NO. 104,183-7
(Court of Appeals No. 59242-8-II)
(Clark County Superior Court No. 23-2-01464-06)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ERIC HOOD,

Plaintiff/Respondent,

vs.

CITY OF VANCOUVER,

Defendant/Petitioner.

PETITIONER'S REPLY

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE(S)

I. INTRODUCTION

Petitioner City of Vancouver submits this brief in reply to Respondent Eric Hood's answer[1] seeking to raise new issues for the Court's review. *See* RAP 13.4(d) ("A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer.").

II. ARGUMENT

Hood purports to advance two new issues for the Court to review should it grant the City's petition.

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[1] By attaching his opening brief from the Court of Appeals and attempting to incorporate it by reference, Hood flagrantly violates RAP 18.17's word limitation provisions. (*See* Oppo. to Pet. for Rvw. at 2 ("Plaintiff requests this Court review his briefing in Division II, attached as Appendix A, as nothing new is being argued by either side.").) Washington's appellate courts frequently reject efforts to incorporate filings into appellate briefs. *E.g.*, *U.S. W. Communications v. Wash. Utils. & Transp. Comm'n*, 134 Wn.2d 74, 112, 949 P.2d 1337 (1997); *Mine Holding Tr. v. Pavlish*, 32 Wn. App. 2d 727, 740, 559 P.3d 517 (2024). Combining the 4,454 words from his opposition brief with the 4,650 words from his Court of Appeals brief yields 9,008 words – almost double what RAP 18.17 permits. Hood's violation of the rules should not be condoned.

Primarily, Hood challenges the Court of Appeals' holding that his "request was ambiguous in some respects." *Hood v. City of Vancouver*, 33 Wn. App. 2d 799, 802, 564 P.3d 1009 (2025); *see also id.* at 811-12 ("Hood's initial request left open several points of ambiguity…. [His response to the City's clarification request] clarified only the organization Hood wanted records from, not the scope of the request."). He challenges this holding by arguing that his request "sufficiently identif[ied] records *related to the audit process*" (Oppo. to Pet. for Rvw. at 1-2 (emphasis added)), even though the phrase "audit process" appears nowhere in any request submitted. *See* CP 30, 434.

Secondarily, he asks this Court to clarify how this case should be remanded to the trial court. (Oppo. to Pet. for Rvw. at at 2.) The Court need not entertain Hood's opposition as a viable cross-petition because Hood has failed to explain why review is justified under RAP 13.4(b) for the two issues he raises.

A. Hood identifies no precedent with which the Court of Appeals' finding of ambiguity conflicts.

The lone section of Hood's brief devoted to arguing why his "cross-petition" should be granted does not cite, mention, or reference RAP 13.4(b)'s criteria for granting review. His failure to do so is not surprising because not one of the cases cited by Hood conflicts with the Court of Appeals' conclusion that Hood's request was at least partially ambiguous. *See* RAP 13.4(b)(1)-(2).

He first cites *Kilduff v. San Juan County*, 194 Wn.2d 859, 453 P.3d 719 (2019), but takes the quote on which he relies out of context. (Oppo. to Pet. for Rvw. at 28.) *Kilduff* held a local government entity's ordinance demanding that requesters exhaust administrative remedies before suing under the PRA conflicted with RCW 42.56.520(4). *Kilduff*, 194 Wn.2d at 868. The quote on which Hood relies appears in this Court's discussion of how San Juan County's exhaustion ordinance operated, which led to the Court to hold that "agencies [cannot] rewrite the [PRA] statute so that a failure to produce records is not truly a denial for the purposes of judicial review until a secondary layer of review has occurred." *Id.* This case concerns

no such exhaustion protocol. *Kilduff* is inapposite and does not help Hood.

Hood next quotes *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3d 735 (2010), to argue "[i]t was not reasonable to ask [requester] where to search for the documents responsive to his request." (Oppo. to Pet. for Rvw. at 28 (alteration in original).) Again, Hood ignores context. The quote from *Yousoufian* was not part of this Court's holding, but rather a description of the *Yousoufian* trial court's unchallenged findings of fact that the Court accepted as "verities on appeal." *Yousoufian*, 168 Wn.2d at 450. "The summary of the facts of [*Yousoufian* that were] based on those findings" do not provide any sort of legal doctrine, let alone substantive precedent with which the opinion below conflicts. *Id.* at 450-51.

