installments as they become ***available***." (CP 541) (emphasis added).

District Public Records Officer ("PRO") Randall Enlow was the primary employee responsible for handling Thornewell's March 2020 PRR. (CP 447, 455-456, 463, 473-484). Roxane O'Connor (the District's most knowledgeable PRA attorney who advised the District on the PRA) was PRO Enlow's direct supervisor during the relevant period. (CP 455-457, 487-488, 492-495).

B. The District determines it will not disclose nor produce responsive records due to OSCR's ongoing investigation into Thornewell's complaint.

Two days after receipt of the March 2020 PRR, PRO Enlow emailed Ms. Meade, copying Ms. O'Connor, with the March 2020 PRR stating, "[s]ee the below request. Could you

please send us anything you believe may be responsive? Any other information you believe may be relevant to assess timing/scope/others to contact would be much appreciated." (CP 457-458, 512-516). That same day, Ms. Meade responded, and copied Ms. O'Connor, who she viewed as the PRO, "[p]lease be aware that there is an open OSCR investigation based on an emailed complaint from parent, Amanda Thornewell. We need to discuss further what documents can be excluded while the investigation is ongoing." (*Id.,* CP 528-529).

By March 11, 2020, Ms. Meade was advised records related to OSCR's investigation were exempt under the PRA until the OSCR investigation was complete. (CP 457-458, 531, 536). Thus, she would not release public records responsive to Thornewell's March 2020 PRR touching on the District's OSCR investigation. (CP 457-458, 531, 536). The entire time, Ms. O'Connor and PRO Enlow knew of Ms. Meade's position on the relevant OSCR records being exempt under the PRA. (CP 457-458, 536-542).

On April 16, 2020, the District produced FERPA-related records, including references to an OSCR investigation, but made no reference to the exempted records. (CP 540, 865-866).

On May 28, 2020, Ms. O'Connor emailed PRO Enlow she "didn't see any content that I'd necessarily exempt under RCW 42.56.280" and "it might be good to connect with [the investigator] Robert Veliz." (CP 545-547). PRO Enlow emailed Mr. Veliz, copying Ms. O'Connor, inquiring whether OSCR's investigation had concluded and requesting Mr. Veliz produce all records responsive to the March 2020 PRR. (CP 515-516).

On May 29, 2020, a second installment was produced to Thornewell, without disclosing the OSCR records or the asserted exemption. (CP 539-540).

On June 1, 2020, Mr. Veliz responded to PRO Enlow:

> Regarding the Thornewell case, that case is still under investigation and I have a few witness statements to obtain. It's my understanding the case cannot be accessed for public records until the investigation is concluded. Please advise if you still want access to what I have thus far on the

Thronewell [sic] case. (CP 514).

On June 2, 2020, Mr. Veliz emailed PRO Enlow, copied Ms. Meade, and stated, "[t]he [sic] Thronewell case is still under investigation and to my understanding not subject to Public Records requests until it is concluded. Please advise me if my records for this case must be provided at this time." (CP 512). PRO Enlow replied (and copied Ms. Meade and Ms. O'Connor), "**[y]ou are correct the records are exempt so long as the investigation is ongoing.**" (CP 513; emphasis added).

That same day, PRO Enlow reiterated this determination in a separate email exchange with Ms. Meade, copying Ms. O'Connor:

> As for the District's records release obligations, **investigative records are indeed exempt in their entirety while the investigation is active and ongoing**. Ideally, we still gather records so we can potentially review and work on them while the investigation is pending, **but it also works great to get them once the investigation closes and the complainant is notified**. (CP 509; emphasis added).

Thus, as of June 2, 2020, the District unequivocally internally determined and asserted the OSCR investigation records were exempt during the pendency of the investigation. (CP 509, 513).

The record is devoid of any other deliberations regarding the exemption in 2020. (CP 509, 512-513, 544-547). Yet, the District produced installments on July 23, 2020; September 17, 2020; November 12, 2020; and January 21, 2021 (CP 538-539, 918), but never once informed Thornewell of the applied investigation record exemption. (*See* CP 538-539, 778, 782, 918).

C. Almost a year after the March 2020 PRR, the District finally disclosed and produced the OSCR investigation records only after the investigation concluded.

It is undisputed the District "postponed producing some of those records until the last two installments." *Thornewell*, No. 85998-6-I, 2024 WL 4880759 at *2; *see also* (CP 549, 555, 558) ("38 pages of documents responsive to the Plaintiff's March 4, 2020 request were not produced due to an ongoing

investigation." (CP 555). The sixth installment was 122 pages and the seventh installment was 82 pages (CP 134, 340).

D. The District has a practice of withholding the disclosure and production of OSCR investigation records due to ongoing investigations.

Dating back to 2016, Ms. Meade had been advised on more than one occasion by the District's public records office that records related to an ongoing investigation subject to the PRA are exempt until the investigation is concluded. (CP 458, 523-527; *see also* 529-534). She advised all investigators she supervised accordingly. *Id*.

Ms. Meade also testified, "[a]t that time [March 11, 2020] we were advised that during an open investigation, investigatory records are not subject to release until the investigation is completed." (CP 531.)

On March 17, 2021, Ms. Meade also claimed records could be withheld, which appears to have been the subject of a PRA request related to a different ongoing investigation. (CP 912, 922-924). Additionally, neither Ms. O'Connor nor PRO

Enlow made efforts to disabuse Ms. Meade of her notion that an ongoing District investigation does not automatically mean the records are exempt. (CP 134, 137-138, 249-250, 544, 865-868, 895, 912, 922-924).

E. The courts recognized the District withheld those records based on its understanding of the ongoing investigation.

The appellate court correctly identified the District postponed producing records. *Thornewell*, No. 85998-6-I, 2024 WL 4880759 at *2. The trial court correctly ascertained PRO Enlow had blanketly withheld records responsive to the March 2020 PRR until the OSCR investigation was completed. (RP[2] 22-23). PRO Enlow had an understanding in his own mind the OSCR investigative records were not subject to disclosure during the investigation, and he only changed his position after the investigation ended. (RP 23-24).

Respectfully, the appellate court incorrectly found the District's misapplication of the investigatory records exemption

[2] Report of Proceedings

and the failure to inform Thornewell of the exemption did not result in a PRA violation. *See Thornewell*, No. 85998-6-I, 2024 WL 4880759 at *2-6.

ARGUMENT

"The stated purpose of the Public Records Act is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions. RCW 42.17.251[3]. Without tools such as the Public Records Act, government of the people, by the people, for the people, risks becoming government of the people, by the bureaucrats, for the special interests. In the famous words of James Madison, 'A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both.' Letter to W.T. Barry, Aug. 4, 1822, 9 *The Writings of James Madison* 103 (Gaillard Hunt,

[3] RCW 42.17.251 is now located at 42.56.030.

ed. 1910)." *Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wn. 2d 243, 251 (1994) ("*PAWS II*").

