91547-4



No. 45542-1-II

SUPREME COURT
OF THE STATE OF WASHINGTON



STEVEN P. KOZOL, Petitioner,

v.

KING COUNTY, Respondent.

# P E T I T I O N  F O R  R E V I E W

ORIGINAL

STEVEN P. KOZOL
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A. IDENTITY OF THE PETITIONER

Petitioner Steven P. Kozol, the appellant below, asks this Court to review the following Court of Appeals Decision, referred to in Section B.

B. COURT OF APPEALS DECISION

Petitioner requests that the Court review the decision of Division II of the Court of Appeals affirming the trial court's order of summary judgment dismissal on statute of limitations grounds, and review the ruling of the Division II Court denying Kozol's motion for reconsideration. A copy of the decision, and ruling denying reconsideration, is attached as Appendix A, and incorporated herein.

C. ISSUES PRESENTED FOR REVIEW

1. If a court determines that the one-year statute of limitations in RCW 42.56.550(6) begins to accrue from an agency's production of a single record page, does this conflict with prior decisions as to records produced on a partial or installment basis?

2. If the Court decides as a new rule of law that agency production of a single document constitutes the last production of records on a partial or installment basis for purposes of RCW 42.56.550(6), should this decision be applied prospectively-only to avoid a substantially inequitable result in this case?

3. If a court determines accrual of a statute of limitations from the date of an agency's first of multiple installments of record production, does it conflict with prior decisions that determined accrual begins on the agency's last installment of records?

4. Is the court's dismissal of a PRA action on statute of limitations grounds conflicting with prior court decisions that determined the statute of limitations accrues from a requestor's last follow-up request?

## D. STATEMENT OF THE CASE

A person confessed to committing the crimes Mr. Kozol was wrongfully convicted of. The confession revealed for the first time that a Rolex watch lost by the perpetrator at the crime scene could contain DNA evidence that would exonerate Mr. Kozol. King County promised to DNA test the evidence, but instead, destroyed the evidence and told Kozol that the County would provide no further assistance in this matter. Clerk's Papers (CP) 115-16.

To obtain documents to support a collateral attack of his wrongful conviction, Kozol submitted three Public Records Act (PRA) requests to the King County Prosecuting Attorney's Office. CP 116. Kozol submitted an initial PRA request on November 20, 2010, seeking all records regarding "the Rolex watch" seized as evidence in his criminal case. CP 125. On December 23, 2010, King County responded and provided only five pages of responsive records. CP 127.

Kozol then submitted a follow-up request on January 12, 2011, expanding his request to include any and all records related to "any watches" taken as evidence in the criminal case. CP 129. On January 25, 2011, King County responded, produced a second set of the same five pages initially produced, and claimed it could find no other records. CP 131.

On May 22, 2011, Mr. Kozol then submitted another follow-up request to King County, further expanding his request to include the entire case file in his criminal case "State v. Kozol, No. 00-1-09050-8KNT," and requested that the County "please conduct a comprehensive search throughout your agency, and provide me with all responsive records." CP 136. King County did not seek clarification of the May 22, 2011 request. Kozol received no response to his expanded May 22, 2011 follow-up request. CP 118.

Mr. Kozol filed a civil complaint in Pierce County Superior Court on February 27, 2012 (GR 3.1). CP 78-79. On June 8, 2012, King County filed its answer to Kozol's amended complaint, and pled the affirmative defense that Kozol's claim was barred by the one-year statute of limitations under RCW 42.56.550(6). CP 313-17.

King County then continued to produce additional installments of responsive records. Then, in its answer to Request for Admission Nos. 18 and 19, King County admitted that document No. KC002804, which mentioned a watch and was responsive to Kozol's January 12, 2011 request, was first produced for Kozol on March 29, 2013. Appendices B, and C.

On August 7, 2013, King County filed a motion for summary judgment dismissal. Relying on the new decision in Bartz v. Dep't of Corr. Pub. Disclosure Unit, 173 Wn.App. 522, 297 P.3d 737, review denied, 177 Wn.2d 1024 (2013), King County argued that Kozol had one year from January 25, 2011, its last production of responsive records, to file his action, which he failed to do. CP 92-96.

The trial court granted King County summary judgment, concluding that the PRA's one-year statute of limitations barred Kozol's claim, and dismissed the action. On September 16, 2013, Kozol filed a motion for reconsideration, which the trial court denied. Kozol appealed.

On appeal, Kozol argued that the trial court failed to follow the Division II Court of Appeals decision in Johnson v. Dep't of Corrections, 164 Wn.App. 769, 778, 265 P.3d 216 (2011), where the court found the statute of limitations accrued from the date of the agency's response to Johnson's last follow-up request. Brief of Appellant at 16, 39; Reply Brief at 17-23.

Further, in reply to King County's arguments, Kozol argued that while Bartz accrued the one-year statute of limitations from an agency's single production of responsive records, Bartz was inapplicable to this case because King County had produced multiple installments of responsive records and Kozol's suit was filed within one year of King County's last record production. Reply Brief at 14-16. Kozol also argued that judicial

interpretation of RCW 42.56.550(6) in Bartz should not be applied retroactively, as it rendered a once-timely action to now be time-barred. Reply Brief at 16-17.

The Court of Appeals affirmed the summary judgment dismissal, on the basis that its decision in Bartz was controlling over the conflicting Division I Court of Appeals decision in Tobin v. Worden, 156 Wn.App. 507, 233 P.3d 906 (2010), and that Bartz required Kozol to file suit within one year from King County's single production of records. Appendix A.

Mr. Kozol filed a motion for reconsideration in which he argued that Bartz could not apply because King County produced more than one production of records, and the action was filed within one year of King County's last installment production of records. Kozol also argued that Bartz should be applied non-retroactively to avoid an unjust and inequitable result, and, that under Division II's decision in Johnson, Kozol's action was timely as he commenced it within one year of his submitting his May 22, 2011 expanded follow-up request. Without comment the Court of Appeals denied the motion. Appendix A. Mr. Kozol seeks review.[1]

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[1] Seattle attorney Michael C. Kahrs has reviewed this Petition for Review and has approved Mr. Kozol to notify this Court that, should review be granted, Mr. Kahrs will enter a Notice of Appearance for purposes of further briefing and oral arguments. Mr. Kahrs has previously presented oral arguments before the Court, is an experienced practitioner of PRA law, and is associated counsel for the Washington Coalition for Open Government.

