

# Public Records Act Case Law Update

## April 2019



*Notes:* The attached list of appellate court decisions contains brief summaries only and is not legal advice or a legal opinion. For details, read the full decisions. The most recent state court opinions, *published* and *unpublished*, are available on the courts' website here: <http://www.courts.wa.gov/opinions/>. Published state court opinions are also available on the Washington State Judicial Opinions Website linked [here](#). Consult with legal counsel if you have questions.

Several state appellate court unpublished decisions are referenced in the attached chart. Previously, they could not be cited as authority. On September 1, 2016, General Rule 14.1 became effective, which allows citation to unpublished decisions as follows: "Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate."

In addition, some of the unpublished decisions may have been published after these materials were prepared. Some of the referenced decisions (published and unpublished) may have appealed further after these materials were prepared.

The list may include a limited number of federal court published decisions (trial court and appellate) where a Public Records Act issue was addressed. For citing to federal court decisions, see FRAP 32.1.

Finally, court decisions issued after these materials were prepared, or statutes enacted after these materials were prepared, may be relevant in a particular situation or may impact an earlier court decision.

The decisions from **2018-2019 as of April 11, 2019** are listed in reverse chronological order, beginning with the most recent decisions.

Case	Date/Cite	Decision/Issues
<b>2019</b> (as of April 11, 2019)		
<b>Strand v. Spokane County</b>	April 11, 2019  Unpublished	<ul style="list-style-type: none"> <li>• Requester sought records on property valuation work relevant to her residence. PRA Complaint alleged County delayed disclosure and withheld responsive documents. Records had been provided but some had been overlooked and were later discovered. Requester appeared pro se in the litigation, but had consulted with an attorney.</li> <li>• Court of Appeals: (1) An attorney need not appear of records in a PRA action for legal services to be compensable if the services were reasonably incurred in litigating a matter on which a PRA plaintiff prevails. Here, the requester presented evidence that she had sought and paid for legal services relevant to the prosecution of her PRA claims. Case remanded to determine if attorney fees of \$612 should be awarded. (2) Trial court properly awarded penalty amount (\$1/day) under <i>Yousoufian</i> + transcript costs; there was no abuse of discretion. (3) Other claims (such as regarding agency’s search, whether other records should exist) were not properly presented.</li> </ul>
<b>Janssen v. DSHS, Payne</b>	March 19, 2019  Unpublished	<ul style="list-style-type: none"> <li>• Sexually violent predator (SVP) made multiple PRA requests concerning a female DSHS staff member, relating to her personally. She sought an injunction from disclosure.</li> <li>• Court of Appeals: (1) Requester’s challenge to issuance of the temporary restraining order was moot; (2) because no preliminary injunction hearing was required under RCW 42.56.565(4), the trial court was not required to conduct a preliminary injunction hearing before issuing the permanent injunction; (3) the absence of an applicable PRA exemption was immaterial because RCW 71.09.120(3) and RCW 42.56.565(2)(c)(i) allow the trial court to enjoin the release of nonexempt public records to SVPs residing in a civil commitment facility if the PRA request was made to harass an agency employee; (4) substantial evidence supported the trial court’s finding that the requester’s PRA requests were made to harass the employee and therefore the permanent injunction was warranted under RCW 71.09.120(3) and RCW 42.56.565(2)(c)(i); and (5) DSHS did nothing improper in supporting the employee’s position during the injunction proceedings.</li> <li>• However, the Court of Appeals also held that the permanent injunction was overbroad to the extent that the injunction applied to any PRA request submitted by any person, but not to the extent that the injunction applied to the requester and his civil commitment attorney. Case remanded to modify injunction.</li> </ul>

