97293-1

COA No. 79254-7

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

F. ROBERT STRAHM
Appellant,

v.

SNOHOMISH COUNTY
Respondent.

---

# PETITION FOR REVIEW

---

F. Robert Strahm
Appellant
1712 Pacific Ave. Suite 105
Everett, WA 98201
(425) 359-1227
bob@psresvc.com

**TABLE OF CONTENTS**

## TABLE OF AUTHORITIES

### Table of Cases

**Washington State Cases**



**Federal Cases**



**Revised Code of Washington**

## A. IDENTITY OF PETITIONER

F. Robert Strahm asks this court to accept review of the Court of Appeals Division One decision terminating review designated in Part B of this petition.

## B. COURT OF APPEALS DECISION

An unpublished decision was filed on May 6th, 2019. A copy of the decision is in the Appendix at pages A-1 through 13.

## C. ISSUES PRESENTED FOR REVIEW

1. Are electronic versions of records, such as existing digital data compilations from which information may be obtained or translated, public records subject to disclosure and production under the Public Records Act ("PRA")?

2. Does an agency violate the PRA when it does not take reasonable steps to provide electronic records in the most efficient manner available to the agency in its normal operations?

3. Does an agency violate the PRA requirement to provide the "fullest assistance" when it does not

disclose the native format of electronic public records or the ability of agency software to translate native format electronic records into different formats?

4. Is the PRA violated when an agency withholds native versions of electronic records without identifying a statutory exemption?

## D. STATEMENT OF THE CASE

### Request K008293

On April 26, 2016 Appellant submitted public record requests for: "[e]lectronic records of the council approved budget, including without limitation, actual expenditures, for the years 2013, 2014, 2015" and "[e]lectronic records of the county property inventory pursuant to SCC 4.46.120 and RCW 36.32.210, for the years 2013, 2014, 2015." Appellant requested the records in DBF format on CD for pick-up. (CP 216, 218).

On May 2nd, 2016, Appellant received an e-mail from the County stating that electronic records would be available in native format: "Please be advised the adopted budgets as well as the monthly and quarterly budget versus actuals are on the Snohomish County web site - Electronic

records responsive to this request will be submitted in native format unless the records contain redacted material." (CP 221). The County stated that the records would be provided: "We reasonably believe that an installment of public records responsive to this request will be available on or before June 3, 2016." (CP 218).

On May 3rd, 2016, Appellant e-mailed the County in response to their offer to provide the K008293 records in native format, stating: "If the "native" format of the county's document allows the electronic records to be "save as" to DBF format without changing the substantive accuracy of the document, this would be "reasonably translatable" and the county is required to provide the records in DBF or a near universal format. WAC 44-14-05002 RCW 42.56.070(1) and 42.56.080." (CP 221).

Respondent denied the K008293 request for electronic budget records on June 3rd, 2016 and directed Appellant to acquire PDF format budget records that were not requested. The on-line documents referred to by Respondent are not database file format (.dbf) electronic budget records or native electronic records. (CP 224).

Respondent denied the K008293 request for electronic inventory records on June 3rd, 2016 and directed Appellant to acquire paper records that were not requested. (CP 224).

The County closed request K008293 on June 3rd, 2016, and did not produce any electronic records in response to the requests, did not provide any privilege log, did not make any claim of exemption and did not provide an internet address and link on the County's web site to the specific records requested. (CP 224). Appellant filed a complaint against the County for violations of the PRA in King County Superior Court on May 15, 2017. (CP 1-16).

## E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### A. The decision of the Court of Appeals conflicts with decisions of the Supreme Court.

#### 1. Electronic Records Are Public Records.

The Court of Appeals erred in determining: "[n]othing in the PRA obligates an agency to disclose records electronically." This is in conflict with Doug O'Neill et al. and Respondents, v. The City of Shoreline et al., Petitioners, 170 Wn.2d 138, where this Court found that electronic versions of public records are public records subject to disclosure. The Division One ruling is also in conflict with Fisher Broad.-Seattle TV LLC v. City of Seattle, 180 Wn.2d 515 (2014), where this Court found that a "public record" is broadly defined and includes "existing data

compilations from which information may be obtained" "regardless of physical form or characteristics." RCW 42.56.010(4), (3). "This broad definition includes electronic information in a database." RCW 42.56.120 (2) (b) (iv) requires an agency to take reasonable steps to produce electronic records: [an] "agency may not charge in excess of:" (iv) "Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations".

Division One erred when citing a case involving the scanning of a paper record into an electronic record, creating a new record. "In this situation, scanning a redacted paper copy of a record into electronic format on an agency's server *creates* a new public record." Benton County v. Zink, 191 Wn. App. 269, 281, 361 P.3d 801 (2015). Division One erred in applying a scanning of a paper record into an electronic format creating a new public record standard. Request K008293 did not involve scanning of any paper record into an electronic record, creating a new record. The request involves existing "native" application software program electronic records and the ability of an agency to translate existing native electronic

records into a different format. The request was for electronic records in DBF (database file) format. (CP 216).