## E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### 1. THERE EXISTS A CONFLICT BETWEEN DIVISION I AND DIVISION II OF THE COURT OF APPEALS AS TO JUDICIAL INTERPRETATION OF RCW 42.56.550(6) THAT REQUIRES REVIEW BY THIS COURT

The PRA's statute of limitations requires a plaintiff to file an action within one year of either (1) an agency's claim of exemption from the PRA's disclosure requirements or (2) an agency's "last production of a record on a partial or installment basis." RCW 42.56.550(6).

In Tobin v. Worden, 156 Wn.App. 507, 233 P.3d 906 (2010), the Division I Court of Appeals held that the one-year statute of limitations under RCW 42.56.550(6) was not triggered by an agency's single production of a document because the single document was the "requested record in its entirety, not a partial production of a larger set of requested records." Id., at 514. The Tobin court ruled that "production of a record on a partial or installment basis" under RCW 42.56.550(6) could be construed to apply only to a production of a record that is "part of a larger set of requested records." Id. (quoting RCW 42.56.080).

The Division II Court of Appeals cited with approval to Tobin in several published opinions. See Johnson v. Dep't of Corrections, 164 Wn.App. 769, n.13, 265 P.3d 216 (2011); McKee v. Wash. St. Dept. of Corrections, 160 Wn.App. 437, 446, 248 P.3d 115 (2011); Greenhalgh v. Dept. of Corrections, 170 Wn.App. 137, 147, 282 P.3d 1175 (2012).

In 2013, the Division II court sharply departed from its reliance upon Tobin, and held in Bartz v. Dep't of Corr. Pub. Disclosure Unit, 173 Wn.App. 522, 297 P.3d 737, rev. denied, 177 Wn.2d 1024 (2013), that the legislature intended the one-year statute of limitations in RCW 42.56.550(6) to apply to an agency's single production of records. Id., at 538. In its analysis, the Division II court reasoned that the Tobin court's literal reading of the statute produced an "absurd" result. Id., at 537-38.

In the case at bar, the decision below acknowledges that there is a direct conflict between Division I's decision in Tobin, and Division II's decision in Bartz. Appendix A. Because of this conflict between the divisions pertaining to interpretation of RCW 42.56.550(6), this Court should accept review of this appeal pursuant to RAP 13.4(b).

2. IF THE COURT DETERMINES BARTZ IS CONTROLLING, THE DECISION SHOULD BE PROSPECTIVE-ONLY, TO AVOID A SUBSTANTIALLY INEQUITABLE RESULT

State courts retain freedom to limit retroactive application of their interpretations of State law. Lunsford v. Saberhagen Holdings, Inc., 166 Wn.2d 264, 289, 208 P.3d 1092 (2009) (Madsen, J., concurring) (citing Grant N. Ry. v. Sunburst Oil & Ref. Co., 287 U.S. 358, 364-66, 53 S.Ct. 145, 77 L.Ed. 360 (1932)). A court may give its decisions prospective-only application to avoid substantially inequitable results. In Washington, a new decision of law generally applies retroactively, affecting both the

litigants before the court as well as subsequent cases. However, where appropriate, the Court may choose in some instances to give a decision prospective-only application. McDevitt v. Harbor View Medical Center, 179 Wn.2d 59, 75, 316 P.3d 469 (2013) (citation omitted).

This Court has adopted the United States Supreme Court's three-part test in Chevron Oil Co. v. Huson, 404 U.S. 97, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971), for determining whether a new decision should receive prospective-only application. Lunsford, 166 Wn.2d at 272-73 (citation omitted). The three Chevron Oil criteria are:

> (1) "The decision to be applied nonretroactively must establish a new principle of law, either be overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed"; (2) the court must "look[] to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation"; (3) whether retroactive application "could produce substantially inequitable results."

Chevron Oil Co., 404 U.S. 97, 106-07, 92 S.Ct. 349; Lunsford, 166 Wn.2d at 272-73 (citation omitted). If these three conditions are met, the Court may depart from the presumption of retroactivity. Lunsford, supra.

The Supreme Court has discretion to apply a new rule of law purely prospectively "where changes in the law cannot be made without undue hardship." Lunsford, 166 Wn.2d at 278. The Court is acutely aware of the potential for substantially

prejudicial results when retroactively applying a new rule of law:

> "If rights vested under a faulty rule, or a constitution misrepresented, or a statute misconstrued, or...subsequent events demonstrate a ruling to be in error, prospective overruling becomes a logical and integral part of stare decisis by enabling the courts to right a wrong without doing more injustice than is sought to be corrected."

Lunsford, 166 Wn.2d at 278-79 (citation omitted).

Under this Court's decision in McDevitt v. Harbor View Medical Center, 179 Wn.2d 59, 316 P.3d 469 (2013), any new rule of law aligning with Bartz decided in this case should be prospective-only. In McDevitt, the Court found the plaintiff reasonably relied upon a prior decision, and acted upon it, thus warranting prospective-only application of the new rule.

Under McDevitt, Kozol meets the three Chevron Oil criteria. First, should this Court adopt the reasoning in Bartz that a single production of records is the last production on a partial or installment basis, it would, similar to McDevitt, create a holding Kozol did not foresee. See McDevitt, 179 Wn.2d at 76.

Based upon the record, Bartz was not even decided until well after Kozol filed this action.[2] Moreover, prior to Bartz, the Division II Court of Appeals cited with approval to Tobin on several occasions. Ante, at 6.

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[2] In fact, Bartz was not even decided until after the two-year statute of limitations relied upon by Kozol had expired. The Bartz decision was clearly not foreseeable, and Tobin was relied upon in good faith.

Second, retroactive application of a decision adopting Bartz would impede the legislature's policy objectives. In McDevitt, the Court applied policy objectives as embodied in later adopted provisions, noting that pending the appeal, the legislature amended the applicable statutory scheme. McDevitt, 179 Wn.2d at 76. Here, despite the conflicting decisions in Tobin and Bartz, the legislature has remained silent on both counts. The legislature is legally presumed to approve of both judicial interpretations. See Riehl v. Foodmakers, Inc., 152 Wn.2d 138, 147, 94 P.3d 930 (2004). Thus, the undisturbed policy objectives of the PRA would be impeded by retroactive application of a holding adopting Bartz; for purposes of this Chevron Oil analysis, the legislature is legally presumed to approve of Tobin.

Finally, under McDevitt, it would be inequitable to retroactively apply this decision adopting Bartz.

> "McDevitt relied on our unqualified language in Waples when he did not file notice as prescribed in former RCW 7.70.100(1). Nullifying his cause of action now would, in effect, punish his reliance on our recent decision: a substantially inequitable outcome."

McDevitt, 179 Wn.2d at 76.

