

RECEIVED
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Washington State
Supreme Court

Supreme Court No. 92792-8

SUPREME COURT OF THE STATE OF WASHINGTON

STEVEN P. KOZOL,

Plaintiff/Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Defendant/Respondent.

PETITIONER'S MOTION TO STRIKE §§ III and IV(D)
OF RESPONDENT'S ANSWER BRIEF

(Hearing Requested for Telephonic Argument)

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- ORIGINAL -

A. MOTION

Petitioner, pro per, STEVEN P. KOZOL moves the Court to strike Sections III, and IV(D) of Respondent Department of Corrections' Answer filed with the Court on March 24, 2016. This motion is brought pursuant to RAP 10.7, RAP 7.3, RAP 8.3, RCW 42.56.080, Evidence Rule 402, 403.

B. ISSUES PRESENTED

1. Should arguments and citation to evidence that is inadmissible and was thus not considered on summary judgment be stricken from the Respondent's Answer?

C. INTRODUCTION

The Washington Department of Corrections' (Department) track record of noncompliance with the strict requirements of the Public Records Act (PRA) can only be described as abysmal. The Department's record of continuous PRA violations is shocking, to say the least. The Department has fostered a culture where employees openly admit with impunity to specifically destroying documents so they do not get disclosed in public records act requests. This case deals with a continuation of the Department's pattern and practice of unlawful destructions of public records, having unlawfully destroyed eight separate public records after they were specifically requested and silently withheld from Petitioner Steven Kozol.

D. FACTS RELEVANT TO MOTION

At the trial court below, the Department filed a false declaration in an attempt to avoid being found in violation of the PRA. The Declaration of Lee Young stated under penalty of perjury that the second/back pages of original grievance forms were not used by inmates or staff in the grievance process, and therefore were not considered responsive to Mr. Kozol's clear requests for original complaint/grievance forms. Clerk's Papers (CP) 29, 152-153. Evidence filed by Mr. Kozol proved that inmates and staff often used the second pages in the substantive grievance process. CP 403-456.

After this misstep, the Department then attempted to prejudice the trial court against Mr. Kozol by submitting a collection of e-mails that Mr. Kozol both received from and sent to a citizen, Aaron Leigh. CP 477-528. The Department argued that these e-mails proved an alleged intent of Mr. Kozol submitting record requests that he knew did not seek identifiable records, and that he had an intent to set up lawsuits for the Department's bad faith PRA violations. CP 157-159, 472-473.

Mr. Kozol moved to strike the e-mails on the ground that under RCW 42.56.080 a requestor's alleged intent cannot be considered by an agency, and as such the legally irrelevant e-mails were inadmissible under ER 402 or 403. CP 287-296. Astutely, the trial court did not consider the e-mail evidence in granting the Department's summary judgment motion. CP 354-

364, 457-461. This is expressly recognized by the Court of Appeals published decision. Kozol v. Washington Dep't of Corr., 2015 WL 9915869, footnote 3.

Now, on discretionary review, the Department continues its campaign to cite this e-mail evidence and argues that an alleged intent of a requestor in seeking public records can be considered by an agency to determine if the requested records are identifiable. Accordingly, Petitioner Kozol moves to strike the sections of Respondent's Answer that cites to this inadmissible evidence.

E. ARGUMENT

1. E-MAIL EVIDENCE WAS INADMISSIBLE ON SUMMARY JUDGMENT

As part of its summary judgment motion the Department expressly asked the court to consider the e-mail evidence as proof of Mr. Kozol's alleged intent behind submitting the requests, and to conclude that his alleged intent caused the Department to not be in violation of the PRA. CP 470-475. After considering Mr. Kozol's motion to strike, the Court did not consider the inadmissible e-mail evidence, and did not find that Mr. Kozol had any malicious intent behind his requests. CP 354-364, 457-461.

"[A]bsence of a finding will be taken as a negative finding on the issue." Peoples Nat'l Bank v. Birney's Enters., Inc., 54 Wn.App. 668, 670, 775 P.2d 466 (1989)(citing Smith v. King, 106 Wn.2d 443, 451, 722 P.2d 796 (1986)). The Department failed

in its arguments that Mr. Kozol's intent was admissible and that it was malicious, because it is well settled that "in the absence of a finding on a factual issue we must indulge the presumption that the party with the burden of proof failed to sustain their burden on the issue." State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1993). See Ellerman v. Centerpoint Prepress, Inc., 143 Wn.2d 514, 22 P.3d 795 (2001).

In this case the Department filed no appeal and assigned no error to the trial court's finding and rulings to not consider the e-mail evidence. When an error is not assigned to a trial court's factual findings, this Court considers these findings verities. Yousoufian v. Office of Ron Sims, 168 Wn.2d 444, 450, 229 P.3d 735 (2010).

There is no question that because any alleged intent behind the requests is legally irrelevant under RCW 42.56.080, the e-mails are inadmissible under ER 402. Accordingly, the citations to this evidence must be stricken from Respondent's Answer.

2. E-MAIL EVIDENCE IS STILL INADMISSIBLE ON REVIEW

"A party is entitled to admit relevant evidence, except as limited by constitutional requirements or as otherwise provided by statute, by the evidence rules." State v. Loutham, 158 Wn.App. 732, 748, 242 P.3d 954 (2010)(citing ER 402)(emphasis added).

"Relevant evidence" is any evidence which tends to show a disputed issue is more or less probable and encompasses elements of both probative value and materiality. ER 401; Davidson v. Muni.

of Metro. Seattle, 43 Wn.App. 569, 573, 719 P.2d 569 (1986).

Evidence is probative if it tends to prove or disprove some fact and is material if that fact is of consequence to the ultimate outcome. Davidson, 43 Wn.App. at 573. "Evidence which is not relevant is not admissible." ER 402.

The Department has failed to offer any proof to the trial court that the e-mails directly affected the agency's understanding of the record requests, its ability to seek clarification of the requests, or that the e-mails affected the agency's unlawful destruction of the requested records. To quite the contrary, the Department consistently confirmed that each of Mr. Kozol's requests sought the complete original/grievance form. CP 72-73, 80-150.

Moreover, the Department squarely admitted that each original complaint/grievance form was comprised of multiple pages. CP 228. "[If] the agency was unclear about what was requested, it was required to seek clarification." Neighborhood Alliance of Spokane v. Spokane County, 172 Wn.2d 702, 727, 261 P.3d 119 (2011).

As the record shows, no clarification was ever sought by the Department; it simply chose to not provide Mr. Kozol with the complete records he requested. Therefore, the e-mails are immaterial, as they did not have any effect upon whether the Department violated the Public Records Act.

Not only do the e-mails have no probative value as to the agency's strict statutory burden in responding to the PRA

requests, but such evidence that the Department claims to prove Mr. Kozol's intent to request knowingly unidentifiable records is legally irrelevant per statutory language in RCW 42.56.080. Despite the Department's attempt to shift the goal line closer to its side of the field, the mere arguments and desires of a state agency cannot rewrite legislative intent. The argument that a requestor's intent could somehow influence or affect how an agency violated the Public Records Act is, frankly, absurd.

Under RCW 42.56.080 it is legally immaterial why a requestor requests certain public records, and "agencies may not inquire into the reason for the request." Cornu-Labat v. Hospital Dist. No. 2 Grant County, 177 Wn.2d 221, 240, 298 P.3d 741 (2013). The statute "specifically forbids intent, regardless of whether it is malicious in design, from being used to determine if records are subject to disclosure." DeLong v. Parmelee, 157 Wn.App. 119, 146, 236 P.3d 936 (2010)(citing RCW 42.56.080); Yousoufian v. Office of Ron Sims, 168 Wn.2d 444, 461 n.8, 229 P.3d 735 (2010); Livingston v. Ceden, 164 Wn.2d 46, 53, 186 P.3d 1055 (2008)("[DOC] must respond to all public disclosure requests without regard to the status or motivation of the requestor.")

Not only did the Department unlawfully use the e-mail evidence to argue an alleged intent below that Mr. Kozol "knew the request he made to the DOC was not an identifiable record," CP 472-473, and therefore the DOC did not have to produce the records because they were not "identifiable," CP 157-159, but

now on discretionary review the Department continues to attempt to divert the Court's focus from the agency actions violating the PRA and relies heavily upon and repeatedly cites to this e-mail evidence to argue an alleged intent behind the requests, and argues the e-mails show Mr. Kozol's intent to be "probative to the issue of whether Kozol requested an identifiable record." Respondent's Answer, at 14. Such an attempt to treat Mr. Kozol differently because of alleged intent is prohibited under RCW 42.56.080.