The PRA requires an agency to provide a "copy" of **all** nonexempt records. RCW 42.56.070(1) and 42.56.080. An electronic version of a record is a public record subject to disclosure. Yet, Division One ignores the holding in Doug O'Neill et al., Respondents, v. The City of Shoreline et al., Petitioners, 170 Wn.2d 138, 147-48 (2010). This Court held that an electronic version of a record is a public record: "We agree with the Supreme Court of Arizona that an electronic version of a record, including its embedded metadata, is a public record subject to disclosure." Division One ignores this Courts holding in Fisher Broad.-Seattle TV LLC v. City of Seattle, 180 Wn.2d 515 (2014). A "public record" is broadly defined and includes "existing data compilations from which information may be obtained" "regardless of physical form or characteristics." RCW 42.56.010(4), (3). "This broad definition includes electronic information in a database. *Id.*; *see also* WAC 44-14-04001. Merely because information is in a database designed for a different purpose does not exempt it from disclosure. Nor does it necessarily make the production of information a 'creation' of a record." Fisher Broad.-Seattle TV LLC v. City of Seattle, 180 Wn.2d 515 (2014). Division One's ruling undermines the PRA by potentially allowing agencies to summarily deny requests for electronic

records. Division One erred in determining: "[n]othing in the PRA obligates an agency to disclose records electronically."

The Court of Appeals erred in determining "That the County did not provide the records in native or DBF format did not constitute a violation of the PRA." The act obligates an agency to provide all nonexempt "identifiable records". RCW 42.56.070**,** RCW 42.56.080, and the County did not claim the requested records were exempt. (CP 224). An "identifiable record" is essentially one that agency staff can "reasonably locate." WAC 44-14-04002(2). The County identified the requested budget records: "the adopted budgets as well as the monthly and quarterly budget versus actuals are on the Snohomish County web site" (CP 221). The County identified the County auditor file numbers of the recorded inventory reports. (CP 224). The online version of the County budgets include a static Portable Document File (pdf) copy of the electronic compilation of data, a "Computerized compilation of budget detail", otherwise known as a database. (CP 61, 62, 63, 64). The online pdf version of County inventories include a statement that the inventories are maintained in a database. (CP 214). The County admits the inventory records are maintained in a database: "Snohomish County does maintain a database of capital assets, both personal and real property." (CP 86). Both the electronic budget records and the electronic inventory records are

reasonably locatable and therefore, identifiable public records. The act obligates an agency to provide **all** nonexempt "identifiable records". The County stated in their initial response that native format electronic records would be produced, yet, produced no electronic records: "Electronic records responsive to this request will be submitted in native format unless the records contain redacted material." (CP 221). A native format electronic record is an application software original file that can be exported or reproduced without translation.[1] The County violated the PRA by withholding nonexempt (CP 224) native format versions of electronic records and the Division One decision is in conflict with Doug O'Neill et al., Respondents, v. The City of Shoreline et al., Petitioners, 170 Wn.2d 138 (2010), and Fisher Broad.-Seattle TV LLC v. City of Seattle, 180 Wn.2d 515 (2014).

### B. The decision of the Court of Appeals conflicts with a published decision of the Court of Appeals.

#### 1. Fullest Assistance In Producing Native Format Electronic Records Or Translating To A Requested Format.

[1] *See The Sedona Conference Glossary: E-Discovery & Digital Information Management (Fourth Edition),* 15 SEDONA CONF. J. 305, 341 (2014) Native Format: Electronic documents have an associated file structure defined by the original creating application. This file structure is referred to as the native format of the document.

The Court of Appeals decision is in conflict with a Division One decision and Division One erred when determining that: "The PRA does not require the County to translate a record into an alternative electronic format. See WAC 44-14-05001." WAC 44-14-05001 provides that agencies should provide electronic records in an alternative format: "In general, an agency should provide electronic records in an electronic format if requested in that format, if it is reasonable and feasible to do so." RCW 42.56.120(1) provides that agency translation of electronic records into a different format does not create a new record: "If any agency translates a record into an alternative electronic format at the request of a requestor, the copy created does not constitute a new public record for purposes of this chapter." The state legislature set maximum copy fees for public records, including electronic public records, and required agencies to take reasonable steps to provide electronic records. RCW 42.56.120 (2) (b) (iv). An "agency may not charge in excess of:" (iv) "Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations". The County capital asset/inventory software system, Checkmate, has the ability

to translate its' native electronic records to different generally commercially available formats. (CP 31, 38).

Electronically Stored Information ("ESI") must be produced in the form in which it is ordinarily maintained or in a form that is reasonably usable to the requesting party. *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1, 172 (2018). The United States Court of Appeals, Ninth Circuit, held, regarding reproduction of electronic records in response to a Freedom Of Information Act ("FOIA") request, that the relevant inquiry is whether the format is readily reproducible using a normal business as usual approach. TPS, INC., Plaintiff-Appellant, v. UNITED STATES DEPARTMENT OF DEFENSE; Defense Logistics Agency, Defendants-Appellees, 330 F.3d 1191 (2003):

> FOIA does not restrict the "business as usual" inquiry to whether a government agency regularly reproduces documents in a specified format solely for FOIA requests. Instead, the relevant inquiry is whether, in general, the format is one that is "readily reproducible" by the agency. In evaluating reproducibility, the agency should employ a

> standard of reasonableness that is benchmarked against the agency's "normal business as usual approach" with respect to reproducing data in the ordinary course of the agency's business.

The Division One decision is in conflict with the Division One decision Meredith Mechling, Appellant, v. The City of Monroe, Respondent, 152 Wn. App. 830, 222 P.3d 808 (2009). The PRA requires agencies to provide the "fullest assistance" and the "most timely possible action on requests for information." RCW 42.56.100. Division One ruled in a PRA case involving electronic records: "consistent with the statutory duty to provide the fullest assistance and with the model rules, on remand the trial court shall determine whether it is reasonable and feasible for the City to" [provide the requested e-mail records in an electronic format]. Meredith Mechling, Appellant, v. The City of Monroe, Respondent, 152 Wn. App. 830, 222 P.3d 808 (2009).

