No. 1044534

WASHINGTON SUPREME COURT

ERIC HOOD,

Respondent,

v.

STEVENS COUNTY

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case is one of many Public Records Act (PRA) cases in which the agency chose to rely on an unsuccessful argument that the one-year statute of limitations in RCW 42.56.550(6) was triggered by less-than-clear communications from the agency. This Court recently clarified how the PRA statute of limitations is triggered in *Cousins v. State*, 3 Wn.3d 19, 546 P.3d 415 (2024). This Court set forth an objective test for whether the PRA's statute of limitations has commenced.

> Sufficient closing letters must be written in plain language targeted to a lay audience and should include at least the following information: (1) how the PRA request was fulfilled and why the agency is now closing the request, (2) that the PRA's one-year statute of limitations to seek judicial review has started to run because the agency does not intend to further address the request, and (3) that the requester may ask follow-up questions within a reasonable time frame, which may be explicitly specified by the agency.

3 Wn.3d at 50. This Court applied its new test to the case at bar, held that the statute of limitations had not expired, and remanded the case to the trial court for further proceedings. 3 Wn.3d at 57.

Cousins has had its intended effect. Agencies are finally issuing proper PRA closing letters, and are not attempting to mislead requestors about whether or not they have closed a PRA request.

In this case the Court of Appeals stayed Hood's appeal until the *Cousins* decision was issued, and then applied the *Cousins* test to reverse the trial court's erroneous dismissal of Hood's PRA case. *Unpublished Opinion* at 9.

The County seeks review under RAP 13.4(b)(1), arguing that the *Unpublished Opinion* somehow "conflicts" with *Cousins* because it retroactively applied *Cousins* to this case. The County has no legal authority to support its argument that the three-prong *Cousins* test (above) was not intended to be retroactive. The *Unpublished Opinion* at 9 correctly states that "nowhere in the [*Cousins*] opinion does the court claim that the test or guidance outlined in the opinion was not intended to apply retroactively to PRA cases."

The word "retroactive" appears only once in the *Cousins* opinion, in which this Court commented that the DOC closing letters did not strictly comply with the three-prong test but that strict compliance was not required:

> Of course, today's opinion was not available to DOC while it was processing Cousins' PRA request. Therefore, it is not surprising that neither of the closing letters DOC sent to Cousins in January 2019 and June 2021 strictly complies with the standards set forth in today's opinion. However, this fact is not determinative, as we do not claim to impose a retroactive standard of strict compliance.

Cousins, 3 Wn.3d at 57. The County takes this passage out of context to argue, without authority, that the *Cousins* opinion is not retroactive at all. *Petition* at 10-11.

The County fails to acknowledge that the *Cousins* test was applied retroactively to the agency at issue in *Cousins*. The County cannot explain why the three-prong test announced in *Cousins* would apply in *Cousins* but not in this case. The Court of Appeals correctly rejected the County's argument that *Cousins* was not retroactive. *Unpub. Opinion* at 9.

The County has no coherent legal theory to present to this Court, much less an important legal issue that would warrant this Court's review under RAP 13.4. The *Petition* is meritless and should be denied. Hood should be awarded his reasonable attorney's fees under RAP 18.1(j).

II. ANSWER TO STATEMENT OF THE CASE

In this PRA case, the trial court erroneously held that the one-year statute of limitations was triggered by an email from the County which merely stated that four particular keyword searches had produced no records and that the County "believe[d]" that this completed Hood's request. *Unpub. Opinion* at 3. Hood appealed, arguing that a subsequent email in which the County produced additional records was the triggering event, and that his lawsuit was not barred by the statute of limitations. Hood was correct, and the County has only itself to blame for relying on an unsuccessful limitations defense rather than simply complying with the PRA.