To effectuate the PRA's purpose, the legislature declared it "shall be liberally construed and its exemptions narrowly construed." RCW 42.56.030; *see also PAWS II*, 125 Wn. 2d at 251, 260. Relatedly, this Court made clear the PRA "is a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hoppe*, 90 Wn. 2d 123, 127 (Wash. 1978).

"The PRA was enacted to facilitate government transparency through the disclosure of public records." *Gipson v. Snohomish Cnty.*, 194 Wn. 2d 365, 370 (2019). "To serve the goal of transparent government, agencies are required to adopt rules and regulations that 'provide for the fullest assistance to inquirers and the most timely possible action on requests for information." *Cantu v. Yakima School Dist.*, 23 Wn. App. 2d 57, 78 (citing RCW 42.56.100).

I. This Case is One Example of the District's Standard Operating Procedure of Impermissibly Withholding Responsive Records for the Duration of an Investigation

Based on an Asserted Exemption, and thus Undermines Government Transparency.

Contrary to government transparency, the District implemented, and by virtue of its decision, the appellate court endorsed, the creation of a legally-evasive District standard operating procedure where (a) an agency applies an improper exemption to requested records for the duration of an investigation, (b) it fails to inform a requestor it applied said exemption, and (c) only when the agency later – here, nearly 11 months after receiving the March 2020 PRR – concludes its investigation, does it ***disclose and actually*** produce the records that were withheld. Such conduct completely eviscerates the clear and repeated directives that an agency must provide the fullest, most timely assistance and action under the PRA.

The appellate court's erroneous conclusion that the "District did not *assert* a public records exemption" must be corrected. *Thornewell*, No. 85998-6-I, 2024 WL 4880759 at *1 (emphasis added). Respectfully, that is semantics. The record

demonstrates the District did "assert" an exemption because it actually applied the investigation exemption. However, it never once informed Thornewell nor her counsel its position was the OSCR investigation records were exempt. (CP 538-540, 778, 782, 918). Indeed, the appellate court recognized as much – "The District did not tell Thornewell it was refusing or denying her access to the investigation records, nor did it claim exemptions for them with an exemption log." *Thornewell,* 2024 WL 4880759 at *4 (emphasis added).

The lower court elevated form over substance, because although the record demonstrates that notwithstanding the District demonstrably internally *asserting/applying* an exemption, since it did not tell Thornewell nor identify it was doing so via an exemption log, it thus far has evaded liability under the PRA.

Multiple internal communications from March 2020, May 2020, June 2020, and January 2021 demonstrate PRO Enlow affirmatively stating he was treating (read: asserting) those

records as exempt or permitting the investigators to treat them as such. (CP 457-458, 512-516). This was not an "initial" understanding, but rather a position the District held until after the close of the relevant investigation. *Id*. And that position was also in line with the District's standard operating procedure.

Dating back to 2016, Ms. Meade had been advised on more than one occasion by the District's public records office that records related to an ongoing investigation subject to the PRA were exempt until the investigation is concluded. (CP 458, 523-527). She in turn advised all investigators she supervised accordingly. *Id*.

For instance, on March 17, 2021, and regarding what appears to have been a different ongoing investigation Ms. Meade was involved in, she claimed records could be withheld. (CP 912, 922-924). Further, neither Ms. O'Connor nor PRO Enlow disabused Ms. Meade's understanding and approach. (CP 134, 137-138, 249-250, 544, 865-868, 895, 912, 922-924).

The District's conduct here, arising from its institutional approach to OSCR investigations where PRA requests are pending, fails to comply with this Court's clear directives in *Gipson*. "With any request, the receiving agency determines any applicable exemptions at the time the request is received." *Gipson* at 372 (emphasis in original). This Court stated, "Thus, we hold that a records request is satisfied when an agency receives a public records request, identifies a legitimate exemption under the PRA *at that time*, and clearly notifies the requester that the request will be treated in accordance with that exemption." *Id.* at 374 (emphasis in original).

The District violated this Court's holding in *Gipson*. It did not identify a "legitimate exemption under the PRA at [the] time it received" Thornewell's request because first, no such legitimate exemption applied, and second, the District could have made such a determination had the responsible personnel actually secured and reviewed the records held by the OSCR staff at the time when they were specifically made aware of their

existence. It did not do so because the District had a pattern and practice of assuming the investigative exemption applied while not disclosing the existence of, let alone producing, such records to a requestor for the duration of an OSCR investigation.

Further, the District never notified "the requester that the request will be treated in accordance with that exemption," as it failed to inform Thornewell at any time the District had applied an exemption, thus depriving her of the ability to review and contest the asserted exemption.

The foregoing shows that Thornewell's position does not disregard the plain language of RCW 42.56.520(2), as the appellate court contends. *Thornewell,* 2024 WL 4880759 at *3. RCW 42.56.520(2) (cited by *Thornewell* with emphasis added therein) reads:

> Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, *or to determine whether any of the*

> *information requested is exempt* and that a denial should be made as to all or part of the request.

As the record demonstrates, the District did actually *determine*, albeit erroneously, that the requested information was exempt, but did not inform Thornewell of such; the additional "time" of nearly 11 months from receipt of the 2020 PRR to when the OSCR records were produced was unnecessary and violative of law. To allow the District's conduct to go without consequence contradicts not only the above statute, but also the spirit of the PRA.

The District's acts run counter to the PRA's strongly-worded mandate and imperils the tenets of ensuring open and transparent government. This is an opportunity for this Court to address the Court of Appeals weakening of the people's right to access and hold accountable their governmental officials through the PRA.

II. The District Failed to Diligently Disclose the Existence of and to Produce the Non-Exempt Records

The lower court recognized that the District erroneously withheld the records at issue because of its misapplication of the exemption under RCW 42.56.250(6). *Thornewell,* 2024 WL 4880759 at *2; *see also* (CP 549, 558). The District's lack of diligence is also implicated here. Failure to diligently respond to a request is unreasonable and amounts to a PRA violation. *Cantu v. Yakima School Dist. No. 7*, 23 Wn. App. 2d 57, 88, 94 (2022).

Again, "The PRA requires agencies to 'provide for the fullest assistance to inquirers and the most timely ... action on requests for information.'..." *Gipson*, 194 Wn. 2d at 370; Agencies "are required to comply with the principles embodied in RCW 42.56.100". *Freedom Found. v. Wash. State Dep't of Soc. & Health Servs.*, 9 Wn. App. 2d 654, 673 (2019) (citations omitted).

The court recognized that Thornewell took issue with the timeliness of District installments 6 and 7. *Thornewell*, WL 4880759 at *2. Only *after* the investigation ended, and consistent with its practice in such matters, did the District work on

producing those records and "discovered" its misapplication of the exemption. (CP 544, 906). It was only then that the District *released* the erroneously-withheld records in February 2021. (CP 134).