To attempt justification of its arguments, the Department falsely stated to this Court, "Kozol asserts the Court of Appeals held that an agency is permitted to consider the requestor's intent when responding to the request." Respondent's Answer, at 13. To the contrary, it is clear that Mr. Kozol never made such an assertion, as his petition squarely stated that the Court of Appeals' surplusage finding on the e-mails "is not a holding." Petition for Review, at 19.

The issue now being raised to this Court is the fact that the Court of Appeals permitted the Department to expressly cite to and argue that an alleged intent behind the record requests was material, which inclusion was confirmed by the opening statement in the published opinion. The Department's present arguments reveal its intent that the published commentary will be used to provide guiding authority in other PRA cases. Motion to Publish, at 4. If this scenario does not constitute an agency

considering an alleged intent of a requestor in arguing against disclosure or that the agency did not violate the PRA, then nothing does, and RCW 42.56.080 has been rendered null and void.

The legislative intent behind RCW 42.56.080 is to ensure judicial review remains squarely focused upon the agency's actions in responding to a record request. This underlying theme is abundantly stated throughout the PRA, where the focus is on "[e]ach agency" (42.56.070), that the "agencies shall" (42.56.080, .100), that "the burden of proof shall be on the agency" (42.56.550), and that it is "[j]udicial review of agency actions." RCW 42.56.550(3) (emphasis added).

Despite the clear directive in RCW 42.56.080 that "[a]gencies shall not distinguish among persons requesting records," and the mandatory language that the "purpose of the request" is irrelevant, the Department wants to treat requestors differently based upon an alleged intent for requesting records so as to take the judicial focus and statutory burden off of the agency. This is emphatically prohibited under the PRA.

As the Legislature recognized, it simply does not matter what any requestor thinks or states about any related function or intent in seeking public records. But perhaps more importantly, an agency's use of a requestor's protected free speech in this context raises a far bigger issue in that, if the Department's stated reliance on the e-mails to prove that Mr. Kozol did not request "identifiable records" was permissible

under the statute, then there is no question such application would be offending a requestor's First Amendment rights.

"[T]he First Amendment protects against the government."
United State v. Stevens, 559 U.S. 460, 480, 130 S.Ct. 1577, 176 L.Ed.2d 435 (2010). This protection exists even when speaking against government. See Henne v. City of Yakima, 182 Wn.2d 446 454 n.6, 341 P.3d 284 (2015).

Here, there is no question that the Department has a deplorable history of unlawfully destroying public records so Mr. Kozol and others cannot obtain them. Exhibit 1, ¶¶ 2-3; see Petition for Review, Appendix C. Again, the Department continued this in this case, destroying eight original records after Mr. Kozol requested them. This does not lend to the public's trust in its state agencies. All the more shocking, Mr. Kozol has experienced that when requesting records to prove the Department's unlawful activities of destroying public records, the Department falsely claimed there were no such records. However, as luck would have it, Mr. Kozol's attorney happened to provide him with an e-mail from Kozol's DOC prison counselor, Marilyn Meldrich, in which she openly proclaimed "I destroy that stuff so it doesn't get out in [public disclosure] requests." Exhibit 1, ¶ 4. This smoking gun e-mail still exists in the Department's files according to its records retention policy, yet the Department continues to silently withhold these records from Mr. Kozol. Or perhaps now after Mr. Kozol requested it, it too has been unlawfully destroyed.

As the Legislature and the Citizens made clear in enacting the PRA,

"The people of this state do not yield their sovereignty to the agencies that serve them," and they - including Mr. Kozol - "do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created."

RCW 42.56.030.

As the evidence shows, the Department cares little about complying with the Public Records Act. Just the last seven years shows an alarming number of PRA violations. Exhibit 1, Att.C. Are these numerous violations over all these years the result of the Department being "outwitted" and "tripped up" into violating the PRA by an army of prisoners with too much access to the prison law library? Certainly not. As a result, the public, including Mr. Kozol, is concerned with the government instrument they have created, and justifiably so.

Mr. Kozol has an absolute right to say whatever he wishes to his family and friends in criticizing government mismanagement and incompetence. "[T]he protection given free speech...was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Roth v. United States, 354 U.S. 476, 484, 1 L.Ed.2d 1498, 77 S.Ct. 1304 (1957). Free Speech on public issues occupies the "highest rung of the hierarchy of First Amendment values" and is entitled to special protection. NAACP v. Clairborne

Hardware Co., 458 U.S. 886, 913, 102 S.Ct 3409, 73 L.Ed.2d 1215 (1982).

As a member of the citizenry who has a right to "maintain control over the instrument they have created," (RCW 42.56.030), Mr. Kozol is free to state his frustrations and criticisms against government conduct, even with his being a prison inmate. See, e.g., Baghdasaryan v. Holder, 592 F.3d 1018, 1024-25 (9th Cir. 2010). (political opinion was imputed to prisoner where he was "defaming" and "raising his head" against government corruption). State agencies such as the Department may not begin to encroach upon a requestor's right to free speech by attempting to use his protected speech as a post-hoc justification for the Department's violation of the Public Records Act, especially in terms of arguing that a requestor's alleged intent in requesting records rendered the records "unidentifiable."¹

There is no need in this forum for Mr. Kozol to specifically address each of the numerous factual inaccuracies and contextual misrepresentations that the Department puts forth in selectively quoting the e-mails, because as a threshold matter the evidence is irrelevant and inadmissible.²

¹ To highlight the absurdity of the Department's argument, these emails were sent in 2011 and 2012. The Department did not review and obtain them until June 2014. CP 477-479. Post-hoc review, two years later, was not a factor in the Department's chosen responses and actions taken upon the requested records.

² It must be noted that these emails were selectively cherry-picked by the Department, and some were fraudulently altered before being filed in the trial court. Mr. Kozol has other litigation in superior court and the Court of Appeals addressing these issues.

It is abundantly clear that the Department wants to divert the Court's attention away from agency actions, and attempt to prejudice Mr. Kozol by using his protected thoughts and speech against him. But the First Amendment protects speakers from both criminal and civil liability or sanctions for their statements. Clairborne Hardware Co., 458 U.S. at 928. It is of no moment that there was any discussion in the e-mails of filing lawsuits in multiple counties, because the record shows that Mr. Kozol brought all 31 claims in this case in a single lawsuit, when he could have brought multiple suits in multiple counties. More importantly, Mr. Kozol submitted eight follow-up requests seeking the withheld records before he had to resort to litigation. These facts cause the Department's arguments to ring hollow. Further, Mr. Kozol has never stated in any of these e-mails that he intended to file an "avalanche of lawsuits," despite the Department's mendacious assertion. Mr. Kozol never said this, and as such is concomitantly filing a motion for CR 11 violation.

Mr. Kozol's only action was to request specific public records. His conversations and hyperbole about what may happen, his frustrations with government conduct, and any possibility that the Department may continue its pattern and practice of blatantly violating the Public Records Act in bad faith cannot be used adversely to his position as a litigant in this case against the government, or else the Department must begin

presenting the alleged intent of every requestor. However, treating requestors differently is not only prohibited under RCW 42.56.080, but it would violate the First Amendment to use a requestor's free speech about government activity or purpose for making requests as a basis to defend a violation of the PRA. A requestor's "intended use of the information cannot be a basis for denying disclosure. To include otherwise would allow agencies to deny access to public records to its most vocal critics, while supplying the same information to its friends." King County v. Sheehan, 114 Wn.App. 325, 341, 57 P.3d 307 (2002). Under the PRA, the "release of information is not conditioned upon the use to which the information will be put." Yacobellis v. Bellingham, 55 Wn.App. 706, 710, 780 P.2d 272 (1989); In re Rosier, 105 Wn.2d 606, 611, 717 P.2d 1353 (1986). "In our system of justice each litigant is entitled to the protection of the rule of law - our fiercely protected and willingly shared right." Duc Tan v. Lee, 177 Wn.2d 649, 674 n.9, 300 P.3d 356 (2013).

"It is well established that the First Amendment protects speech that others might find offensive or even frightening. Speech may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with the conditions as they are or even stirs people to anger. Speech is often provocative and challenging."

