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STATE OF WASHINGTON
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NO. 1041217

SUPREME COURT OF THE STATE OF WASHINGTON

SHELDON SOULE,

Petitioner,

v.

STATE OF WASHINGTON BY AND THROUGH BOB
FERGUSON AND HIS OFFICE OF ATTORNEY GENERAL,

Respondent.

**RESPONDENT'S ANSWER TO PETITION
FOR REVIEW**

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I. INTRODUCTION

This Court should reject Petitioner Sheldon Soule's request to review the dismissal of his Public Records Act (PRA) claims based on fact-specific inquiries about the adequacy of the search and the promptness of the response and discretionary discovery and case management rulings. The superior court correctly concluded that the Attorney General's Office's (AGO) response was appropriately prompt and its search was adequate. The superior court also properly issued two discretionary rulings denying late requests for discovery and live testimony. Consistent with settled law, the Court of Appeals affirmed the superior court's decisions.

The promptness of the response and the adequacy of the search are fact specific inquiries, dependent on the individual circumstances of the given case. *Neighborhood All. of Spokane Cnty. v. Spokane Cnty.*, 172 Wn.2d 702, 719, 261 P.3d 119 (2011); *Andrews v. Wash. State Patrol*, 183 Wn. App. 644, 653, 334 P.3d 94 (2014), *review denied*, 182 Wn.2d 1011 (2015).

Multiple Supreme Court and Court of Appeals decisions consistently apply this established law to varying fact patterns, providing a broad framework that the Court of Appeals followed in this case. Additionally, the superior court entered orders on discovery and the conduct of the hearing that are only reversed on an abuse of discretion, which does not exist here. *See* CR 26(b); *Nakata v. Blue Bird, Inc.*, 146 Wn. App. 267, 277, 191 P.3d 900 (2008), *review denied*, 165 Wn.2d 1033 (2009).

The Court of Appeals followed this established precedent and made no new law. This is a fact specific case where the Court of Appeals and Thurston County Superior Court thoroughly reviewed the facts to reach a correct result. Because the Court of Appeals decision was consistent with this Court's cases and does not present an issue of substantial public importance, this Court should deny Soule's petition for review.

II. STATEMENT OF THE CASE

A. The AGO Promptly Responded in Compliance with the PRA After Receiving Soule's Broad Request

Between July 2019 and January 2020, Soule submitted three broad public records requests to the AGO. CP 87. Each request sought multiple subcategories of records related to a nation-wide settlement with Wells Fargo Bank that Washington and other states entered into over a ten-year period. CP 87. The Washington AGO was a leader in a multistate investigation that led to Wells Fargo entering into the settlement, which had to do with certain mortgage loans and offered financial relief in the form of loan modifications to some borrowers who took out those loans. CP 253-254. The Consumer Protection Division (CP Division) of the AGO handled that matter with Assistant Attorney General (AAG) David Huey as the lead counsel. CP 253-254.

Soule's third request about this settlement, labeled "PRR 2020-0009" by the AGO, is the subject of this appeal and included two general categories and seven subcategories of

requested records with multiple people and types of records listed. CP 87, 95-96.

In response to PRR 2020-0009, from January 2020 to May 2022, the AGO sent Soule seventeen batches of records, totaling 30,105 pages. CP 93. The AGO closed the request on May 13, 2022, when the records request was fulfilled. CP 93. The steps the AGO took to respond to and fulfill the request are detailed here.

- 1. The AGO asked Soule for clarification and gave third-party notice to personnel whose files were requested**

PRR 2020-0009 sought two general categories of records. First, the request sought “all communications” between Wells Fargo and the AGO regarding the 2010 Assurance of Discontinuance and the national mortgage settlements. CP 95-96. Second, it sought “all records in the personnel files” of various named and unnamed employees who worked on these matters. CP 95-96.