Division One ignores the model PRA rules promulgated by the State Attorney General providing that when "…an agency has a database in a unique format… A requestor requests an electronic copy. The agency can convert the data in its unique system into a near-universal format such as a comma-delimited or tab-delimited format. The requestor can then convert

the comma-delimited or tab-delimited data into a database program (such as Access®) and use it. The data in this example is "reasonably translatable" into a comma-delimited or tab-delimited format so the agency should do so." WAC 44-14-05002 (2) (iii).

Division One erred in determining the County did not violate the PRA requirement to provide the fullest assistance. Division One ignores that Appellant requested the electronic budget and inventory records in dbf (database file) format. Division One ignores that the requested records are "database" records (CP 61, 62, 63, 64), (CP 214), (CP 86) and the fact that the County was apprised of the difference between PDF format and DBF format electronic files: "it was noted you need electronic records in "DBF" format. Do you mean "PDF" format?" Appellant responded: "DataBase File format." (CP 69). Division One ignores that the County capital asset/inventory software system, Checkmate, has the capability to translate its' native electronic records to different generally commercially available formats. (CP 31, 38). Division One ignores that the County stated responsive records would be produced: "We reasonably believe that an installment of public records responsive to this request will be available on or before June 3, 2016." (CP 218). Division One ignores that the County stated native format records will be produced: "Electronic records

responsive to this request will be submitted in native format unless the records contain redacted material." (CP 221).

Division One selectively quotes Appellant and erred in determining that the County did not violate the PRA requirement to provide the fullest assistance because, the County "did not provide electronic budget and inventory database records." Appellant's request was for "[e]lectronic records of the council approved budget and [e]lectronic records of the county property inventory pursuant to SCC 4.46.120 and RCW 36.32.210". Appellant requested the electronic budget and inventory records in dbf (database file) format. (CP 216). The subject County budgets include a "Computerized compilation of budget detail", otherwise known as a database. (CP 61, 62, 63, 64). The subject County inventories are maintained in a database. (CP 214). The County admits the inventory records are maintained in a database: "Snohomish County does maintain a database of capital assets, both personal and real property." (CP 86).

Division One erred in determining Appellants request was not clear: "His request, however, merely sought [e]lectronic records of the council approved budget" and "[e]lectronic records of the county property inventory.", citing Levy v. Snohomish County,167 Wn. App. 94,98, 272 P.3d 874 (2012) ("At a minimum, a person seeking documents under the

PRA must identify or describe the documents with sufficient clarity to allow the agency to locate them. The PRA does not require public agencies to be mind readers."). The *Levy* case is distinguishable because, *Levy* had requested a document that his attorney showed him without identifying the document: “Levy originally requested a document that his attorney apparently showed him during a 2002 criminal trial. As the County correctly notes, the request created an immediate uncertainty because the County had no objective method for determining what counsel had shown Levy.” *Id.* The County requested clarification from Levy in it’s initial response and Mr. Levy’s position was that the request for clarification was an unreasonable delay: “Levy contends that the County's request for clarification unreasonably delayed its compliance with the PRA, in violation of the five-day time limit in RCW 42.56.520. He maintains that his original request was “objectively clear” and that clarification was therefore unnecessary.” *Id.* Here, unlike in *Levy*, the County did not request clarification and correctly identified the requested records in it’s initial response. (CP 218, 224). Unlike *Levy*, the County responded that records were going to be produced: “We reasonably believe that an installment of public records responsive to this request will be available on or before June 3, 2016.” (CP 218), and “[e]lectronic records responsive to this request will be submitted in native format unless

the records contain redacted material." (CP 221). The County made no claim of exemption (CP 224). The PRA requires an agency to provide a "copy" of **all** nonexempt records. RCW 42.56.070(1) and 42.56.080. The County silently withheld the electronic records, violating it's duty to provide the fullest assistance.

### C. This petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Advancing computer technology has changed transmission and storage of information from an analog paper medium to a digital electronic medium, transforming information into a digital commodity readily accessible to the public. The digital revolution has transformed the storage of records from a paper form to a digital electronic form.

The state legislature recognized the importance of the digital revolution as early as 1996 and adopted policies that encourage access to electronic public records: "Broad public access to state and local government records and information has potential for expanding citizen access to that information and for improving government services. Electronic methods for locating and transferring information can improve linkages between and among citizens, organizations, businesses, and governments. Information must be managed with great care to meet the

objectives of citizens and their governments." RCW 43.105.351. The statute also provides that making public records available electronically is a priority:

> It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public.

An agency that withholds nonexempt financial administration electronic records deprives the public of the ability to digitally review and efficiently scrutinize important government records, such as a county budget and inventory. The development, storage, and management of records is quickly converting to a digital medium where paper records are becoming obsolete. Thus, this is a case involving a fundamental and urgent issue of broad public import warranting review by the Supreme Court.