Case	Date/Cite	Decision/Issues
<b>Palmer v. King County et al.</b>	March 4, 2019  Unpublished	<ul style="list-style-type: none"> <li>• PRA requester had sued in 2016 regarding allegations of inadequate search for records and the trial court dismissed the case upon the agency’s motion. The requester moved the vacate the order under CR 60(b), that was denied, and the requester appealed but abandoned the appeal. Appellate review was terminated in 2017. Later in 2017, the requester claimed he had new evidence and again sought to vacate the prior order. The trial court denied the motion. The requester appealed again.</li> <li>• Court of Appeals: The requester’s second motion to vacate the prior order was filed 16 months after the original order and thus was untimely under CR 60(b); such motions must be filed within a reasonable time period and no more than one year from the challenged order or judgment. This “time limit must be strictly followed.”</li> </ul>
<b>Washington Coalition for Open Gov’t v. Pierce County</b>	February 20, 2019  Unpublished  <i>(Petition for review filed)</i>	<ul style="list-style-type: none"> <li>• PRA request for records related to amicus participation in another case, <i>Nissen v. Pierce County</i>. Requester wanted records provided via email or an internet transfer service. County provided records largely by mailed CD, in installments, until the county later set up an internet transfer service. Some records were exempted as work product, and exemption logs were provided. Trial court ruled in favor of the county.</li> <li>• Court of Appeals: Trial court affirmed. County met its burden to establish that the work product privilege exemption under RCW 42.56.290 applied to the redacted documents. The privilege was not waived when documents were shared with amicus groups in the litigation. The county’s exemption logs were adequate and provided the required brief explanation. The county did not violate the PRA by refusing to transmit the requested documents electronically.</li> </ul>
<b>Hood v. Langley</b>	January 28, 2019  Unpublished	<ul style="list-style-type: none"> <li>• PRA requester challenged sufficiency of agency’s search for records, including mayor’s calendar records and laptop records.</li> <li>• Court of Appeals: Rejected requester’s argument that too many paper records were provided. Found there is no PRA cause of action for producing records for which an agency could have claimed an exemption. Found requester was not entitled to search mayor’s laptop himself (no “unfettered searches”). Declined to establish a rule that daily calendars are always public records (citing <i>Yacobellis v. Bellingham</i>). (Trial court had also held personal journals are not public records; that issue was not challenged on appeal.)</li> <li>• Court of Appeals: Recognized City provided four declarations. City’s search for paper records was adequate. However, issue of fact about whether the search for “the City’s computer records” also included a search of laptop or produced electronic calendars. There was another issue of fact as to whether the requester clarified his request. It was also unclear if requester was given access to paper copies of electronic records when he inspected records. Case remanded on those matters.</li> </ul>

Case	Date/Cite	Decision/Issues
<b>Doe v. Pierce County, Zink</b>	January 23, 2019 – Order to Publish  ___ Wn. App. 2d, ___, 433 P.3d 838 (2019)  <i>(Order amending Aug. 21, 2018 opinion and order to publish entered Jan. 23, 2019)</i>  <i>(Petition for review filed)</i>	<ul style="list-style-type: none"> <li>• <i>(Publishing and amending August 21, 2018 decision).</i></li> <li>• This PRA case is the latest in a series of appellate decisions involving release of certain sex offender records, including SSOSA and SSODA evaluations.</li> <li>• Court of Appeals: upheld some trial court rulings, reversed others, in this decision involving multiple claims and counterclaims. Case remanded for further proceedings.</li> <li>• Court of Appeals: upheld trial court order granting class certification for several offenders seeking an injunction from release; reversed the trial court order permitting most offenders to proceed using pseudonyms in the litigation; upheld the trial court’s permanent injunction barring release of certain unredacted juvenile sex offender records that were not in the official juvenile court file, pursuant to RCW 13.50; and, reversed the trial court’s decision that the records were exempt under the health care statutes (UHCIA) (RCW 70.02), the Community Protection Act (CPA) (former RCW 4.24.550), or as “personal information” used to obtain a driver’s license (RCW 42.56.230(7)(a)).</li> <li>• Court of Appeals: upheld the trial court order dismissing the requester’s counterclaims concerning the alleged failures to provide records “electronically,” explain copying fees, provide an exemption log, and improperly notify third parties.</li> </ul>
<b>Asotin Co. v. Eggleston</b>	January 17, 2019  ___ Wn. App. 2d, ___, 432 P.3d 1235 (2019)	<ul style="list-style-type: none"> <li>• PRA request involving legal costs incurred by county. County had asked court to decide whether exemptions apply, and to what extent.</li> <li>• Court of Appeals: It is the agency’s burden to determine if exemptions apply. A requester can be a prevailing party, entitled to attorneys’ fees, even if he/she did not initiate the PRA action. Requester substantially prevailed on some issues. Case remanded to determine penalties.</li> </ul>
<b>Boardman v. Inslee</b>	January 10, 2019  354 F.Supp.3d 1232 (W. Dist. Wash. 2019)	<ul style="list-style-type: none"> <li>• First Amendment and Equal Protection challenge to PRA provision enacted in Initiative 1501 (I-1501) exempting home care workers' names from public inspection and copying.</li> <li>• Federal District Court: Provision did not violate First Amendment right to free speech; did not entail unlawful viewpoint discrimination; was not unconstitutionally overbroad; did not violate First Amendment right of association; and did not violate equal protection. Claims dismissed.</li> <li>• (For state court opinions on other claims involving I-1501, see these 2018 decisions summarized below: <i>Puget Sound Advocates for Retirement Action et al. v. State et al.</i>; and <i>SEIU Local 925 v. State et al.</i>)</li> </ul>