Given the breadth of Soule's request for "all communications between Wells Fargo ... and any other employee at the [AGO] regarding Wells Fargo and the national mortgage settlement," the AGO sought clarification from Soule several times in an effort to assist Soule in obtaining the records he desired. CP 88, 101-104, 122-130. The AGO sought clarification regarding consumer complaints that might be responsive to Soule's request for "all communications." CP 88, 122-130.

The AGO receives between 20,000 and 25,000 consumer complaints each year, all of which are housed in the Catalyst consumer complaint database. CP 254. Because of the volume of records in the Catalyst database that involved Wells Fargo Bank, including communications between the AGO and Wells Fargo about those complaints, a list of "practice codes" was provided to Soule to confirm the scope of his request. CP 88-89, 122-130. Consumer complaints in the Catalyst database are coded with practice codes that identify the types of potential unfair or

deceptive business practices involved in the complaint. CP 239-40. AGO Senior Public Records Officer Kristin Young sent Soule a list of practice codes involving Wells Fargo complaints and inquired which consumer complaints Soule was interested in. CP 88-89, 122-130. Soule confirmed that the AGO could restrict consumer complaints to be produced to those received before January 17, 2020, that fell under 13 specific practice codes. CP 122-130.

Soule also sought “all records in the personnel files” of three named individuals and “[a]ny and all employees...who had any involvement” with the 2010 Assurance of Discontinuance and the national mortgage settlements. CP 88, 101-104. Multiple members of the CP Division worked together to identify the employees responsive to the request, and the CP Division provided Young with a list of the names of these employees. CP 247-252. After receiving the list of individuals from the CP Division, Young sent third-party notice to those employees

informing them of the public records request that implicated their personnel files. CP 88, 106-120.

The AGO also sought clarification from Soule regarding these personnel records. Young informed Soule of the volume of “all records in the personnel files” and the types of records that would be included and inquired if there were particular records Soule sought. CP 88, 101-104. Soule clarified his request to be seeking only performance evaluations of the named and identified individuals. CP 88, 101-104.

2. The AGO searched for responsive records

While the AGO was working to clarify both portions of Soule’s request, and notifying affected employees whose personnel files had been requested, the AGO was also diligently searching for records.

The AGO centrally searched its email system for all communications using the terms “Wells Fargo” and either “assurance of discontinuance” or “national mortgage settlement.” CP 89-90. The AGO also searched electronic file

folders and hard copy files for responsive communications. CP 257-260. In addition, the AGO searched its consumer complaint database. CP 239-240.

For public records purposes, the AGO conducts centralized searches of the AGO email system, using the software platform Outlook 360. CP 89-90. Every AGO division had records with hits from the search. CP 90. Each division reviewed the records for responsiveness and provided responsive records to Young, who compiled those responsive records and readied them for production to Soule. CP 90.

As described above, the CP Division handled the national mortgage settlement cases, including the Assurance of Discontinuance with Wells Fargo. CP 253-254. Thus, Young sent Soule's records request to the CP Division to begin searching for responsive records. CP 89.

CP Division Public Records Coordinator Andrew Gutzmer emailed Soule's public records request to the entire CP Division. CP 238-239. Gutzmer's email directed

that employees review the public records request, conduct a search for records, determine if they had responsive records, and respond on the CP PRR Tracking List hyperlinked to the email. CP 242-243. All CP Division employees responded indicating that they had reviewed the request and did not have records, except former AAG Amy Teng who responded “yes.” CP 255-256.

In addition, CP Division Chief Shannon Smith, Litigation Support Manager Margaret Farmer, former AAG Amy Teng, and former AGO Paralegal Lesli Ashley worked to identify additional locations where responsive records might be located. CP 257-258.

Ashley searched for responsive records in the Wells Fargo Assurance of Discontinuance file on the AGO’s electronic folder drive where electronic files are maintained. CP 259-260. Ashley also searched the Wells Fargo National Mortgage file on the same drive. CP 259-260. Ashley searched through all the electronic files that the AGO had regarding the Wells Fargo

national mortgage settlement. CP 259-260. When searching, Ashley used broad terms such as “wells fargo” and “dave huey.” CP 259-260. Ashley also searched hard copy files pertaining to the 2010 Assurance of Discontinuance and the national mortgage settlements. CP 259-260. Ashley testified in her declaration that she “searched everywhere we thought records would still be in existence.” CP 259-260.