While Hood's appeal was pending this Court granted review in *Cousins*, *supra*, on September 7, 2023, and heard oral argument January 16, 2024. Obviously whatever decision this Court made in *Cousins* would be determinative of the outcome in this case. Accordingly, Hood brought a motion to stay the pending appeal until the *Cousins* case was decided. The Court of Appeals granted the stay over objections of the County:

> Appellant's motion to stay this matter pending the Supreme Court's decision in *Cousins v. Dept. of Corrections*, case no. 101769-3, is granted. RAP 7.3. This matter is stayed pending a decision in *Cousins*.

Notation Ruling (February 20, 2024).

This Court's decision in *Cousins* was issued on April 11, 2024. The Court of Appeals requested supplemental briefing on *Cousins*, starting with Respondent Hood. Hood correctly explained that the County's first email to Hood was ***not*** a sufficient PRA closing letter under *Cousins*:

> The email did ***not*** state that Hood's request was being closed, did ***not*** state that the statute of limitations had started to run, and did ***not*** indicate whether Hood was invited to ask follow-up

> questions or whether the County intended to further address Hood's request.

App. Supp. Brief (6/4/24) at 6.

In response, the County took the single word "retroactive" out of context from *Cousins* to argue that *Cousins* was not retroactively applicable this case. *County Supp. Br.* at 10. The County's non-retroactivity argument was not supported by any authority or analysis whatsoever. *Id.*

Over the County's objections Hood filed a *Supplemental Reply Brief* which explained that the County's new argument was absurd and meritless:

> The County's creative new interpretation of *Cousins* ignored the undisputed fact that the Supreme Court's opinion (i) contains no legal authority or analysis on retroactivity, and (ii) applied retroactively to require the reversal of the trial court in that case.

Supp. Reply Br. (7/18/25) at 4. Hood also explained that case law is generally retroactive, and that the County had failed to even address that issue:

> Unlike statutes, case law is usually given fully retroactive effect, with limited exceptions. For

> example, when parties attempt to avoid the retroactive application of case law, they must prove that they justifiably and reasonably relied on existing case law, which was subsequently changed. *See Bradbury v. Aetna Casualty & Sur. Co.*, 91 Wn.2d 504, 508-509, 589 P.2d 785 (1979). The County has failed to brief this issue.

Id. at 7.

The Court of Appeals then considered the appeal without hearing oral argument. The *Unpublished Opinion* correctly held that the County's first email did not even meet the "final, definitive response" test from *Belenski v. Jefferson County*, 186 Wn.2d 452, 378 P.3d 176 (2016):

> [A] closing letter must satisfy the "final, definitive response test" first discussed in *Belenski v. Jefferson County*, 186 Wn.2d 452, 378 P.3d 176 (2016)…
>
> [T]he initial email sent on January 6, 2020, did not satisfy the final, definitive response test.

Id., at 5, 9. The Court of Appeals then specifically addressed the County's argument that *Cousins* was not retroactive:

> The County argues that *Cousins* is intended to provide guidance for future PRA closing letters and warned against retroactive application. The County misconstrues the language in *Cousins*.

> "Washington has followed the general rule that a new decision of law applies retroactively unless expressly stated otherwise in the case announcing the new rule of law." *Lunsford v. Saberhagen Holdings, Inc.* 166 Wn.2d 264, 271, 208 P.3d 1092 (2009). *Cousins* stated that it did "not claim to impose a retroactive standard of strict compliance." 3 Wn.3d at 52. However, nowhere in the opinion does the court claim that the test or guidance outlined in the opinion was not intended to apply retroactively to PRA cases. As such, the County's argument fails.

Id. at 9.

Finally, the Court of Appeals squarely held that "*Cousins* applies to this case and requires reversal." *Unpub. Opinion* at 9.

The County subsequently filed a motion for reconsideration, asking the Court of Appeals to "reconsider its retroactive application of *Cousins*." *Motion for Reconsideration* (6/24/25) at 2. The Court of Appeals denied the motion without comment.