The next case, *Violante v. King County Fire District No. 20*, 114 Wn. App. 565, 59 P.3d 109 (2002), provides Hood no support either. Hood cites footnote 14 of *Violante* to support the statement "the agency should determine which records are withheld even if the request does not specifically name them." (Oppo. to Pet. for Rvw. at 28.) At issue in *Violante* was whether

a public union violated its collective bargaining duties by seeking budget records during contract negotiations. *Violante*, 114 Wn. App. at 570. The Court of Appeals "reject[ed]" the employer's argument, emphasizing that "no authority hold[s] that disclosure requests are handled differently when requesting parties have an ongoing relationship with the agency, or that unions are in a unique category subject to different procedures or remedies." *Id.* Specific to the argument Hood advances here, the Fire District argued that the document requested there—the "2001 Budget"—did not exist and that its action of disclosing the dollar figure for the budget was sufficient. *Id.* at 571 & n.14. The Court of Appeals noted, however, that the District had a document entitled "2000 Budget," and that "[t]he documents ultimately disclosed contain the same information categories found in the 2000 Budget, but [we]re titled '2001 Spending Guidelines.'" *Id.* at 571 n.14. Hood fails to explain how *Violante* helps his case, much less how the opinion below conflicts with it.

The only other case cited by Hood in the section seeking to introduce a new issue for review is *West v. City of Tacoma*, 12

Wn. App. 2d 45, 456 P.3d 894 (2020), which Hood uses to argue that "[a]n agency may not narrow a 'request to less than its actual wording.'" (Oppo. to Pet. for Rvw. at 25.) Hood fails to explain how the Court of Appeals' holding that *he* challenges conflicts with *West*, especially given that *Hood* cited *West* to support the holding that the *City* challenges. *Cf. Hood*, 33 Wn. App. at 815 (citing *West*, 12 Wn. App. 2d at 79).

Hood's attempts to depict these cases as somehow conflicting with the Court of Appeals' finding of ambiguity below are unpersuasive. The ambiguity of his requests is highlighted even more by his ever-shifting position that the City has withheld records from him, particularly in regards to the reports of the State Auditor. Four days after his original request, Jordan Sherman sent him a link to access "all the audit reports." CP 436. Before the trial court, Hood confirmed that he "ha[d] no objection to [the City] providing a link, rather than attaching a copy, when sharing the Audit Report with him." CP 321. Yet now, he says the "City continues to withhold the SAO's reports of its most recent audit of the DRA." (Oppo. to Pet. for Rvw. at 24 n.4.) This is precisely the type of bait-and-switch tactic the

City's petition seeks to stop. Hood's brief exemplifies why his lawsuit has nothing to do with transparency and everything to do with trying to monetize the PRA at the expense of Vancouver's taxpayers.

In short, none of the cases Hood cites addresses RCW 42.56.520(3)'s language describing an agency's duty when confronted with an ambiguous request, meaning none provides a basis for granting review of Hood's cross-petition.

B. The only other "issue" presented for review seeks to enforce the Court of Appeals' holding that Hood defends, which is not a proper basis for a cross-petition.

Hood presents the second issue he cross-petitions for as follows:

> 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")?

(Oppo. to Pet. for Rvw. at 2.) In essence, this question asks this Court to enter a mandate requiring the trial court to follow the Court of Appeals' decision. That would occur automatically if review is denied. RAP 12.5(b)(3); *see also In re Marriage of*

Snider, 6 Wn. App. 2d 310, 315, 430 P.3d 726 (2018) ("trial courts are bound by published decisions of the Court of Appeals"). If review is granted, this Court's opinion would supersede that of the Court of Appeals, thereby rendering this request moot. In essence, Hood's second "issue" presented for review is a non-starter and should be ignored.

III. CONCLUSION

For the foregoing reasons, the Court should grant the City's petition and deny Hood's cross-petition.

The undersigned certifies that this brief contains 1,459 words, exclusive of words exempted by RAP 18.17. The word count was computed using the word count function in Microsoft Word.

RESPECTFULLY SUBMITTED on July 29, 2025.

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