As Mr. Kozol orally argued on summary jugment,

> "Under the law at the time when I filed [the complaint], the Division I case of Tobin v. Worden had said that the one-year time clock did not start[,] [a]nd that has since been ruled differently upon by the ruling in Bartz from Division II."

Appendix D, Report of Proceedings 1 (RP1), at 18-19.

Moreover, Mr. Kozol relied upon King County's statute of limitations affirmative defense pled in its answer. At the time of the County's answer, Tobin was the only case the affirmative defense was based upon; Bartz had not yet been published. Kozol had no notice of a reliance on Bartz, even under notice pleading standards.

Consideration should further include the fact that Kozol had expended considerable resources, where it had taken him,

> "over two and a half years in this case alone to recover responsive records which [Public Records Officer] Ms. Johnson repeatedly said she could not locate, some of which were right under her nose during multiple searches for records."

Appendix D, RP1, at 13.

Retroactive application of a new rule adopting Bartz would punish Mr. Kozol's reliance on prior precedent, resulting in the "substantially inequitable outcome" that this Court is cautious to avoid. McDevitt, 179 Wn.2d at 76. Prospective-only application would allow the Court "to right a wrong without doing more injustice than is sought to be corrected." Lunsford, 166 Wn.2d at 278-79. Because this is an issue of significant public importance, the Court should accept review pursuant to RAP 13.4(b)

### 3. THE COURT OF APPEALS RULING CONFLICTS WITH PRIOR DECISIONS, AND FACTUALLY, THE COURT OF APPEALS ERRED WHEN IT FOUND THE AGENCY PROVIDED ONLY A SINGLE PRODUCTION OF RECORDS

In moving for summary judgment, King County claimed its last production of records occurred on January 25, 2011. CP 95. Mr. Kozol presented King County's sworn answers to Request for

Admission Nos. 18 and 19, where the County admitted that document No. KC002804, which was responsive to Kozol's January 12, 2011 request, was first produced for requestor Kozol on March 29, 2013. Appendix C. Upon this undisputed fact, the Court of Appeals erred, because it failed to follow the Supreme Court's controlling standard of review of summary judgment based on statute of limitations.

The statute of limitations is an affirmative defense on which the defendant bears the burden of proof. Haslund v. City of Seattle, 86 Wn.2d 607, 620-21, 547 P.2d 1221 (1976). Appellate courts will affirm summary judgment if,

> "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Vallandigham v. Clover Park School Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 810 (2005).

On de novo review of summary judgment, all facts are considered in the light most favorable to the non-moving party, and summary judgment is affirmed only if, from all of the evidence, reasonable persons could reach but one conclusion. The burden is on the moving party to show no genuine issue of material fact exists. Id., at 26.

Here, the sworn admissions show King County produced an installment of responsive records regarding a "watch" on March 29, 2013. Appendix C. By the plain, unambiguous statutory language,

Mr. Kozol had to bring suit "within one year of the agency's...last production of a record on a partial or installment basis." RCW 42.56.550(6). This Mr. Kozol has done.

Therefore, as a matter of law, King County failed to sustain its burden of establishing Kozol's action was commenced more than one year from March 29, 2013. Undisputed facts in the record show Kozol's action was filed by the Superior Court Clerk on March 7, 2012. Not only was this well before the one-year statute of limitations expired on March 29, 2014, but the action was filed before the agency's last production of responsive records, i.e., before the statute of limitations in RCW 42.56.550(6) began to run.

The Court of Appeals decision below conflicts with decisions requiring all facts and inferences to be viewed in the light most favorable to the non-moving party. See Scrivener v. Clark College, 181 Wn.2d 439, 334 P.3 541, 545 (2014); Berrocal v. Fernandez, 155 Wn.2d 585, 590, 121 P.3d 82 (2005). Based upon King County's sworn admissions, the Court of Appeals erred in not viewing the fact of this record production installment in the light most favorable to Mr. Kozol.

"If the undisputed facts in the record do not support the Court of Appeals' holdings as a matter of law, those holdings are subject to reversal by this court." L.K. Operating, LLC v. Collection Group, LLC, 181 Wn.2d 48, 331 P.3d 1147, 1157 (2014) (citing DGHI Enters. v. Pac. Cities, Inc., 137 Wn.2d 933, 942-43, 977 P.2d 1231 (1999)).

This Court has never held that an agency's additional installment(s) of responsive records, when produced after commencement of a PRA action, do not constitute production of records on a partial or installment basis for purposes of RCW 42.56.550(6).[3] While it was presented in another case, the Court ultimately did not reach the issue. See Rental Housing Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 541 n.3, 199 P.3d 400 (2009).

Under the plain statutory language there is no basis in law to find that agency production of additional installment(s) of records after a PRA suit is filed do not comprise an agency's "last production of a record on a partial or installment basis." RCW 42.56.550(6). This Court has analogously held that,

> "the remedial provisions of the PRA are triggered when an agency fails to properly disclose and produce records, and any intervening disclosure serves only to stop the clock on daily penalties, rather than eviscerate the remedial provisions altogether."

Neighborhood Alliance of Spokane County v. County of Spokane, 172 Wn.2d 702, 727, 261 P.3d 119 (2011).

Therefore, when viewed under equitable principles, and in accordance with the legislature's intent of the Public Records

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[3] In McKee v. Wash. Dep't of Corr., 160 Wn.App. 437, 248 P.3d 115 (2011), the Division II Court of Appeals found that it was incumbent upon the trial court in a PRA action to determine the factual issue of whether an agency produced records on a partial or installment basis. Id. at 447. The court held, "the trial court must first determine whether the agency fully and timely produced the requested records and then determine the applicable statute of limitations." Id. at 446. In the case at bar, the trial court never fulfilled this obligation before dismissing Kozol's action.

Act, the mere timing of an agency's record productions cannot be determinative of the material factual issue of whether records responsive to the underlying request were produced on a partial or installment basis. At best, additional production installments would only stop the clock on penalty calculation.

The decision here also directly conflicts with Division II's decision in Hobbs v. State, ___Wn.App.___, 335 P.3d 1004 (2014), where the court held that there is "no PRA cause of action until after [the] agency denies the public record requested." Id., at 1009. In Hobbs, the agency provided an initial production of records, and the requestor filed suit two days later. However, the agency continued to produce responsive records after the suit was filed. Id., at 1005-07.

While the requestor in Hobbs argued that the trial court "erred by allowing the [agency] to supplement its responses after he had filed suit to correct alleged violations of the PRA," the Court of Appeals disagreed, and held that, "under the PRA, a requestor may only initiate a lawsuit to compel compliance with the PRA after the agency has engaged in some final action denying access to a record." Id., at 1008 (emphasis in original).

