No. 1041837

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Eric Hood
Respondent/ Plaintiff,

V.

City of Vancouver
Petitioner/Defendant,

OPPOSITION OF PETITION FOR REVIEW OR CROSS PETITION

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Other Authority

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I. IDENTIFY MOVING PARTY

Respondent and Cross Appellant Eric Hood ("Hood," "Plaintiff") is a Washington resident and was plaintiff and appellant below.

II. CITATION TO COURT OF APPEALS DECISION

The Defendant's Petition correctly identifies the decision at issue.

III. ISSUES PRESENTED FOR REVIEW

Primarily, Hood requests this Court reject City of Vancouver's ("City") petition for review. However, if review is granted, Hood presents the following additional issues for review:

1) Did Hood's request for "records the Downtown Redevelopment Agency got from the auditor and all records of its response to the audit, or to the audit report" sufficiently identify records related

to the audit process to obligate the responding agency to produce those records?

2) Should the remand to the trial court also direct the court to apply the Court of Appeals' holding that records the agency "got from the auditor" was clear in its review of Defendant's compliance with the Public Records act ("PRA")?

As this is not the focus of Hood's brief, Plaintiff requests this Court review his briefing in Division II, attached as Appendix A, as nothing new is being argued by either side.

IV. COUNTERSTATEMENT OF THE CASE

The City attempts to make this case seem far more complex than it is. In May 2022, Plaintiff was looking for records showing the process and outcome of the Washington State Auditor's Office (SAO) audit of the

DRA. Plaintiff found contact info for the DRA, which was listed on an earlier version of City's website. CP 119. It listed three people, all of whom had email addresses hosted "@cityofvancouver.us." *Id*. Mr. Hood emailed the first one on the list, Natasha Ramras, on May 27, 2022, seeking records. CP 107. His message read:

> Person in charge of public records: I understand that your organization was recently audited by the state auditor and a report was published. May I have all records it got from the auditor and all records of its response to the audit or to the audit report, including any changes to policy or practices?

Id. He later clarified that the request sought records from the DRA, not City of Vancouver. CP 31. The Court of Appeals held that the City's response was inadequate because it should have produced records it "got from the auditor[.]" Defendant's Petition for Review, App. A, p. 1017.

A. Hood's Request

By June 2, 2022, all parties knew Mr. Hood sought records of DRA's response to the "audit, or to the audit report." On that date, the most recent DRA audit had resulted in Report No. 1028995 and Report No. 1028983.[1] Both reports were published on September 2, 2021, and covered the audit period from January 1, 2019, to December 31, 2020. *Id*. City has produced neither report to Hood nor records related thereto.

In addition to the misunderstanding of the timing, this portion of Hood's request raised two points of dispute in the decisions below: first, who was the recipient agency? And second, what records related to the audit are responsive to Hood's request? *See* VRP at

[1] SAO report search reveals these are the most recent audits as of the date of Hood's request, available here: https://www.sao.wa.gov/reports-data/audit-reports?SearchText=vancouver%20downtown%20redevelopment&StartDate=&EndDate=

20 (discussing agency responsibility dispute); VRP at 22 (granting summary judgment based on compliance with the PRA).

On the first point, there is very little data in the record. Hood sent an email to the email address listed for City's Downtown Redevelopment Authority ("DRA"): nramras@vancouverwa.gov. CP 119. That address was for Natasha Ramras. *Id.* Ramras has two roles. She is both City's Chief Financial Officer and DRA's Executive Director. CP 21,430. But neither of the two lower courts addressed the fundamental question of responsibility: which entity was Ms. Ramras representing in receiving and managing Hood's request for records? *See* VRP 19; Def. Petition, App. A, p. 1018. With that question unaddressed in the lower courts, it is not ripe for review here. Furthermore, if it were possible to determine who Ms. Ramras was representing in that moment, there is

still a factual question around what records *City* got or created in response and not those *DRA's* got or created in response, or if such a distinction is even possible.

What little evidence there is shows a single entity, City, doing all the relevant work. The DRA is completely managed by City. It has no separate staff, no separate email addresses, and no means to contact or be contacted outside of City's employees. CP 21. All those things are provided and managed via the City and its employees. CP 21.

According to City's trial court assertions, the same two people managed the audit of both City and the DRA and were involved in handling or creating records related to the audits. Ms. Ramras explained "[p]art of the ducties[*sic*] of the City's Finance Department is to coordinate with the [SAO] to prepare audit reports[.]" *Id.* The second person was Jordan Sherman who is

"employed by the City of Vancouver as the Internal auditor." CP 10. Sherman explained that the City has a "Downtown Redevelopment Authority which is a legally separate entity with no employees" and is audited separately from the City. CP 12. But as DRA has no employees, the City's Finance Department "assists the SAO in its audit(s) of DRA." CP 21.

Second, City correctly describes an audit as a process, not merely a document: "Through audits, the [State Auditor's Office] determines whether Local governments have, in any way, failed to comply with state law when managing their finances." City's Petition for Review, p.2. An SAO audit of an agency, includes a pre-audit phase, collecting data, and creating a report with findings or recommendations. *See* Anatomy of an Audit, State Auditor's Office, *available at* https://sao.wa.gov/about-audits/anatomy-

audit/anatomy-audit-text-version. Many kinds of records are generated during an audit. An Overview of Audit Services for State Agencies, State Auditor's Office, PPT 1-8, *available at* https://portal.sao.wa.gov/trainingfiles/An_Overview_of_Audit_Services_for_State_Agencies/story_html5.html. And when the audit is completed, the document that explains the auditor's conclusions is called an "Audit Report." Anatomy of an Audit, supra.