Teng also searched for responsive records in all of the CP Division’s electronic files that Teng could locate regarding the national mortgage settlement and assurance of discontinuance. CP 257-259. Teng searched the physical and electronic locations that the search team collectively identified might have responsive records. CP 257-259.

Gutzmer searched Catalyst for consumer complaint files responsive to Soule’s request. As explained above, in response to clarification requests from the AGO, Soule identified 13 specific Catalyst practice codes for the AGO to use in searching its complaint database for responsive records. CP 122-130,

238-240. Gutzmer searched Catalyst for all consumer complaints within these 13 practice codes. CP 238-240.

As described above, Soule’s request sought “all records in the personnel files” of certain AGO employees, and the CP Division compiled a list of employees whose personnel files were responsive. CP 247-252. Young sent this list of names to the AGO Human Resources Office to gather the records. CP 136-136. After Soule clarified that his request sought only performance evaluations of the identified employees (CP 101-104), Young informed the Human Resources Office of this clarification, and the Office provided Young with performance evaluations of the identified individuals.¹ CP 89.

3. The AGO produced responsive records over a period of approximately two years

As responsive records were identified, and reviewed for possible redaction, they were made available to Soule in batches.

¹ Young informed Soule that the performance evaluations were being completely withheld pursuant to RCW 42.56.230 and *Dawson v. Daly*. CP 365-369.

CP 93. The AGO produced a “variety of kinds of records that ... included records from a variety of timeframes as far back as 2010.” RP 12/22/23 at 9. To name a few, the AGO produced emails, CP 90, consumer complaints, CP 366, correspondence with members of the public, CP 239, communication “exchanges between Mark Elliott from Wells Fargo to Dave Huey and Rich Zwicker from the Attorney General's Office discussing various topics related to the Wells Fargo assurance mortgage agreement ... include[ing] electronic correspondence, mostly emails, some more formal letters attached, as well as handwritten complaints from individual borrowers[,] handwritten signed releases, as well as copies of mortgage paperwork related to individual borrowers’ transactions,” RP 12/22/23 at 14-15.

Once records were located in the search, they were reviewed for responsiveness and if responsive then reviewed again for redactions. CP 87-90, 257-258. Following this detailed review, records were produced to Soule. The AGO consistently communicated with Soule throughout the process. CP 87-93.

The AGO sent Soule “records ready” letters which notified him that a batch of records was ready for production and informed him of the required payment. CP 87-93. Once payment was received, the records were promptly sent. CP 90-93. The declaration of Young contains a detailed description and chronology of the numerous and regular communications and productions made by the AGO to Soule. CP 87-93. The AGO produced large batches of records to Soule every 30 to 45 days. CP 90-93. In all, the AGO produced 30,105 pages of records and communicated consistently with Soule. CP 88, 90-93. PRR 2020-0009 was closed on May 13, 2022, when the records request was fulfilled. CP 93.

B. Soule Did Not Comply with the Scheduling Order and Made Untimely Requests to Extend Discovery and Convert the Nature of the Hearing

In May 2023, Soule filed this lawsuit alleging violations of the PRA. In June 2023, the trial court held a scheduling conference. While many things were discussed, at no point before or during the scheduling conference did Soule’s counsel

mention or seek live witness testimony. CP 301. The scheduling conference resulted in the PRA Scheduling Order, signed on June 22, 2023. The scheduling order bifurcated the merits and penalty portions of the matter. The scheduling order established a hearing based on affidavit, as provided for in RCW 42.56.550(3), and included a briefing schedule and hearing date for argument on the merits on November 17, 2023. CP 304-307. The scheduling order, which was agreed to by the parties, made no mention of a trial or witnesses. CP 304-307. The scheduling order included a discovery deadline of September 29, 2023. CP 304-307.