## 2018

<p><b>Sheats v. City of East Wenatchee et al.</b></p>	<p>December 11, 2018</p> <p>6 Wn. App. 2d, 5232, 431 P.3d 489 (2018)</p> <p><i>(Petition for review denied)</i></p>	<ul style="list-style-type: none"><li>• A police officer’s pre-employment polygraph showed several incidents of theft and dishonesty. A copy of the redacted report had been distributed by prosecutors to lawyers representing parties in criminal proceedings, including as part of <i>Brady</i> criminal case disclosures.</li><li>• A PRA request sought complaints about the officer, but not the report. The agency provided the officer third party notice that it would release the redacted report. The officer sought an injunction to prevent release, although he did not file a superior court “Complaint.” The trial court determined the redacted report must be disclosed under <i>Brady</i>, and that because it was disclosable under <i>Brady</i> it could be disseminated to persons making a PRA request.</li><li>• Court of Appeals: Trial court upheld.<ul style="list-style-type: none"><li>○ The initial pleading filed by the plaintiff substantially complied with the statutory requirement of filing of a Complaint, so the court had subject matter jurisdiction. The challenges to the jurisdiction were waived.</li><li>○ RCW 42.56.250(2), which exempts certain employment information including “other related materials submitted with respect to an applicant,” applies to exempt polygraph reports taken by police officers as part of a pre-employment screening.</li><li>○ But when an agency elects to disseminate exempt records in response to a PRA request, the person seeking to enjoin dissemination has a “heavy burden” which includes establishing that dissemination of the record would clearly not be in the public interest.</li><li>○ Here, the officer’s redacted polygraph report discloses numerous instances of theft and dishonesty, and because the public has an interest in knowing whether a particular officer is law abiding, the public has an interest in viewing the redacted report.</li><li>○ Disclosure did not violate the officer’s right to privacy.</li><li>○ “An agency need not disseminate exempt records of all officer misconduct. An isolated minor incident, or even a series of incidents before becoming an officer, is not necessarily indicative of present character. When choosing whether to disseminate an exempt record, the agency should ask whether a reasonable person would consider the record probative of the officer’s present character.”</li></ul></li></ul>
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<p><b>West v. City of Tacoma</b></p>	<p>November 14, 2018  Unpublished</p>	<ul style="list-style-type: none"> <li>• Three requesters (including Plaintiff West) requested records from the city concerning a liquid natural gas terminal under construction at a port. Some records were temporarily enjoined from disclosure pursuant to a separate injunction action in which West intervened. Another injunction action was filed, and both were later dismissed when records were otherwise obtained and published by the media requester.</li> <li>• The city communicated with West regarding his first request and said he could contact the city if he believes other records are responsive or if the records provided did not meet the scope of his request.</li> <li>• West sued the city for silently withholding two records that one of the other requesters had obtained. The city re-opened his request and provided the records.</li> <li>• Trial court dismissed the action, finding the city produced the requested documents.</li> <li>• Court of Appeals: Trial court reversed. <ul style="list-style-type: none"> <li>○ West identified the records with sufficient clarity for the agency to locate them and by not disclosing their existence. The city silently withheld the records.</li> <li>○ The record does not show that West confined his request to only the records at issue in the injunction action in which he intervened.</li> <li>○ “To the extent the City was unclear about the scope of West’s request, it had an obligation to request clarification.” The city’s communication with West regarding his chance to re-open his request was not a “request for clarification of an unclear request.”</li> </ul> </li> </ul>
<p><b>Puget Sound Advocates for Retirement Action et al. v. State et al.</b></p>	<p>October 30, 2018  Unpublished</p>	<ul style="list-style-type: none"> <li>• PRA request to DSHS for names and associated birthdates of individual home care providers who provide personal care services. Trial court denied permanent injunction to enjoin disclosure.</li> <li>• Court of Appeals: Trial court reversed. Case remanded. <ul style="list-style-type: none"> <li>○ Following the holding in <i>WPEA et al. v. Wash. St. Ctr. For Childhood Deafness and hearing Loss (WPEA)</i> (currently on appeal), article 1, Sec. 7 of the state constitution protects that information from disclosure.</li> <li>○ Regardless of whether Initiative 1501 can be applied retroactively, the initiative codified at RCW 43.17.410(1) operates prospectively to prohibit DSHS from releasing the names/birthdates, regardless of the date the public records request was filed.</li> </ul> </li> </ul>