B. Search and Disclosure

City Public Records Officer McJilton performed the search for responsive records and on June 21, 2022, they produced the only batch of records Hood received before suit. CP. 26. City-employee McJilton searched the City's document management system, eDocs, and the City's website. *Id.* McJilton sent Hood 1) a copy of the exit conference for SAO's audit of City, CP 40-44; 2) a draft

of City's response to the 2020 Audit of City, CP 45-50; 3) a copy of a draft audit report for the 2020 Audit of City, CP 51-85; along with a message. The message read in relevant part, "If you feel that there are any missing documents or additional types of materials that your request sought, which are not included in the enclosed response, please contact me so your request may be clarified. This concludes the *City's* response to the above-mentioned request." CP 29 (emphasis added). City never sent any records about its work on behalf of the DRA or about SAO's audit of the DRA.

C. Trial Court

Plaintiff filed his complaint on June 16, 2023. CP 3. He never received an answer to his complaint.. During pendency of then pro se Plaintiff's unavailability, on July 11, City moved to Dismiss based on incorrect service for lack of wet signature. App 2. On July 18th,

City withdrew that motion, based on re-service. App 3. On September 1, 2023, City moved for summary judgment and for the first time made Plaintiff aware that it disputed 1) it's responsibility to respond to Hood's PRA request rather than the DRA, and 2) that City's response was inadequate. CP 87-105. Accompanying this motion were the declarations of Jordan Sherman, CP 9-19, Natasha Ramras, CP 20-23, and Raelyn McJilton, CP 24-86. In the motion for summary judgment, City insinuated that because Hood was pro se, he had no right to be "unavailable" or "out of office," as others are, CP 88. City also showed a continued failure to read Hood's request in its plain meaning,[2] and

[2] Although City quoted Hood's request in the text of its motion correctly as "I seek all records the Downtown Redevelopment Authority got from the auditor and all records of its response to the audit or to the audit report, including any changes to policy or practices[.]" City goes on to say it had no records because "the *SAO* never submitted any "response" to the DRA audit because there have been no findings of noncompliance against the DRA in either of the two most recent audit years." CP 93 (emphasis added).

claimed that Hood did not respond to a request for clarification.[3] In fact, Hood did respond to clarify the only part of the request City had made him aware was unclear—which agency he was referring to. He responded and specified he wanted all records DRA got from the auditor. CP 93.

After receiving this motion which suggested he was at a disadvantage in scheduling by being pro se and that City had disclosed all responsive records, Hood took two steps. First, he submitted a public records request to the SAO which said, "Regarding your audit of the Downtown Redevelopment Authority, please produce all records the City of Vancouver got from the SAO and all records of its response to the audit or to the audit report,

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[3] The City's motion characterized its message restating Hood's request, listing what City had already sent and asking, "what else are you seeking?" as a request for clarification, despite the fact that it did not tell who what was unclear about the request. CP 92, Def. Petition, App. A, p. 1017.

including any changes to policy or practices." CP 344. Then he hired counsel on September 12, 2023. CP 361. Hood's response to the motion was filed on September 19, 2023, CP 314, and the hearing set for September 29, 2023. CP 88.

In total, between the complaint and the hearing on December 1, both parties were only available for 62 calendar days, less than 9 weeks, during which Hood also had to account for the time lost in fending off the wet signature motion, hire an attorney, and respond to a motion for summary judgment. Hood was only aware of what claims from his complaint were disputed for 30 of those days.

Trial court made two decisions. First, on December 1, 2023, Judge Vanderwood ruled that City's response to Hood's request was adequate to avoid penalties under RCW 42.56, no matter who the responsible agency was.

VRP 18-22. In so ruling, Judge Vanderwood accepted City's argument that Hood should have moved for a continuance under CR 56(f) to oppose summary judgment based on disputed facts and rejected Hood's oral motion for continuance. VRP 18. He also held that Hood could have pursued further discovery before the hearing. *Id*.

Second, on January 9th, 2024, the judge denied Plaintiff's motion to reopen judgment and repeal the prior order under CR 59. CP 398, 399. Plaintiff's CR 59 motion was based on documents SAO had shared with Plaintiff just a few days before the hearing. CP 342.

D. Court of Appeals

The Court of Appeals, Division II, issued its opinion on March 4, 2025. Defendant's Petition for Review ("Def. Petition"), App. A. The court later denied a motion for reconsideration on April 15, 2025. Def. Petition, App. B.

In its opinion, Division II reversed the trial court's grant of summary judgment because 1) there was a genuine issue of material fact as to whether the City had conducted an adequate search, Def. Petition, App. A, p. 1012, and 2) that inviting a records requester to object to a closed request is not a "request for clarification" as used in RCW 42.56.520(3), Def. Petition, App. A, p. 1017-1018.

The first holding was based on several smaller conclusions. First, the court found that Eric Hood's public records request, despite some ambiguities, *see* Def. Petition, App. A, fn. 2, encompassed emails that the DRA "got from the state auditor related to the DRA's most recent audit" Def. Petition, App. A, p. 1017.

Based on that interpretation, the fact that City searched the document management system and website, but did not explicitly state that the email

accounts or other communications were searched, Def. Petition. App. A, p. 1014, there was not sufficient evidence to carry the burden of proof in a summary judgment motion. *Id. at* 1018.

Conversely, Division II considered the portion of the request concerning the DRA's "response to the audit or to the audit report" ambiguous, as it was unclear if it included communications before the final audit report. *Id. at* fn.2.

As to the request for clarification, the opinion stated that an agency cannot "insulate itself from liability by requiring the requester to identify missing records," as requesters may not be familiar enough with agency records to do so and the statute does not allow clarification after closing a request. *Id. at* 1018.

