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NO. 91255-6
COURT OF APPEALS NO. 70757-4-I

SUPREME COURT OF THE STATE OF WASHINGTON

KAMAL MAHMOUD,

Petitioner,

v.

SNOHOMISH COUNTY,

Respondent.

**SNOHOMISH COUNTY'S ANSWER TO AMICUS CURIAE
MEMORANDA OF ALLIED DAILY NEWSPAPERS OF
WASHINGTON, WASHINGTON NEWSPAPER PUBLISHER'S
ASSOCIATION AND THE WASHINGTON COALITION FOR
OPEN GOVERNMENT IN SUPPORT OF MAHMOUD'S
PETITION FOR REVIEW**

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ORIGINAL

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I. INTRODUCTION

Snohomish County (“the County”) hereby submits the following answer to the memorandum of Amici Curiae Allied Daily Newspapers Of Washington, Washington Newspaper Publishers Association, and The Washington Coalition For Open Government (“Amici”).

RCW 42.56.550(6) requires that all Public Records Act actions be filed “within one year of the agency’s claim of exemption or the last production of a record on a partial or installment basis.” Amici’s Memoranda simply restates Appellant’s arguments that (1) the County did trigger that same statute of limitations by claiming an exemption; and (2) the County did not trigger the statute of limitations by providing records on an installment basis. Amici also attempt to raise a third issue: that the “discovery rule” should apply to the PRA statute of limitations.

The participation and the arguments raised by Amici do not alter the fact that the Court of Appeals’ decision in this case is consistent with Washington law and review is not warranted. *See* RAP 13.4(b).

II. ANSWER

Amici’s memorandum raises the same two issues raised in Mr. Mahmoud’s Petition for Review.¹ As argued in the Answer to the Petition

¹ The County incorporates by reference its previously filed Answer to Petition for Review.

for Review, review of the Court of Appeals decision in this case is not warranted.

A. The Court of Appeals properly found that the County's claim of exemption triggered RCW 42.56.550(6).

The Court of Appeals decision clearly applies the plain language of RCW 42.56.550(6). In response to request number 09-05374, the County made a categorical claim of exemption (RCW 42.56.250(5)) and refused to provide Mr. Mahmoud with records of an on-going, active investigation into Mr. Mahmoud's claims of employment discrimination.² CP 129-30; CP 986-87. The County's claim of exemption notified Mr. Mahmoud of the statutory basis of the claim of exemption and how the exemption applied to the records withheld in compliance with *Rental Housing Association of Puget Sound*, 165 Wn.2d 525, 199 P.3d 393 (2009). *Amici* also attempts to characterize a subsequent letter sent by Mr. Mahmoud's council to the County as a "refreshed request" for 09-05374 records. *Amici Br.* at 3. The Court of Appeals correctly found that a letter referencing a different request did not "re-request" these exempt records. *Mahmoud*, 2014 WL 5465404 at *5. This conclusion is consistent with

² The County also made a claim of exemption in response to request 10-05383. CP 45. The County's claim of exemption identified "the date, citation to statutory exemption, author, recipient, and type and description of the record." *Mahmoud*, 2014 WL 5465404 at *5. This claim of exemption comports with the "brief explanation" requirement articulated by the Court in *Rental Housing Association of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 539-40, 199 P.3d 393 (2009).

Washington law and the evidence in this case, and does not provide a basis for review.

B. The Court of Appeals properly found that the County's last production on an installment basis triggered RCW 42.56.550(6).

Amici argues the statute of limitations does not begin until an agency produces the "last record" on a partial or installment basis. The plain language of RCW 42.56.550(6) does not support Amici's position. RCW 42.56.550(6) plainly states the statute of limitations begins to run upon a claim of exemption or the "last production of a record on a partial or installment basis." The statute does not say the "production of the last record on a partial or installment basis." "When the meaning of statutory language is plain on its face, courts must give effect to that plain meaning as an expression of legislative intent." *Tobin v. Worden*, 156 Wn. App. 507, 512-13, 233 P.3d 906 (2010), citing *Rental Housing Association of Puget Sound*, 165 Wn.2d 525, 199 P.3d 393 (2009). RCW 42.56.550(6) was triggered when the County last produced records on an installment basis.

Consistent with the plain language of RCW 42.56.550(6), the Court of Appeals correctly determined that the remainder of Mr. Mahmoud's requests were time barred. The County last produced an installment of records responsive to each of Mr. Mahmoud's five other

requests more than one-year prior to the amendment of his Complaint. By producing records in installments, the County triggered the statute of limitations at the time of its last response. Therefore, the Court of Appeals ruling is consistent with Washington law and does not provide a basis for review.

A. Amici cannot raise additional issues on appeal.

Pursuant to RAP 13.7 the scope of review is limited to the issues raised in the petition and answer. Amici's identification of a third issue, namely that the "discovery rule" should apply, is improper and is not appropriately reviewed by this Court.

III. CONCLUSION

For all of the foregoing reasons, this Court should deny Mr. Mahmoud's petition for review under RAP 13.4(b).

Respectfully submitted on April 13, 2015.

MARK K. ROE
Snohomish County Prosecuting Attorney

By:



SARA J. DIVITTORIO, WSBA #33003
Deputy Prosecuting Attorney
Attorneys for Respondent

DECLARATION OF SERVICE

I, Cindy Ryden, hereby certify that on the 13th day of April, 2015, I caused to be delivered and served a true and correct copy of the foregoing Answer to Amicus Curiae upon the entity and persons listed herein by the following means:

Washington State Supreme
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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 13th day of April, 2015.



Cindy Ryden, Legal Assistant to
Sara J. Di Vittorio
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Hello,

Attached please find Respondent Snohomish County's Answer to Amicus Curiae Memorandum of Allied Daily Newspapers of Washington, Washington Newspaper Publisher's Association, and The Washington Coalition For Open Government supporting Petitioner's Petition for Review.

This document is being filed on behalf of Deputy Prosecuting Attorney Sara Di Vittorio, attorney of record for Respondent Snohomish County. She can be reached at sara.divitorrio@snoco.org or at (425) 388-6343.

By copy of this email I am also serving a copy of this document to all parties of record as indicated in the accompanying Declaration of Service.

Thank you.

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