Fogel v. Collins, 531 F.3d 824, 829 (9th Cir. 2007). Some may not approve of Mr. Kozol's thoughts and statements.³ But to

³ Contrary to Respondent's aspersions, nothing in the e-mails disprove or conflict with Mr. Kozol's deposition testimony. The e-mails discuss specific mechanisms of obtaining the records and elements of litigation strategy in preparation for possible litigation to obtain wrongfully withheld records. Mr. Kozol's deposition testimony focused upon the underlying need and use of the records, once obtained, to bring suit against the Department for its misconduct in its grievance program.

feed into such distraction misses the crucial point in this analysis that the overriding component in this government course of conduct is a strict requirement to comply with the Public Records Act.

If the Department had simply complied with the Public Records Act, had not silently withheld requested document pages from Mr. Kozol in order to hide racially disparaging comments contained thereon, and had not proceeded to destroy the requested record pages to conceal the misconduct, there would never be any need for these issues to even appear before this Court. "Courts have long recognized that speech may need to be abrasive or upsetting in order to draw attention to the speaker's cause." Id., at 829. This is no less true when here Mr. Kozol's cause is to compel the Department of Corrections to follow the law of Washington State.

In Fogel, a vehicle owner had the following words painted on his van: "I AM A F[---]ING SUICIDE BOMBER COMMUNIST TERRORIST ! PULL ME OVER PLEASE, I DARE YA[.] PRAISE THE PATRIOT ACT...F[---]ING JIHAD ON THE FIRST AMENDMENT! P.S. W.O.M.D. ON BOARD!" Fogel, 531 F.3d at 827. The Ninth Circuit held that when the police took action against the owner of this van, they violated his First Amendment rights to free speech. Id., at 829. To apply the same analysis here under a lens of reason, it should not matter what Mr. Kozol or any requestor thought or stated about whether the Department or any agency was probably

or may be going to violate the Public Records Act. Free speech is not trumped by government feigning impuissance.

If every requestor of records stated in their record request the warning that "IF YOU CHOOSE TO VIOLATE THE PRA I WILL PROCEED WITH SUING YOU FOR STATUTORY PENALTIES - VIOLATE THE PRA PLEASE. I DARE YOU !" the agencies would certainly not claim that the requestor's statement showed an intent to "set up lawsuits," or that a requestor did not seek identifiable records, as the Department now argues. Nor could an agency use such a statement to avoid strictly complying with the PRA. If anything, such a proclamation would undoubtedly lead to a decrease in Public Records Act violations.

As a matter of law such statements of "threats to sue" or plans to sue are a vital component of the PRA's overall purpose. In Zink v. City of Mesa, 140 Wn.App. 328, 166 P.3d 738 (2007), the Court of Appeals held that a requestor's statements to agency staff warning, "you'd better do this," "look this up," and "if you don't do this just right, I'm gonna sue ya," did not excuse noncompliance with the PRA. Id., at 343. To the contrary, the Court of Appeals clarified that the statements were not a threat towards anyone, "but instead served the legitimate purpose of achieving lawful disclosure of public documents." Id. Public enforcement breeds compliance.

In actuality, the only difference here is that what the Department points to as an alleged intent of Mr. Kozol was made in purely personal communications in a confined forum of e-mail

correspondence. There is no basis in law to use Mr. Kozol's protected speech against him when other requestor's overt threats to sue are legally held to be effective enforcement of the PRA. Treating Mr. Kozol differently based upon his speech is in violation of RCW 42.56.080 and the First Amendment. Further, the Department did not even learn of these e-mails until several years after it violated the PRA, silently withheld records, and destroyed the records Mr. Kozol requested. If the Department follows the law, there will be no violations. It is that simple.

It is unfathomable to comprehend how a requestor, confined to a prison cell, could merely request specific records and by sheer will coerce an agency into violating the PRA in bad faith. This is all the more so when, as here, eight follow-up letters were submitted simply seeking the withheld records, before litigation had to be resorted to. But this is just a growing trend among agencies to push for ways to not have to disclose public records, and to escape being found in violation of the PRA. Historically, the Washington courts have disapproved of these types of agency arguments. In City of Lakewood v. Koenig, 160 Wn.App. 883, 250 P.3d 113 (2011) the City "sought Koenig's litigation history to use his alleged history of bad faith lawsuits to reduce any penalty," which included the City's intent to "show that Koenig regularly delayed filing a lawsuit until the final day of the PRA's statute of limitation period as a way of maximizing his penalty award." Id., at 894. The Court

of Appeals squarely rejected the argument and clearly enforced strict statutory compliance, stating, "[a]s long as Koenig acted within the statute of limitation, we are not concerned with when he brings a PRA lawsuit." Id. The Washington courts have rejected such attempts to lessen an agency's strict statutory burden, and the Department's use of Mr. Kozol's protected speech to prove alleged intent behind the requests requires the same fate. It "violate[s] RCW 42.56.080" if the agency "use[s] the requestor's identity to deny access to public records." Id. at 891. If Mr. Kozol's name was not on these e-mails, the Department would not be attempting to use them in this case.

It is the Department's affirmative duty to follow the statutory requirements of the PRA. Civil jurisprudence affords robust whistle-blower protection, and the law supports citizen watchdog group activity. Therefore, even if arguendo Mr. Kozol's e-mails showed an intent behind the requests to test whether the Department would violate the law, the Department should not be violating the law in the first place. In fact, every PRA request by definition is testing whether the agency is following the law. If the Department acts in bad faith in violating the PRA, the legislative remedy is the enacted penalty provision to deter future violations. Considering the alleged intent of a requestor would preclude a non-biased judicial determination of agency action and imposition of deterrent penalties.

"The purpose of the act's attorney fees, costs, and daily penalties is to reimburse the requestor for vindicating the public's right to obtain public records...and to deter agencies from improperly withholding records." WAC 44-14-08004(7). The Supreme Court has emphasized that "strict enforcement" of the PRA's penalty provision "will discourage improper denial of access to public records." Amren v. City of Kalama, 131 Wn.2d 25, 36, 929 P.2d 389 (1997) (quoting Progressive Animal Welfare Society v. Univ. of Wash., 125 Wn.2d 243, 271, 884 P.2d 592 (1994)). "Thus, the legislature plainly intended to afford prisoners an effective records search, while insulating agencies from penalties so long as they did not act in bad faith.' By incorporating the bad faith requirement, the legislature allows penalties for inmates only when the conduct of the agency defeats the purpose of the PRA and deserves harsh punishment." Faulkner v. Dep't of Corr., 183 Wn.App. 93, 106, 332 P.3d 1136 (2014)(quoting Francis v. Dep't of Corr., 178 Wn.App. 42, 60, 313 P.3d 457 (2013)). Any statement about enforcing the PRA serves the overall purpose of the Act, and is also protected speech under the First Amendment.

The Department's reliance on this inadmissible e-mail evidence only serves to prejudice the Court against Mr. Kozol. The Department caused a traffic accident and now wants to blame the other car that was obeying all the rules of the road.

F. CONCLUSION

For all the foregoing reasons, the e-mail evidence is wholly irrelevant under RCW 42.56.080, DeLong, supra, and other cited authorities. The irrelevant evidence is inadmissible under ER 402 or 403. It is legally inferred that the trial court did not consider the e-mail evidence nor find a malicious intent from the e-mail evidence. A comment by the Court of Appeals does not resuscitate evidence admissibility, and does not permit the Respondent to cite to and argue inadmissible evidence in its Answer. Petitioner respectfully requests that the Court order any reference to the e-mail evidence appearing at Clerk's Papers 477-528 be stricken from Respondent's Answer, or in the alternative, direct Respondent to submit a new brief within an appropriate period of time. This motion is necessary to secure the fair review of this case, RAP 7.3, and to insure effective and equitable review. RAP 8.3.

RESPECTFULLY submitted this 21st day of April, 2016.



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DECLARATION OF SERVICE BY MAIL
GR 3.1

I, STEVEN P. KOZOL, declare and say:

That on the 21st day of April, 2016, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 92792-8:

Petitioner's Motion to Strike Sections of Respondent's Answer;

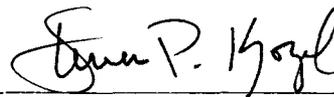
addressed to the following:

Clerk of the Court
Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Candie M. Dibble, AAG
Attorney General's Office
1116 W. Riverside Ave., #100
Spokane, WA 99201-1194

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 21st day of April, 2016, in the City of Aberdeen, County of Grays Harbor, State of Washington.