Had the District provided "the fullest assistance to [Thornewell] and the most timely possible action on the request for information," it would have at the least *disclosed* the existence of said records via an exemption log at the time it asserted an exemption, or *provided* those records as soon as they became available – all of which was well before it produced the records nearly 11 months after receiving Thornewell's March 2020 PRR. *See* RCW 42.56.100. The District did neither.

The appellate court's ruling disregards the concerns in *Gipson*. First, "assessing a request on the day it is received 'insured the people's prompt efficient access to public records' …. When receiving a request, the agency must identify responsive documents and any applicable exemptions and estimate the time for response. Requiring the agency to

continuously reevaluate a request to determine whether their original assessment regarding exemptions is still correct will only delay the production of the records request." *Gipson*, 194 Wn. 2d at 374.

The underlying ruling allows for agencies to do just that – and engage in the slippery slope that this Court with *Gipson* seeks to avoid. *Id.* Stated differently, agencies are enabled by the appellate court's decision to conclusively and *silently* make an exemption determination, pause any deliberations, and only subsequently decide otherwise – separate from any such past "deliberations." This cannot be countenanced under the PRA.

Should this Court instead decide that the District violated the PRA due to its conduct under these circumstances, that will incentivize agencies to promptly identify and then produce records in installments to ensure they are meeting their obligations to act timely on PRA requests and to not delay

releasing records once available.[4] It would incentivize agencies to properly analyze and identify to a requestor PRA exemptions. Only then would the requestor be able to put in a "refresher request" if the requestor seeks those exempt records or provide the opportunity to dispute the exemption without delay. *See Gipson*, 194 Wn. 2d at 372.

Quite simply, and contrary to the appellate court's holding, the District did not act diligently; rather, it violated the PRA by its lack of diligence.

III. The Lower Courts Improperly Placed Emphasis on Thornewell to Prioritize the March 2020 PRR Categories in Order to Forgive the District's Misconduct

The District, and then the trial court, and then ultimately the appellate court, all erroneously emphasized that Thornewell

[4] The appellate court's concern that an agency would intentionally try to withhold all records to the end is already disallowed by the PRA because the District is required to "make [public records] promptly available to any person . . . on a partial or installment basis as records that are part of a large set of requested records are assembled or made ready for inspection or disclosure." *See* RCW. 42.56.080(2).

purportedly did not prioritize anything specific within her March 2020 PRR. *Thornewell,* 2024 WL 4880759 at *1 ("The request did not mention prioritization."); *5 ("Without a directive to prioritize specific records, Enlow prioritized the timely production of records that he knew were non-exempt before working on records that had been flagged as exempt, albeit erroneously.")

In other words, the appellate court improperly required Thornewell to have initially prioritized records in order to hold the District accountable for its own misconduct when it determined an exemption applied and consequently made a final agency action by not disclose the existence of nor produce the records in a timely fashion over the course of nearly one year.

On the contrary, under the model rules applicable to processing PRA requests, WAC 44-14-03006 states only, as to prioritization, "An agency may ask a requestor to prioritize the records he or she is requesting so that the agency is able to provide the most important records first. An agency is not

required to ask for prioritization, and a requestor is not required to provide it." *Id.* (emphasis added).

Further, while the March 2020 PRR did contain prioritization language ("we prefer electronic production in installments **as they become available**."), more detailed prioritization would have been futile given PRO Enlow's ongoing position on the exemption until the OSCR investigation concluded – which informed his decision to not collect the records – and it would not have resulted in Thornewell receiving the OSCR investigation records sooner. (CP 511) (emphasis added); (CP 509, 513, 544, 906).

Whether Thornewell prioritized which records she sought is of no consequence. It was not Thornewell's duty, but instead the District's to comply with the PRA. The District must not be allowed to fail in its duties simply because the lower court placed more onerous obligation on Thornewell than the PRA requires.

IV. Improperly Asserting that the OSCR Investigation Records were Exempt Constructively Denied Thornewell of those Records

The appellate court analyzed the issues of promptness and silent withholding in relation to the concept of constructive denial in an attempt to resolve the issues presented. *Thornewell*, No. 85998-6-I, 2024 WL 4880759 at *4-5. An agency fails to meet PRA statutory requirements through inaction, delay, or lack of diligence, which can ripen into constructive denial under the PRA. *Cantu,* 23 Wn. App. 2d at 88-89. The denial of an opportunity to inspect or copy occurs when there is some agency action or inaction, indicating that the agency will not be providing responsive records. *Hobbs v. State*, 183 Wn. App. 2d 925, 936 (Wn. App. 2014). When an agency completely ignores a record request for an "extended period," the requestor may treat the agency's silence as a constructive denial and file suit. *See Cantu*, 23 Wn. App. 2d at 91 (*citing* Wash. State Bar Ass'n, Public Records Act Deskbook: § 16.2 at SU-16-2 (2d ed. & Supp. 2020)).

"[W]hether a constructive denial has occurred is based on an objective standard from the requester's perspective and will depend on the circumstances of each case." *Id. a*t 91. "The question is whether the District can show that it was working diligently to promptly provide the records requested." *Id.* at 93.

Here, there was a subset of records that PRO Enlow knew of and applied a blanket exemption for several months. (CP 457-458, 512-516). Thornewell's objective belief that the production was delayed is reasonable because there was a wrongful exemption covertly applied, thus only after the fact came to understand she was entitled to those records prior to the end of the investigation. *Id.*; *See Cantu* 23 Wn. App. 2d at 93.

PRO Enlow, silently misapplied an exemption, thus, never disclosing the existence of the available records to Thornewell despite ongoing communications with her counsel. (CP 509, 512-514, 538-539, 918). Again, the District's actions as to those records was anything but "working diligently," which in turn reflected on its approach to the PRA request as a whole. The lack

of diligence must not be excused because other records were produced. It is nearly impossible for the requestor to know an agency is not acting diligently with respect to part of a request when the agency is appearing to otherwise act diligently.

This lack of diligence aligns with the type of constructive denial contemplated by other cases. *See Cantu*, 23 Wn. App. 2d at 88-89; *see also C.S.A. v. Bellevue Sch. Dist. No. 405*, Wn. App. 2d __, 557 P.2d 268, 281-83 (Wn. App. 2024). The District determined that the records were exempt and thus it simply could not demonstrate it acted diligently, because it failed to inform Thornewell of its decision and it failed to produce available records. *Thornewell*, No. 85998-6-I, 2024 WL 4880759 at *4.