On October 16, 2023, more than two weeks after the discovery deadline and days before the scheduled merits briefing was due, Plaintiff's counsel served a 30(b)(6) deposition notice on the AGO. CP 5-12. At no previous point did Soule serve discovery on the AGO or communicate with the AGO or the court regarding discovery. The late deposition notice demanded the AGO designate one or more persons to testify regarding

sixteen topics, some of which related to penalty factors (e.g., item 14 - *Yousoufian* factors) that were specifically excluded from discovery in the scheduling order during the merits stage of the case. CP 5-12.

The AGO filed a motion to quash. CP 21-25. The trial court quashed the notice of deposition and protected the AGO from any discovery by Soule that was not in compliance with the scheduling order. CP 292-293. Hours after receiving this ruling, Soule's counsel instructed the AGO by email to "make each of your declarants available to testify at the merits hearing." CP 301, 309. Thereafter, Soule's counsel served a Notice to Attend Hearing, purportedly requiring six individuals to attend the hearing to testify as witnesses. CP 311-314.

The AGO filed a motion to quash the notice to attend hearing. CP 296-300. The first available hearing date for the motion to quash was the morning of the scheduled merits hearing. That morning, the court heard argument regarding whether in-person testimony would be heard at the afternoon's

scheduled merits hearing. The trial court stated: “Nobody made a motion two months ago saying we need to change the format, and at this juncture, which is very late, I am not changing the format.” RP 11/17/23 Vol. 1 at 16-17. The merits hearing occurred later that day.

C. The Superior Court Ruled on the Merits in Favor of the AGO, and the Court of Appeals Affirmed

Following the merits hearing on PRR 2020-0009, the superior court provided a detailed oral ruling on the issues. Regarding the promptness of the response, the superior court noted that given the content of the records, including private individuals’ mortgage documents, thus necessitating review for personal identifying information, the AGO’s response was timely. RP 12/22/23 at 17. Regarding adequacy of the search, the superior court summarized the evidence and declarations submitted and explained that based on the “search, the scope of the search, the variety of categories of people who were involved in the effort, the locations that were sought, the Court finds that the search was adequate and was reasonable and, in terms of the

scope of the search, that the AG's office has carried its burden of showing on a reasonableness standard that the search was reasonable and did not violate the Public Records Act.” RP 12/22/23 at 16. The superior court determined that the AGO did not violate the PRA and dismissed Soule’s remaining claims. Soule appealed.

The Court of Appeals affirmed the superior court’s decision on the merits and discretionary rulings on discovery and nature of the hearing. The Court of Appeals held that the record established the AGO’s response was reasonably prompt and that the AGO’s search was adequate. It further held that the trial court did not abuse its discretion by granting two pre-hearing motions to quash. The Court of Appeals affirmed the superior court’s decision in an unpublished opinion that followed established law and case precedent.

III. ARGUMENT

Soule is not entitled to review for any of the reasons provided by RAP 13.4(b): (1) The decision of the Court of

Appeals is *not* in conflict with a decision of the Supreme Court; (2) The decision of the Court of Appeals is *not* in conflict with a published decision of the Court of Appeals; (3) There is *not* a significant question of law under the Constitution of the State of Washington or of the United States involved; and (4) The petition does *not* involve an issue of substantial public interest that should be determined by the Supreme Court.

The Court of Appeals made no new law. Rather, this is a fact specific case where the Court of Appeals and Thurston County Superior Court thoroughly reviewed the facts to reach a correct result. Soule's petition should be denied.

A. The Superior Court and the Court of Appeals Faithfully Applied This Court's Case Law in the Merits Decisions

The two issues on the merits that the superior court and Court of Appeals considered were promptness of the agency response and adequacy of the search. Each of these issues has been frequently litigated, and thus there is extensive case precedent laying out the established law. Each of these issues

also require a heavily fact-specific analysis. The superior court and Court of Appeals correctly applied the established law to the facts of this particular matter and reached the correct result.