<p><b>Stetson v. Department of Corrections</b></p>	<p>October 30, 2018  Unpublished</p>	<ul style="list-style-type: none"> <li>• Inmate PRA case, and Uniform Health Care Information Act (HCIA) (RCW 70.02) case.</li> <li>• Inmate requested to review his medical records at DOC, and was given limited and delayed access. Inmate filed suit under the PRA and HCIA.</li> <li>• Trial court entered judgment on the pleadings, for DOC.</li> <li>• Court of Appeals: <ul style="list-style-type: none"> <li>○ Request was for inmate to inspect his own health care records from a health care provider (DOC) and UHCIA applies as the “exclusive means” to review his records. PRA did not apply.</li> <li>○ Inmate alleged sufficient facts to show agency may have violated the UHCIA. Trial court reversed; case remanded. Discovery can proceed.</li> </ul> </li> </ul>
<p><b>Lancaster v. Department of Corrections</b></p>	<p>October 23, 2018  Unpublished</p>	<ul style="list-style-type: none"> <li>• Inmate PRA case. Request for phone calls made with the inmate’s ID number. Trial court awarded penalties.</li> <li>• Court of Appeals: Agency did not act in bad faith, so inmate PRA case did not qualify for penalty award under RCW 42.56.565(1). “[A]n agency’s bad faith must cause the denial of the opportunity to inspect or copy a public record in order for an inmate to be awarded monetary penalties” and that did not happen in this case.</li> <li>• Penalty award reversed; case remanded.</li> </ul>
<p><b>Doe v. Wash. Dep’t of Fish &amp; Wildlife, Loomis</b></p>	<p>October 16, 2018  Unpublished  <i>(Petition for review filed)</i></p>	<ul style="list-style-type: none"> <li>• PRA request for agency-conducted investigation records concerning cross-allegations of sexual harassment between two employees. Records contained, in addition to other information, allegations regarding Doe’s sexual conduct. Agency redacted certain information under RCW 42.56.230(3) related to sexual conduct, but not other information. Doe wanted the agency to redact all information that identified her by name, relationship or association. Doe sued to seek injunction.</li> <li>• Trial court conducted <i>in camera</i> review and accepted some of Doe’s proposed additional redactions and rejected others where they did not connect her to alleged sexual conduct and therefore did not implicate her right to privacy. Trial court entered injunction but declined to extend it to future PRA requests, and did not award Doe attorneys’ fees.</li> <li>• Court of Appeals: Trial court upheld. <ul style="list-style-type: none"> <li>○ Trial court properly declined to order redaction of all references to Doe’s identity in the investigative records. Not every reference to Doe concerned intimate matters of Doe’s private life, so there was no privacy interest in that information. Although a requester may potentially figure out the identity of a person, that does not negate the public’s interest in a document.</li> <li>○ Trial court properly declined to enter injunction as to future requests. Court of Appeals declined to enter advisory opinion as to future requests.</li> <li>○ Trial court properly declined to award Doe attorneys’ fees.</li> </ul> </li> </ul>