The PRA requires an agency to provide a "copy" of all nonexempt records. RCW 42.56.070(1) and 42.56.080. An electronic version of a

record is a public record subject to disclosure. Doug O'Neill et al., *Respondents,* v. The City of Shoreline et al., *Petitioners,* 170 Wn.2d 138, 147-48. ("We agree with the Supreme Court of Arizona that an electronic version of a record, including its embedded metadata, is a public record subject to disclosure.") This case will determine for the first time what steps an agency must take to translate an agencies' original electronic record into a useable copy for a requestor. WAC 44-14-05002 (2). This case will also determine for the first time whether an agency may withhold "native" format data compilations without identifying a statutory exemption. A "public record" is broadly defined and includes "existing data compilations from which information may be obtained" "regardless of physical form or characteristics." RCW 42.56.010(4), (3). "This broad definition includes electronic information in a database. *Id.*; *see also* WAC 44-14-04001. Merely because information is in a database designed for a different purpose does not exempt it from disclosure. Nor does it necessarily make the production of information a 'creation' of a record." Fisher Broad.-Seattle TV LLC v. City of Seattle, 180 Wn.2d 515 (2014).

RCW 42.56.120 follows the Ninth Circuit decision regarding reproduction of electronic records (1): "If any agency translates a record into an alternative electronic format at the request of a requestor, the copy

created does not constitute a new public record for purposes of this chapter." RCW 42.56.120 (2) (b) (iv) sets maximum fees for production of "public records in an electronic format" and requires that the "agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations". The U.S. Ninth Circuit Court of Appeals determined that a FOIA electronic record format reproduction inquiry is whether, in general, the format is one that is "readily reproducible" by the agency. In evaluating reproducibility, the agency should employ a standard of reasonableness that is benchmarked against the agency's "normal business as usual approach", TPS, INC., Plaintiff-Appellant, v. UNITED STATES DEPARTMENT OF DEFENSE; Defense Logistics Agency, Defendants-Appellees, 330 F.3d 1191 (2003). The County can reproduce electronic inventory records in different formats. (CP 31, 38). The County made no effort to "provide the records in the most efficient manner available to the agency in its normal operations".

The digital revolution is rapidly transforming the distribution and storage of information into an electronic, digital medium. Whether the PRA is violated when an agency withholds original "native" versions of electronic records without identifying a statutory exemption or without offering to make the records available in an alternative electronic format is

an issue of first impression, which has broad and urgent public importance.

## F. CONCLUSION

This court should accept review for the reasons indicated in Part E, reverse the appellate court decision, award costs and penalties to Appellant as the prevailing party and remand the case to the trial court for further proceedings.

RESPECTFULLY SUBMITTED this 3RD day of June, 2019.

F. Robert Strahm,
Appellant

# APPENDIX A

FILED
5/6/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | |
|---|---|
| F. ROBERT STRAHM,<br><br>Appellant,<br><br>v.<br><br>SNOHOMISH COUNTY,<br><br>Respondent. | No. 79254-7-I<br><br>DIVISION ONE<br><br>UNPUBLISHED OPINION<br><br>FILED: May 6, 2019 |

CHUN, J. — In April 2016, F. Robert Strahm filed the three public record requests at issue on appeal with Snohomish County (County).[1] For one of these requests (K008293), the County directed Strahm to its website and the County Auditor's Office to obtain responsive records and closed the request. The County stated it would respond to Strahm's two other requests (K008190 and K008333) in installments and began doing so.

Dissatisfied with the records the County produced and their format, Strahm filed a complaint alleging violations of the Public Records Act (PRA). The County moved for summary judgment. The County claimed it had complied with the PRA as to the closed request. With regard to the other two requests, the County argued Strahm had prematurely filed his lawsuit because it had not finished responding to them. The trial court granted the County's motion and

[1] We refer to the requests using the tracking numbers the County assigned to them—K008190, K008293, and K008333.

dismissed Strahm's case. Strahm appeals and seeks statutory penalties totaling over $500,000. We affirm.

## I.
## BACKGROUND

### A. Request K008190

On April 21, 2016, Strahm submitted a public records request seeking, in part, records of "Land Capital Assets increases and decreases" and "Equipment Capital Assets increases and decreases" for 2012, 2013, and 2014.[2] The County responded the following day, informing Strahm that it had assigned tracking number K008190-042216 to the request and that it expected to make "public records responsive to [the] request . . . available on or before May 27, 2016." Due to the large scope of Strahm's request, the County told him it would submit responsive records in installments. In correspondence, Strahm requested the County submit files to him in Database File (DBF) format.

---

[2] Strahm's full request provided as follows:

I request the following public record(s), including, without limitation, electronic records, invoices, billings, bids, payments, accounting:

1. All records of the Capital Projects Fund revenues and expenditures and fund transfers from 1/1/2013 to the present date.
2. All records of the Conservation Futures Tax Fund revenues and expenditures and fund transfers from 1/1/2013 to the present date.
3. All records of the Data Processing Capital Fund revenues and expenditures and fund transfers from 1/1/2013 to the present date.
4. All records of Land Capital Assets increases and decreases for the years 2012, 2013 and 2014 as depicted in the county's notes to the financial statements.
5. All records of Equipment Capital Assets increases and decreases for the years 2012, 2013 and 2014 as depicted in the county's notes to the financial statements.
6. All records of sales of bonds by the county from 1/1/2014 to the present date.

He claims the County violated the PRA with respect to only Items 4 and 5.

The County submitted the first installment on May 27, 2016 and had provided 15 installments, including 1,420 electronic files, as of March 1, 2018.[3] The County expected to complete its response by the end of 2018.

B. Request K008293

On April 26, 2016, Strahm requested documents related to the County's approved budget and property inventory for the years 2013, 2014, and 2015. Strahm again requested delivery of the files in DBF format.