In Hobbs there was "no dispute that the [agency] was continuing to provide Hobbs with responsive records until March 1, 2012....Therefore, there could be no 'denial' of records forming a basis for judicial review until March 1, 2012." Id., at 1009. Similarly, here there is no question that King County produced

additional responsive records on March 29, 2013. Appendix C. If the Court of Appeals reasoning in Hobbs is to be good law, then that same reasoning means Mr. Kozol should not have brought suit until after King County's March 29, 2013 record production. Instead, the decision below inexplicably determined Mr. Kozol's action to be time-barred, when under Hobbs it was filed before there even was a cause of action. This is confounding.

As the Division II court reasoned, "[w]hen considering the PRA as a whole, we conclude that a denial of public records occurs when it reasonably appears that an agency will not or will no longer provide responsive records." Id., at 1009. Therefore, under Hobbs, Mr. Kozol did not even have a cause of action until King County's last production of responsive records on March 29, 2013. The court's decision below sharply conflicts with Hobbs, as it is judicially inconsistent to require Mr. Kozol to have filed suit in response to King County's initial record production, while concomitantly ruling that the requestor in Hobbs could not file suit until after the agency's last record production.

As a matter of law, there can only be one "last production of a record." RCW 42.56.550(6). See, e.g., Scanlan v. Townsend, __Wn.2d__, 336 P.3d 1155, 1159 (2014) (Supreme Court determining that "'Any person' means any person"). An agency cannot shield itself from the provisions of the PRA simply by silently withholding records, and effectively manipulating accrual of

the statute of limitations by waiting until after a suit was filed before producing additional responsive records, and then claiming they were not record productions.

King County was required by law to produce the records because "incomplete production is not authorized by the PRA [which] prohibits an agency's withholding of a part of a record unless it claims an exemption." Tobin, 156 Wn.App. at 514 (citing RCW 42.56.210(3)); see also, Neighborhood Alliance, 172 Wn.2d at 715 (citing RCW 42.56.070(1)).

The Court of Appeals erred in not viewing the evidence of King County's record productions in the light most favorable to Mr. Kozol, and in issuing its decision in stark conflict with its decision in Hobbs. Because the ruling below conflicts with prior decisions, this Court should accept review pursuant to RAP 13.4(b).

4. WHETHER THE STATUTE OF LIMITATIONS UNDER THE PUBLIC RECORDS ACT ACCRUES FROM A FOLLOW-UP REQUEST IS AN ISSUE OF SIGNIFICANT PUBLIC IMPORTANCE, AND THE COURT OF APPEALS RULING CONFLICTS WITH PRIOR DECISIONS

In Johnson v. Dep't of Corrections, 164 Wn.App. 769, 265 P.3d 216 (2011), the requestor submitted an initial request dated August 21, 2006, followed by three follow-up or "expanded" requests dated September 10, 2006, October 19, 2006, and March 27, 2007.[4] Id., at 771-74.

[4] The Court of Appeals determined these requests were "requesting the same information" requested earlier, "for the same documents that he had requested originally." Johnson, 164 Wn.App. at 772-73.

While the agency issued responses to each of Johnson's four letters, the Division II Court of Appeals ultimately determined that, "the latest possible date on which Johnson's single-document action accrued," was one week after the agency's August 27, 2007 response to Johnson's last follow-up request. Id., at 778-79.

Here the record on summary judgment shows that Mr. Kozol submitted an initial request on November 20, 2010. CP 125. Then, Mr. Kozol submitted an expanded follow-up request on January 12, 2011. CP 129. Still being denied the requested records, he then on May 22, 2011 submitted another expanded follow-up request, broadening the request to seek all agency records in his criminal case file "State v. Kozol, No. 00-1-09050-8KNT." CP 136.

While King County admitted to responding to Mr. Kozol's initial November 20, 2010 and (first) expanded follow-up request of January 12, 2011, the County claimed on summary judgment that its employee, Kristie Johnson, did not "recall" receiving Mr. Kozol's May 22, 2011 request.[5] CP 60.

As briefed on appeal below, Mr. Kozol presented sufficient evidence that his May 22, 2011 follow-up request was properly mailed, thereby attaching a legal presumption of receipt by the

[5] Up until Mr. Kozol filed his evidence of mailing the May 22, 2011 letter, King County had represented that it had "filled (Kozol's) request three times providing everything related to watches in the file...." CP 160.

County. Brief of Appellant at 17-22; Appendix E. Moreover, King County's evidence was legally insufficient to rebut presumption of receipt of the May 22, 2011 letter. Brief of Appellant at 22-27. Finally, King County did not timely file and serve its rebuttal evidence (Second Declaration of Kristie Johnson) and Mr. Kozol's motion to strike said material should have been granted. Brief of Appellant at 8-13.

Therefore, viewing the facts in the light most favorable to Mr. Kozol, the legal presumption of King County's receipt of the May 22, 2011 expanded follow-up request began accrual of the statute of limitations, because under Johnson, accrual begins from an agency's response to a requestor's last follow-up request. Reply Brief at 17-23.

Below, the Court of Appeals misapprehended Kozol's reliance upon Johnson. Appendix A (Unpublished Opinion at 3). To the contrary, Kozol did not cite Johnson as authority for the one-year statute of limitations in RCW 42.56.550(6) to not apply. Johnson was cited to establish accrual to begin at an agency's response to the last follow-up request. Brief of Appellant at 39; Reply Brief at 17-23.

The decision below further conflicts with Division II's decision in Hobbs, supra, where the court held a cause of action did not arise until an agency's final response to a request. "Under the PRA, a requestor may only initiate a lawsuit to compel compliance with the PRA after the agency has engaged in some

final action denying access to a record." Hobbs, 335 P.3d at 1008 (emphasis in original).

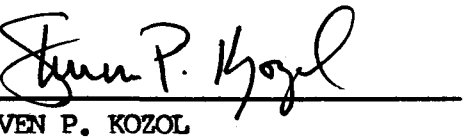
Because the facts viewed in the light most favorable to Mr. Kozol establish King County's legally presumed receipt of the May 22, 2011 follow-up request, the Court of Appeals decision below is in direct conflict with its decision in Johnson. The decision below also conflicts with Division II's decision in Hobbs. Because of these conflicts with prior decisions, and as an issue of significant public importance, this Court should accept review pursuant to RAP 13.4(b).

## E. CONCLUSION

For the reasons stated above, Mr. Kozol respectfully requests that this Court grant review.

DATED this 5th day of April, 2015.