<p><b>Zabala v. Okanogan County</b></p>	<p>October 2, 2018</p> <p><i>(April 3, 2018 opinion withdrawn; new opinion issued, published in part)</i></p> <p>5 Wn. App. 2d 517, 428 P.3d 124 (2018)</p>	<ul style="list-style-type: none"> <li>• Requests for monitored jail phone calls used in prosecution of crime, and other records concerning calls.</li> <li>• Court of Appeals: Published part of decision: RCW 70.48.100 exempts the requested records.</li> <li>• Unpublished part of decision: Regarding a search for identifiable records, the inability to perform a key word search does not excuse an agency’s response to a public records request. Nevertheless, the inability to perform a key word search for electronic records can be considered in determining whether the records sought are identifiable. Broad, sweeping requests lacking specificity are not sufficient. Here, the requester did not provide a precise request, and even if he had, the records would be exempt. Under the unique circumstances of this appeal, the agency complied with the PRA by declining to provide an exhaustive list of cases in which it holds a jail inmate phone recording.</li> </ul>
<p><b>Doe P. et al. v. Thurston County, Zink</b></p>	<p>October 2, 2018</p> <p>Unpublished</p> <p><i>(Petition for review denied)</i></p>	<ul style="list-style-type: none"> <li>• Unpublished decision following State Supreme Court remand of decision at 199 Wn. App. 280 (2017) and following State Supreme Court decision in <i>Doe v. Department of Corrections</i> at 190 Wn.2d 185 (2018) (<i>Doe v. DOC</i>).</li> <li>• In light of remand and <i>Doe v. DOC</i>: (1) Sex offender SSOSA and SSODA evaluations are not exempt from disclosure under the state Health Care Information Act (HCIA) at RCW 70.02 [except for juvenile offender records exempt under RCW 13.50]; and (2) the superior court decision allowing the sex offenders to proceed under pseudonyms is reversed.</li> <li>• Other holdings in 199 Wn. App. 280 are affirmed.</li> </ul>
<p><b>SEIU Local 925 v. State et al.</b></p>	<p>September 18, 2018</p> <p>Unpublished</p> <p><i>(Motion to Publish denied)</i></p> <p><i>(Petition for review granted – Oral argument June 13, 2019)</i></p>	<ul style="list-style-type: none"> <li>• Requester Freedom Foundation requested list of names and contact information of child care providers. Trial court denied union’s request for injunction.</li> <li>• Court of Appeals: Trial court affirmed. Exemptions created by RCW 42.56.640 and RCW 43.17.410 established through Initiative 1501 do not apply retroactively so as to restrict disclosure in this case (the statutes were not in effect at the time of the PRA request). In addition, former RCW 74.04.060(4), which restricts lists of public assistance recipients when the list is for a commercial or political purpose, also does not apply so as to exempt disclosure of the requested records.</li> </ul>
<p><b>Martin v. Gonzaga University et al.</b></p>	<p>September 13, 2018</p> <p>191 Wn.2d 712, 425 P.3d 837 (2018)</p>	<ul style="list-style-type: none"> <li>• Not a PRA case. Case involved access to employee’s personnel file under RCW 49.12.250.</li> <li>• Supreme Court: The former employee’s statutory claim regarding lack of access to his complete his personnel file under RCW 49.12.250 was not yet justiciable because he had not brought that claim first to the state Department of Labor and Industries, the agency which enforces that statute.</li> </ul>

<p><b>Church of the Divine Earth v. City of Tacoma</b></p>	<p>September 5, 2018</p> <p>Published in part</p> <p>5 Wn. App. 2d 471, 426 P.3d 268 (2018)</p> <p><i>(Petition for review granted only as to land use/permit damages issue, not PRA issue)</i></p>	<ul style="list-style-type: none"> <li>• Case involved a building permit and a claim for damages, and a PRA claim involving records the church requested from the city. Trial court conducted in camera review and dismissed PRA claims, finding search and redactions were appropriate.</li> <li>• Court of Appeals published the damages claim part of the decision, but not the PRA part of the decision.</li> <li>• Unpublished (PRA) part of decision: Trial court affirmed. City’s search for responsive public records was reasonable and adequate, even though it initially missed two records and later provided them. Court of Appeals independently reviewed redactions; city properly redacted documents under attorney client privilege and work product doctrine.</li> </ul>
<p><b>Freedom Foundation v. SEIU Healthcare NW, Training Partnership, a 501(c)(3)</b></p>	<p>August 27, 2018</p> <p>Unpublished</p>	<ul style="list-style-type: none"> <li>• Requester Freedom Foundation requested 501(c)(3) training partnership entity, an ERISA welfare trust, to produce “public records” under the PRA. Entity denied it was a public agency subject to the PRA. Trial court ruled entity was not subject to the PRA.</li> <li>• Court of Appeals: Trial court affirmed. Entity is not the functional equivalent of a public agency under the four-factor <i>Telford</i> test, so it is not subject to the PRA.</li> </ul>
<p><b>Does v. Pierce County, Zink</b></p>	<p>August 21, 2018</p> <p><i>(Now published. See 2019 decisions)</i></p>	<ul style="list-style-type: none"> <li>• This PRA case is the latest in a series of appellate decisions involving release of certain sex offender records, including SSOSA and SSODA evaluations.</li> <li>• Court of Appeals: upheld some trial court rulings, reversed others, in this decision involving multiple claims and counterclaims. Case remanded for further proceedings.</li> <li>• Court of Appeals: upheld trial court order granting class certification for several offenders seeking an injunction from release; reversed the trial court order permitting most offenders to proceed using pseudonyms in the litigation; upheld the trial court’s permanent injunction barring release of certain unredacted juvenile sex offender records that were not in the official juvenile court file, pursuant to RCW 13.50; and, reversed the trial court’s decision that the records were exempt under the health care statutes (UHCIA) (RCW 70.02), the Community Protection Act (CPA) (former RCW 4.24.550), or as “personal information” used to obtain a driver’s license (RCW 42.56.230(7)(a)).</li> <li>• Court of Appeals: upheld the trial court order dismissing the requester’s counterclaims concerning the alleged failures to provide records “electronically,” explain copying fees, provide an exemption log, and improperly notify third parties.</li> </ul>