V. The District's Silent Withholding of the Records Until the Completion of the Investigation Resulted in the District Treating the March 2020 PRR as a Standing Request in Violation of the PRA

As an institution, the District consistently mishandles its application of the investigatory records exemption and withholds records related to ongoing investigations that categorically do

not qualify for the exemption. (CP 458, 529-534). The PRA "clearly and emphatically prohibits silent withholding by agencies of records relevant to a public records request." *PAWS II*, 125 Wn. 2d at 270. Silent withholding gives requesters the misleading impression that all documents relevant to the request have been disclosed. *Rental House Ass'n of Puget Sound v. City Of Des Moines*, 165 Wn. 2d. 525, 537 (Wash. 2009). When an agency refuses, in whole or in part, inspection of any public records, the response "shall include a statement of the specific exemption authorizing the withholding of the records (or part) and a brief explanation of how the exemption applies to the record withheld." RCW 42.56.210(3). "[T]he remedial provisions of the PRA are triggered when an agency fails to properly disclose and produce records, and any intervening disclosure serves only to stop the clock on daily penalties…." *Cedar Grove Composting, Inc. v. City of Marysville*, 354 P.3d 249, 188 Wn. App. 695 (Wn. App. 2015) (citing *Neigh. Alliance*, 172 Wn. 2d at 727). The District repeatedly reiterated its reliance

on the investigatory records exemption and then applied the same exemption from at least June 2020 to January 2021, when the investigation concluded. Three months of one-sided conclusory "deliberations" that the investigatory records exemption applied followed by nearly eight months of the District withholding records on account of its misapplication of the investigatory records exemption constitutes "a final agency action" under RCW 42.56.520. *See Cedar Grove*, 354 P.3d at 257.

Thornewell is not disputing she *eventually* received the records. However, the wrongful withholding of Thornewell's records had already occurred. Additionally, even if the records are not provided until a later point the PRA still requires the District to disclose and explain the exemption it determined applied in the first place. *Sanders v. State*, 240 P.3d 120, 130 (Wash. 2010) (If "[c]laimed exemptions cannot be vetted for validity if they are unexplained," then it is clear that undisclosed and unexplained exemptions also cannot be vetted.)

Standing requests are not permitted under the PRA. *Gipson*, 194 Wn. 2d at 373. Only records existing at the time of the request must be provided. Likewise, the determination of the exemption at the time the request was made treats a record like it does not exist. *Id*. "Requiring an agency to continuously reevaluate a request to determine whether the original assessment regarding exemptions is still correct will only delay the production of the records request." *Id*. at 374. If the District is permitted to delay production based on an internal determination that particular records are exempt (knowing it will release them after the investigation closes), then the District is improperly permitted to treat the PRA request as a "standing request" until the completion of the investigation. *Id*.

These concerns were contemplated by *Gipson. See generally Gipson*, 194 Wn. 2d at 371-375. If the investigation exemption applied, the OSCR investigation records were, as a matter of law nonexistent, as they related to the March 2020 PRR. *See id*. at 374. Yet, under the appellate court's reasoning,

PRO Enlow was allowed to continuously go back and reevaluate the already-available records. In treating the request for the OSCR investigation records as a stand-alone request, PRO Enlow and Ms. O'Connor delayed the production of those records by approximately 11 months. (CP 134, 340, 457-458, 512-516, 555). The appellate court's holding permits agencies to treat certain portions of PRA requests as standalone requests without notice to the requestor of its action in violation of the PRA. *See Gipson*, 194 Wn. 2d at 375.

CONCLUSION

The PRA is meant to ensure open and transparent government. Where an agency like the District has a standard operating procedure of not disclosing nor producing responsive records based on an inapplicable investigation exemption, and only does so after said investigation is complete, it violates the PRA's language and intent, as well as decisional law interpreting the PRA.

Accordingly, Thornewell respectfully requests that this Court accept review in order to correct the lower courts' decisions so that the public, including Thornewell, will be informed of and provided records where an agency determines an exemption applies.

In accordance with RAP 18.17(b), the undersigned certifies this Petition contains 4,999 words.

Respectfully submitted this 27th day of January, 2025.

Ryan P. Ford, WSBA No. 50628
Michael L. Smith, WSBA No. 57816
Cedar Law PLLC
113 Cherry St., PMB 96563
Seattle, WA, 98104-2205
Ph: (206) 607-8277
Fax (206) 237-9101
ryan@cedarlawpllc.com
mike@cedarlawpllc.com

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

AMANDA THORNEWELL, Appellant, v. SEATTLE SCHOOL DISTRICT NO. 1, Respondent.	No. 85998-6-I DIVISION ONE UNPUBLISHED OPINION

BIRK, J. — In this public records case, requester Amanda Thornewell challenges the trial court's order denying her motion for summary judgment and granting Seattle School District No. 1's (District) motion for partial summary judgment. Thornewell also challenges the trial court's order striking evidence of settlement negotiations, and requests costs, attorney fees, and penalties under the Public Records Act (PRA), chapter 42.56 RCW. Because the District did not assert a public records exemption, answered Thornewell's request with diligence, and produced all responsive records, we affirm.

I

Thornewell filed a complaint on behalf of her son with the Seattle School District's Office of Student Civil Rights (OSCR). The District opened an investigation into the complaint. Thereafter, on March 4, 2020, Thornewell's lawyer e-mailed a public records request to the District. He requested five categories of records and expressed a preference for "installments as they become

available." The request did not mention prioritization. The five categories of records requested were:

- All records, including recordings and text messages or any other communication method being utilized by staff (please interpret all requests here to encompass these options), related to investigations by the Office of Student Civil Rights regarding allegations of and by Alex Thornewell and his parents Amanda [e-mail address omitted] and Peter Thornewell [e-mail address omitted].

- Records related to any investigation focusing on incidents related to the Garfield Swim Team during the 2019-2020 school year. Athletic Director Carole Lynch was believed to have initiated an investigation but this request is not limited solely to her records.

- Any communications or notes of such between Tim Zimmerman and Greg Barnes of Garfield High School since December 1, 2019.

- Any communications between Garfield High School administration and its school newspaper related to any story about the swim team *or* hazing during the 2019-2020 school year.

- Any emails or messaging system records (text, What's App [sic],[1] etc.) mentioning or referring to Alex Thornewell or his parents since December 1, 2019.

Public Records Officer Randall Enlow responded to the request within five business days, as required by the PRA. RCW 42.56.520(1). His response anticipated that, because of the District's "current volume of open requests" and

[1] "WhatsApp" is a free, instant messaging application that supports sending and receiving a variety of media, including text, photos, videos, documents, and voice calls. *About WhatsApp*, WHATSAPP LLC, https://www.whatsapp.com/about/, [https://perma.cc/36Q6-BYE4].

the "potential volume/complexity" of Thornewell's request, the District would provide "at least an installment" by May 29, 2020.