The Court of Appeals explicitly stated that it did not address the trial court's denial of Hood's CR 56(f) motion

for a continuance, his CR 59 motion for reconsideration, or whether the City of Vancouver was the proper defendant in the case. *Id. at* 1019.

V. GROUNDS FOR REVIEW

Hood does not believe the flaws in the Court of Appeals' decision merit review. But after addressing the grounds raised by Defendant, Hood presents some issues that should also be reviewed if the Court takes the case.

A. Relying on the Full Record Was Correct

In arguing that RAP 9.12 prevents the Court of Appeals from deciding that its search was inadequate, City plays two pieces of sleight of hand. Most important, City mischaracterizes the Court of Appeals' decision.

> The Court of Appeals [...] held [that] the phrase "records the Downtown

> Redevelopment Authority got from the auditor" clearly encompassed emails received by Vancouver because "there [wa]s some evidence that related emails existed." *Id*. at 1019. That "evidence" consisted *entirely* on what Hood filed after summary judgment was entered. *Id. at 1015, 1019*.

Def. Petition, p. 11 (emphasis added). But Division II did rely on evidence submitted before summary judgment, Def. Petition, App. A, p. 15. ("lots of back and forth emails [and] records sent/received; to/from; state auditor's office." (Citing CP 37 and 112). Also, by arguing for deference to the trial court's decision under RAP 9.12, City implies that the trial court made a finding about whether the evidence presented with Hood's motion for reconsideration could be considered. It did not. CP 398-399.

Also, the audits and requests are presented in a way that makes it sound like Hood's requests were intended to produce the same records in every instance. But this

is not the case. City has consistently been slapdash in its reading of the timeline, so to ensure clarity for the Court, here is a side-by-side comparison of the dates of requests and the dates of audits.

Latest audit of the DRA	Request Date	Request recipient
September 2, 2021: Reports No. 1028995 and 1028983	**May 27, 2022:** "I understand that your organization was recently audited by the state auditor and a report was published. May I have all records it got from the auditor and all records of its response to the audit or audit report, including any changes to policies or policies?"	Natasha Ramras
September 2, 2021: Reports No. 1028995 and 1028983	**June 2, 2022**: Regarding the most recent state audit, I seek all records the [DRA] got from the auditor and all records of its response to the audit or to the audit report, including any changes in policy or practices."	Raelyn McJilton
June 27, 2023: Reports No. 1032982 and 1032972	**September 11, 2023**: Regarding your audit of the [DRA] please produce all records the City of Vancouver got from the SAO and all records of its response to the audit or audit report including any changes to policy or practices."	SAO public records request email

Hood's request to the SAO was never about finding records that should have been disclosed in the first place, it was about demonstrating why he believed more responsive records existed. This information was difficult to obtain, and Hood presented it as soon as he could.

B. If the PRA Does Not Allow Suit Here, Loopholes Negate Rule

The City's public records officer understood the request and the City did not fulfill it in a way that matched that understanding. There is no other way to characterize the facts here and few other facts could affect the outcome. And the City's officer understood this request because it was a clear request based on her understanding of language and the PRA's definition of "record."

i. Seeking Clarification Without Describing What is Unclear, Is Merely a Cheat Code to Avoid Liability.

If City's statement that a requester has the option to follow up if they are dissatisfied is a barrier to litigation, such a statement will be added to every public records response in the state. As the Court of Appeals noted, a requester cannot know what he does not know. Def. Petition, App. A, p. 1018; *see also Progressive Animal Welfare Socy v. Univ. of Wash*., 125 Wn.2d 243, 269-71, 884 P.2d 592 (1994) (holding that silent withholding is not permitted under the PRA). Here, City's statement is even more ridiculous than many agencies. It wrote that if Mr. Hood "feels" the City misinterpreted his request, to let City know. *See* CP 29 (message from McJilton to Hood which reads "If you feel that there are any missing documents or additional types of materials that your request sought, which are not included in the enclosed

response, please contact me so your request may be clarified.") To prevent liability, all that would be necessary is to shift the burden to the requester to guess what the agency is hiding behind its back.

And the Attorney General's Model Rules do not ignore the negative consequences of seeking clarifications, especially when unnecessary. WAC 44-14-04003(8). To accept City's argument would be to turn the PRA on its head and nullify the enforcement provisions.

ii. "Records" Includes Emails

Officer McJilton understood Hood's request for all "records" of a certain type to include emails. Though they did not specify, it seems likely that they knew this was the case because RCW.41.56.010 dictates that any "means of recording communication" is included in the definition of "public record." A remand to determine

whether City applied this statutory definition is an incredibly narrow, reasonable step.

C. If Division II Erred, It Was In Too Narrowly holding for Hood.

Hood does not ask this Court to accept review on the grounds below but raises them for the purpose of cross petition if the Defendant's petition is granted.

iii. "Records of Response" Was Clear to City

Division II found the portion of Hood's PRA request for "all records of its response to the audit or to the audit report, including any changes to policy or practices," *id*., to be ambiguous, in part "because official responses to an audit are included in the final audit report [and] Hood's initial request did not necessarily indicate that he wanted records about the response beyond the final audit report itself." Def. Petition, App. A, p. 1016-1017.

First, Hood did not request only "official responses," rather, he wanted "all records of [DRA's] response to the audit and to the audit report." CP 31. The official response contained within the audit report that the City produced to Hood in 2022 is a *description* of the City's official response.[4] CP 74 ("City's response […] is described.") The description mentioned actual *records of response* to the audit or audit report, including e.g., "Corrective action the auditee plans to take in response to the finding [that, e.g.,] City's accounting team will implement additional layers of review." CP 84. City did *not* produce *records* showing its corrective actions, i.e., did not produce records showing or discussing that the City "implemented additional layers of review," which

[4] Because City continues to withhold the SAO's reports of its most recent audit of the DRA, Hood uses the non-responsive reports produced by the City as examples.