Signature

STEVEN P. KOZOL

Print Name

DOC 974691 UNIT H6-A86
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520

EXHIBIT 1

IN THE SUPREME COURT OF WASHINGTON STATE

STEVEN P. KOZOL,)
Petitioner,) No. 92798-8
)
v.)
WASHINGTON STATE DEPT.) DECLARATION OF STEVEN KOZOL
OF CORRECTIONS,)
Respondent.)
_____)

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

1. I am the plaintiff/petitioner in the above captioned case, am over the age of 18 years, and am competent to testify to the following facts based upon my personal first-hand knowledge thereof.

2. The Department of Corrections has many times unlawfully destroyed public records after I have requested them. As one example, when the Superintendent of Stafford Creek Corrections Center relied upon an "inmate kite" to prove the State's position in a tort action I was pursuing, I had reason to believe that the document did not state what the Superintendent claimed it did. I wrote the Superintendent, notified him to preserve this document as I was requesting a copy under the Public Records Act. The Department then provided me with a fraudulently altered copy of the kite, and upon notifying the Department the copy was forged/altered, I then requested disclosure of the original. The Department then destroyed the original. Attached as

Attachment A is a true and correct copy of the correspondence exchanged between myself and the Department of Corrections, dated April 14, 2011, April 26, 2011, March 7, 2012, March 12, 2012, April 10, 2012, June 7, 2012, July 18, 2012, July 20, 2012, August 2, 2012, and September 14, 2012 letters.

3. Twenty-two other times outside of the case at bar the Department has withheld and then destroyed responsive pages of original grievances that I have specifically requested to prove government misconduct.

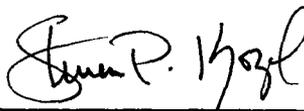
4. I submitted a request for public records to the Department seeking any e-mails containing statements from WDOC staff that identify they destroy public records to prevent them from being produced in public disclosure. The Department told me that there were no such records. Soon after, I had the need in other litigation to serve a subpoena duces tecum upon attorney Thomas A. Balerud. In response to the subpoena, Mr. Balerud produced a batch of e-mails, which included an e-mail from my prison counselor, Marilyn Meldrich, where she stated, "I destroy that stuff so it doesn't get out in PD requests." Despite a follow-up letter to the Department regarding the search for such records, the Department still is silently withholding the records from me. Attached as Attachment B is a true and correct copy of the February 11, 2015 and March 17, 2015 correspondence I received from the Department of Corrections, a copy of the

subpoena duces tecum I served upon Thomas A. Balerud in the captioned action, and the October 28, 2015 letter with one of the e-mails produced for me by Thomas A. Balerud.

5. Attached as Attachment C is a true and correct copy of the Department of Corrections' discovery responses as filed in Thurston County Superior Court Case No. 15-2-00672-7.

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.

EXECUTED this 21st day of April, 2016, at Aberdeen, Washington.



STEVEN P. KOZOL
Declarant

ATTACHMENT A



Rec'd on 4-19-11
via campus mail. (SPK)

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
STAFFORD CREEK CORRECTIONS CENTER
191 Constantine Way • MS WA-39 • Aberdeen, Washington 98520 • (360) 537-1800
FAX (360) 537-1807

April 14, 2011

TO: Steven Kozol
H-6 Living Unit, A3

FROM: Pat Glebe Superintendent
Stafford Creek Corrections Center

SUBJECT: Typewriter Rejection

I am in receipt of your correspondence regarding the rejection of your typewriter. This rejection is being upheld as your mother purchased the typewriter. Per policy this is not allowed.

Our facility has revised our operational memorandum to add Swintec as an approved vendor for offenders to purchase the 64K Memory Typewriters, after reviewing Mr. Murphy's memorandum; however, our policy and procedure is that the only approved vendor for family to purchase from is ACCESS. This has not changed and the memorandum that Mr. Murphy sent out did not change this, it only added Swintec as an approved vendor for offenders.

After further review, it was found in your property file that you had sent a kite to Sergeant Swope on December 3, 2010, to ask about your family purchasing this typewriter for you. Sergeant Swope responded back to you on December 10, 2010, that family members are not allowed to purchase from Swintec for you from ACCESS, but if they want to put money on your books for you to purchase it from your own account they could do so. So in light of this new evidence it shows that you knowingly disregarded policy and had your mother purchase the typewriter anyway.

No more correspondence will be accepted regarding this issue. Please follow directives and send this typewriter out.

PG:bt
SUPT3498

cc: S. Izatt, Policy Coordinator
C. May, Captain
C. Whaley, Investigator 3
Offender Central File
File

"Working Together for SAFE Communities"

Steven P. Kozol, DOC# 974691
Unit H6-A3
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

April 26, 2011

Pat Glebe, Superintendent
Stafford Creek Correctional Center
191 Constantine Way, MS:WA-39
Aberdeen, WA 98520

Re: Typewriter Rejection

Dear Mr. Glebe:

I am in receipt of your April 14th letter regarding the rejection of my typewriter.

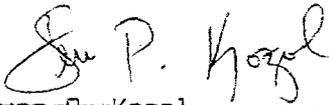
You stated that a kite was found in my property file on which Sgt. Swope responded on December 10, 2010, that my family is not allowed to purchase my typewriter for me from Swintec. To date I have never received any such response from a Sgt. Swope. I only have my pink inmate copy of the kite I sent, and a response never came back to me.

Because I received no response to my December 3, 2011 kite, I asked H6 unit staff and they told me that other inmates in the unit had just had their family purchase a swintec typewriter for them. This was the basis upon which I had my mother purchase my Swintec typewriter for me.

What is more, there does not exist a legitimate penological interest in allowing an inmate's family to purchase a typewriter from CI/Access Securepak, but not be allowed to purchase a typewriter from Swintec. As you point out in your letter, Swintec is an approved vendor for offenders. So is CI/Access Securepak. I have inquired with every level of SOCC staff, all the way up to Eldon Vail, and not one person will answer my question of, what is the legitimate penological interest in denying a typewriter from Swintec, but allowing it from CI/Access Securepak? The first obvious conclusion is that DOC directly profits from typewriters sold by CI/Access, whereas Swintec does not pay any percentage to DOC. According to long-standing case law, this does not rise to the level of a legitimate penological interest.

I wrote Eldon Vail just days before receiving your letter, and I have attached a copy for your review. I ask that you please either issue my typewriter to me, or state in writing the legitimate penological interest for denying it. Also, because you denied my typewriter on the erroneous conclusion ("in light of this new evidence") that I had received a kite response from Sgt. Swope, I ask that you please reconsider this issue and issue my typewriter. Thank you.

Sincerely,



Steven P. Kozol

c:file

Michael G. Gusa, Attorney

Steven P. Kozol, DOC# 974691
Unit H6-A86
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

March 7, 2012

Pat Glebe, Superintendent
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

RE: Pat Glebe Letter of April 14, 2011

Dear Superintendent Glebe:

As you know, I had been told by SCCC staff that my family was allowed to purchase a Swintec 64K memory typewriter for me, and upon such instruction my mother did so in December 2010. As you are also aware, I spent the next nine months trying to get this typewriter issued to me by SCCC staff, as once it arrived they told me I couldn't have it because my family paid for it.

I wrote a barrage of letters appealing this property restriction, to Captain Clint May, to you, and to Roy Gonzalez at headquarters. In every letter I requested that the "legitimate penological interest" be identified that prohibited my family from purchasing a typewriter for me from a DOC/SCCC approved vendor, yet at the same time my family was allowed to purchase a non-64K memory typewriter for me from the Access/Securepak approved vendor. Neither you, nor any other DOC official ever answered this question.

I continued to write to you to get my typewriter issued to me, and on April 14, 2011, you wrote a letter to me categorically refusing to respond to any more of my letter. In this April 14 letter, you specifically stated that because SCCC Sgt. Swope allegedly told me in a written kite response on 12-10-10, that my family could not pay for my Swintec typewriter, you were finding that I knowingly disregarded policy, and therefore could not get my typewriter issued to me.

I wrote you a letter on April 26, 2011, informing you that I had never received or seen/heard any such response back from Sgt. Swope. You failed to respond to this letter to date.

I recently learned that an SCCC inmate, Josh Frost, had a similar problem with SCCC staff lying to him. He received a kite response back from SCCC property staff that said in writing that his family could purchase the Swintec 64K memory typewriter for him directly. When they did so, it was rejected upon arrival at SCCC. Inmate Frost recently showed me a copy of his lawsuit

he has filed against you and other SOCC staff, and sworn declarations filed in this suit state that when Inmate Frost presented the written permission for his family to make the purchase, as stated on the kite, SOCC Lieutenant Kline said to him, "What are you going to do - sue us?"