Respectfully submitted,



STEVEN P. KOZOL
Petitioner/Appellant

CERTIFICATE OF MAILING AND SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day, via U.S. Mail, first class, postage-prepaid, by deposit in the "Prison Legal Mail" system at Stafford Creek Corrections Center, in Aberdeen, Washington (GR 3.1), I caused this document to be filed with the Division II Court of Appeals, and served the following party with a true, correct and complete copy of this document:

Mr. David J. Eldred, SDPA
King County Prosecuting Attorney's Office
CIVIL DIVISION, Litigation Section
500 Fourth Ave., Suite 900
Seattle, WA 98104

DATED this 5th day of April, 2015, at Aberdeen, Grays Harbor County, Washington State.

Steven P. Kozol

STEVEN P. KOZOL
Petitioner/Appellant, Pro Per

## APPENDIX

STEVEN P. KOZOL, duly sworn upon oath, deposes and declares:

(1.) I am the Petitioner, Pro Per, am over the age of eighteen (18) years, have personal knowledge of the matters contained herein, and am competent to testify thereto;

(2.) Attached hereto as APPENDIX A is a true and correct copy of the decision of Division II of the Court of Appeals, and the ruling denying reconsideration, from which Petitioner seeks further review;

(3.) Attached hereto as APPENDIX B is a true and correct copy of document No. KC002804 produced by King County as responsive to the underlying record requests in this case, Pierce County Superior Court Case No. 12-2-06850-5;

(4.) Attached hereto as APPENDIX C is a true and correct copy of King County's Answer to Request for Admission Nos. 18 - 20 in Pierce County Superior Court Case No. 12-2-06850-5;

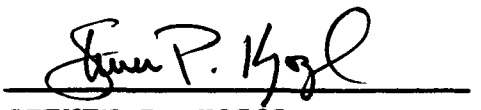
(5.) Attached hereto as APPENDIX D is a true and correct copy of pages 13, 18, and 19 of the Verbatim Report of Proceedings, Hearing Date September 6, 2013, in Pierce County Superior Court Case No. 12-2-06850-5;

(6.) Attached hereto as APPENDIX E is a true and correct copy of the Declaration of Isabelle M. Sanabria, in Pierce County Superior Court Case No. 12-2-06850-5;

(7.) All of the attached appendices are part of the record in case number COA 45542-1-II, and are appended hereto to assist in the review of the Petitioner's petition for review.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 5th day of April, 2015, at Aberdeen, Grays Harbor County, Washington State.



STEVEN P. KOZOL
Petitioner/Apellant, Pro Per

# Appendix A

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

STEVEN P. KOZOL,

Appellant,

v.

KING COUNTY,

Respondent.

No. 45542-1-II

ORDER DENYING MOTION FOR RECONSIDERATION



**APPELLANT** moves for reconsideration of the Court's **February 3, 2015** opinion.

Upon consideration, the Court denies the motion. Accordingly, it is

**SO ORDERED.**

**PANEL:** Jj. Worswick, Bjorgen, Melnick

**DATED** this 12th day of March, 2015.

**FOR THE COURT:**

Bjorgen, A.C.J.
ACTING CHIEF JUDGE

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500 4th Ave Ste 900
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Steven P Kozol
#974691
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA, 98520

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| STEVEN P. KOZOL,<br><br>Appellant,<br><br>v.<br><br>KING COUNTY,<br><br>Respondent. | No. 45542-1-II<br><br><br><br><br><br>UNPUBLISHED OPINION |

WORSWICK, J. — Steven P. Kozol appeals the trial court's order dismissing his Public Records Act (PRA)[1] claim against King County. Kozol argues that the trial court incorrectly applied the PRA's statute of limitations, RCW 42.56.550(6), and urges us to follow Division One's holding in *Tobin v. Worden*, 156 Wn. App. 507, 233 P.3d 906 (2010), which applied the "catch-all," two year statute of limitations to PRA claims involving a single response. We decline to do so. Instead, we adhere to our earlier holding in *Bartz v. Dep't of Corr. Pub. Disclosure Unit*, 173 Wn. App. 522, 297 P.3d 737, *review denied*, 177 Wn.2d 1024 (2013), and hold that the one-year statute of limitations applies uniformly to all PRA claims. We affirm.

[1] *See* RCW 42.56.550.

## FACTS

### A. *Kozol's Requests for Records*

Kozol filed two separate PRA requests with the King County Prosecuting Attorney's Office. Kozol's first request was dated November 20, 2010, and was received by Kristie Johnson, the former public records officer for the King County Prosecuting Attorney's Office. In that request, Kozol sought all records pertaining to his 2000 criminal case that related to a Rolex watch. On December 23, 2010, Johnson provided Kozol with five pages of documents. In a second request dated January 12, 2011, Kozol sought all records pertaining to his 2000 criminal case that related to any watches. On January 25, 2011, Johnson informed Kozol that she had not found any additional documents regarding watches in Kozol's 2000 criminal case.

### B. *Kozol's Complaint*

On March 7, 2012, Kozol filed a complaint in Pierce County Superior Court, alleging that King County violated the PRA in its responses to his records requests. King County answered Kozol's amended complaint and asserted as an affirmative defense that Kozol's claim was barred by the one year statute of limitations under RCW 42.56.550(6).

### C. *Summary Judgment Motion and Hearing*

On August 7, 2013, King County filed a motion for summary judgment. King County, relying on our decision in *Bartz*, argued that Kozol had one year from January 25, 2011, its last PRA response, to file an action, which he failed to do. The trial court granted King County's motion for summary judgment, concluded that the PRA's one-year statute of limitations barred

Kozol's complaint, and dismissed Kozol's complaint. On September 16, 2013, Kozol filed a motion for reconsideration, which the trial court denied. Kozol appeals.

ANALYSIS

Kozol argues that the trial court erred in granting summary judgment in favor of King County because under *Johnson v. Dep't of Corrects.*, 164 Wn. App. 769, 265 P.3d 216 (2011), *review denied*, 173 Wn.2d 1032 (2012), and *Tobin*, the one-year statute of limitations in RCW 42.56.550(6) does not apply to his PRA claim and, thus, it was not time-barred. We review a trial court's disposition of a motion for summary judgment de novo. *McKee v. Dep't of Corrs.*, 160 Wn. App. 437, 446, 248 P.3d 115 (2011). Summary judgment is appropriate where, the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c).

There are no genuine issues of material fact in dispute. The question before us is which statute of limitations applies when there has been a single response without any claimed exemptions: (1) the two-year, catch-all statute of limitations, as Division One held in *Tobin*; or (2) the one-year statute of limitations, as we held in *Bartz*. We adhere to our earlier decision in *Bartz*. Because the one-year statute of limitations under the PRA is ambiguous when reading the statute as a whole, we consider other indicia of legislative intent, including the legislative history of the statute. When considering the legislative intent and history of the PRA's one-year statute of limitations, we determine that the one-year statute of limitations applies to records produced in a single response without any claimed exemptions. Accordingly, we affirm the trial court's order granting summary judgment and dismissing Kozol's complaint.