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would be actual "records of its response" as Hood requested. CP 31. The DRA's "changes to policy or practices," i.e., "corrective actions," i.e., what it "plans to" do, i.e., "records of response," were described but *not* included in the report. Thus, a *description of a response* should not be conflated with *records of response*.

An agency may not narrow a "request to less than its actual wording." *West v. City of Tacoma*, 456 P.3d 894, 915 (2020). City's claim that its "response […] appears in a single report," Def. Petition, p. 4, narrowed and distorted "records of response" to mean only the description of its response. The City consequently excluded 1) City responses to the SAO's questions and requests for information during the audit process, and 2) internal records showing how the City responded to the SAO's recommendations. Where City knew it should have but failed to search for responsive records, "it failed

to conduct an adequate search." Def. Petition, App. A, p. 1019.

Second, because multiple state audits[5] have familiarized the City with the audit process, City *knew* that "records of response" encompassed more than the mere description of the response shown in the audit report. City's explanation about the "audit process" omitted material information. Def. Petition, p. 2. In particular, City knew that "records of response" does *not* mean the description of its response. For example, "City's response," to SAO "recommendations" said, e.g., that City "will revise the financial statement preparation tool [and] institute a quality control process." CP 141. But City did not produce *records* of its

[5] Petition, p. 3 (link to SAO audit reports of City.) And see https://www.sao.wa.gov/reports-data/audit-reports?SearchText=vancouver%20downtown%20redevelopment&StartDate=&EndDate= (Link to audit reports of the DRA.)

response, i.e., discussions or drafts showing that it did or how it "will revise [and] institute" the promised changes. For another example, during an audit, City provides to the SAO "financial records and related data [,] Minutes of the meetings of the governing body [and] a corrective action plan." CP 45-49. The SAO also "examine[d] the financial affairs [and] obtain[ed] evidence [including] General ledger, accounts payable, payroll [etc.]." CP 54-55. This audit work would have required the City employees, whether acting for the DRA or City, to respond to SAO questions and requests for information. *See, e.g.,* CP 350 (SAO emails to City with subject "Audit Requests" and "Audit Questions").

City argued that Hood was obliged to respond to its post-closure remark that Hood contact it if he felt "that there were any missing documents or additional materials." Def. Petition, p. 18-22, CP 29. Because City

fully understood the scope of Hood's clarified request, its remark violated WAC 44-14-04003 (8) ("Seeking a "clarification" of an objectively clear request delays access to public records.")

This Court expressly rejected the City's argument that requesters, with no access to agency records, "must ask for more, without necessarily knowing which records they are owed." *Kilduff v. San Juan Cty.*, 453 P.3d 719, 724 (2019). "It was not reasonable to ask [requester] where to search for the documents responsive to his request." *Yousoufian v. Office of Sims*, 168 Wn. 2d 444, 453 (2010). Rather, the agency should determine which records are withheld even if the request does not specifically name them. *Violante v. King County Fire District No. 20*, 114 Wn. App. 565, 571 & n.14, 59 P.3d 109 (2002). These rulings are especially relevant when, as here, the agency, unlike the

requester, knows all the kinds of records generated by an audit.

City's discussion of ambiguity, Def. Petition, p. 23-26, conflates breadth with ambiguity. Hood's request was intentionally broad because he wanted all records of the DRA's response, including changes to policy and practices, not merely the description provided in the final report. Breadth did not make Hood's request ambiguous. Additionally, by the canon of surplusage, it would be duplicative to say response to "audit" and "audit report" if one only sought response to one of the two items.

In short, City did *not* "ma[ke] every effort to cooperate [and] provide the requested records." Def. Petition, p. 22. City may not blame Hood for City's 1) failure to search for or produce the DRA's records in response to his PRA request, 2) misleading production of non-responsive

records to Hood after he sued, and 3) continued withholding.

iv. Continued Misinterpretation of Hood's Request

No amount of explanation or clarification will help if the person addressed does not care to understand. City has not acted with any intent to care about transparency from the first time Natasha Ramras opened Hood's email. Even after suit was filed, City's attorney Dan Lloyd claimed to have reproduced responsive records after suit was filed. CP 111:3, CP 124 ("so there is no confusion, the reports you requested […] are attached to this email.") But none of the records Lloyd sent were responsive to Hood's clarified PRA request. *Compare* CP 31 (request) *with* CP 111, at 21-22, CP 126-260 (audits of City), and CP 261-286 (audit report No. 1031704 of DRA published December 29, 2022, after Hood

requested records).[6] Could City have *still* believed Hood sought records of a different audit? Not if it was acting with intent to provide "fullest assistance" to the requester. *See* RCW 42.56.100.

On June 2, 2022, Hood clarified that his May 27, 2022 PRA request referred to the "most recent state audit of […] the [DRA]." CP 31. City ignored Hood's clarification, i.e., it "interpreted Hood's "clarification" as "essentially repeat[ing] his earlier request." Def. Petition, p. 4; *and see* CP 124 ("[Hood] never provided any clarification.") *And see* VRP, p. 9:22 ("[Hood] repeat[ed] the exact language of the request. That's not a clarification.") Consequently, City searched for and produced records

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[6] Misled by Lloyd's assurance that report No. 1031704 was responsive to his PRA request, Hood requested records from the SAO related to that report. *Petition*, p. 9-10. Lloyd now faults Hood for "[seeking] from the SAO a different scope of records than what he requested from the DRA." *Id.*

related only to the audit of the City. *See* CP 26 at 8 and CP 40-85 (records produced).

