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NO. 1041161

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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ANDREW PILLOUD,

Petitioner,

v.

THE EMPLOYMENT SECURITY  
DEPARTMENT OF THE STATE OF WASHINGTON,

Respondent.

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**ANSWER TO PETITION FOR REVIEW**

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## I. INTRODUCTION

In response to a public records request seeking the identities and personal information of every Washington employee who had applied for an exemption from the Long-Term Services and Supports Trust Program, also known as the “WA Cares Fund,” the Employment Security Department wrote custom code to pull responsive data from various tables and, within seven weeks of becoming aware of the request, produced a redacted list of individuals.

The Court of Appeals correctly ruled that the plain language of RCW 50B.04.170(1), which makes “[a]ny information or records concerning an individual or employer obtained by the employment security department for the purposes of collecting and assessing employee premiums [for the WA Cares Fund] . . . and determining qualified individuals . . . private and confidential,” prohibits the disclosure of the personal information of applicants for exemptions from the WA Cares Fund. *Pilloud v. Emp. Sec. Dep’t*, 33 Wn. App. 2d. 644,

647, 566 P.3d 124 (2025). Accordingly, the Department properly redacted the applicants' personal information. The court understood that the "exempt employee" information Mr. Pilloud requested is necessary "for the purposes of collecting and assessing employee premiums. . . and determining qualified individuals," and thus is exempt from disclosure.

RCW 50B.04.170(1).

The Court of Appeals also properly ruled that the Department established that it "acted with reasonable diligence and thoroughness" in responding to Mr. Pilloud's request. *Pilloud*, 33 Wn. App. 2d at 655. The court did not shift the burden to Mr. Pilloud to prove an unreasonable delay, as he claims.

The Court of Appeals' decision does not conflict with any appellate decision and there is no issue of substantial public interest warranting review. RAP 13.4(b)(1), (2), (4). This Court should deny review.

## **II. COUNTERSTATEMENT OF THE ISSUES**

(1) Whether the personal information of employees who sought an exemption from the WA Cares Fund is “private and confidential” under RCW 50B.04.170(1), and thus prohibited from disclosure because that information is obtained by the Department for the purposes of assessing and collecting premiums and determining qualified individuals?

(2) Did the Department comply with the PRA when it responded to Mr. Pilloud’s novel and complex public records request by providing a custom report in approximately seven weeks?

## **III. STATEMENT OF THE CASE**

### **A. The Employment Security Department Helps Administer the WA Cares Fund**

The Legislature created the Long-Term Services and Supports Trust Program, commonly referred to as the “WA Cares Fund,” in 2019 to assist with the long-term care needs of the state’s aging population. H.B. 1087, 66th Reg. Sess. (Wash. 2019); RCW 50B.04.900. Unless they obtain an exemption, all



employees in Washington must contribute to the Fund so that money is available to pay for their future care if and when they qualify for benefits. *See* RCW 50A.04.080; RCW 50B.04.085(1); and RCW 50A.04.055(1). Non-exempt employees are assessed a premium based on their individual wages. RCW 50B.04.080(1).

The Employment Security Department is one of several state agencies that the Legislature tasked with administering the WA Cares Fund Program. RCW 50B.04.020. The Department's responsibilities include collecting and assessing employee premiums, RCW 50B.04.020(4)(a); processing applications for exemptions from paying premiums, RCW 50B.04.080(1); and determining qualified individual status, RCW 50B.04.020(4)(d).

To assist the Department with assessing and collecting premiums, employers submit quarterly reports to the Department, which include their employees' names, social security numbers, dates of birth, and wages earned and hours

worked during the quarter, as well as the employees' exemption status. WAC 192-910-005(2); WAC 192-540-030; CP 61, 63–66. Employers collect the premiums from their employees through payroll deductions and remit the amounts to the Department. RCW 50B.04.080(2)(a). The Department relies upon these reports to accurately assess the correct amount of premiums only from the non-exempt employees. RCW 50B.04.080(1), (4)(a); WAC 192-910-005; WAC 192-910-010; CP 61–66.

Individuals can apply to the Department for an exemption from the WA Cares Fund under limited circumstances. *See* RCW 50B.04.085(1) (exempting employees who purchased private long-term care insurance before November 1, 2021).<sup>1</sup>

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<sup>1</sup> *See also* RCW 50B.04.055(1); Long-Term Services and Supports Trust Comm'n, LTSS Trust Comm'n Recommendations Report, at 4, 6–10 (2022); RCW 50B.04.030. One exemption is for select populations that would likely never qualify for benefits, such as temporary workers on nonimmigrant visas, out-of-state residents, and veterans with service-connected

To apply for an exemption, employees must submit their personal information to the Department, including “proof of identification, date of birth, address and contact information.” WAC 192-905-005; CP 58, 60, 61. Anyone approved for an exemption is considered an “exempt employee” who will not be assessed premiums and who cannot later become a “qualified individual” eligible to receive benefits in the future. RCW 50B.04.085(1); RCW 50B.04.055(3); RCW 50B.04.010(10) (definition of “exempt employee”).