The County responded on May 2, 2016 and assigned the request the tracking number K008293-042616. The County told Strahm via e-mail that it posts the council approved budget online and provided him with the web address. The e-mail additionally provided, "Electronic records responsive to this request will be submitted in native format[4] unless the records contain redacted material." The County expected to provide the first installment of responsive records by June 3, 2016.

On June 3, 2016, the County told Strahm via e-mail that it had determined its website contained all the records relating to the budget inquiry and that the County Auditor's Office maintained the records responsive to the property inventory request. This e-mail again provided the web address where Strahm could access the budget files in PDF format. The County's e-mail also informed

---

[3] March 1, 2018 is the date of the declaration supporting the County's motion for summary judgment. The declaration contains the information regarding what records the County provided to Strahm in response to requests K008190 and K008333.

[4] "Native file format refers to the default file format that an application uses to create or save files." Native File Format, TECHOPEDIA, https://www.techopedia.com/definition/5453/native-file-format [https://perma.cc/GD4S-7BZH].

Strahm that to obtain the documents located at the County Auditor's Office, he would need to contact the Auditor and pay a fee. The County provided Strahm with the address for the Auditor's Office and the recording numbers for the documents he sought. Because the County directed Strahm to the records formatted as PDFs or paper documents, it did not provide them in native format.

On June 3, 2016, the County closed the request.

C. Request K008333

On April 28, 2016, Strahm made a public records request seeking, among other documents, "records of county property inventory acquisitions and dispositions, for the years 2012, 2013, 2014, 2015" in PDF format.[5]

The County responded on May 4, 2016 and assigned the tracking number K008333-042816 to the request. It told Strahm that it would make records available in installments and that it expected to produce the first installment by June 10, 2016.

---

[5] Strahm's full request stated:

I request the following public record(s):

1. All electronic budget records including without limitation, actual expenditures, for the years 2015 to the present date. Please provide the records in DBF format.
1. [sic] All records of county property inventory acquisitions and dispositions, for the years 2012, 2013, 2014, 2015. Please provide the records in PDF format.
2. All email in PST (NOT MSG) format sent or received by county employees or elected officials regarding the new courthouse project between January 1, 2012 and the present date.
3. All email in PST (NOT MSG) format sent or received by county employees or elected officials regarding Conservation Futures projects, including without limitation purchases, sales, construction, between January 1, 2012 and the present date.

He challenges the County's response only as it relates to the second item in the list (which he labelled as a second "1." in his request).

The County provided the first installment of responsive records on May 27, 2016. It continued to provide records to Strahm, including 18 installments totaling 9,364 electronic files and over 12 gigabytes of data as of March 1, 2018. The County anticipates it will complete the request by the end of 2019.

D. Trial Court Proceedings

On May 15, 2017, Strahm filed a complaint against the County for violations of the PRA. The lawsuit sounded in four causes of action: (1) failure to produce records; (2) failure to promptly respond; (3) failure to provide a privilege log; and (4) failure to provide fullest assistance.[6] Strahm additionally sought "an award of a statutory penalty for each day and for each page of public records that are found to have been withheld in violation of the PRA, at the maximum of the penalty range set forth in RCW 42.56.550(4)."

The County moved for summary judgment on March 2, 2018. The County argued that it had complied with the PRA with regard to request K008293 and that Strahm had filed the claims concerning requests K008190 and K008333 prematurely because it had not yet closed those requests. On May 1, 2018, the court granted the County's motion.

Strahm appeals.

## II. ANALYSIS

Appellate courts review de novo a trial court's grant of summary judgment. Scrivener v. Clark Coll., 181 Wn.2d 439, 444, 334 P.3d 541 (2014). Trial courts

[6] The first and fourth causes of action pertained to all three of Strahm's requests. The second cause of action addressed requests K008190 and K008333 and the third concerned request K008293.

review de novo challenges to an agency action under the PRA. RCW 42.56.550(3). Such a court should grant summary judgment where no genuine issues of material fact exist, entitling the moving party to judgment as a matter of law. Scrivener, 181 Wn.2d at 444. When determining whether a genuine issue of material fact exists, we consider all the facts in the light most favorable to the nonmoving party. Scrivener, 181 Wn.2d at 444.

A. Request K008293

1. Format

Strahm argues the County violated the PRA with respect to request K008293 because it did not produce the files in native or DBF format.[7] The County contends it complied with the PRA. We agree with the County and affirm the trial court's grant of summary judgment for the County as to this request.

RCW 42.56.520(1) requires an agency to respond to a request for public records within five business days of receiving the request. The response must either provide the record; provide an internet address and link to the specific record; acknowledge receipt of the request and provide an estimate of when it will produce responsive records; acknowledge receipt of the request and ask for clarification; or deny the request. RCW 42.56.520(1)(a)-(e). Should an agency

[7] Strahm additionally argues the County's response to request K008293 violated the PRA because it did not provide an exemption log and did not conduct an adequate search. First, the County did not need to provide an exemption log because it did not redact or refuse to provide any record. See RCW 42.56.210 ("Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld."). Second, Strahm did not argue below that the County failed to conduct an adequate search and thus improperly raises the argument on appeal. Accordingly, we decline to address this issue. See RAP 2.5(a).

deny a request, it must provide a written statement with the specific reasons for the denial. RCW 42.56.520(4).