City argued that "everyone believed Hood was seeking records related to the SAO's audit of *Vancouver*, not the DRA." *Petition*, p. 25 (emphasis in original). In fact, after receiving Hood's clarified request on June 2, 2022, Ramras knew that Hood's clarified request sought DRA, *not* City records. CP 37-38. ("The same person was asking for the same information for the *City* last week.") (Emphasis added.)

VI. PRAYER FOR RELIEF

The Defendant's Petion for review should be denied. But if it is granted, the Court should consider expanding Division II's holding to include a finding of that "records of response to the audit and audit report" is not ambiguous, but clear, and that City denied records based on an unreasonable interpretation of the request.

I certify that this pleading is in 14-point Century Schoolbook font and contains 4454, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images, as calculated using Microsoft Word, the word processing software used to prepare this brief, in compliance with the RAP 18.17(b).

RESPECTFULLY SUBMITTED on the 30th of June, 2025.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that December 2, 2022, I electronically filed with the Court the foregoing document and this declaration of service and served the same by email upon the following:

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Appendix 1

No. 59242-8

COURT OF APPEALS FOR
THE STATE OF WASHINGTON
DIVISION II

ERIC HOOD

Appellant,

and

CITY OF VANCOUVER

Respondent.

APPELLANT'S BRIEF

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I. INTRODUCTION

Simply put—this case asks this Court to give a plaintiff a reasonable amount of time to collect data before he is asked to justify his claims to the court. Instead, City of Vancouver, ("City") brought summary judgment by ambush, preventing Eric Hood ("Plaintiff," or "Hood") from collecting facts to present his claims to the judge. City treated Hood as a second-class litigant because he was pro se, refused to answer and thus allow Hood to target his discovery, and continues to ignore his obvious desire for records. This Court should reverse and remand for more discovery.

City, like all organizational entities, is not a person. It doesn't have eyes to read messages or the ability to type out a response. What it does have is employees. It has officers. These people act on its behalf. So, when the Public Records Act ("PRA") asks if an

agency "received" a request for public records, the question is whether one of those people, acting on the agency's behalf, received the request. In this case, a City employee received a request for records from Hood and only partially responded, violating the PRA's mandate.

At the trial court, the City objected to this description of events in two ways: first claiming that the City employee was not acting as a City employee, but as an officer of a related agency, the Vancouver Downtown Redevelopment Authority ("DRA"), when she received request for records. Second, the City claimed that it had produced all the responsive records. When City moved for summary judgment on those grounds, the Honorable Judge Vanderwood stated in his oral ruling that he was persuaded that City's response to Hood's PRA request was sufficient, regardless of whether City was the correct defendant, and therefore did not need to decide

the City's first basis for its motion for summary judgment. VRP 22. The record shows, however, that his request was far broader than the records produced, using both the plain language of the request and the words of City's employees. For that reason, summary judgment was unjustified.

II. Assignments of Error and Issues Pertaining Thereto

The trial court erred as follows:

1. The trial court erred in concluding that, there was no issue of material fact preventing summary judgment. Order, CP 338.
    a. This error is developed in point IV.A., below, showing that parties disputed two facts, either of which could be dispositive—that City was the correct defendant and that City's response to Plaintiff's public records request was adequate.

2. The trial court erred in concluding that the record, including Hood's CR 59 motion, showed that City's disclosures were sufficient CP 398.
    a. Section IV.B., below, pairs facts with law to demonstrate that the evidence available showed that City had not provided the requested records.
3. If the record was adequate for summary judgment, then the trial court erred in failing to find that City was responsible for its response to Hood's request and that the response was unlawful.
    a. The burden of proof and limited record work in tandem to show that City failed in its PRA obligations. *See* §IV.C. below.

III. Statement of the Case

A. The City and its Parts

Like many local governments, City has dedicated resources to improving certain aspects of its jurisdiction. Relevant here, it has a Downtown Redevelopment Authority ("DRA") tasked with managing the Vancouver Convention Center and Hotel Project. CP 21. The DRA is completely managed by City. It has no separate staff, CP 21, no separate email addresses, and no means to contact others or be contacted by others. All those things are provided and managed via the City and its employees. CP 21. In other words, City retains all DRA records.

According to City's trial court assertions, two people managed the audit of both City and the DRA and were involved in handling or creating records related to the audits. First, Natasha Ramras is "employed by the City

of Vancouver as its Chief Financial Officer. As CFO [she is] the director of the City's Finance Department. In addition, [she is] the Executive Director of the Downtown Redevelopment Authority[.]" CP 21. She also explained "[p]art of the ducties[*sic*] of the City's Finance Department is to coordinate with the [SA)] to prepare audit reports[.]" *Id.* Ramras' department includes Jordan Sherman who is "employed by the City of Vancouver as the Internal auditor." CP 10. Sherman explained that the City has a "Downtown Redevelopment Authority which is a legally separate entity with no employees" and is audited separately from the City. CP 12. But as DRA has no employees, the City's Finance Department "assists the SAO in its audit(s) of DRA." CP 21.

Using Ramras' language, the City's Finance Department "coordinated" with the SAO to perform the

2020 audit of the DRA. City email addresses were used by City employees to conduct the 2020 audit of DRA.