The District produced records in seven installments, starting on May 29, 2020, as originally anticipated, and on July 23, 2020, September 17, 2020, November 12, 2020, January 21, 2021, February 10, 2021, and February 26, 2021. In total, the District provided 1,801 pages of responsive records to Thornewell. Starting with the initial response, and continuing with each installment production, Enlow provided an estimate for the date of the next records installment release. Each installment was released by its estimated deadline. In a later declaration, Enlow estimated he spent 5 to 10 percent of his time working on the Thornewell request, said he was working on 100 other public records requests contemporaneously, and thought "11 months . . . a very standard amount of time to fulfill a request of this scope." The Thornewell request was closed on February 26, 2021, after the seventh records installment was produced. The District produced all records responsive to the request and withheld no records.[2]

At the time Thornewell made the public records request, the District was investigating Thornewell's civil rights complaint. Internal e-mails show that the District postponed producing some of those records until the last two installments. Enlow's supervisor Tina Meade, advised him that due to the open OSCR investigation there was a need "to discuss further what documents can be

[2] Thornewell contested whether 10 pages of responsive records should have been identified and produced if the District had conducted a reasonable search. At the summary judgment hearing, Thornewell conceded that the District's search was adequate.

excluded while the investigation is ongoing." Meade e-mailed a senior legal assistant stating, "We are not going to release records due to the ongoing investigation." Roxane O'Connor, assistant legal counsel and public records officer at the District, suggested to Enlow he connect with Robert Veliz, the investigator assigned to the OSCR investigation, and she expressed concern about whether the investigation was closed and whether any of the records were exempt under RCW 42.56.280. This section exempts certain "[p]reliminary drafts, notes, recommendations, and intra-agency memorandums" expressing opinion or formulating or recommending policy. RCW 42.56.280. After confirming with Veliz that the investigation was ongoing, Enlow replied that "the records are exempt so long as the investigation is ongoing. Ideally, we can get the records earlier . . . but it also works just fine to send the file once the investigation wraps up."

Later, O'Connor e-mailed Enlow telling him that, for purposes of the exemption log, former RCW 42.56.250(6) (2020) did not apply but she thought RCW 42.56.280 was the applicable exemption. Former RCW 42.56.250(6), now codified at RCW 42.56.250(1)(f), LAWS OF 2023, ch. 458, § 1, exempts investigative records "compiled by an employing agency in connection with an investigation of a possible unfair practice" under certain labor laws. Enlow e-mailed Veliz asking for responsive records for the Thornewell request and told him, "We are closing this public records matter soon (sending what looks to be the last non-exempt, responsive installment tomorrow) and we need to assess what exempt

investigative materials/notes existed at the time of the request for purposes of the listing in our exemption log."

The OSCR investigation concluded on January 28, 2021. The District produced a sixth installment on February 10, 2021, and a seventh, and final, installment on February 26, 2021. Approximately one year later, Thornewell filed suit against the District, alleging the District had violated the PRA by erroneously relying on the investigatory records exemptions during its processing of the request. Thornewell maintains that the entire sixth installment, 122 pages, was wrongfully withheld. Thornewell also claims the seventh installment included records related to the OSCR investigation. Thornewell does not contend that the timeframe in which the District produced the overall 1,801 pages of records was unreasonable. When asked by the trial court, "Are you asserting any other lack of due diligence in the timeliness of the overall production in the seven installments separate and apart from the investigatory records?" Thornewell replied, "We are not." The District agreed that the investigatory records exemptions would not have applied, but the parties disagreed whether the District ever applied them.

The trial court granted the District's summary judgment motion. At the summary judgment hearing, the court stated,

> [T]here is no other objection by plaintiff as to the timeliness of the records except for [the sixth] installment. And this installment was delayed by an initial misunderstanding of the exception that did apply, but yet the Department then turned around and produced all of the records, and, therefore, there were no records not produced, and there was no need for a privilege log because all of the records were produced.

The trial court concluded the District did not need to produce an exemption log because no exemption was applied, the District did not engage in silent withholding, and there was no constructive denial.

II

Thornewell claims that the District's erroneous reliance on the investigatory records exemption led it to violate the PRA by withholding responsive records that should have been made available sooner. The District produced 1,801 pages of records, in 7 installments, and Thornewell did not dispute that the overall time in which the records were produced was timely. Thornewell took issue with the timeliness of a subset of the records, chiefly installment 6. She claims that but for the District's erroneous reliance on an exemption, she would have received some records sooner.

"The PRA is a strongly worded mandate for broad disclosure of public records." Rental Hous. Ass'n. of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 535, 199 P.3d 393 (2009). The PRA is to be liberally construed, while its exemptions are to be narrowly construed. RCW 42.56.030. Each agency must make public records available for inspection and copying, unless the records fall within a specific exemption. RCW 42.56.070(1). We review agency actions taken or challenged under the PRA de novo. RCW 42.56.550(3); Neigh. All. of Spokane County v. Spokane County, 172 Wn.2d 702, 715, 261 P.3d 119 (2011). When reviewing actions taken under the PRA, we stand in the same position as the trial court when the record consists only of documentary evidence. Freedom Found.

v. Dep't of Soc. & Health Servs., 9 Wn. App. 2d 654, 663, 445 P.3d 971 (2019). To recover penalties and other relief under the PRA, Thornewell must prevail against the District in "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.*" RCW 42.56.550(4) (emphasis added). Because the District produced all records requested in timely responses, she does neither.

A

The District concedes the investigatory records exemptions were not applicable to the contested records in the sixth and seventh installments. The first question is whether the District violated the PRA by actually applying an exemption, as asserted by Thornewell, or if instead, the District engaged in internal processes that never rose to the level of asserting an exemption.

1

The PRA allows an agency time to determine whether an exemption applies, stating,

> Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, *or to determine whether any of the information requested is exempt* and that a denial should be made as to all or part of the request.

RCW 42.56.520(2) (emphasis added).

Citing Gipson v. Snohomish County, 194 Wn.2d 365, 372, 449 P.3d 1055 (2019), Thornewell claims that agencies are required to determine whether a record is exempt at the time that the request is received. This mischaracterizes

the holding of Gipson, and disregards the plain language of RCW 42.56.520(2). In Gipson, the court was concerned with the question whether a properly applied exemption, which was valid on the date that the request was made, continued to be in effect throughout the life of the request, even as the agency produced record installments, some of which postdated the exemption's expiration. Gipson, 194 Wn.2d at 367. The court held any valid exemptions at the time of the request continue to be effective throughout the life of request, even as records are produced in installments. Id. at 374. The purpose of this rule is to "put[] the requester on notice as to the nature of the exemption," so that they can "submit a 'refresher request' after receiving an installment controlled by the claimed exemption." Id. Gipson holds that the agency determines the applicability of an exemption by asking whether a record is exempt on the date of the request. Id. It does not mean that the agency must make the determination that day nor eliminate the contemplation of the PRA that the agency is afforded a reasonable time in which to respond, provided it does so timely and with diligence. This is consistent with Sanders v. State, 169 Wn.2d 827, 848, 240 P.3d 120 (2010), which held that an agency may amend its justification for withholding a document in litigation to avoid forcing agencies into potentially excessive initial claims of exemption to avoid waiver. The District satisfied its obligation by responding within five business days with a reasonable estimate for the production of records. RCW 42.56.520(1).