III. ARGUMENT

A. The County's unsupported theory that *Cousins* is not retroactive does not warrant further review.

The County argues that the *Unpublished Opinion* somehow "conflicts" with *Cousins*, for purposes of RAP 13.4(b)(1) by retroactively applying *Cousins* to this case. Apart from taking the word "retroactive" out of context from *Cousins*, the County has completely failed to explain why this Court's decision in *Cousins* would not apply retroactively. The County's nonsense arguments about unfair retroactivity fail to acknowledge that the *Cousins* test was applied to the agency at issue in *Cousins*.

The County cites the same *Lunsford* case as the Court of Appeals, *Petition* at 10, acknowledging the general rule that Court "decisions of law apply retroactively to all litigants not barred by procedural requirements unless we expressly limit our decision to purely prospective application." *Lunsford*, 166 Wn.2d at 285. As the Court of Appeals correctly observed,

> *Cousins* stated that it did "not claim to impose a retroactive standard of strict compliance." 3 Wn.3d at 52. However, nowhere in the opinion does the court claim that the test or guidance outlined in the opinion was not intended to apply retroactively to PRA cases.

Unpub. Opinion at 9.

The County's argument is based on nothing more than taking one word from *Cousins* out of context. The County ignores the fact that, consistent with the general rule of retroactivity, that *Cousins* test applied retroactively to the *Cousins* case itself. The County asserts that "the case law of retroactivity does not split hairs between rules and rationales." *Petition* at 11. But the County's *Petition* does not actually cite any 'case law of retroactivity' other than *Lunsford*, which shows that the County is wrong.

The County has not given any thought to how its proposed non-retroactive interpretation of *Cousins* in this particular case could actually work. Agencies all over this state have been on notice of the *Cousins* test since April 11, 2024, when *Cousins* was issued. The fact that this Court applied *Cousins* retroactively

in *Cousins* itself informed every requestor, agency and attorney in this state that the *Cousins* test would determine whether or not the PRA statute of limitations applied. The June 2025 *Unpublished Opinion* in this case, while lacking precedential value itself, confirmed that *Cousins* is retroactive just like any other decision of this Court.

Even if *Cousins* was somehow not retroactive, that would not affect this case. As the Court of Appeals correctly held, the "the [County's] initial email sent on January 6, 2020, did not satisfy the final, definitive response test." *Unpub. Opinion* at 9.

The County has no coherent legal theory to present to this Court, much less an important legal issue that would warrant review under RAP 13.4. The *Petition* is meritless and should be denied.

B. Hood requests an award of reasonable attorney's fees for answering the County's *Petition*.

Pursuant to RAP 18.1(j) Hood requests his reasonable attorney's fees pursuant to RCW 42.56.550(4) and RAP 18.1(a). Respondent Hood was the prevailing party in the Court of

Appeals and was awarded reasonable attorney's fees. *Unpublished Opinion* at 10.

IV. CONCLUSION

For all these reasons this Court should deny the County's *Petition* and award Hood his reasonable attorney's fees pursuant to RAP 18.1(j).

This answer contains 1932 words, excluding the parts of the brief exempted from the word count by RAP 18.17.

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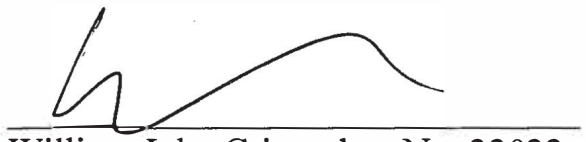
RESPECTFULLY SUBMITTED this 11th day of September, 2025,



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CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 11th day of September, 2025, I caused a true and correct copy of this pleading to be served, by the method(s) indicated below, to the following person(s):

By email (PDF) and filing in the appellate portal:

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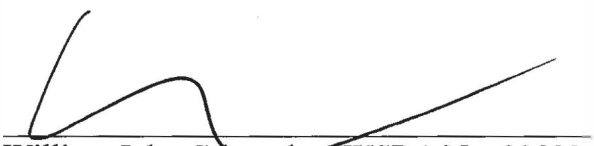

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