<p><b>Creer Legal v. Monroe School District</b></p>	<p>August 13, 2018</p> <p>4 Wn. App. 2d 776, 423 P.3d 915 (2018)</p> <p><i>(Petition for review denied)</i></p>	<ul style="list-style-type: none"> <li>• An attorney for a PRA requester, as an agent of the requester with respect to a records request and subsequent claim that the public agency did not comply with the PRA, does not have his/her own cause of action for an alleged violation of the PRA.</li> <li>• Once the client released the public agency in a settlement agreement, the attorney for the client could not pursue his/her own PRA lawsuit.</li> <li>• Citing to RCW 42.56.550, the Court of Appeals held, “We read the [PRA] to provide for a single cause of action arising from an alleged PRA denial, regardless of how many individuals were involved in making the request.”</li> </ul>
<p><b>Hoffman v. Kittitas County</b></p>	<p>July 24, 2018 <i>(Amended August 20, 2018)</i></p> <p>4 Wn. App. 2d 489, 422 P.3d 466 (2018)</p> <p><i>(Petition for review granted – oral argument May 9, 2019)</i></p>	<ul style="list-style-type: none"> <li>• Public agency improperly redacted and withheld 126 records for 246 days. Trial court calculated the penalty amount under the <i>Yousoufian</i> analysis and assessed 50 cents per day for each document/page, for a total of \$15,498.</li> <li>• Court of Appeals: Trial court affirmed under <i>Yousoufian</i>; there was no abuse of discretion. A PRA penalty “is guided by an overarching concern for deterrence” thus a court should consider an agency’s overall level of culpability, “not just the culpability of the worst actor.” Here, the penalty amount was reasonable, including if cost per resident is considered.</li> </ul>
<p><b>Gaston v. State of Washington Dep’t of Corrections</b></p>	<p>July 24, 2018</p> <p>Unpublished</p>	<ul style="list-style-type: none"> <li>• Former inmate made PRA request for videos of an assault on him while he was in prison.</li> <li>• Court of Appeals: Trial court decision finding that requested prison surveillance videos were exempt from disclosure is affirmed. Specific intelligence information requested was exempt under RCW 42.56.240(1) and prior case law.</li> <li>• The fact that the requester is now a former inmate does not change the analysis, under RCW 42.56.080. And, although some videos were used in court proceedings, the agency did not waive the exemption in response to a PRA request.</li> </ul>
<p><b>Green v. Lewis County</b></p>	<p>July 16, 2018</p> <p>Unpublished</p>	<ul style="list-style-type: none"> <li>• Public agency admitted it mistakenly omitted one document in response to a PRA request. Trial court awarded requester 25 percent of his attorneys’ fees/costs since the requester did not prevail on a majority of his claims, and a smaller penalty (\$5/day for 369 days) than the requester had sought.</li> <li>• Court of Appeals: Trial court affirmed under <i>Yousoufian</i>; there was no abuse of discretion in assessing the penalty.</li> </ul>
<p><b>Zellmer v. King County</b></p>	<p>July 16, 2018</p> <p>Unpublished</p> <p><i>(Petition for review denied)</i></p>	<ul style="list-style-type: none"> <li>• Inmate PRA lawsuit.</li> <li>• Court of Appeals: Public agency used unreliable method for determining date of requested photographs by relying on the “date modified” field; therefore, its search for responsive records was inadequate.</li> <li>• However, because the agency did not act in bad faith, inmate is not entitled to an award of penalties pursuant to RCW 42.56.565(1) and the trial court dismissal is affirmed.</li> </ul>