If an employee is approved for an exemption from the WA Cares Fund, the employee must provide proof of that exemption to their employer. RCW 50B.04.085(6); WAC 192-905-015(3); CP 60–61. The employees’ exemption statuses are also reflected on the quarterly reports employers submit to the

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disabilities who qualify for other care coverage. The Department began accepting applications for this type of coverage exemption in January 2023.

Department. WAC 192-910-005(2); WAC 192-540-030; CP 61, 63-66.

Beginning in 2026, the Department will use both the exemption applications and the employers' quarterly reports to determine "qualified individuals." RCW 50B.04.050(4); RCW 50B.04.055(1); RCW 50B.04.080(1); RCW 50B.04.085(1); CP 55–57, 60–62. If an employee applies for benefits, the Department will rely on information obtained from employee exemption applications and from employer reports to determine whether an employee is eligible for or exempt from coverage. RCW 50B.04.020(4)(d); RCW 50B.04.050(4); CP 55–56, 61.

**B. The Legislature Took Steps to Protect WA Cares Fund Records**

The WA Cares Fund did not initially include an express confidentiality provision. H.B. 1087, 66th Leg., Reg. Sess. (Wash. 2019); CP 59. This meant that all WA Cares Fund records and information were subject to disclosure to the general public. CP 59–60.

In order to protect from disclosure the sensitive personal information it was receiving from Washington employers and employees, the Department initiated and proposed H.B. 1613 to the Legislature. CP 60. The Legislature passed the bill, and it was ultimately codified as RCW 50B.04.170, which became effective on June 9, 2022.

The confidentiality provision states: “Any information or records concerning an individual or employer obtained by the employment security department for the purposes of collecting and assessing employee premiums under RCW 50B.04.080 and determining qualified individuals under RCW 50B.04.050 will be considered private and confidential in the same manner provided in chapter 50A.25 RCW.”<sup>2</sup>

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<sup>2</sup> Chapter 50A.25 RCW places broad limits on disclosure of Paid Family and Medical Leave information, another program that the Department helps administer in a similar manner as the WA Cares Fund. See RCW 50A.25.020; CP 29, 58-60.

### **C. Pilloud's Public Records Request**

On April 19, 2022, Andrew Pilloud submitted, by email, a public records request to the Department seeking: "An export of the WA Cares Exemption Database including Name, Phone Number, Email Address, Residential Address, and Application Status for those who have applied for an exemption." CP 40.

Mr. Pilloud submitted his public records request from a unique, personal email domain, "@pilloud.us." CP 40. As a result, the Department's security filters sent the records request to the junk email folder. CP 31–32, 127–28. The Department located the request on May 3, 2022, when it conducted a routine check of the junk email folder. CP 32. The Department acknowledged receipt three days later. CP 45.

The Department initially informed Mr. Pilloud that they expected to produce responsive record by May 27. CP 44-45. The Department's Chief Data Privacy Officer then met with WA Cares Fund data experts to discuss how to respond to the request. CP 35. She learned that there is no such thing as the

“WA Cares Exemption Database,” as Mr. Pilloud requested. CP 35-36. Instead, the specific responsive information that Mr. Pilloud requested was contained in multiple, separate tables in one of several databases that contains a host of WA Cares Fund records at the Department. CP 35–36.

In order to provide a record responsive to Mr. Pilloud’s request, the Department’s information and technology team had to write and test custom code to pull responsive information from the commingled data. CP 36. Because of the amount of work involved to create this responsive record, the Department updated its estimate of time to respond. CP 35–36. On June 1, the Department informed Mr. Pilloud that its new estimated date to respond was June 22, 2022. CP 36.

Just one day after that updated estimated response date—which was approximately seven weeks after the Department located the request—the Department provided Mr. Pilloud the custom report. CP 36, 37, 46, 48-49. This spreadsheet contained approximately 480,000 rows, one for each employee who

applied for an exemption, with columns for each of the data elements that Mr. Pilloud requested, the “Name, Phone Number, Email Address, Residential Address, and Application Status of those who have applied for an exemption.” CP 46-50; VRP 36-37, December 1, 2023.