Under the PRA, "[a]n agency should provide reasonably locatable electronic public records in either their original generally commercially available format (such as an Acrobat PDF® file) or, if the records are not in a generally commercially available format, the agency should provide them in a reasonably translatable electronic format if possible." WAC 44-14-05001. "While not required, an agency may translate a record into an alternative electronic format at the request of the requestor if it is reasonable and feasible to do so." WAC 44-14-05001. However, "[n]othing in the PRA obligates an agency to disclose records electronically." Benton County v. Zink, 191 Wn. App. 269, 281, 361 P.3d 801 (2015).

Here, Request K008293 sought records of the council-approved budget and county property inventory. The County responded to Strahm's request in four business days. The response acknowledged receipt of Strahm's request, gave an estimate for when the County would produce responsive documents, and provided an internet address for where it believed Strahm could access many of the records he sought. In a subsequent communication sent on June 3, 2016, the County informed Strahm that it had determined he could find all of the responsive records either online or at the County Auditor's Office.

As to the council-approved budgets, the County posts the records online in PDF format—a commercially available format. See WAC 44-14-05001;

Budget Division, SNOHOMISH COUNTY, WASH. (last visited April 24, 2019), https://snohomishcountywa.gov/367/Budget-Division. The PRA does not require the County to translate a record into an alternative electronic format. See WAC 44-14-05001. That the County did not provide the records in native or DBF format did not constitute a violation of the PRA.

Likewise, directing Strahm to paper records of the county property inventory at the County Auditor's Office did not violate the PRA. As required by statute, the County filed an inventory of all its capital assets with the County Auditor's Office. See RCW 36.32.210. The County stated, "These records are accessible to the public upon request subject to payment of applicable fees." It further gave Strahm the address for the Auditor's Office and the recording numbers for the documents he sought. That Strahm could access paper copies of these records, as opposed to electronic files, also does not violate the PRA. See Zink, 191 Wn. App. at 281; WAC 44-14-05002 ("While not required, providing a PDF copy of the record is analogous to making a paper copy.").

2. "Fullest assistance"

Strahm additionally argues the County violated the PRA's requirement to provide "fullest assistance" because it did not provide "electronic budget and inventory database records." His request, however, merely sought "[e]lectronic records of the council approved budget" and "[e]lectronic records of the county property inventory." The County had previously posted the council-approved budget online and provided Strahm with the internet address. The County further

directed Strahm to where he could obtain the inventory records. Thus, the County responded to Strahm's request as he phrased it and directed him to the documents in generally commercially available formats—as PDFs or paper copies. See Levy v. Snohomish County, 167 Wn. App. 94, 98, 272 P.3d 874 (2012) ("At a minimum, a person seeking documents under the PRA must identify or describe the documents with sufficient clarity to allow the agency to locate them. The PRA does not require public agencies to be mind readers.") (internal quotations and citations omitted).

Thus, even when viewing the facts in the light most favorable to Strahm, we determine the County's response to Request K008293 did not violate the PRA.

B. Requests K008190 and K008333

Strahm next argues the County violated the PRA with regard to Requests K008190 and K008333. The County asserts Strahm makes these arguments prematurely because it had not yet closed these requests at the time he filed the lawsuit. We agree.

"Under the PRA, a requester 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 v. Wash. State Auditor's Office, 183 Wn. App. 925, 935-36, 335 P.3d 1004 (2014). "[A] denial of public records occurs when it reasonably appears that an agency will not or will no longer provide responsive records." Hobbs, 183 Wn. App. at 936.

Strahm argues he timely filed his complaint because it reasonably appeared the County would no longer provide responsive records to requests K008190 and K008333.

1. Request K008190

As to Request K008190, Strahm claims he properly filed his claims because, after the County submitted the ninth installment, it would provide responsive records only in paper, rather than DBF, format. Before Strahm filed his lawsuit in May 2017, he had several communications with the County. In an e-mail dated March 29, 2017, the County provided Strahm with responsive records and stated:

> Snohomish County would like to know if these [records] satisfy your request. If not, in order to provide you the records you are seeking in the most cost and time efficient manner, we would like to know if you can identify particular items, projects, or timeframe, based on the [records] provided to you.

The County additionally informed Strahm he could expect the next installment on or before May 3, 2017.

In the e-mail sent on May 3, 2017, The County stated:

> As you are aware, many of our financial documents are kept in paper format and do not exist digitally. We would need to scan these documents in order to provide them digitally. It is my understanding you are not seeking records that would need to be converted. If this is incorrect please let me know.

Strahm replied that he wanted the paper records in PDF format and the electronic records in native format. The County responded as follows:

> The records "necessary to isolate and prove the validity of every transaction" (RCW 43.09.200) do not exist in digital format. Snohomish County does not have an accounting system that

> supports digital supporting documents, therefore our records are still maintained in paper.
>
> In order to provide the records requested in PDF format we will need to scan these documents. If you would like to have items scanned we will provide you with estimates and require a 10% deposit.
>
> If you would like to review records in person, please let me know so we can make arrangements.

Strahm responded that he sought electronic database records. He additionally asked the County to make all responsive paper records available for inspection and copying, which it did on June 29, 2017.

The County sent the last e-mail 11 days before Strahm filed suit. Each of the County's communications evidenced its efforts to provide Strahm with responsive documents. The County repeatedly asked Strahm if he found the records responsive, asked him to clarify his requests, and stated its willingness to continue working to provide responsive documents. As such, we determine that, viewing the facts in the light most favorable to Strahm, at the time he filed his lawsuit, it did not reasonably appear that the County would cease to provide responsive records to request K008190.