Based upon these examples of duplicity exhibited in the handling of this issue, I have a sneaking suspicion that you were not truthful to me in stating that a kite response from Sgt. Swope expressly prohibited my family from directly paying for my Swintec typewriter. I am actually thinking that the kite probably said that my family was allowed to pay for it, just like Inmate Frost was told, and that you purposefully told me misinformation, thinking I would get confused, go away, or not be intelligent enough to figure out that there is a systematic effort at SOCC to make it as difficult and expensive as possible for inmates to get Swintec 64K typewriters, because it is in SOCC's interest to try to thwart inmate's access to the courts, and to file civil complaints against SOCC's practices. Case in point: the SOCC inmate who sued last year over inadequate law library access, and received around \$25,000.00 in damages. This is taxpayer money that could have been better spent, if it weren't being used to pay for SOCC blatant civil rights violations.

By this letter, and pursuant to the Public Records Act, RCW 42.56 et seq, I am hereby giving you official notice that I will be submitting a public record request to DOC headquarters to obtain a copy of the alleged kite response from Sgt. Swope that your April 14, 2011 letter cited as reason to deny me my typewriter. Pursuant to RCW 42.56.100, you are not permitted to now go and destroy this kite, even if it has been scheduled for destruction. Further, you and your agency (DOC) are required under RCW 42.56.550(3) to produce this record, even if "such examination may cause inconvenience or embarrassment to public officials or others", such as if this kite doesn't say what you claim it does, but instead states authorization for my family's purchase, as in the case of Inmate Frost and his kite.

Thank you for your time. Have a great day!

Cordially,

151
Steven P. Kozol
cc: file

Steven P. Kozol, doc# 974691
Unit H6-A86
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

March 12, 2012

Terry Pernula
Public Disclosure Specialist
Department of Corrections
P.O. Box 41118
Olympia, WA 98504

RE: Public Records Act (PRA) Request

Dear Ms. Pernula:

By this letter and pursuant to the PRA I am requesting a copy of the Inmate Kite I submitted on 12-3-10, responded to by Sgt. Swope on 12-10-10, which states my family cannot purchase a Swintec typewriter for me. I was told by SOCC Superintendent Pat Glebe that this kite is currently in my property file at Stafford Creek Corrections Center.

I sent a letter on 3-7-12 to Pat Glebe in which I stated that I believed he was being untruthful about this kite. My letter also informed him of my intention to request this record under the Public Records Act, RCW 42.56 et seq, and that pursuant to RCW 42.56.100 it is unlawful to destroy this record now that I have given him notice that I am requesting it, even if it was scheduled for destruction, or if it would cause "inconvenience or embarrassment" to him, per RCW 42.56.550(3).

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

Sincerely,

/s/

Steven P. Kozol

✓ cc: file



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

April 10, 2012

Mr. Steven Kozol, DOC # 974691
Unit H6 – A-86 U
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Dear Mr. Kozol:

Your request for records was received in the Public Disclosure Unit on April 4, 2012. This request has been assigned public disclosure tracking number PDU-19645. Please reference that number in any future correspondence regarding this request.

You are requesting a copy of the kite you submitted on 12-3-10 which was responded to by Sgt. Swope on 12-10-10. You state the topic of the kite relates to your family not being able to purchase a Swintec typewriter for you.

Staff are in the process of determining if there are records responsive to your request and if so, gathering them. I will correspond with you regarding the status of PDU-19645 within 45 business days, on or before June 13, 2012.

Sincerely,

Terry Pernula, Public Disclosure Specialist
Department of Corrections
P.O. Box 41118
Olympia, WA 98504-1118

tp:PDU-19645
cc: file

“ Working Together for SAFE Communities ”



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

June 7, 2012

Mr. Steven Kozol, DOC # 974691
Unit H6 – A-86 U
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Dear Mr. Kozol:

This is a follow up to my last correspondence regarding PDU-19645 dated April 10, 2012. You requested a copy of the kite you submitted on 12-3-10 which was responded to by Sgt. Swope on 12-10-10.

A one-page document has been identified as responsive to your request. The Department charges a copy fee of \$0.20 per page plus postage. Upon receipt of a check or money order payable to the Department in the amount of \$0.65 (\$0.20 for copies and \$0.45 for postage), the record will be mailed to you. Payment in the **exact** amount should be mailed to the address below with reference to PDU-19645.

Please note that all records sent to incarcerated offenders are subject to Department mailroom policy guidelines. Your payment for copies of records requested under the Public Records Act does not ensure that these same records will be allowed into a secure prison facility (Livingston v. Cedeno, 186 P.3d 1055 (Wash. 2008)). Should you wish to have records mailed to a third party on your behalf please provide the correct name and mailing address with your payment. Otherwise, the responsive records will be sent to your attention.

If no response is received from you within 30 days of the date of this letter, the file for this request will be closed.

Sincerely,

Terry Pernula, Public Disclosure Specialist
Department of Corrections
P.O. Box 41118
Olympia, WA 98504-1118

tp:PDU-19645
cc: file

"Working Together for SAFE Communities"



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

July 18, 2012

Mr. Steven Kozol, DOC # 974691
Unit H6 – A-86 U
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Dear Mr. Kozol:

This is to acknowledge receipt of payment in the amount of \$0.65 for costs associated with PDU-19645. You requested a copy of the kite you submitted on 12-3-10 which was responded to by Sgt. Swope on 12-10-10.

Enclosed is the one-page identified as responsive to your request. This document is provided to you in accordance with the Public Records Act. By making agency documents available to you, the Department is not responsible for your use of the information or for any claims or liabilities that may result from your use or further dissemination.

The file for PDU-19645 is now closed.

Sincerely,

A handwritten signature in cursive script that reads "T. Pernula".

Terry Pernula, Public Disclosure Specialist
Department of Corrections
P.O. Box 41118
Olympia, WA 98504-1118

tp:PDU-19645
enclosure
cc: file

"Working Together for SAFE Communities"

Steven P. Kozol, DOC# 974691
Unit H6-A86
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

July 20, 2012

Terry Pernula
Public Disclosure Specialist
Department of Corrections
P.O. Box 41118
Olympia, WA 98504-1118

RE: PDU-19645

Dear Ms. Pernula:

I am in receipt of your July 18, 2012 letter and the copy of the inmate kite that was the subject of this record request.

Upon my review of the responsive document, I contend that it is a forgery, as this does not appear to be the kite I submitted.

It appears to me that this kite has been altered or fabricated, either of which violates RCW 42.56.100, RCW 40.16.010 and RCW 40.16.020.

Therefore, I am now requesting to view the original 12-3-10 inmate kite that was used to make the copy provided to me. See RCW 42.56.070(1) ("Each agency, in accordance with published rules, shall make available for public inspection and copying all public records....") (emphasis mine).

Please inform me of the date and time at which I can inspect this original kite here at Stafford Creek Corrections Center.

Sincerely,

/s/

Steven P. Kozol

cc: file



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

August 2, 2012

Mr. Steven Kozol, DOC # 974691
Unit H6 – A-86 U
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Dear Mr. Kozol:

This is in response to your letter dated July 20, 2012, and received July 26, 2012, regarding PDU-19645. Your original request was for a copy of a kite you submitted on December 3, 2010, which was responded to by Sgt. Swope on December 10, 2010.

I provided a copy of the requested document to you on July 18, 2012. You now write to say that you feel the kite has been altered or fabricated and want to view the original kite that was used to make the copy that was provided to you.

I have asked staff at Stafford Creek Corrections Center to conduct another search for any other versions of the aforementioned kite. I will correspond with you regarding PDU-19645 within 30 business days, on or before September 14, 2012.

Sincerely,

Terry Pernula, Public Disclosure Specialist
Department of Corrections
P.O. Box 41118
Olympia, WA 98504-1118

tp:PDU-19645
cc: file

"Working Together for SAFE Communities"



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

September 14, 2012

Mr. Steven Kozol, DOC # 974691
Unit H6 – A-86 U
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Dear Mr. Kozol:

This is a follow up to my last correspondence to you dated August 2, 2012, regarding PDU-19645. Your original request was for a copy of a kite you submitted on December 3, 2010, which was responded to by Sgt. Swope on December 10, 2010. I provided a copy of the kite to you on July 18, 2012. You then asked to view the original kite.

I have been assured by staff at Stafford Creek Corrections Center that the original kite no longer exists. Therefore, the file for PDU-19645 is closed.