The Court of Appeals followed the PRA, quoting RCW 42.56.520, appropriately finding that the AGO's response to Soule's request was reasonably prompt. "Even though the PRA requires an agency to respond to a request within five business days, it allows agencies to take a longer time in order '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.'" Slip Opinion at 21, quoting RCW 42.56.520. The Court also followed established precedent that the inquiry of whether an agency has provided a "prompt" response to a request is a fact-specific inquiry. *Freedom Found. v. Washington State Dep't of Soc. & Health Servs.*, 9 Wn. App. 2d 654, 673, 445 P.3d 971, 981 (2019); *Andrews v. Wash. State*

Patrol, 183 Wn. App. 644, 653, 334 P.3d 94 (2014), *review denied*, 182 Wn.2d 1011 (2015). Applying the law to the facts of this case, the Court of Appeals appropriately held that “[a]lthough the length of time the entire process took may have appeared long, in our review of the record, all of the AGO’s actions that contributed to this duration were consistent with what the PRA allows.” Slip. Op. at 23.

The Court of Appeals’ holding is consistent with the ample precedent involving an agency’s promptness in responding to a public records request. *See Twin Harbors Fish & Wildlife Advoc. v. Washington Dep’t of Fish & Wildlife*, No. 54849-6-II, 2022 WL 538366 (Wash. Ct. App. Feb. 23, 2022) (unpublished) (finding no PRA violation for response time and no undue delay when 38 installments of records were produced over approximately 3.5 years in approximately one month intervals)²;

² Pursuant to GR 14.1(a), unpublished opinions of the Court of Appeals have no precedential value and are not binding but may be accorded such persuasive value as the court deems appropriate.

West v. Dep't of Fish & Wildlife, No. 54872-1-II, 2022 WL 369984 (Wash. Ct. App. Feb. 8, 2022) (unpublished) (finding the agency's estimated response times were reasonable and there was no undue delay when six installments were produced over 13 months, with two to three months between installments); *Freedom Found. v. Washington State Dep't of Soc. & Health Servs.*, 9 Wn. App. 2d 654, 667, 445 P.3d 971, 978 (2019) (finding no unreasonable delay in producing responsive record 33 days after public records officer received record); *Conklin v. Univ. of Washington Sch. of Med.*, No. 83200-0-I, 2023 WL 21565 (Wash. Ct. App. Jan 3, 2023) (unpublished) (finding agency responded promptly and reasonably when it produced 14 installments over almost three years regarding one request and three installments over one year regarding another request). It is well in line with this precedent for a request involving more than 30,000 pages to take a bit more than two years to complete.

As to the adequacy of the AGO's search, the PRA requires an agency to conduct a reasonable search for records that are responsive to a request, and to provide the requestor with those records that the agency finds in its search. *Block v. City of Gold Bar*, 189 Wn. App. 262, 270-72, 355 P.3d 266 (2015), *review denied*, 184 Wn.2d 1037 (2016). The adequacy of a records search is judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents. *Neighborhood All. of Spokane Cnty. v. Spokane Cnty.*, 172 Wn.2d 702, 719, 261 P.3d 119 (2011); *Hobbs v. State*, 183 Wn. App. 925, 943, 335 P.3d 1004 (2014) (quoting *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 866, 288 P.3d 384 (2012)) (internal quotation marks omitted). The lower courts in this case applied this well-established law to the specific facts of this matter and conducted a thorough analysis. The Court of Appeals addressed both parties' arguments and held "the AGO's search was reasonably calculated to uncover all relevant documents that were still available." Slip Op. at 27. The evidence

submitted by the AGO “describe an adequate search that meets the demands of the PRA.” Slip Op. at 26. And that “AGO employees used search terms broad enough to potentially include all the individuals named by Soule as they related to the Wells Fargo negotiations and settlements.” Slip. Op. at 26.