2. Request K008333

Turning to Request K008333, Strahm claims it appeared the County would stop providing responsive records after it gave him the ninth installment on April 3, 2017. In the e-mail providing the ninth installment, the County stated:

> Finance Budget Operations has provided the 2015 CAFR Worktable. This worktable is provided to the State Auditor annually as a tool to allow them to determine what makes up each of the balances on the financial statements. It includes all of the transactions for all of the funds. We have also included an installment of scanned paper records from Information Technology (DoIT) at no cost. This is to show you a sample of the underlying cost documents. We are still

> unclear of what you are seeking in regards to this item of your request. I am hoping the worktable will provide much of the information you are seeking. If it does not, please let me know and I will continue to provide samples of the types of documents we can produce.

The County e-mailed Strahm again on April 5, 2017, two days later. The e-mail conveyed to Strahm that the County was "continuing to gather and review responsive records" and "anticipate[d] having a next installment available on or before May 5, 2017." Strahm responded the next day that his request "seem[ed] clear enough." The County provided the next installment on May 2, 2017.

Again, the County's communications with Strahm demonstrated a willingness to work with him to understand his request and provide responsive records. The County produced the tenth installment of responsive records 13 days before Strahm filed his lawsuit. Though Strahm claims the tenth installment did not contain responsive records, the County had informed him it would continue to work toward meeting his request and could provide samples of the types of documents it could make available. Based on these communications, and the County's continual effort to deliver installments of responsive records to Strahm, we determine that when viewing the facts in the light most favorable to Strahm, it did not reasonably appear that the County would no longer provide responsive records to request K008333 at the time he filed suit.

In light of our conclusions as to Requests K008190 and K008333, we decline to address the merits[8] of Strahm's claims regarding these requests.

---

[8] With regard to Request K008190, Strahm claims the County failed to provide "fullest assistance" by not disclosing the native format of requested nonexempt electronic database records or translating the records into a commercially available format, did not conduct an adequate search for nonexempt electronic records, did not provide "fullest assistance" by falsely

C. Costs and Penalties as the Prevailing Party

Strahm seeks costs and penalties as the prevailing party on appeal. Because he does not prevail in this matter, we deny his request. See RCW 42.56.550(4) (entitling prevailing party to attorney fees and costs).

Affirmed.

WE CONCUR:

claiming it could only produce certain documents in paper form, and destroyed nonexempt financial administration records subject to his PRA request. He requests $1.50 per day—for 446 days—per page in statutory penalties for 800 pages of electronic records (totaling $535,200) he claims the County wrongfully withheld. In relation to Request K008333, he argues the County did not conduct an adequate search for nonexempt electronic records, did not provide "fullest assistance" by falsely claiming it could only produce certain documents in paper form, and destroyed nonexempt financial administration records subject to his request.

# APPENDIX B

# RCW 42.56.010

## Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.

(3) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW **40.14.100** and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

(a) Do not serve in an administrative capacity;

(b) Have not been appointed by the agency to an agency board, commission, or internship; and

(c) Do not have a supervisory role or delegated agency authority.

(4) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

[ **2017 c 303 § 1; 2010 c 204 § 1005; 2007 c 197 § 1; 2005 c 274 § 101.**]

# RCW 42.56.070

## Documents and indexes to be made public—Statement of costs.

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW **34.05.010** and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW **34.05.240** and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW **34.05.010** that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW **34.05.010** that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such

indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency may establish, maintain, and make available for public inspection and copying a statement of the actual costs that it charges for providing photocopies or electronically produced copies, of public records and a statement of the factors and manner used to determine the actual costs. Any statement of costs may be adopted by an agency only after providing notice and public hearing.

(a)(i) In determining the actual cost for providing copies of public records, an agency may include all costs directly incident to copying such public records including:

(A) The actual cost of the paper and the per page cost for use of agency copying equipment; and

(B) The actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage and processing service.

(ii) In determining other actual costs for providing copies of public records, an agency may include all costs directly incident to:

(A) Shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; and

(B) Transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.

(b) In determining the actual costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and send the requested public records may be included in an agency's costs.

(8) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter **34.05** RCW, the administrative procedure act.

[ **2017 c 304 § 1; 2005 c 274 § 284; 1997 c 409 § 601.** Prior: **1995 c 397 § 11; 1995 c 341 § 1; 1992 c 139 § 3; 1989 c 175 § 36; 1987 c 403 § 3; 1975 1st ex.s. c 294 § 14;** 1973 c 1 § 26 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.260**.]

## NOTES:

**Part headings—Severability—1997 c 409:** See notes following RCW **43.22.051**.

**Effective date—1989 c 175:** See note following RCW **34.05.010**.

**Intent—Severability—1987 c 403:** See notes following RCW **42.56.050**.

*Exemption for registered trade names: RCW **19.80.065**.*

*Paid family and medical leave information: RCW **50A.04.195**(4).*

# RCW 42.56.080

## Identifiable records—Facilities for copying—Availability of public records.

(1) A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.

(2) Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW **42.56.070**(8) or **42.56.240**(14), or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received in person during an agency's normal office hours, or by mail or email, for identifiable public records unless exempted by provisions of this chapter. No official format is required for making a records request; however, agencies may recommend that requestors submit requests using an agency provided form or web page.