Because RCW 50B.04.170’s confidentiality requirement became effective on June 9, 2022, and was in effect at the time the Department produced the record, the Department redacted the names and contact information for each individual, leaving each individual’s exemption status unredacted. CP 37, 50.

**D. Mr. Pilloud Sued the Department, and the Superior Court Dismissed the Complaint**

Mr. Pilloud filed a PRA lawsuit, alleging, among other things, that the records he requested were not exempt from disclosure and that the Department unreasonably delayed in producing them. CP 1-11. Mr. Pilloud and the Department agreed not to conduct discovery unless the trial court found the Department violated the PRA and reached the penalties phase. CP 25-27. The trial court ultimately found there was no PRA



violation. It concluded that the Department provided a reasonable estimate of time to respond to the request and properly redacted the information on the records because the information was exempt from disclosure under RCW 50B.04.170(1). CP 129-131. The court dismissed the complaint. *Id.*

#### **E. The Court of Appeals Affirmed**

On appeal, Mr. Pilloud continued to argue, among other things, that the confidentiality provision of RCW 50B.04.170(1) does not apply to the information of applicants for exemptions from the WA Cares Fund, and that the Department unreasonably delayed in responding to his request, amounting to a constructive denial of records.<sup>3</sup>

The Court of Appeals rejected these arguments, ruling that RCW 50B.04.170(1) protected the requested information from disclosure. It reasoned, “Information about employees

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<sup>3</sup> Mr. Pilloud has abandoned all other arguments made at superior court and the Court of Appeals by not raising it in his petition for review.

applying for exemption from the WA Cares Fund is inextricably linked with the collection and assessment of premiums and the determination of qualified beneficiaries.” *Pilloud*, 33 Wn. App. 2d at 653. And, “[e]mployees who obtain an exemption will not have premiums deducted from their wages.” *Id.* Therefore, the Department “needs to know which employees are exempt in order to assist in ‘collecting and assessing employee premiums.’” *Id.* In addition, “exempt employees cannot be qualified individuals,” so the Department “needs to know which employees are exempt in order to assist in ‘determining qualified individuals.’” *Id.* Accordingly, “RCW 50B.04.170(1)’s confidentiality provisions apply to the personal information of applicants for exemptions from the WA Cares Fund.” *Id.*

The court further held that because the Department “acted with reasonable diligence and thoroughness in responding to Pilloud’s request,” there was no unreasonable delay amounting to a constructive denial. *Id.* at 655.

#### **IV. ARGUMENT WHY REVIEW SHOULD BE DENIED**

The Court of Appeals correctly ruled that “RCW 50B.04.170(1)’s confidentiality provisions apply to the personal information of employees seeking an exemption from the WA Cares Fund.” *Pilloud*, 33 Wn. App. 2d at 653. The Department thus properly applied the statute and redacted the personal information of those employees who sought an exemption from the WA Care Fund. In addition, based on the evidence the Department submitted, the court properly found that the Department acted with “reasonable thoroughness and diligence in responding to Pilloud’s request.” *Id.* at 655. Further review by this Court is unwarranted.

Mr. Pilloud’s primary argument for review is that Court of Appeals did not narrowly interpret the confidentiality provision in RCW 50B.04.170(1). Pet. for Review at 9. Mr. Pilloud, however, does not challenge the facts in this case or the court’s plain language interpretation of the statute.

Mr. Pilloud also incorrectly faults the Court of Appeals for “shifting the burden to Pilloud to show there was an unreasonable delay” in the Department’s response, but the Court of Appeals did no such thing. Pet. at 12. Rather, the Court of Appeals followed PRA precedent when it reviewed the evidence in the record and properly concluded that the Department’s response did not amount to a constructive denial because “there was no unreasonable delay.” *Id.* at 655.

The bare assertions in the Petition do not merit this Court’s consideration. Because there is no conflict with any appellate decision, and the Petition does not involve any issue of substantial public interest, the Court should deny review. RAP 13.4(b).

**A. The Court of Appeals Correctly Held That RCW 50B.04.170(1) Prohibits the Disclosure of “Exempt Employee” Information**

Mr. Pilloud requested the private and confidential information of employees seeking an exemption from the WA Cares Fund, and the Court of Appeals properly affirmed the

Department's redaction of those records under RCW 50B.04.170(1).