When an agency refuses, in whole or in part, inspection of any public records, the response "shall include a statement of the specific exemption authorizing the withholding of the records (or part) and a brief explanation of how the exemption applies to the record withheld." RCW 42.56.210(3). When an agency has not yet produced requested records, but "has not stated that it will refuse to produce them, the agency has not denied access to the records for purposes of judicial review." Freedom Found., 9 Wn. App. 2d at 664. "When an agency produces records in installments, the agency does not deny access to the records until it finishes producing all responsive records." Cortland v. Lewis County, 14 Wn. App. 2d 249, 258, 473 P.3d 272 (2020).

In each case cited by Thornewell, the agency handling the public records request affirmatively asserted an exemption to the requester.[3] The District was in

[3] Cowles Publ'g Co. v. Spokane Police Dep't, 139 Wn.2d 472, 475, 987 P.2d 620 (1999) (police responded to journalist's records request by refusing to release investigative records); Gipson, 194 Wn.2d at 368-69 (county provided records in installments, redacted files, provided a withholding log, and closed the request while still withholding documents); Progressive Animal Welfare Soc'y v. Univ. of Wash, 125 Wn.2d 243, 250, 252, 884 P.2d 592 (1994) (university denied records request and claimed many exemptions); Rental Hous., 165 Wn.2d at 528-29 (city refused to turn over records and failed to provide exemption log); Sanders, 169 Wn.2d at 837 (agency responded to request with disclosed but partially redacted and withheld records that lacked sufficient exemption explanations); Wade's Eastside Gun Shop, Inc. v. Dep't of Lab. & Indus., 185 Wn.2d 270, 284, 372 P.3d 97 (2016) (agency responded to request by asserting that records were exempt due to ongoing investigations); Cantu v. Yakima Sch. Dist. No. 7, 23 Wn. App. 2d 57, 68-69, 71, 98, 100-01, 514 P.3d 661 (2022) (school district repeatedly tried to close request without providing responsive records, failed to provide exemption logs for redacted records, and asserted exemptions unreasonably); Zink v. City of Mesa, 162 Wn. App. 688, 723, 256 P.3d 384 (2011) (requester was denied records by city when it asserted attorney-client privilege exemption).

the process of producing installments for Thornewell from March 2020 until February 2021. It provided exemption logs for other records included in the request. It produced the investigation records before closing the request, and without ever claiming an exemption for them. The District did not tell Thornewell it was refusing or denying her access to the investigation records, nor did it claim exemptions for them with an exemption log. Because it produced responsive records within a reasonable time, the District did not assert an exemption. And because the District did not withhold records, or apply an exemption, it was not obligated to provide a statement and explanation for investigative records under RCW 42.56.210(3).

B

Silent withholding under the PRA occurs when an agency fails " 'to reveal that some records have been withheld in their entirety.' " Rental Hous., 165 Wn.2d at 537 (quoting Progressive Animal Welfare Soc'y v. Univ. of Wash, 125 Wn.2d 243, 270, 884 P.2d 592 (1994) (PAWS II)). This has the effect of " 'giv[ing] requesters the misleading impression that all documents relevant to the request have been disclosed.' " Id. (quoting PAWS II, 125 Wn.2d at 270). "Claimed exemptions cannot be vetted for validity if they are unexplained." Sanders, 169 Wn.2d at 846. The PRA "clearly and emphatically prohibits silent withholding by agencies of records relevant to a public records request." PAWS II, 125 Wn.2d at 270. At the same time, "installments are not new stand-alone requests. Rather, installments fulfill a single request and should be treated as such." Gipson, 194

Wn.2d at 372. The District did not engage in silent withholding where it timely and diligently produced all responsive records even though it mistakenly believed at the start of its process that some of the records it ultimately produced were exempt.

C

The PRA requires that agencies adopt and enforce reasonable rules and regulations that "shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information." RCW 42.56.100. One way that the PRA facilitates this command is by directing agencies to "make [public records] promptly available to any person . . . on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure." RCW 42.56.080(2).

An agency's failure to meet these statutory requirements, through inaction, delay, or lack of diligence, can ripen into constructive denial of the request for purposes of fees, costs, and penalties under the PRA. Cantu v. Yakima Sch. Dist. No. 7, 23 Wn. App. 2d 57, 88-89, 514 P.3d 661 (2022). " '[A] denial of public records occurs when it reasonably appears that an agency will not or will no longer provide responsive records.' " Id. at 90 (quoting Hobbs v. State, 183 Wn. App. 925, 932, 335 P.3d 1004 (2014)). "Whether an agency's lack of diligence amounts to a constructive denial is a question of fact."[4] Id. at 93 (citing Freedom Found., 9 Wn.

[4] Elsewhere this fact-specific inquiry is articulated as whether the agency acted with "reasonable thoroughness and diligence." Freedom Found., 9 Wn. App. 2d at 673 (citing Rufin v. City of Seattle, 199 Wn. App. 348, 357, 398 P.3d 1237 (2017)); Andrews v. Wash. State Patrol, 183 Wn. App. 644, 646, 334 P.3d 94 (2014).

App. 2d at 673). Courts "apply an objective standard from the viewpoint of the requester." Id. at 94 (citing Violante v. King County Fire Dist. No. 20, 114 Wn. App 565, 571, 59 P.3d 109 (2002)). In this assessment, courts consider the totality of the circumstances to determine if the agency satisfied RCW 42.56.100. Id.

In Cantu, in response to a public records request, the Yakima School District failed to respond within five business days, missed its estimated records production timelines, failed to allocate sufficient resources to answer the request, ignored inquiries by the requester for up to 45 days, and ceased all work on the request for months at a time. Id. at 94-95. This conduct rose to the level of constructive denial. Id. at 94; see also C.S.A. v. Bellevue Sch. Dist. No. 405, ___ Wn. App. 2d ___, 557 P.3d 268, 281-83 (2024) (school district lacked diligence under the PRA when it did not communicate with requester or take steps to fulfill a records request for one year, delayed responsive records, and wrongfully redacted some of the delayed records).

Here, for much of the life of the request, District staff were under the mistaken belief that records related to the ongoing investigation were exempt from production. Without a directive to prioritize specific records, Enlow prioritized the timely production of records that he knew were non-exempt before working on records that had been flagged as exempt, albeit erroneously. The District then timely produced all the records. The District processed the request diligently and within the parameters provided to it by the requester. Thornewell conceded she makes no assertion of a lack of diligence in the overall production of records.