Sincerely,

A handwritten signature in cursive script that reads "T. Pernula".

Terry Pernula, Public Disclosure Specialist
Department of Corrections
P.O. Box 41118
Olympia, WA 98504-1118

tp:PDU-19645
cc: file

" Working Together for SAFE Communities "

ATTACHMENT B



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

February 11, 2015

Steven Kozol, DOC#974691
Stafford Creek Corrections
191 Constantine Way (H6-A86)
Aberdeen, WA 98520

Mr. Kozol:

I acknowledge receipt of your recent public records request received in our office on February 4, 2015. We have assigned this request a tracking number of PDU-32816. Please refer to this number in all future communications with us about this request. You write to request the following record(s):

1. A copy of any and all e-mails within the past six (6) years where any DOC staff have maintained or identified that they dispose of records in order to prevent them from being disclosed under the PRA.

Department staff are currently identifying and gathering records, if any, responsive to your request. I will respond further as to the status of your request within 23 business days, on or before March 17, 2015. If you have any questions in the interim, please contact me at the address below.

Sincerely,

A handwritten signature in cursive script that reads "Paula Terrell".

Paula Terrell, Public Disclosure Specialist
Public Disclosure Unit
Department of Corrections
PO Box 41118
Olympia WA 98504-1118
plt:
cc: File PDU #32816

"Working Together for SAFE Communities"



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

March 17, 2015

Steven Kozol, DOC#974691
Stafford Creek Corrections
191 Constantine Way (H6086U)
Aberdeen, WA 98520

Dear Mr. Kozol:

Under PDU-32816, you requested the following records:

1. A copy of any and all e-mails within the past six (6) years where any DOC staff have maintained or identified that they dispose of records in order to prevent them from being disclosed under the PRA.

A search was conducted for responsive records and none were found.

PDU-32816 is now closed.

Sincerely,

Paula Terrell, Public Disclosure Specialist
Public Disclosure Unit
Department of Corrections
PO Box 41118
Olympia WA 98504-1118
plt:PDU #32816
Enclosure
cc: File

“ Working Together for SAFE Communities ”

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

DEPARTMENT OF CORRECTIONS,)
Plaintiff,) No. 15-2-00672-7
v.)
BLAKE STERLING-COSWELL,) SUBPOENA DUCES TECUM
et al.,) IN A CIVIL CASE
Defendants.)
_____)

THE STATE OF WASHINGTON TO: THOMAS A. BALERUD

YOU ARE HEREBY COMMANDED to produce for inspection and copying of
the following documents or tangible things at the place, date, and time
specified below:

1. All email communications which were received by you in the months
of February 2012, March 2012, April 2012, and May 2012, that were sent
to you by staff at the Stafford Creek Corrections Center, in Aberdeen,
Washington, concerning the subject matter of Steven P. Kozol, without
limitation.

PLACE: The requested documents are to be sent via U.S. Mail, "Legal
Mail", to Steven P. Kozol, DOC# 974691, Stafford Creek Corrections Center,

Steven P. Kozol, DOC# 974691
191 Constantine Way
Aberdeen, WA 98520 Ph:(360)537-1800

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191 Constantine Way, Aberdeen, WA, 98520. Pursuant to Rule 45, Civil Rules for Superior Court, State of Washington, you are hereby commanded to produce the above-identified documents within thirty (30) days of service of this subpoena upon you.

HEREIN FAIL NOT AT YOUR PERIL.

DATED this _____ day of OCT - 6 2015, 2015.

Linda Myhre Enlow
Thurston County Clerk
2000 Lakeridge Dr. S.W.
Olympia, WA 98502

Clerk of the Superior Court
of Thurston County, Washington.

[Signed] 
[Deputy Name] **MELISSA S. PEREZ**

1 CR 45, Sections (c) & (d):

2 **(c) Protection of Persons Subject to Subpoenas.**

3 (1) A party or an attorney responsible for the issuance and service of a subpoena shall take
4 reasonable steps to avoid imposing undue burden or expense on a person subject to that
5 subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of
6 this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a
7 reasonable attorney's fee.

8 (2)(A) A person commanded to produce and permit inspection and copying of designated
9 books, papers, documents or tangible things, or inspection of premises need not appear in
10 person at the place of production or inspection unless commanded to appear for deposition,
11 hearing or trial.

12 (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit
13 inspection and copying may, within 14 days after service of subpoena or before the time
14 specified for compliance if such time is less than 14 days after service, serve upon the party or
15 attorney designated in the subpoena written objection to inspection or copying of any or all of
16 the designated materials or of the premises. If objection is made, the party serving the
17 subpoena shall not be entitled to inspect and copy the materials or inspect the premises except
18 pursuant to an order of the court by which the subpoena was issued. If objection has been
19 made, the party serving the subpoena may, upon notice to the person commanded to produce
20 and all other parties, move at any time for an order to compel the production. Such an order to
21 compel production shall protect any person who is not a party or an officer of a party from
22 significant expense resulting from the inspection and copying commanded.

23 (3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the
24 subpoena if it:

25 (i) fails to allow reasonable time for compliance;

26 (ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or
waiver applies; or

(iv) subjects a person to undue burden, provided that, the court may condition denial of
the motion upon a requirement that the subpoenaing party advance the reasonable cost of
producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or
commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing
specific events or occurrences in dispute and resulting from the expert's study made not at the
request of any party, the court may, to protect a person subject to or affected by the subpoena,
quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a

1 substantial need for the testimony or material that cannot be otherwise met without undue
2 hardship and assures that the person to whom the subpoena is addressed will be reasonably
3 compensated, the court may order appearance or production only upon specified conditions.

4 **(d) Duties in Responding to Subpoena.**

5 (1) A person responding to a subpoena to produce documents shall produce them as they
6 are kept in the usual course of business or shall organize and label them to correspond
7 with the categories in the demand.

8 (2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or
9 subject to protection as trial preparation materials, the claim shall be made expressly and shall
10 be supported by a description of the nature of the documents, communications, or things not
11 produced that is sufficient to enable the demanding party to contest the claim.

12 (B) If information produced in response to a subpoena is subject to a claim of privilege or of
13 protection as trial-preparation material, the person making the claim may notify any party that
14 received the information of the claim and the basis for it. After being notified, a party must
15 promptly return, sequester, or destroy the specified information and any copies it has; must not
16 use or disclose the information until the claim is resolved; must take reasonable steps to
17 retrieve the information if the party disclosed it before being notified; and may promptly
18 present the information in camera to the court for a determination of the claim. The person
19 responding to the subpoena must preserve the information until the claim is resolved.

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Steven P. Kozol, DOC# 974691
191 Constantine Way
Aberdeen, WA 98520 Ph:(360)537-1800

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing document on all parties or their counsel of record as follows:

Via Certified U.S. Mail, Return Receipt Requested to:

Thomas A. Balerud, Attorney
Law Office of Thomas A. Balerud
417 S. G Street
Tacoma, WA 98405

U.S. Mail Postage Prepaid

Timothy J. Feulner, AAG
Attorney General's Office
P.O. Box 40116
Olympia, WA 98504

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 14th day of October, 2015, at Aberdeen, Washington.



STEVEN P. KOZOL

LAW OFFICE OF THOMAS A. BALERUD

Thomas A. Balerud, Attorney
Pamela L. Rainwater, Paralegal

417 S. G Street
Tacoma, WA 98405
T: 253-573-1111
F: 253-573-1115
email: tbalerud@balerudlaw.com

October 28, 2015

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

Re: DOC v. Blake Sterling-Coswell, et al
Thurston County Superior Court #15-2-00672-7
Response to SDT sent to Thomas A. Balerud

Dear Steven:

In response to the Subpoena Duces Tecum I received in the above-referenced matter, please find attached, any/all emails in my file I received in the months of February, March, April and May 2012, from staff at the Stafford Creek Corrections Center concerning the subject matter of Steven P. Kozol.

I should also add Steven, that shortly after I received your letter containing the Subpoena, I also received a request (not in the form of a Subpoena) from an Assistant Attorney General named Feulner, requesting a copy of the records you requested. In my experience, it is standard form to mail out duplicates. In this case, however, I first wanted to secure your permission before I sent out a second set of the printed emails to the opposing party's attorney.

Please advise.