(3) An agency may deny a bot request that is one of multiple requests from the requestor to the agency within a twenty-four hour period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential functions of the agency. For purposes of this subsection, "bot request" means a request for public records that an agency reasonably believes was automatically generated by a computer program or script.

[ **2017 c 304 § 2; 2016 c 163 § 3.** Prior: **2005 c 483 § 1; 2005 c 274 § 285; 1987 c 403 § 4; 1975 1st ex.s. c 294 § 15;** 1973 c 1 § 27 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.270**.]

## NOTES:

**Finding—Intent—2016 c 163:** See note following RCW **42.56.240**.

**Intent—Severability—1987 c 403:** See notes following RCW **42.56.050**.

# RCW 42.56.100

## Protection of public records—Public access.

Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives shall retain possession of the record, and may not destroy or erase the record until the request is resolved.

[ **1995 c 397 § 13; 1992 c 139 § 4; 1975 1st ex.s. c 294 § 16;** 1973 c 1 § 29 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.290**.]

# RCW 42.56.120

## Charges for copying.

(1) No fee shall be charged for the inspection of public records or locating public documents and making them available for copying, except as provided in RCW **42.56.240**(14) and subsection (3) of this section. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. When calculating any fees authorized under this section, an agency shall use the most reasonable cost-efficient method available to the agency as part of its normal operations. If any agency translates a record into an alternative electronic format at the request of a requestor, the copy created does not constitute a new public record for purposes of this chapter. Scanning paper records to make electronic copies of such records is a method of copying paper records and does not amount to the creation of a new public record.

(2)(a) Agency charges for actual costs may only be imposed in accordance with the costs established and published by the agency pursuant to RCW **42.56.070**(7), and in accordance with the statement of factors and manner used to determine the actual costs. In no event may an agency charge a per page cost greater than the actual cost as established and published by the agency.

(b) An agency need not calculate the actual costs it charges for providing public records if it has rules or regulations declaring the reasons doing so would be unduly burdensome. To the extent the agency has not determined the actual costs of copying public records, the agency may not charge in excess of:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations; and

(v) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(c) The charges in (b) of this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(d) An agency may charge a flat fee of up to two dollars for any request as an alternative to fees authorized under (a) or (b) of this subsection when the agency reasonably estimates and documents that the costs allowed under this subsection are clearly equal to or more than two dollars. An additional flat fee shall not be charged for any installment after the first installment of a request produced in installments. An agency that has elected to charge the flat fee in this subsection for an initial installment may not charge the fees authorized under (a) or (b) of this subsection on subsequent installments.

(e) An agency shall not impose copying charges under this section for access to or downloading of records that the agency routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means.

(f) A requestor may ask an agency to provide, and if requested an agency shall provide, a summary of the applicable charges before any copies are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

(3)(a)(i) In addition to the charge imposed for providing copies of public records and for the use by any person of agency equipment copying costs, an agency may include a customized service charge. A customized service charge may only be imposed if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other agency purposes.

(ii) The customized service charge may reimburse the agency up to the actual cost of providing the services in this subsection.

(b) An agency may not assess a customized service charge unless the agency has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice also must provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge.

(4) An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the agency is not obligated to fulfill the balance of the request. An agency may waive any charge assessed for a request pursuant to agency rules and regulations. An agency may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this section, or in response to a voluminous or frequently occurring request.

[ **2017 c 304 § 3; 2016 c 163 § 4; 2005 c 483 § 2.** Prior: **1995 c 397 § 14; 1995 c 341 § 2;** 1973 c 1 § 30 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.300**.]

## NOTES:

**Finding—Intent—2016 c 163:** See note following RCW **42.56.240**.

## RCW 42.56.520

## Prompt responses required.

(1) Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond in one of the ways provided in this subsection (1):

(a) Providing the record;

(b) Providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer;

(c) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request;

(d) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and asking the requestor to provide clarification for a request that is unclear, and providing, to the greatest extent possible, a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request if it is not clarified; or

(e) Denying the public record request.

(2) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3)(a) In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking.

(b) If the requestor fails to respond to an agency request to clarify the request, and the entire request is unclear, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Otherwise, the agency must respond, pursuant to this section, to those portions of the request that are clear.

(4) Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review.

[ **2017 c 303 § 3; 2010 c 69 § 2; 1995 c 397 § 15; 1992 c 139 § 6; 1975 1st ex.s. c 294 § 18;** 1973 c 1 § 32 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.320**.]

## NOTES:

**Finding—2010 c 69:** "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its

web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." [ **2010 c 69 § 1**.]

# CLEANGOV.NET

## June 03, 2019 - 2:20 PM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Court of Appeals Division I |
| **Appellate Court Case Number:** | 79254-7 |
| **Appellate Court Case Title:** | F. Robert Strahm, Appellant v. Snohomish County, Respondent |
| **Superior Court Case Number:** | 17-2-12232-7 |

**The following documents have been uploaded:**

- 792547_Petition_for_Review_20190603141845D1369775_2599.pdf
  This File Contains:
  Petition for Review
  *The Original File Name was PRR petition for review King SupCt 6.3.19 final.pdf*

**A copy of the uploaded files will be sent to:**

- alex.witenberg@snoco.org
- bob@cleangov.net
- diane.kremenich@snoco.org
- kmurray@snoco.org

**Comments:**

---

Sender Name: F Robert Strahm - Email: bob@cleangov.net
Address:
1712 Pacific Ave Suite 105
Everett, WA, 98201
Phone: (425) 359-1227

**Note: The Filing Id is 20190603141845D1369775**