B. Hood's Request

In May 2022, Plaintiff was looking for records showing the process and outcome of the Washington State Auditor's Office (SAO) audit of the DRA. Plaintiff found contact info for the DRA, which was listed on a prior version of City's website. CP 119. It listed three people, all of whom had email addresses hosted "@cityofvancouver.us." *Id*. Mr. Hood emailed the first one on the list, Natasha Ramras, on May 27, 2022, seeking records. CP 107. His message read:

> Person in charge of public records: I understand that your organization was recently audited by the state auditor and a report was published. May I have all records it got from the auditor and all records of its response to the audit or to the audit report, including any changes to policy or practices?

At the time, Hood did not know that Ms. Ramras fulfilled roles with two entitles, so he did not specify in what capacity he was contacting her: City CFO or DRA contact.

City employees responded thrice to this request. On May 31, City's auditor, Jordan Sherman, sent a message with a link to the SAO's database of audit reports and instructions to open the report for City and for DRA: "you will see all the most current audit reports for *us*." CP 107 (emphasis added). This message did not say that Hood had contacted the wrong agency, did not draw any distinction between City and DRA, and did not ask for any explanation from Hood.

This dual-agency response confused Hood, who was not yet aware that the City managed all DRA's affairs, so he responded saying he had "made a request

to the Downtown Redevelopment Authority" to make sure he was getting the right records. CP 109.

In the City-employee's second response on May 31, 2022, Raelyn McJilton pointed out that "we" already provided the link to the SAO database showing the audit reports for both agencies. McJilton then asked, "Can you please tell me what else you are seeking?" As the responses had been nonspecific about what agency records were being searched, on June 2, 2022, Hood clarified which agency he was attempting to review, saying:

> Regarding the most recent state audit, I seek all records the Downtown Redevelopment Authority got from the auditor and all records of its response to the audit or to the audit report, including any changes to policy or practices.

CP 31, 110.

That same day, McJilton started attempting to fulfill the request. CP 37, 38. McJilton emailed Ms. Ramras a copy of the request to ask, "who do you recommend I

work with?" Ms. Ramras responded "could you please work with Jordan? The same person was asking for the same information for the City last week." *Id*. McJilton forwarded that message chain to Jordan Sherman, with a request to chat. Sherman responded, "yes of course […] Should I send him the link to SAO website again in the meantime?" McJilton responded "I did that already. *Now he wants records sent/received; to/from; state auditor's office*." CP 37 (emphasis added). After Mr. Hood's June 2 response, McJilton understood that the Audit Reports were insufficient disclosures.

C. Disclosure

On June 21, 2022, a City-employee produced the only batch of records Hood received. City-employee McJilton sent Hood 1) a copy of the exit conference for SAO's audit of City, CP 40-44; 2) a draft of City's response to the 2020 Audit of City, CP 45-50; 3) a copy of a draft audit report

for the 2020 Audit of City, CP 51-85; along with a message. The message read in relevant part, "If you feel that there are any missing documents or additional types of materials that your request sought, which are not included in the enclosed response, please contact me so your request may be clarified. This concludes the *City's* response to the above-mentioned request." CP 29 (emphasis added). City never sent any records about its work on behalf of the DRA or about SAO's audit of the DRA.

D. Trial Court

Plaintiff filed his complaint on June 16, 2023. CP 3. He never received an answer to his complaint. Plaintiff then filed a notice of unavailability for the period from June 28 to August 15 of the same year.[1] App 1. During

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[1] Appellant intends to file a supplemental designation of clerk's papers contemporaneous with this brief. However, for the Court's ease and fair notice to the opposition, the referenced documents are included as appendices here as well.

pendency of then pro se Plaintiff's unavailability, on July 11, City moved to Dismiss based on incorrect service for lack of wet signature. App 2. On July 18th, City withdrew that motion, based on re-service. App 3. On September 1, 2023, City moved for summary judgment and for the first time made Plaintiff aware that it disputed 1) it's responsibility to respond to Hood's PRA request rather than the DRA, and 2) that City's response was inadequate. CP 87-105. Accompanying this motion were the declarations of Jordan Sherman, CP 9-19, Natasha Ramras, CP 20-23, and Raelyn McJilton, CP 24-86. In the motion for summary judgment, City insinuated that because Hood was pro se, he was not entitled to be "unavailable" or "out of office," as others are, CP 88. City also showed a continued failure to read Hood's request in its plain

meaning,[2] and claimed that Hood did not respond to a request for clarification.[3] In fact, Hood did respond to clarify the only part of the request City had made him aware was unclear—which agency he was referring to. He responded and specified he wanted all records DRA got from the auditor. CP 93.

After receiving this motion which suggested he was at a disadvantage in scheduling by being pro se and that City had disclosed all responsive records, Hood took two steps. First, he submitted a public records request to the SAO which said, "Regarding your audit of the Downtown redevelopment Authority, please produce all

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[2] Although City quoted Hood's request in the text of its motion correctly as "I seek all records the Downtown Redevelopment Authority got from the auditor and all records of its response to the audit or to the audit report, including any changes to policy or practices[.]" City goes on to say it had no records because "the *SAO* never submitted any "response" to the DRA audit because there have been no findings of noncompliance against the DRA in either of the two most recent audit years." CP 93 (emphasis added).

[3] The City's motion characterized its message restating Hood's request, listing what City had already sent and asking, "what else are you seeking?" as a request for clarification, despite the fact that it did not tell who what was unclear about the request. CP 92.

records the City of Vancouver got from the SAO and all records of its response to the audit or to the audit report, including any changes to policy or practices." CP 344. Then he hired counsel on September 12, 2023. CP 361. Hood's response to the motion was filed on September 19, 2023, CP 314, and the hearing set for September 29, 2023. CP 88. At the hearing, however, the judge explained she had to recuse herself and reassign the case. CP 361. Unfortunately, the hearing was the shortly before undersigned had a planned absence from October 4 to October 24. *Id*. City's attorney had an absence that would make him unavailable for November. CP 362. Therefore, the next available date was December 1, 2023. *Id*. During that time, undersigned planned and drafted discovery but did not believe it appropriate to promulgate those requests during City's attorney's absence. *Id*.