Judicial review of an agency's response to a PRA request governed by RCW 42.56.550(1) states:

> Upon the motion of any person having been denied an opportunity to inspect or copy a *public record* by an agency, the superior court . . . may require the responsible agency to show cause why it has refused to allow inspection or copying of a *specific public record or class of records.* The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific *information or records.*

(Emphasis added). The one-year statute of limitations under RCW 42.56.550(6) provides that "[a]ctions under this section must 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.*" (Emphasis added).

Whether RCW 42.56.550(6) bars Kozol's complaint is a question of statutory interpretation we review de novo. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 708, 153 P.3d 846 (2007). The goal of statutory interpretation is to effectuate the legislature's intent. *Bostain*, 159 Wn.2d at 708. We first look to the plain language of the statute. *State v. Bunker*, 169 Wn.2d 571, 578, 238 P.3d 487 (2010). "[I]f the statute is ambiguous, meaning it is subject to two or more reasonable interpretations, we resolve the ambiguity by looking at other indicia of legislative intent, including legislative history." *Seashore Villa Ass'n*, 163 Wn. App. 531, 539, 260 P.3d 906 (2011).

In *Bartz*, we held that the legislature intended the one-year statute of limitations to apply to an agency's single production of records. 173 Wn. App. at 538. We determined that it would be "absurd to conclude" that the legislature intended that a more lenient two-year statute of limitations would apply for one category of PRA responses and not apply for another. *Bartz*, 173 Wn. App. at 537. To support our determination, we looked to the 2005 amendment to the one-

year statute of limitations, which shortened the limitations period from five years to one year. *Bartz*, 173 Wn. App. at 537. In light of the legislative history, we determined that the one-year statute of limitations applies to PRA requests completed by a single response without any claimed exemptions. *Bartz*, 173 Wn. App. at 538.

We adhere to our holding in *Bartz* and conclude that the one-year statute of limitations applies to PRA requests completed by a single response without any claimed exemptions. Here, when looking at RCW 42.56.550 in its entirety, the language "or the last production of a record on a partial or installment basis" in subsection (6) is ambiguous in light of subsection (1)'s language referring to a party being denied the opportunity to inspect a single "record," or being denied the opportunity to copy "a specific public record or class of records." RCW 42.56.550(6), (1). The legislature's use of the word "record" in the singular, and use of the word "or" between a "specific public record" and "class of records" contemplates that a situation may occur where a party requests only one record that would not be disclosed on a partial or installment basis. Based on the reasonable application of the language in RCW 42.56.550(1), RCW 42.56.550(6) is ambiguous.

Because the language in the one-year statute of limitations is subject to more than one reasonable interpretation, we look to other indicia of legislative intent, including legislative history, to resolve the ambiguity. *Seashore Villa Ass'n*, 163 Wn. App. at 539. The same legislative history which we held supported the one-year statute of limitations in *Bartz* supports it with equal force here.

Moreover, the legislature explicitly included a provision of the PRA, RCW 42.56.550, to govern judicial review of actions under the PRA. And, RCW 42.56.550(6) contains an explicit statute of limitations. It follows that any action that is brought under RCW 42.56.550 must be governed by all the provisions of RCW 42.56.550. The legislature could not have intended us to look outside of RCW 42.56.550(6) to determine the applicable statute of limitations. The logical conclusion is that an agency's production of records in a single response, as contemplated by RCW 42.56.550(1), is governed by the one-year statute of limitations set out in that section.

Here, King County responded to Kozol's first request on December 23, 2010, and King County responded to Kozol's second request on January 25, 2011. Kozol filed his complaint in March 7, 2013. Therefore, the one-year statute of limitations under RCW 42.56.550(6) expired as to both records requests. Accordingly, we affirm the trial court's order granting summary judgment and dismissing Kozol's claim against King County.[2]

ATTORNEY FEES

Kozol requests to be awarded all costs and expenses incurred in litigating this appeal. A prevailing party in a PRA action is entitled to reasonable attorney fees and all costs associated with litigation. RAP 18.1; RCW 42.56.550(4). Kozol's claim is barred by the statute of limitations, and we affirm the trial court's order on summary judgment. Therefore, Kozol is not the prevailing party and is not entitled to attorney fees and costs. Moreover, pro se litigants are

[2] Because Kozol's claim is barred by the statute of limitations we do not address Kozol's remaining claims regarding his motion to amend his complaint or his motion to strike King County's summary judgment reply brief.

not entitled to attorney fees for their work representing themselves. *Mitchell v. Dep't of Corr.*, 164 Wn. App. 597, 608, 277 P.3d 670 (2011).

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, J.

We concur:

Bjorgen, A.C.J.

Bjorgen, A.C.J.

Melnick, J.

Melnick, J.