Objectively, from Thornewell's perspective, the District was answering the request diligently. It therefore did not constructively deny Thornewell's request or any part of it.

D

Thornewell argues that if the District's internal belief about the investigative records exemption were to go unpunished, then agencies would be incentivized to withhold records based on unasserted exemptions for long stretches of time. We are not persuaded by this argument. The parties agree that agencies may prioritize specific categories of records, thus forcing the exemption issue sooner. See RCW 42.56.100. Thornewell points to a risk of agencies abusing the rule of diligence by intentionally delaying production of embarrassing or time-sensitive records until later installments, but that risk may be mitigated and specific matters advanced by the requester through prioritization. And if an agency attempted to use internal dialogue about an exemption in bad faith to delay production then it would not be acting diligently. Conversely, if an agency were subject to penalties under the PRA merely for an initial erroneous exemption determination ultimately corrected through timely production, then agencies would be incentivized to avoid installments and produce records in a single large production. This could impair the public's timely access to public records. The rule requiring diligence effectively balances these two risks.

III

Thornewell challenges on appeal the superior court's refusal to consider certain evidence she submitted drawn from the parties' settlement negotiations, that the trial court concluded was inadmissible under ER 408. However, Thornewell offered this evidence as relevant only to assessment of penalties under the PRA. We have reviewed the evidence stricken by the trial court and it does not alter our conclusion. Because we conclude Thornewell does not show a violation of the PRA, it is not necessary to address the admissibility of evidence offered only on the subject of PRA penalties.

IV

Thornewell seeks attorney fees, citing RCW 42.56.550(4). Because Thornewell did not prevail in superior court, and has not prevailed on appeal, she is not entitled to costs, attorney's fees, or penalties.

Affirmed.

Birk, J.

WE CONCUR:

Feldman, J.

Díaz, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

AMANDA THORNEWELL, Appellant, v. SEATTLE SCHOOL DISTRICT NO. 1, Respondent.	No. 85998-6-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Amanda Thornewell, filed a motion for reconsideration. The court has considered the motion pursuant to RAP 12.4 and a majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Birk, J.

Judge

RCW 42.56.030 Construction. The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. [2007 c 197 s 2; 2005 c 274 s 283; 1992 c 139 s 2. Formerly RCW 42.17.251.]

RCW 42.56.080

Identifiable records—Facilities for copying—Availability of public records.

(1)(a) A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.

(b) A request for a recording required to be maintained by a school district board of directors under RCW 42.30.035(2) shall only be considered a valid request for an identifiable record when the date of the recording, or a range of dates, is specified in the request. When searching for and providing identifiable recordings, no search criteria except date must be considered by the school district.

(2) Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(8) or 42.56.240(14), or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received in person during an agency's normal office hours, or by mail or email, for identifiable public records unless exempted by provisions of this chapter. No official format is required for making a records request; however, agencies may recommend that requestors submit requests using an agency provided form or web page.

(3) An agency may deny a bot request that is one of multiple requests from the requestor to the agency within a twenty-four hour period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential functions of the agency. For purposes of this subsection, "bot request" means a request for public records that an agency reasonably believes was automatically generated by a computer program or script.

[2023 c 67 s 1; 2017 c 304 s 2; 2016 c 163 s 3. Prior: 2005 c 483 s 1; 2005 c 274 s 285; 1987 c 403 s 4; 1975 1st ex.s. c 294 s 15; 1973 c 1 s 27 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.270.]

NOTES:

Effective date—2023 c 67: See note following RCW 42.30.035.

Finding—Intent—2016 c 163: See note following RCW 42.56.240.

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

RCW 42.56.100

Protection of public records—Public access.

Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

[**1995 c 397 s 13**; **1992 c 139 s 4**; **1975 1st ex.s. c 294 s 16**; **1973 c 1 s 29** (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.290**.]

RCW 42.56.210

Certain personal and other records exempt.

(1) Except for information described in *RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

[2005 c 274 s 402. Prior: (2006 c 302 s 11 expired July 1, 2006); (2006 c 75 s 2 expired July 1, 2006); (2006 c 8 s 111 expired July 1, 2006); (2003 1st sp.s. c 26 s 926 expired June 30, 2005); 2003 c 277 s 3; 2003 c 124 s 1; prior: 2002 c 335 s 1; 2002 c 224 s 2; 2002 c 205 s 4; 2002 c 172 s 1; prior: 2001 c 278 s 1; 2001 c 98 s 2; 2001 c 70 s 1; prior: 2000 c 134 s 3; 2000 c 56 s 1; 2000 c 6 s 5; prior: 1999 c 326 s 3; 1999 c 290 s 1; 1999 c 215 s 1; 1998 c 69 s 1; prior: 1997 c 310 s 2; 1997 c 274 s 8; 1997 c 250 s 7; 1997 c 239 s 4; 1997 c 220 s 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 s 900; prior: 1996 c 305 s 2; 1996 c 253 s 302; 1996 c 191 s 88; 1996 c 80 s 1; 1995 c 267 s 6; prior: 1994 c 233 s 2; 1994 c 182 s 1; prior: 1993 c 360 s 2; 1993 c 320 s 9; 1993 c 280 s 35; prior: 1992 c 139 s 5; 1992 c 71 s 12; 1991 c 301 s 13; 1991 c 87 s 13; 1991 c 23 s 10; 1991 c 1 s 1; 1990 2nd ex.s. c 1 s 1103; 1990 c 256 s 1; prior: 1989 1st ex.s. c 9 s 407; 1989 c 352 s 7; 1989 c 279 s 23; 1989 c 238 s 1; 1989 c 205 s 20; 1989 c 189 s 3; 1989 c 11 s 12; prior: 1987 c 411 s 10; 1987 c 404 s 1; 1987 c 370 s 16; 1987 c 337 s 1; 1987 c 107 s 2; prior: 1986 c 299 s 25; 1986 c 276 s 7; 1985 c 414 s 8; 1984 c 143 s 21; 1983 c 133 s 10; 1982 c 64 s 1; 1977 ex.s. c 314 s 13; 1975-'76 2nd ex.s. c 82 s 5; 1975 1st ex.s. c 294 s 17; 1973 c 1 s 31 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.310.]

NOTES:

***Reviser's note:** RCW 42.56.230 was amended by 2011 c 173 s 1, changing subsection (3)(a) to subsection (4)(a).

Expiration date—2006 c 302 ss 9 and 11: See note following RCW 66.28.180.

Expiration date—2006 c 75 s 2: "Section 2 of this act expires July 1, 2006." [2006 c 75 s 4.]

Expiration date—2006 c 8 s 111: "Section 111 of this act expires July 1, 2006." [2006 c 8 s 404.]