As an "other statute" exemption, RCW 50B.04.170(1) broadly prohibits the disclosure of WA Cares Fund records and information.<sup>4</sup> It provides: "*Any information or records* concerning an individual or employer obtained by the employment security department for the purposes of collecting and assessing employee premiums under RCW 50B.04.080 and determining qualified individuals under RCW 50B.04.050 will be considered private and confidential in the same manner provided in chapter 50A.25 RCW." RCW 50B.04.170(1) (emphasis added).

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<sup>4</sup> Mr. Pilloud does not contest that RCW 50B.04.170(1) is an "other statute" exemption to the PRA. *See* RCW 42.56.070(1) ("[e]ach agency . . . shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or *other statute which exempts or prohibits disclosure of specific information or records.*" (emphasis added)); *Pilloud*, 33 Wn. App. 2d at 652.

The Court of Appeals properly ruled that the Department correctly applied this confidentiality provision to the “exempt employee” information Mr. Pilloud sought. *Pilloud*, 33 Wn. App. 2d at 653. That is because “[i]nformation about employees applying for exemption from the WA Cares Fund is inextricably linked with the collection and assessment of premiums and the determination of qualified beneficiaries.” *Id.*

The Department cannot assess or collect premiums from an “exempt employee.” RCW 50B.04.080(1); WAC 192-910-015(3)(b), (4). And the Department “needs to know which employees are exempt in order to assist in ‘collecting and assessing employee premiums.’” *Pilloud*, 33 Wn. App. 2d at 653. The Department thus obtains the personal employee information, including “exempt employee” information, “for the purposes of collecting and assessing employee premiums under RCW 50B.04.080.” RCW 50B.04.170(1).

Similarly, employees exempt under RCW 50B.04.085 cannot become a “qualified individual.” RCW 50B.04.085(1). Neither can employees exempt under RCW 50B.04.055, generally. RCW 50B.04.050(4); RCW 50B.04.055(3). The Department therefore “needs to know which employees are exempt in order to assist in ‘determining qualified individuals.’” *Pilloud*, 33 Wn. App. 2d at 653. The Department thus obtains the personal employee information, including “exempt employee” information, “for the purposes of . . . determining qualified individuals under RCW 50B.04.050.” RCW 50B.04.170(1).

Because the Department obtains the “exempt employee” information for *both* of the purposes identified in RCW 50B.04.170(1), *i.e.*, collecting and assessing premiums and determining qualified individuals, it is expressly “private and confidential” under that statute. The Court of Appeals thus correctly ruled that “RCW 50B.04.170(1)’s confidentiality provisions apply to the personal information of applicants for

exemptions from the WA Cares Fund.” *Pilloud*, 33 Wn. App. 2d at 653.

Mr. Pilloud does not challenge the Court of Appeal’s plain language application of RCW 50B.04.170(1) to the specific records and information he sought. He instead argues that the Court of Appeals “should have narrowly construe [sic] the exemption in RCW 50B.04.170(1) to only the records listed on its face rather than broadly applying the exemption to related records.” Pet. at 10.

But RCW 50B.04.170(1) does not “list on its face” any specific records. Rather, the plain language of the statute broadly exempts “any information or records” obtained *for the specific purposes* for which they are used. That necessarily required the Court of Appeals to evaluate whether the records and information Mr. Pilloud sought—information about applicants for exemption from the WA Cares fund—is information the Department obtained “for the purposes of collecting and assessing employee premiums under



RCW 50B.04.080 and determining qualified individuals under RCW 50B.04.050.” RCW 50B.04.170(1). And here, the Court of Appeals correctly ruled that the Department obtains and then uses “exempt employee” information to “verify and assess employee premiums, and to determine eligible beneficiaries for eventual payment of benefits.” *Pilloud*, 33 Wn. App. 2d at 653.

Mr. Pilloud provides no other challenge to the Court of Appeals’ interpretation of RCW 50B.04.170(1), and he fails to identify how this decision conflicts with any other appellate decision. Therefore, review under RAP 13.4(b)(1) and (2) is not warranted.

**B. The Court of Appeals Correctly Determined That the Department Responded Timely and Diligently to Mr. Pilloud’s Records Request**

Mr. Pilloud erroneously asserts that the Court of Appeals shifted “the burden to Pilloud to show there was an unreasonable delay” in the Department’s public records response. Pet. at 12. It did not. Instead, the Court of Appeals followed settled PRA precedent and determined that under the

facts of this case, the Department’s response did not amount to a constructive denial because the Department “acted with reasonable diligence and thoroughness in responding to Pilloud’s request.” *Pilloud*, 33 Wn. App. 2d at 655.