# Appendix B

ORIGINAL

SHERIFF

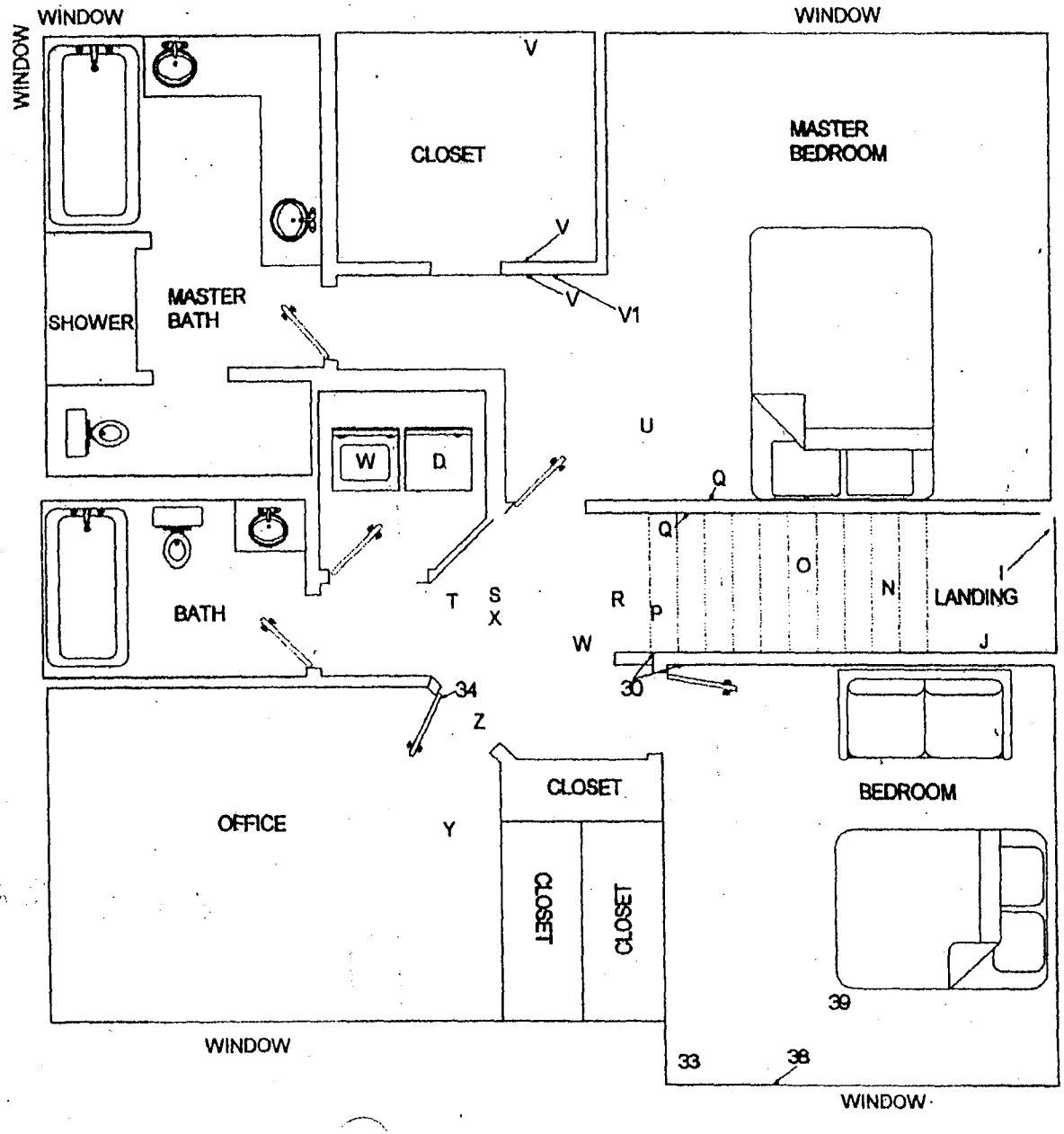
12123 138th PL SE

00-355677

SECOND FLOOR & STAIRWAY

0 2' 4' 6' 8' 10'

I: INDENTATION & BLOOD SPLATTER
J: SHELL CASING
N: BLOOD STAIN
O: WIRE
P: SHELL CASING
Q: BULLET HOLE IN WALL
R: BULLET FRAGMENT
S: SHELL CASING
T: BULLET FRAGMENT
U: BULLET
V: BULLET HOLE IN WALL
V1: BULLET JACKET
W: SHELL CASING
X: NUT FROM LIGHT FIXTURE
Y: WATCH
Z: BLOOD STAIN
30 BULLET HOLE IN WALL
33: SHOTGUN & 3 SHOTGUN SHELLS
34: BLOOD STAIN
38: BULLET
39: SHELL CASING




KC002804

# Appendix C

Hon. Stephanie A. Arend

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | |
|---|---|
| STEVEN P. KOZOL,<br><br>Plaintiff,<br><br>vs.<br><br>KING COUNTY,<br><br>Defendant. | No. 12-2-06850-5<br><br>DEFENDANT KING COUNTY'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION |

COMES NOW Defendant King County (hereinafter "King County Defendants") and submits the following Responses to Plaintiff's First Set of Requests for Admission to plaintiff Steven P. Kozol:

REQUEST FOR ADMISSION NO. 1: Admit that Kristie Johnson and Myralynn Nitura each conducted at least one search for responsive records in this case.

ANSWER: Admit.

REQUEST FOR ADMISSION NO. 2: Admit that these searches conducted by Kristie Johnson and Myralynn Nitura were applied to "all of the files related to State v. Kozol, KCSC Cause No. 00-1-09050-8".



ORIGINAL

**Daniel T. Satterberg**, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-0430 Fax (206) 296-8819

REQUEST FOR ADMISSION NO. 15: Admit that Defendant's applied policies and practices in responding to Plaintiff's records request(s) in this case did not allow identification and production of all responsive records.

ANSWER: Denied.

REQUEST FOR ADMISSION NO. 16: Admit that Kristie Johnson did not see Ian Goodhew's name attached to the files of Plaintiff's criminal case, KCSC No. 00-1-09050-8.

ANSWER: Admit.

REQUEST FOR ADMISSION NO. 17: Admit that the absence of Ian Goodhew's name being attached to case files on Plaintiff prevented Kristie Johnson from requesting responsive records from Mr. Goodhew.

ANSWER: Admit.

REQUEST FOR ADMISSION NO. 18: Admit that document KC002804 in King County's discovery production is responsive to Plaintiff's records request(s) in this case.

ANSWER: Admit that KC002804 is responsive to plaintiff's second request.

REQUEST FOR ADMISSION NO. 19: Admit that document KC002804 was first produced for Plaintiff on March 29, 2013, after this lawsuit was filed.

ANSWER: Admit.

REQUEST FOR ADMISSION NO. 20: Admit that the confession letter at issue in this case specifically references a wristwatch.

ANSWER: Admit.

REQUEST FOR ADMISSION NO. 21: Admit that the wristwatch referenced in this confession letter is identified as a blue and stainless-steel Rolex.

ANSWER: Admit.



**Daniel T. Satterberg**, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-0430 Fax (206) 296-8819

ANSWER: Denied.

DATED this 20th day of June, 2013

David J. Eldred
Attorney for Defendant King County



**Daniel T. Satterberg**, Prosecuting Attorney
CIVIL DIVISION, Litigation Section
900 King County Administration Building
500 Fourth Avenue
Seattle, Washington 98104
(206) 296-0430 Fax (206) 296-8819

# Appendix D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

| | |
|---|---|
| STEVE P. KOZOL,<br><br>Plaintiff,<br><br>vs.<br><br>KING COUNTY,<br><br>Defendant. | COPY<br><br>Superior Court<br>No. 12-2-06850-5<br><br>Court of Appeals<br>No. 45542-1-II |

**VERBATIM TRANSCRIPT OF PROCEEDINGS**

September 6, 2013
Pierce County Superior Court
Tacoma, Washington
Before the
**HONORABLE STEPHANIE AREND**

Sheri Schelbert
Official Court Reporter
930 Tacoma Avenue
334 County-City Bldg.
Department 12
Tacoma, Washington 98402

County's argument is evidence proves that it never received the May 22nd request. However, I think that there's a few problems with what the County is arguing.