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Working group on veterans' records: "The protection from identity theft for veterans who choose to file their discharge papers with the county auditor is a matter of gravest concern. At the same time, the integrity of the public record of each county is a matter of utmost importance to the economic life of this state and to the right of each citizen to be secure in his or her ownership of real property and other rights and obligations of our citizens that rely upon the public record for their proof. Likewise the integrity of the public record is essential for the establishment of ancestral ties that may be of interest to this and future generations. While the public record as now kept by the county auditors is sufficient by itself for the accomplishment of these and many other public and private purposes, the proposed use of the public record for purposes that in their nature and intent are not public, so as to keep the veterans' discharge papers from disclosure to those of ill intent, causes concern among many segments of the population of this state.

In order to voice these concerns effectively and thoroughly, a working group may be convened by the joint committee on veterans' and military affairs to develop a means to preserve the integrity of the public record while protecting those veterans from identity theft." [2002 c 224 s 1.]

Effective date—2002 c 224 s 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 224 s 4.]

Findings—Severability—Effective dates—2002 c 205 ss 2, 3, and 4: See notes following RCW 28A.320.125.

Finding—2001 c 98: "The legislature finds that public health and safety is promoted when the public has knowledge that enables them to make informed choices about their health and safety. Therefore, the legislature declares, as a matter of public policy, that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards or threats to the public.

The legislature also recognizes that the public disclosure of those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate criminal terrorist acts as defined in RCW 70.74.285, could have a substantial likelihood of threatening public safety. Therefore, the legislature declares, as a matter of public policy, that such specific and unique information should be protected from unnecessary disclosure." [2001 c 98 s 1.]

Findings—Conflict with federal requirements—Severability—2000 c 134: See notes following RCW 50.13.060.

Effective date—1998 c 69: See note following RCW 28B.95.025.

Effective date—1997 c 274: See note following RCW 41.05.021.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW **74.08A.900** through **74.08A.904**.

Severability—1996 c 305: See note following RCW **28B.85.020**.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW **28B.109.010**.

Captions not law—Severability—Effective dates—1995 c 267: See notes following RCW **43.70.052**.

Effective date—1994 c 233: See note following RCW **70.123.075**.

Effective date—1994 c 182: "This act shall take effect July 1, 1994." [**1994 c 182 s 2**.]

Effective date—1993 c 360: See note following RCW **18.130.085**.

Effective date—1993 c 280: See RCW **43.330.902**.

Finding—1991 c 301: See note following RCW **10.99.020**.

Effective date—1991 c 87: See note following RCW **18.64.350**.

Effective dates—1990 2nd ex.s. c 1: See note following RCW **84.52.010**.

Severability—1990 2nd ex.s. c 1: See note following RCW **82.14.300**.

Effective date—Severability—1989 1st ex.s. c 9: See RCW **43.70.910** and **43.70.920**.

Severability—1989 c 11: See note following RCW **9A.56.220**.

Effective date—1986 c 299: See RCW **28C.10.902**.

Exemptions from public inspection

*basic health plan records: RCW **70.47.150**.*
*bill drafting service of code reviser's office: RCW **1.08.027**, **44.68.060**.*
*certificate submitted by individual with physical or mental disability seeking a driver's license: RCW **46.20.041**.*
*commercial fertilizers, sales reports: RCW **15.54.362**.*
*criminal records: Chapter **10.97** RCW.*
*employer information: RCW **50.13.060**.*
*family and children's ombuds: RCW **43.06A.050**.*
*legislative service center, information: RCW **44.68.060**.*
*medical commission, reports required to be filed with: RCW **18.71.0195**.*
*organized crime investigative information: RCW **43.43.856**.*
*public transportation information: RCW **47.04.240**.*
*salary and fringe benefit survey information: RCW **41.06.160**.*

RCW 42.56.520

Prompt responses required.

(1) Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond in one of the ways provided in this subsection (1):

(a) Providing the record;

(b) Providing an internet address and link on the agency's website to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer;

(c) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request;

(d) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and asking the requestor to provide clarification for a request that is unclear, and providing, to the greatest extent possible, a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request if it is not clarified; or

(e) Denying the public record request.

(2) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3)(a) In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking.

(b) If the requestor fails to respond to an agency request to clarify the request, and the entire request is unclear, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Otherwise, the agency must respond, pursuant to this section, to those portions of the request that are clear.

(4) Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

[**2017 c 303 s 3**; **2010 c 69 s 2**; **1995 c 397 s 15**; **1992 c 139 s 6**; **1975 1st ex.s. c 294 s 18**; **1973 c 1 s 32** (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.320**.]

NOTES:

Finding—2010 c 69: "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency websites. When an agency has made records available on its website, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." [**2010 c 69 s 1**.]

CERTIFICATE OF SERVICE

I, Amy Schley, certify and declare that I am now and at all times herein mentioned was a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and am competent to testify as a witness. I am a paralegal employed with Cedar Law PLLC, 113 Cherry St., PMB 96563, WA 98104. On January 27, 2025, I caused to be served the foregoing document to be served on the following via e-mail:

COUNSEL FOR DEFENDANT

Charles P.E. Leitch
Jason A. Burt
Patterson Buchanan Fobes & Leitch
1000 2nd Ave., 30th Fl.
Seattle, WA 98104
cpl@pattersonbuchanan.com
jburt@pattersonbuchanan.com

The foregoing statement is made under the penalty of perjury under the laws of the United States of America and the State of Washington and is true and correct.

DATED this 27th day of January, 2025.

Amy Schley
Paralegal

Cedar Law PLLC
113 Cherry St., PMB 96563
Seattle, WA, 98104-2205
(206) 607-8277;
Fax (206) 237-9101

CEDAR LAW PLLC

January 27, 2025 - 4:40 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Amanda Thornewell, Appellant, v. Seattle School District No. 1, Respondent (859986)

The following documents have been uploaded:

- PRV_Petition_for_Review_20250127163601SC941866_2939.pdf
  This File Contains:
  Petition for Review
  The Original File Name was 2025.01.27 Petition for Discretionary Review.pdf

A copy of the uploaded files will be sent to:

- burt.jason42@gmail.com
- cpl@pattersonbuchanan.com
- jburt@pattersonbuchanan.com
- jds@pattersonbuchanan.com
- jrf@pattersonbuchanan.com
- mike@cedarlawpllc.com

Comments:

Sender Name: Amy Schley - Email: amy@cedarlawpllc.com
Filing on Behalf of: Ryan Patrick Ford - Email: ryan@cedarlawpllc.com (Alternate Email: amy@cedarlawpllc.com)

Address:
113 Cherry St.
PMB 96563
Seattle, WA, 98104
Phone: (206) 607-8277

Note: The Filing Id is 20250127163601SC941866