In total, between the complaint and the hearing on December 1, both parties were only available for 62 calendar days, less than 9 weeks, during which Hood also had to account for the time lost in fending off the wet signature motion, hire an attorney, and respond to a motion for summary judgment. Hood was only aware of what claims from his complaint were disputed for 30 of those days.

Trial court made two decisions. First, on December 1, 2023, Judge Vanderwood ruled that City's response to Hood's request was adequate to avoid penalties under RCW 42.56, no matter who the responsible agency was. VRP 18-22. In so ruling, Judge Vanderwood accepted City's argument that Hood should have moved for a continuance under CR 56(f) to oppose summary judgment based on disputed facts and rejected Hood's oral motion for continuance. VRP 18. He also held that

Hood could have pursued further discovery prior to the hearing. *Id*.

Second, on January 9th, 2024, the judge denied Plaintiff's motion to reopen judgment and repeal the prior order under CR 59. CP 398, 399. Plaintiff's CR 59 motion was based on documents SAO had shared with Plaintiff just a few days before the hearing. CP 342.

IV. Argument

Summary judgment cases proceed under a two-step analysis: 1) Is there a genuine issue as to any material fact? 2)Based on those facts, is the movant entitled to judgment as a matter of law? CR 56(c). City bore the burden to prove both questions in the affirmative, both as the movant and as a responding agency under the PRA.

Both questions received the wrong answer in the court below. With sharp disagreement over two material

facts, no answer, and no discovery, summary judgment was premature. Furthermore, the facts that were in the record via affidavits all militate against City's claims that it was not the agency responding to Hood's request and that its response was sufficient.

The purpose of summary judgment motions is not to eliminate cases, it is to eliminate unwinnable cases. The purpose of summary judgment motions is justice. But here, motion by ambush prevented plaintiff from adequately collecting evidence in the short window between dispute and judgment. This court, with de novo review, has the opportunity and obligation to undo that mistake

A. Parties Disputed Material Facts.

CR 56 prevents summary judgment where there is dispute as to *any* material fact. Allowing summary judgment where, as here, the court agreed there was a

dispute over the proper defendant does not match CR 56's language or jurisprudence.

The rule itself says that summary judgment may be granted when there is "no genuine issue as to any material fact." CR 56(c). But does that mean that summary judgment may *not* be granted where there is an issue of material fact? Yes, of course. *See, e.g.*, *Wood v. Seattle*, 57 Wn.2d 469 (1960) (holding that a motion for summary judgment must be denied where "a genuine issue as to a material fact is presented"); *Highline Sch. Dist. v. Port of Seattle*, 87 Wn.2d 6, 548 P.2d 1085 (1976). *Cf Yakima Fruit & Cold Storage Co. v. Cent. Heating & Plumbing Co.*, 81 Wn. 2d 528, 503 P.2d 108 (1972) (holding that because the statute of limitations had passed, summary judgment was appropriate). Here, the parties disputed who the appropriate defendant was, hinging on which agency was "receiving" the request as

used in RCW 42.56.520. Parties also dispute whether City's response to the records request was sufficient.

Hood sent a request to the SAO which largely mirrored his request to City, though of course SAO would only have the records it sent or received regarding the audit of the DRA, not any internal discussion of the audit which City may have recorded. *See* CP 344. Hood received 154 emails or email chains and 285 attachments from the SAO, demonstrating both that City, having shared 0 emails and failing to search email files, did not send him all the responsive records and that his request was understandable to the SAO. CP 344-345. For its part, City alleged that it searched several places and found no responsive records. CP 89. More discovery was needed for this case.

And if the movant has not met its burden to show the two steps of CR 56 review have been met, the party

opposing a summary judgment need not present any affidavits or evidence. *Hash v. Children's Ortho. Hos & Med. Ctr.,* 110 Wn. 2d 912, 915, 757 P.2d 507 (1988). Here, Hood did choose to submit affidavits showing the basis for his dispute, to the best of his ability with the evidence he had, but the court should only have reviewed those if it believed City's affidavits showed that the standard was met.

City also argued, and the lower court agreed, that Hood needed to make a motion under CR 56(f) to argue that more the facts were not sufficiently established to meet the summary judgment standard. VRP at 18. But this is not the case. Washington Civil Procedure Desk-book, Ch. 56.6(1)(c) "When opposing party needs additional time to defend against the motion," (Wash. St. Bar Assoc. 3d ed. 2014) (noting that CR 56 does not require a motion for continuance). *MRC Receivables Corp. v.*

Zion, 152 Wn. App. 625, 218 P.3d 621 (2009)[4] provides a close analog to this case, with one key distinction. In this case, defendant always had the burden of proof. *See* §V.B.2, below. In *MRC*, an alleged debtor disputed plaintiff debt collector's claims that she 1) had a debt and 2) that the collector had the right to collect on that debt. As here, both the disputed claims must be true for plaintiff to succeed. Over the alleged debtor's objection, the trial court determined that the collector had sufficiently proven both claims, despite a complete lack of admissible evidence as to the existence of a debt or evidence of any kind as to the right to collect. *MRC* at 628 (describing the unauthenticated, unexplained documents presented to establish the debt); *MRC* at 630, fn. 7 (describing Plaintiff's evidence intended to show the

[4] Later published by order *MRC Receivables Corp. v. Zion,* No. 60926-2-I, 2009 Wn. App. LEXIS 2667 (Ct. App. July 27, 2009).

right to collect). The Court of Appeals reversed because there was an issue of fact as to the collector's right to collect on the debt. *MRC* at 631. Notably, Division I found that there was a genuine issue of material fact precluding summary judgment without a CR 56(f) motion to continue. The Court also knew that more discovery was needed on remand for both issues and both parties, but merely overturned the grant of summary judgment based on disputed facts, rejecting a call for a CR56(f) continuance. *See MRC* at 623, fn. 9 (describing the many factual questions both parties would be able to attempt to answer via discovery, once the case was remanded and the judgment reversed). The movant simply did not meet the first of the two steps for summary judgment—undisputed material facts.