Arguing against this, Soule insists that different terms could have been used that might have resulted in more records being produced. Petition at 16. But, as held by the Court of Appeals, “a search is not unreasonable just because an agency did not ‘think of alternative search terms that may produce more records.’” Slip. Op. at 26 (quoting *Cantu v. Yakima School Dist. No. 7*, 23 Wn. App. 2d 57, 85, 514 P.3d 661 (2022)).

The superior court and Court of Appeals correctly applied settled law regarding a prompt response and adequate search to the facts of this case and reached the correct result. There is no basis for this Court to grant review.

B. The Superior Court and the Court of Appeals Faithfully Applied the Law and Case Precedent Regarding Discretionary Discovery and Case Management Issues

The court rules grant the superior court broad discretion to manage the discovery process, set deadlines, and set the scope of discovery through a pretrial scheduling order. CR 26(b); *Nakata v. Blue Bird, Inc.*, 146 Wn. App. 267, 277, 191 P.3d 900 (2008), *review denied*, 165 Wn.2d 1033 (2009). Here, the trial court properly exercised its discretion in overseeing the proceedings before it by granting two pre-hearing motions to quash. The Court of Appeals then applied this longstanding precedent in its review of the superior court's rulings, determining that they were well within the superior court's discretion.

The superior court exercised sound discretion when it quashed Soule's untimely deposition notice. The Court of Appeals reviewed the superior court's ruling and the facts and noted that the "superior court gave multiple reasons supporting its decision." Slip Op. at 16. The Court held, consistent with the superior court, that in addition to the AGO being prejudiced and

Soule's failure to articulate why additional discovery was needed and the fact that Soule did not ask for a continuance until after the discovery deadline had passed, "the driving consideration is in the response to the motion to quash, there is no mention of what specific issues need to be explored on discovery." Slip Op. at 9-10.

Immediately after receiving the superior court's ruling quashing the depositions, Soule served a notice to attend hearing for the same six declarants. The notice, served three weeks ahead of the long-scheduled merits hearing, was the first time that Soule requested or even mentioned in-person testimony. Soule's notice was simply another attempt to contravene the court's pre-hearing order and delay proceedings. The trial court again exercised sound discretion when it quashed Soule's untimely notice to attend hearing.

The superior court and the Court of Appeals followed the PRA and this Court's precedent in concluding that the "PRA allows for claims to be decided "solely on affidavits."

RCW 42.56.550(3); *see O’Neill*, 170 Wn.2d at 153 (“‘To speed up the court process, a public records case may be decided merely on the motion of a requestor and solely on affidavits.’” (internal quotation marks omitted) (quoting former WAC 44-14-18004(1) (2006))).” Slip Op. at 18. The Court of Appeals, again quoting this Court’s precedent, noted that this decision is consistent with the policy supporting the PRA: “We give superior courts deference to make management decisions to avoid encumbering PRA proceedings with unnecessary and costly procedural barriers.” Slip Op. at 17-18 citing to *O’Neill v. City of Shoreline*, 170 Wn.2d 138, 153, 240 P.3d (2010).

These discretionary rulings are well supported by the record and both courts took care in issuing their rulings. There is nothing of substantial importance for this Court to review.

C. Soule Is Not Entitled to Attorney Fees as He Is Not a Prevailing Party

A party who prevails against an agency in a PRA action regarding the right to inspect or copy any public record or the right to receive a response to a public record request is entitled

to costs and attorney fees. RCW 42.56.440(4). Soule has not prevailed in this action. Soule is not a prevailing party entitled to attorney fees and thus such fees must be denied.

IV. CONCLUSION

Because the Court of Appeals faithfully applied existing case law and its decision does not present issues of substantial public importance, the Court should deny Soule's petition for review and request for attorney fees.

This document contains 4,345 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 27th day of June, 2025.

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s/ Jennifer Steele

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CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the date below, I caused a true and correct copy of the foregoing to be served on the following:

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DATED this 27th day of June, 2025 at Seattle, Washington.

s/ Jennifer Steele _____
JENNIFER STEELE
Public Records Counsel

CONSUMER PROTECTION DIVISION AGO

June 27, 2025 - 10:12 AM

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