

2014 FEB -4 AM 9:19
OF WASHINGTON
STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE
DIVISION II

BY 
DEPUTY

No. 44675-8-II

MARVIN HUNTER,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF
CORRECTIONS,

Respondent.

UNPUBLISHED OPINION

PENoyer, J. — Marvin Hunter appeals from the trial court's denial of his request for an in camera review of documents Department of Corrections (DOC) withheld after a public records request.¹ The court based its decision on its sua sponte determination that Hunter's counsel's May 3, 2010 letter, requesting the opportunity to review Hunter's DOC central file, was not a request for records under the Public Records Act (PRA).² DOC concedes that the trial court erred when it determined that Hunter's counsel's letter was not a request under the PRA. It asks that we remand to the trial court for the court to exercise its discretion in determining whether an in camera review is needed and for further proceedings consistent with that determination. Hunter agrees with the concession of error but asks that we direct the trial court to conduct the in camera review that he requested, contending that that court has no discretion to refuse to conduct an in camera review. *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 593-94, 243 P.3d 919 (2010).

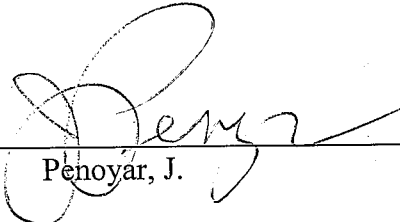
¹ A commissioner of this court initially considered Hunter's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges. He also appeals from the trial court's March 21, 2013 order granting him attorney fees only as to the 10 pages of documents that DOC untimely produced. CP 666-68.

² Ch. 42.56 RCW.

We accept DOC's concession of error and decline to direct the trial court in the way Hunter requests. Accordingly, we vacate the trial court's January 4, 2013 order on plaintiff's motion for partial summary judgment and for in camera inspection, its January 24, 2013 ruling denying Hunter's motion for reconsideration of the January 4, 2013 Order, and its March 21, 2013 order and judgment on plaintiff's motion for attorney fees and penalties. We remand for further proceedings, including a determination of whether an in camera review is required. We refer Hunter's request for attorney fees on appeal to the trial court, under RCW 42.56.550(4), but we award Hunter his statutory costs on appeal, under chapter 4.84 RCW.

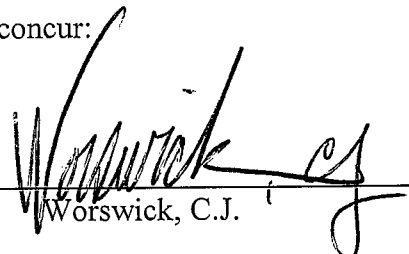
We vacate and remand to the trial court for further proceedings.

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




Penoyar, J.

We concur:



Worswick, C.J.



Maxa, J.