Sincerely,



THOMAS A. BALERUD

Thomas A. Balerud

From: Meldrich, Marilyn E. (DOC) <memeldrich@DOC1.WA.GOV>
Sent: Tuesday, March 20, 2012 10:54 AM
To: tbalerud@balerudlaw.com
Subject: RE: Kozol 974691

 I destroy that stuff so it doesn't get out in PD requests. Thanks again.

Marilyn Meldrich
Stafford Creek Corrections Center
360-537-1992

"Obstacles don't have to stop you. If you run into a wall, don't turn around and give up. Figure out how to climb it, go through it, or work around it." Michael Jordan.

From: Thomas A. Balerud [<mailto:tbalerud@balerudlaw.com>]
Sent: Tuesday, March 20, 2012 10:45 AM
To: Meldrich, Marilyn E. (DOC)
Subject: RE: Kozol 974691

Good morning Ms. Meldrich!

I spoke with Tom and he would like to visit Steven Kozol on Saturday, April 14th at noon.

Thank you,
Kayleen Bystrom
Paralegal to Thomas A. Balerud

From: Meldrich, Marilyn E. (DOC) [<mailto:memeldrich@DOC1.WA.GOV>]
Sent: Thursday, March 15, 2012 3:14 PM
To: tbalerud@balerudlaw.com
Subject: RE: Kozol 974691

Thanks. I am off on Mondays.

Marilyn Meldrich
Stafford Creek Corrections Center
360-537-1992

"Obstacles don't have to stop you. If you run into a wall, don't turn around and give up. Figure out how to climb it, go through it, or work around it." Michael Jordan.

From: Thomas A. Balerud [<mailto:tbalerud@balerudlaw.com>]
Sent: Thursday, March 15, 2012 10:51 AM
To: Meldrich, Marilyn E. (DOC)
Subject: RE: Kozol 974691

ATTACHMENT C

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set:
Date:
Time:
Judge

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8 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

9 DEPARTMENT OF CORRECTIONS,

NO. 15-2-00672-7

10 Plaintiff,

DEFENDANT'S FIRST SET OF
INTERROGATORIES & REQUESTS
FOR PRODUCTION OF
DOCUMENTS

11 v.

12 BLAKE STERLING-COSWELL, et al.,

**AND PLAINTIFF'S OBJECTIONS
AND ANSWERS THERTO**

13 Defendants.

14
15 **GENERAL OBJECTIONS**

16 The Plaintiff neither agrees nor stipulates to the Defendant's definitions or procedures.
17 These interrogatories and requests for production will be answered and supplemented in
18 accordance with Civil Rules 26, 33, and 34. Without waiving such objections, answers are
19 provided as set forth below.

20
21 **INTERROGATORY 1:** Please identify the number of times in the past seven (7)
22 years that the Department of Corrections has been found by any court in Washington State to
23 have violated the Public Records Act.

24 **OBJECTION:** This interrogatory seeks information that is irrelevant to the time
25 frame in Plaintiff's complaint. Moreover, this interrogatory is not reasonably calculated to
26 lead to the discovery of admissible evidence as every action in which the Department was

1 found in violation of the Public Records Act during the specified time period cannot be related
 2 to the allegations in Plaintiff's complaint. For similar reasons, this interrogatory is overly
 3 broad and unduly burdensome. Plaintiff has equal access to court files if Plaintiff desires
 4 additional information.

5 **ANSWER:** Without waiving the above objections, here is information about
 6 PRA cases from 2006 until 2014 in which the Department has paid money either by settlement
 7 or penalty:

Name	Inmate Case	Forum	Cause #	Date Closed	Pay Out	Penalty/Settlement
2006						
Wilson, Carl P. v. Clark, Harold, DOC & the State of WA	No	Superior Court - Thurston	05-2-02098-6	2/6/06	\$4,534.10	
Roy, Nicholas v. Wilson-Kirby, Kay	Yes	Superior Court - Spokane	05-2-05800-0	4/1/06	\$450.00	
Martin, Samuel D. v. DOC	Yes	Superior Court - Spokane	05-2-05547-7	4/28/06	\$4,500.00	
Parmelee, Allan v. Clarke, Harold	Yes	Superior Court - Thurston	05-2-01317-3	5/21/06	\$15,000.00	
Lawson, Leslie v. DOC	Yes	Superior Court - Snohomish	06-2-08166-6	9/6/06	\$2,100.00	
Roy, Nicholas v. Barshaw, Victoria	Yes	Superior Court - Thurston	05-2-02326-8	12/3/06	\$277.94	
					\$26,612.04	
2007						
Prison Legal News v. DOC	No	Superior Court - Thurston County	01-2-00828-2	7/9/07	\$541,154.69	

1	Greenhalgh, Shawn v. DOC	Yes	Superior Court - Pierce	07-2-06009-5	9/5/07	\$9,500.00	
2							
3	Hutcheson, James v. DOC	Yes	Superior Court - Snohomish	06-2-13022-5	9/5/07	\$40,000.00	
4	Gronquist, Derek v. DOC	Yes	Superior Court - Grays Harbor	06-2-01324-3	9/6/07	\$2,500.00	
5							
6	Parmelee, Allan v. Porter, Carol	Yes	Superior Court - Mason	06-2-00520-5	10/17/07	\$9,641.23	
7							
8	Moore, Douglas L. v. DOC	No	Superior Court - Thurston	06-2-01040-7	12/3/07	\$65,000.00	
9							
10	Wgeishofski, Eugene v. DOC	Yes	Superior Court - Pierce	07-2-05785-0	12/28/07	\$9,000.00	
11						\$676,795.92	
12	2008						
13	Gronquist, Derek E. v. DOC	Yes	Superior Court - Spokane	07-2-00562-0/Settled	5/18/08	\$27,500.00	S
14			Superior Court - Clallam	07-2-00212-2/Settled			
15			COA II	36948-6-II/Settled			
16			WDC - Tacoma	C06-5543/Dismissed			
17	Gronquist, Derek E. v. DOC	Yes	Superior Court - Spokane	02-2-05518-9	5/19/08	\$79,000.00	S
18							
19	Elliott, Samuel J. v. DOC	Yes	Superior Court - Pierce	07-2-12105-1	8/29/08	\$34,300.00	S
20							
21	Matthews, Brian David v. DOC	Yes	Superior Court - Grays Harbor	08-2-00269-8	9/5/08	\$5,325.00	S
22						\$146,125.00	
23	2009						
24	Ashby, Michael Eugene v. DOC	Yes	Superior Court - Snohomish	08-2-04778-2	2/7/09	\$600.00	S
25							
26							

1	Silva, Matthew v. Francis, Lyn & DOC	Yes	Superior Court - Mason	07-2-00929-2	4/9/09	\$320.00	P
2	3	4	5	6	7	8	9
10	11	12	13	14	15	16	17
18	19	20	21	22	23	24	25
26						\$239,298.29	

2010								
1	Chester, David K. v. DOC	Yes	WA St. COA, Div. III	28126-4-III	3/12/10	\$3,000.00	S	
2								
3	Quinn, Daniel R. v. DOC	Yes	Superior Court - Thurston	10-2-00572-0	7/15/10	\$800.00	S	
4								
5	Bronowski, Steven E. v. DOC	Yes	Superior Court - Thurston	10-2-01711-6	10/25/10	\$3,500.00	S	
6								
7	Francis, Shawn v. DOC	Yes	WA St. COA, Div. I	63433-0-I	11/13/10	\$484.83	P/Costs Only	
8								
9	Levy, Percy v. DOC	Yes	Superior Court - Thurston	10-2-01087-1	12/3/10	\$3,161.00	S	
10								
11	Gronquist, Derek v. DOC	Yes	Superior Court - Clallam	08-2-00758-1	1/07/10	\$360.00	P	
12								
13	Greenhalgh, Shawn D. v. DOC	Yes	Superior Court - Grays Harbor	08-2-00431-3	7/7/10	\$18,260.00	S	
14								
15	Cunningham, Carl	Yes	n/a	Settlement only, no cause #	6/10/10	\$4,987.50	S	
16								
17	Burt v. DOC to Parmelee	Yes	WA St. Supreme Court	80998-4	6/2/10	\$922.55	P/Costs to Parmelee	
18								
19	Francis, Shawn v. DOC	Yes	Superior Court - Snohomish	08-2-10813-7	12/15/10	\$32,355.00	S	
20								
21	Kennedy, Diane	No	n/a	Settlement only, no cause #	2/16/10	\$1,035.00	S	
22								
23						\$68,865.88		
24								
25	2011							
26	Blick, Richard v. DOC	Yes	Superior Court - Snohomish	10-2-05983-9	2/21/11	\$14,812.50	P	
	Greenhalgh, Shawn vs. DOC	Yes	Superior Court - Pierce	10-2-06108-3	2/24/11	\$7,000.00	S	
	Greenhalgh, Shawn v. DOC	Yes	Superior Court - Thurston	08-2-01203-1	3/10/11	\$35,000.00	S	
	Leigh, Aaron v. DOC	Yes	Superior Court - Thurston	10-2-02081-8	3/17/11	\$2,640.00	P	