<p><b>Gipson v. Snohomish County</b></p>	<p>July 9, 2018 Unpublished <i>(Petition for review granted; oral argument held Feb. 26, 2019; decision pending)</i></p>	<ul style="list-style-type: none"> <li>• Requester made PRA request for records of an open investigation regarding himself. After the investigation closed, the agency provided substantially redacted records, withheld in part under the exemption for records related to an active investigation into employment discrimination (RCW 42.56.250(6)). Trial court held agency properly cited exemption.</li> <li>• Court of Appeals: Trial court affirmed. An agency makes a determination on whether a record is exempt at the time it receives the request. In this case, the request was made while the investigation was ongoing, although it later ended. This approach is consistent with the fact that there are no “standing” requests under the PRA and an agency has no obligation to later supplement its responses.</li> </ul>
<p><b>Clapham v. Washington State Patrol</b></p>	<p>June 19, 2018 Unpublished</p>	<ul style="list-style-type: none"> <li>• No records existed related to the requester’s PRA request for surveillance and harassment records at the Washington State Patrol, therefore, the request was not for identifiable records.</li> <li>• Agency conducted an adequate search in four different databases. This was an adequate search under the circumstances in this case.</li> <li>• Agency properly sought clarification from requester.</li> <li>• Agency provided the fullest assistance to the requester by responding within two days and searching four databases that would reasonably contain the records requested. The PRA does not require an agency to spend a specified amount of time on a search.</li> </ul>
<p><b>Zink v. City of Mesa</b></p>	<p>June 14, 2018 <i>(Amended June 19, 2018)</i>  4 Wn. App. 2d 112, 419 P.3d 847 (2018)  <i>Published in part</i>  <i>(Petition for review denied)</i></p>	<ul style="list-style-type: none"> <li>• PRA penalty case regarding penalty factors (<i>Yousoufian</i> factors).</li> <li>• Published part of Court of Appeals decision: A trial court may adjust its total penalty based on the size of the agency and the facts of the case. Trial court had discretion to adjust penalty. The 2011 legislation that eliminated the \$5 floor on per day penalties (allowing for \$0 per day) is remedial and retroactive.</li> <li>• Unpublished part of decision: Court dispensed with several arguments by requester concerning retroactivity, due process and separation of powers.</li> </ul>
<p><b>SEIU 925 v. UW, Freedom Foundation</b></p>	<p>June 11, 2018  4 Wn. App. 2d 605, 423 P.3d 849 (2018)  <i>(Petition for review granted – oral argument May 14, 2019)</i></p>	<ul style="list-style-type: none"> <li>• The email and other records at issue in this case that were on public agency servers were not “public records” under the PRA because they were not prepared, owned, used or retained with the scope of employment. The records related to faculty collective bargaining and similar union-related topics.</li> <li>• The SEIU had standing to bring the action on behalf one of its members.</li> <li>• The trial court had authority to stay proceedings after appellate review was sought, to preserve the posture of the case.</li> </ul>

<p><b>Lyft et al. City of Seattle et al.</b></p>	<p>May 31, 2018 190 Wn. 2d 769, 418 P.3d 102 (2018)</p>	<ul style="list-style-type: none"> <li>• Records containing trade secrets are not categorically exempt under the PRA.</li> <li>• The injunction standard in the PRA at RCW 42.56.540 applies, requiring a court to determine that disclosure would clearly not be in the public interest and would substantially and irreparably damage a person or vital governmental interest.</li> <li>• The superior court erred by applying the general civil injunction standard in Civil Rule 65/<i>Tyler Pipe Indus. v. Dep't of Revenue</i>, and by not adequately considering the PRA's more stringent standard. Case remanded for trial court to consider the proper standard.</li> </ul>
<p><b>Kittitas County v. Sky Allphin et al.</b></p>	<p>May 17, 2018 <i>(Amended June 18, 2018)</i>  190 Wn. 2d 691, 416 P.3d 1232 (2018)</p>	<ul style="list-style-type: none"> <li>• Emails exchanged between county and state Department of Ecology were work product because they were prepared by the county in anticipation of litigation.</li> <li>• The county did not waive its work product protection because disclosure to Ecology never created a significant likelihood that an adversary would also obtain the information.</li> <li>• Therefore, the emails were properly withheld in response to a PRA request under RCW 42.56.290 since work product is not generally discoverable under Civil Rule 26(b)(4).</li> </ul>
<p><b>Lee v. City of Seattle et al.</b></p>	<p>May 14, 2018  Unpublished  <i>(Petition for review denied)</i></p>	<ul style="list-style-type: none"> <li>• Request for death scene photos and other investigative records of musician who committed suicide. Certain records, including photos, were not released.</li> <li>• Court of Appeals: Trial court properly enjoined release. Release of death scene photos would violate the families' due process rights under the 14<sup>th</sup> Amendment.</li> <li>• Other documents were properly withheld as exempt under RCW 68.50.105(1)(autopsy report), 70.02.020 (former RCW 70.96A.150) (drug influence evaluation), 42.56.240(2) (witnesses who asked for their identities to not be disclosed), 42.56.230(5) (social security and credit card numbers), 10.97.080 (nonconviction data), 70.48.100(2) (jail records), ch. 13.50 (juvenile records), and 42.56.250(3) (telephone number of a police officer).</li> </ul>
<p><b>Zabala v. Okanogan County</b></p>	<p>April 3, 2018  <i>(April 3, 2018 opinion withdrawn; see October 2, 2018 decision)</i></p>	<ul style="list-style-type: none"> <li>• Requests for monitored jail phone calls used in prosecution of crime, and other records concerning calls. Opinion withdrawn; see October 2, 2018 decision.</li> </ul>