As the Court of Appeals correctly observed, “Whether the agency responded with reasonable thoroughness and diligence is a fact-specific inquiry.” *Pilloud*, 33 Wn. App. 2d at 655 (quoting *Freedom Found. v. Dep’t of Soc. & Health Servs.*, 9 Wn. App. 2d 654, 673, 445 P.3d 971 (2019)); *see also Cantu v. Yakima School District Number 7*, 23 Wn. App. 2d 57, 88, 514 P.3d 661 (2022) (“[W]hether an agency was reasonably diligent in responding to a records request . . . is a factual issue.”).

Here, the Department submitted ample evidence, including declarations and attachments, explaining the steps it took to timely respond to Mr. Pilloud’s request to show that it acted with reasonable thoroughness and diligence. In approximately seven weeks, the Department searched for and

identified responsive information for hundreds of thousands of Washington employees, learned how to write custom code to pull this specific information from multiple tables in one expansive database, and then compiled and applied applicable redactions. CP 34-37; *Pilloud*, 33 Wn. App. 2d at 655. Based on this evidence, both the superior court and the Court of Appeals determined that under these facts, the Department acted with reasonable diligence and thoroughness. CP 129-130; *Pilloud*, 33 Wn. App. 2d at 655.

Thus, Mr. Pilloud's contention that the Court of Appeals improperly shifted the burden to him to show that there was an unreasonable delay is simply a mischaracterization of the Court of Appeals' decision. Pet. at 12. And his reliance on RCW 42.56.550(1) and *Greene v. Pierce County*, 197 Wn.2d 841, 487 P.3d 499 (2021), is misplaced. *Greene v. Pierce Cnty.*, 197 Wn.2d 841, 487 P.3d 499 (2021) (statute relating to burden of proof for claimed exemptions is separate and distinct from the constructive denial analysis); Pet. at 12.

Here, the court appropriately relied on the record before it and concluded that the Department met *its* burden to show that it acted with reasonable diligence to respond to a novel, complicated records request in a matter of weeks.<sup>5</sup> *Pilloud*, 33 Wn. App. 2d at 655.

By mischaracterizing the Court of Appeals' decision, Mr. Pilloud attempts to generate a conflict where none exists. Review is unwarranted under RAP 13.4(b)(2).

**C. This Case Does Not Involve a Matter of Substantial Public Interest That Should Be Determined by This Court**

Finally, Mr. Pilloud's Petition does not involve "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). Indeed, Mr. Pilloud does not even claim that the public interest in this case, if any, is "substantial." He merely asserts that because of "ongoing legislation" about exemptions to the WA Cares Fund, there is

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<sup>5</sup> Mr. Pilloud implies discovery would be required to show an unreasonable delay. Pet. at 12. But he agreed to forego discovery in superior court. CP 25-27.

“General Public Interest and Importance of WA Cares Fund exemptions” meriting this Court’s review. Pet. at 13. But that is not the standard for review under RAP 13.4(b)(4). And to the extent that employee exemptions to the WA Cares Program may be the current subject of public policy debates, “[t]he Legislature is the fundamental source for the definition of this state’s public policy.” *Sedlacek v. Hillis*, 145 Wn.2d 379, 390, 36 P.3d 1014 (2001).

Nor is there any support for Mr. Pilloud’s claim that “[o]pinions that curtail” access to public records necessarily warrant this Court’s review. Pet. at 13-14. If that were so, *any* time a lower court held that a PRA exemption applied, this Court would have to review the decision. But that is not the standard, and Mr. Pilloud’s generalized reference to the importance of the PRA does not come close to demonstrating that this case involves an issue of substantial interest that this Court should decide. Petition at 13; RAP 13.4(b)(4).

## V. CONCLUSION

The Court should deny the Petition for Review.

This document contains 3,621 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 9th day of June, 2025.

NICHOLAS W. BROWN  
Attorney General

A handwritten signature in dark ink, appearing to read "ERIC PALOSAARI", with a long, sweeping horizontal line extending to the right.

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## PROOF OF SERVICE

I, Michael Sawyer, certify that I caused to be served a copy of **Answer to Petition for Review** on all parties on their counsel of record on the date below as follows:

E-Served via Washington State Appellate Courts' Portal

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E-filed via Washington State Appellate Courts' Portal

SARAH PENDLETON, CLERK  
WASHINGTON STATE SUPREME COURT  
<https://ac.courts.wa.gov/>

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

DATED this 9th day of June 2025, in Seattle, Washington.

  
\_\_\_\_\_  
MICHAEL SAWYER, Paralegal

# AGO/LICENSING AND ADMINISTRATIVE LAW DIV

June 09, 2025 - 2:57 PM

## Transmittal Information

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