1	Baker, Shappa v. DOC	Yes	Superior Court - Thurston	10-2-01552-1	3/25/11	\$2,450.00	S
2							
3	Leigh, Aaron v. DOC	Yes	n/a	Settlement only, no cause #	5/10/11	\$1,000.00	S
4	Levy, Percy v. DOC	Yes	n/a	Settlement only, no cause #	5/11/11	\$885.00	S
5	Greenhalgh, Shawn v. DOC	Yes	Superior Court - Snohomish	09-2-07448-6	5/26/11	\$2,680.00	S
6							
7	Greenhalgh, Shawn v. DOC	Yes	Superior Court - Pierce	09-2-12311-5	6/22/11	\$3,775.00	S
8	Hill, David v. DOC	Yes	Superior Court - Thurston County	10-2-02410-4	11/3/11	\$11,000.00	S
9							
10	Pecnik, Gertrude v. DOC	No	Superior Court - Thurston	11-2-02086-7	11/15/11	\$5,250.00	S
11							
12	Mitchell, Kevin v. DOC	Yes	Superior Court - Thurston	08-2-01287-2	03/29/11	\$21,245.00	S
13	Malicoat, William v. DOC	Yes	Superior Court - Thurston	11-2-00162-5	12/1/11	\$1,000.00	S
14							
15	Hamilton, Jimi vs. DOC	Yes	Superior Court - Snohomish	10-2-08660-7	01/10/11	\$1,500.00	S
16	Ashby, Michael v. DOC	Yes	Superior Court - Snohomish	10-2-02835-6	01/10/11	\$1,200.00	S
17							
18	McKee, Jeffrey v. DOC	Yes	Superior Court - Spokane	10-2-05025-1	09/27/11	\$434.34	P - no fines awarded, just costs
19	McKee, Jeffrey v. DOC	Yes	Superior Court - Thurston	09-2-02875	09/07/11	\$9,250.00	S
20							
21						\$121,121.84	
22	2012						
23	Moore, David v. DOC	Yes	Superior Court - Spokane	11-2-02214-0 11-2-02213-1	5/23/12	\$600.00	S
24	Forbes, Susan v. DOC	No	Superior Court - Thurston	11-2-02379-3	6/4/12	\$10,000.00	S
25	Bronowski, Steven v. DOC	Yes	Superior Court - Thurston	12-2-00151-8	6/5/12	\$300.00	S
26							

1	WCOG v. AG & DOC	No	Superior Court - Thurston	10-2-00485-5	5/11/12	\$32,500.00	S
2							
3	Chester, David v. DOC	Yes	Superior Court - Spokane	11-2-00329-3	6/7/12	\$1,000.00	P/Contempt Sanction
4	Mitchell, Kevin v. DOC	Yes	Superior Court - Thurston	08-2-00815-8	6/8/12	\$469.90	S
5							
6	Ashby, Michael v. DOC	Yes	Superior Court - Franklin	11-2-50491-6	8/8/12	\$300.00	S
7	Faulk, Darren v. DOC	No	Superior Court - Thurston	10-2-02753-7	9/19/12	\$173,131.01	P
8							
9	Canha Steven v. DOC	Yes	Superior Court - Thurston	12-2-00131-3	8/28/12	\$18,000.00	S
10	Orndorff Shawn v. DOC	Yes	Superior Court - Clallam	10-2-01043-5	9/21/12	\$5,300.00	S
11							
12	Simms Daniel v. DOC	Yes	Superior Court - Thurston	11-2-00611-2	10/12/12	\$3,000.00	S
13	Francis Shawn v. DOC	Yes	Superior Court - Spokane	12-2-00556-1	11/9/12	\$11,650.00	S
14							
15	Faulkner, Clarence v. DOC	Yes	Superior Court - Franklin	12-2-50706-9	12/26/12	\$2,697.00	S
16							
						\$258,947.91	
17	2013						
18	Faulkner, Clarence v. DOC	Yes	Superior Court - Franklin	12-2-51013-2	2/21/13	\$600	S
19	Baker, Shappa v. DOC	Yes	Superior Court - Thurston	12-2-02491-7	2/22/13	\$4000	S
20							
21	Chester, David v. DOC	Yes	Superior Court - Spokane	11-2-00329-3	6/27/13	\$100,000	S
22	McKee, Jeffrey v. DOC	Yes	Superior Court - Franklin	13-2-50047-0	11/22/13	\$80,000 (part of a multi-case settlement)	S
23	McKee, Jeffrey R. vs. DOC	Yes	Superior Court - Spokane	11-2-02020-1	11/26/13	\$80,000 (part of a multi-case settlement)	S
24							
25	McKee, Jeffrey vs. DOC	Yes	Superior Court - Franklin	12-2-50391-8	11/27/13	\$80,000 (part of a multi-case settlement)	S
26							

1	McKee, Jeffrey R. Vs. Scilley, Lee	Yes	Superior Court - Franklin	13-2-50726-1	11/27/13	\$80,000 (part of a multi-case settlement)	S
2							
3	McKee, Jeffrey R. vs. DOC, et. al.	Yes	Superior Court - Thurston	08-2-00529-9	11/27/13	\$80,000 (part of a multi-case settlement)	S
4							
5	McKee, Jeffrey R. vs. DOC, et. al.	Yes	Superior Court - Thurston	08-2-00527-2	12/6/13	\$80,000 (part of a multi-case settlement)	S
6							
7	McKee, Jeffrey R. vs. DOC, et.al.	Yes	Superior Court - Thurston	08-2-00528-1	11/27/13	\$80,000 (part of a multi-case settlement)	S
8							
9	McKee, Jeffrey vs. Washington State Department of Corrections	Yes	Superior Court - Franklin	13-2-50300-2	11/27/13	\$80,000 (part of a multi-case settlement)	S
10							
11							
12							
13	Baker, Shappa vs. DOC	Yes	Superior Court - Spokane	12-2-00294-5	11/26/13	\$57,500	S
14	Keefover, James v. DOC	Yes	Superior Court - Franklin	13-2-51070-0	12/23/13	\$750.00	S
15							
16						\$242,850.00	
17	2014						
18	Faulkner, Clarence v. DOC	Yes	Superior Court - Franklin	13-2-51176-5	1/24/14	\$2,500 (part of a multi-case settlement)	S
19	Faulkner, Clarence v. DOC	Yes	Superior Court - Franklin	13-2-50985-0	1/24/14	\$2,500 (part of a multi-case settlement)	S
20	Williams, Carlos John vs. Hinrichsen, Denise	Yes	Superior Court - Snohomish	13-2-06450-1	1/16/14	\$1,060 (part of a multi-case settlement)	S
21							
22	Williams, Carlos John vs. DOC	Yes	Superior Court - Snohomish	14-2-01833-7	1/16/14	\$1,060 (part of a multi-case settlement)	S
23							
24	Ashby, Michael vs. DOC	Yes	Superior Court - Snohomish	14-2-02686-1	3/20/14	\$600	S
25							
26							

1	2011	\$121,121.84
	2012	\$258,947.91
2	2013	\$242,850.00
	2014	\$48,438.00
3	2015	\$18,014.13
	TOTAL	\$1,936,149.06

4
5 **INTERROGATORY 2:** Please identify the number of times in the past seven (7)
6 years that the Department of Corrections has settled a claim of an alleged violation of the
7 Public Records Act by paying money to a requestor or his representative.

8 **OBJECTION:** This request is vague and ambiguous with respect to the terms
9 “settled” or “alleged.” Moreover, this interrogatory is not reasonably calculated to lead to the
10 discovery of admissible evidence as every action in which the Department settled an allegation
11 of the Public Records Act during the specified time period cannot be related to the allegations
12 in Plaintiff’s complaint. For similar reasons, this interrogatory is overly broad and unduly
13 burdensome. Plaintiff has equal access to court files if Plaintiff desires additional information.

14 **ANSWER:** Without waiving the above objections, see the chart provided in
15 response to Interrogatory 1.

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