Here, like the movant in *MRC*, City did not provide enough evidence to determine who the proper defendant

was, as the trial court acknowledge, VRP 19, nor did City provide evidence to show that it had disclosed "all records it got from the auditor and all records of its response to the audit or to the audit report, including any changes to policy or practices" as Hood requested. *See* IV.B. below.

The trial court also denied the oral motion for a continuance, asserting that Hood had ample time to conduct discovery in the 3 months since the motion had been filed. VRP 19. The court appears to have been invoking the standard set in *Qwest Crop. V. City of Bellevue*, 161 Wn.2d 353, 369, 166 P.3d 667 (2007), which held that although CR 56(f) was to be applied with liberality toward the party opposing summary judgment,[5] it is not an abuse of discretion to reject a

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[5] *See Coggle v. Snow,* 56 Wn. App. 499, 508, 784 P.2d 554 (1990) ("The primary consideration in the court's decision on the motion for a continuance should have been justice"); §V.B.2 – addressing the burden of proof; *Weeks v. Chief of Wash. State Patrol*,

continuance where 1) the requesting party does not have a good reason for the delay in obtaining the evidence, 2) the requesting party does not indicate what evidence would be established by further discovery, or 3) the new evidence would not raise a genuine issue of fact. Here there was no delay in obtaining evidence, as just a short period of usable time had passed since the case began and even less since Hood knew what facts were in disputed. Hood articulated what facts were missing both on the issue of who the responsible party was and what records should have been produced (VRP 14-16). And if Hood were able to show that City withheld responsive records that would certainly change the outcome of the case.

This Court should reverse and remand for discovery.

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96 Wn.2d 893, 895-96, 639 P.2d 732 (1982) (showing preference for a decision on the merits over formalities).

B. The Facts Did Not Show Movant City Was Entitled to Judgment.

The evidence is scant, and the Court should reverse on the first element of summary judgment alone. Even so, even what evidence there is militates against the City. This is especially true considering the substantial burden a moving party bears in seeking summary judgment, as well as the burden an agency bears in justifying its response to a PRA request.

The affidavits presented by City show that Ms. Ramras was acting in the scope of her City employment when she received Hoods email. They also show that City employee McJilton knew that Hood's request sought "records sent/received; to/from; state auditor's office." CP 37.

The consistent use of City email addresses, first person pronouns and City signature blocks on emails,

shows that all those who received Hood's request and crafted or sent responses to that request saw their actions as part of their employment to the City. On the record available, their opinion is the strongest evidence available and counsels finding City responsible for the lackluster PRA response.

Similarly, both City employee McJilton and the SAO properly interpreted Hood's request to at least include messages between City and SAO regarding the 2018 Audit of the DRA. This also matches the plain language of Hood's request for all records "from the auditor and all records of its response to the audit or to the audit report." CP 4. To instead read this request as only seeking the audit report, as City did, simply makes no sense when the audit report is specifically mentioned as a thing about which records were made in the request.

C. City Bore the Burden of Proof So the Limited Facts Should Be Construed Against the City's Interests.

Every rule, statute, or case governing this appeal advises that all leniency and favor should have been expressed towards Hood. As the nonmovant under CR 56, all facts and evidence must be viewed in light most favorable to Hood. *Hansen v. Horn Rapids O.R.V. Park*, 85 Wn. App. 424, 932 P.2d 724 (1997) (the party moving for summary judgment has the burden of establishing its right to judgment). And as the person seeking transparency, the PRA's disclosure requirements shift the burden to the agency to prove it complied with the PRA.

Hood did not want to end the search for truth at the trial court and therefore should have been entitled to the court's favor. *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994) ("All

facts and reasonable inferences are considered in the light most favorable to the nonmoving party, and all questions of law are reviewed de novo.") (internal citations omitted). Even his affidavits, which were based on Hood's personal knowledge and so only have a small amount of information, are entitled to "leniency" in interpretation and inferences. *Morris v. McNicol*, 83 Wn.2d 491, 519 P.2d 7 (1974).[6]

Also, as the person seeking disclosure, the PRA directs that the agency has the burden of proof to justify its refusal to disclose records. RCW 42.56.550(1). Every part of a PRA action must be understood in the context of the law's purpose. The PRA is "a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978).

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[6] For a similar case in which an attorney was added late in the proceedings and presented the type of information needed, see *Coggle v. Snow* 56 Wn. App 499, 507-508, 784 P.2d 554 (1990).

The trial court lost sight of this fact and allowed conclusory, scant evidence to substitute for impartial application of the law when the judge held that the City of Vancouver could not be penalized for its disregard for transparency in Hood's request.

V. CONCLUSION

For all these reasons, this Court should reverse and remand for further discovery. Hood should be allowed to continue with his claims against City for its failure to disclose records. In the alternative, this Court should reverse with the direction that it is already conclusively proven that City is the proper defendant, leaving open only the question of how many and what types of records were withheld and the proper penalty.

This document contains 4650 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 25th day of June 2024.

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