First of all, the sole evidence that they have filed is a loan declaration from Kristie Johnson, the agency's former public records officer. It does not establish conclusively that the County did not receive the May 22nd follow-up request because Ms. Johnson only attests that in the places she looked, there is no indication that the May 22nd document was received. There's no corroborative evidence such as data base index, printouts which she alludes to in her declaration, but there's actually no hard copies of that filed as evidence, and the history of this case has already proven that the mere absence in a database or file does not preclude a document from existing within this agency.

It's taken me over two and a half years in this case alone to recover responsive records which Ms. Johnson had repeatedly said she could not locate, some of which were right under her nose during multiple searches for documents.

The next issue is the fact that the County has presented no evidence proving that this May 22nd letter was not received or logged in the agency's mail system or mail room or misplaced or misfiled.

an appeal. The only benefit it does by doing that is it shoehorns that holding in Greenlaw which is actually factually different.

One final thing I'd like to add, Your Honor, is Greenlaw, I don't believe is controlling on this issue, and if we actually turn to the case that the County primarily relies upon, Barts vs. Department of Corrections. In Barts, Division II cited directly to its previous holding in Johnson vs. Department of Corrections, 164 Wn.App. 769. In that case Division II held that if the actions were governed by even a two year deadline to file suit, the period did not begin to run until that requestor received a response from the agency on its follow-up request stating that there were no other documents responsive. Therefore, because I received no response to the May 22nd follow-up, a one year statutory clock was not yet running.

Finally, I do admit that while this May 22nd document was not included in either my initial complaint or amended complaint, based upon the current law at the time, I did not identify a need to do so, because I was not arguing a five-day response violation, which is the only additional element that me adding that to the complaint would have offered. Under the law at the time when I filed it, the Division I case of Tobin vs. Warden

had said that the one-year time clock did not start. And that has since been ruled differently upon by the ruling in Barts from Division II.

But, in any event, because trial was not set for 15 more months away, I don't believe that the County would be prejudiced if I need to move to amend the complaint to add this document in as an element now. The element of the complaint was not necessary at the time I filed it, because the law did not add anything else to the complaint by me, including that in there.

So in conclusion, I ask that the Court deny summary judgment, because the evidence that the County's filed is insufficient to prove it did not receive the May 22nd follow-up request, and further, their evidence does not disprove that the evidence showing it was mailed on May 25th, and was not returned by the post office. So due to this genuine issue of material fact and the inherent credibility issues derived therefore, I ask this case be sent to trial.

THE COURT: Thank you, Mr. Kozol.

MR. ELDRED: Your Honor, I think there is a question of fact about whether the letter was sent and received. The issue is not that. The issue is, is this -- was this pled in the complaint? Is this a part of the lawsuit? And under Greenlaw, does the case survive in

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR the County OF PIERCE

---

| | | |
|---|---|---|
| STEVEN P. KOZOL, | ) | |
| Plaintiff, | ) | Superior Court No. 12-2-06850-5 |
| vs. | ) | |
| KING COUNTY, | ) | Court of Appeals No. 45542-1-II |
| Defendant. | ) | |

---

REPORTER'S CERTIFICATE

---

STATE OF WASHINGTON )
) ss
COUNTY OF PIERCE )

I, Sheri Schelbert, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the forgoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

Dated this 7th day of January, 2014.

Sheri Schelbert, CCR, RPR, CRR
Official Court Reporter

# Appendix E

Honorable Stephanie A. Arend
Noted: Friday, September 6, 2013
at 9:00 am
With Oral Argument

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR PIERCE COUNTY

| | | |
|---|---|---|
| STEVEN P. KOZOL, Plaintiff, | ) | No. 12-2-06850-5 |
| v. | ) | **DECLARATION OF** |
| KING COUNTY, Defendant. | ) | **ISABELLE M. SANABRIA** |

I, ISABELLE M. SANABRIA, make the following declaration:

1. I am over the age of 18, am of sound mind, am competent to testify to the matters declared herein, and am not a party to this action.

2. I am the mother of Steven P. Kozol. I am 79 years old. I have Top Secret security clearance from working on high-level U.S. Military projects while employed at the Boeing Company. I have been thoroughly vetted and background checked by the U.S. Department of Defense and the F.B.I. I have never been arrested or charged with a crime.

3. My son, Steven Kozol, has asked me for the past thirteen years to maintain duplicate copies of his various legal files as pertaining to both his appeals of his criminal conviction and to his civil litigation. I thus have tens of boxes retained at my residence for Steven.



Steven P. Kozol, DOC# 974691
191 Constantine Way, Unit H6-A86
Aberdeen, WA 98520 Ph:(360)537-1800
www.FreeSteveKozol.com

4. Due to reoccurring and sporadic problems with the prison refusing to make certain legal copies for Steven or refusing to mail certain items of his in the manner Steven addresses them, I have often received letters that Steven wished sent to another party, such as investigators, the media, and State and local government agencies. This includes mailing public records requests.

5. On May 25, 2011, I received an envelope sent from Steven Kozol which contained several letters that he wanted me to photocopy, mail the originals as addressed, and retain the copies in my files.

6. On May 25, 2011, I made a photocopy of an original letter, dated May 22, 2011, which was from Steven Kozol to Kristie Johnson, Public Records Officer, King County Prosecutor, 516 Third Ave., Room W400, Seattle, WA 98104. I retained the photocopy of this letter and mailed the original as addressed via First Class U.S. Mail, postage prepaid. Attached and incorporated as Exhibit 1 is a true and correct copy of the May 22, 2011 letter from Kozol to Johnson.

7. On May 25, 2011, I mailed a letter to Steven Kozol to inform him that on that same day I had mailed the letters and checks as he had requested.

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

DATED: August 15, 2013

Isabelle M. Sanabria
ISABELLE M. SANABRIA, Declarant



Steven P. Kozol, DOC# 974691
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www.FreeSteveKozol.com

# EXHIBIT 1

Steven Kozol
DOC #974691
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

May 22, 2011

Kristie Johnson
Public Records Officer
King County Prosecutor
516 Third Ave., Rm W400
Seattle, WA 98104

Re: State v. Kozol, No. 00-1-09050-8KNT
Public Records Request

Dear Ms. Johnson:

This is a follow-up to the last correspondence exchanged with your office. I am officially objecting to your agency's claims to have provided all responsive records to me, and I hereby protest your assertion.

Please conduct a comprehensive search throughout your agency, and provide me with all responsive records.

Thank you for your response within the terms and timeframes of the PRA.

Sincerely,

Steven P. Kozol

Steven Kozol

c: file