<p><b>Kittitas County v. Sky Allphin et al.</b></p>	<p>March 13, 2018</p> <p>Published in part</p> <p>2 Wn. App. 2d 782, 413 P.3d 22 (2018)</p> <p><i>(Petition for review denied)</i></p>	<ul style="list-style-type: none"> <li>• A public agency can use Civil Rule 7(b)(1) to move for judicial review in a PRA case when it seeks review under RCW 42.56.550(3), and the show cause nature of the proceeding did not prejudice the requesters. Per case law, a party can proceed under any manner allowed in the Civil Rules; those rules also apply to PRA cases. (Published).</li> <li>• The requesters’ other claims (including regarding the agency’s alleged failure to provide discovery, the trial court’s refusal to review records <i>in camera</i>, the trial court’s denial of a motion for partial relief, the alleged inadequacy of the agency’s search for records, and the claims that it delayed providing records while it coordinated its response with another agency), were dismissed. (Unpublished).</li> </ul>
<p><b>West v. The Evergreen State College Board of Trustees et al.</b></p>	<p>February 27, 2018</p> <p>3 Wn. App. 2d 112, 414 P.3d 614 (2018)</p> <p><i>(Petition for review denied)</i></p>	<ul style="list-style-type: none"> <li>• The federal Family Educational Rights and Privacy Act (FERPA) is an “other statute” that exempts records from disclosure in response to a PRA request.</li> <li>• The agency properly withheld records under FERPA, and properly withheld other records that were exempt as attorney-client privileged communications. The attorney-client privilege statute is also an “other statute” exempting records under the PRA.</li> </ul>
<p><b>John Doe et al. v. Dep’t of Corr., Zink</b></p>	<p>February 22, 2018</p> <p>190 Wn.2d 185, 410 P.3d 1156 (2018)</p>	<ul style="list-style-type: none"> <li>• Special sex offender sentencing alternative (SSOSA) evaluations are forensic exams done for the purpose of aiding a court in sentencing. They do not contain “health care information” and are not exempt from disclosure in response to a PRA request.</li> <li>• Pseudonyms were not properly permitted in this action because the lower court did not follow the required State Constitutional analysis and court rule (GR 15) procedures before permitting plaintiffs to proceed as “John Does.”</li> </ul>
<p><b>West v. Puyallup</b></p>	<p>February 21, 2018</p> <p>2 Wn. App. 2d 586, 410 P.3d 1197 (2018)</p>	<ul style="list-style-type: none"> <li>• Facebook posts on an elected official’s personal site are public records if they relate to the conduct of government and are prepared in within the scope of employment or official capacity.</li> <li>• In this case, requested records were not public records.</li> </ul>
<p><b>Williams v. Dep’t of Corrections</b></p>	<p>February 21, 2018</p> <p>Unpublished</p>	<ul style="list-style-type: none"> <li>• Inmate PRA case.</li> <li>• Court of Appeals: Agency made a reasonable estimate of time, did not unduly delay production of records, and provided a sufficient brief explanation. However, the agency improperly redacted some portions of records with respect to the security provisions in 42.56.240. Remanded to determine if penalties should be awarded.</li> </ul>
<p><b>Strickland v. Pierce County</b></p>	<p>January 29, 2018</p> <p>Unpublished</p>	<ul style="list-style-type: none"> <li>• PRA lawsuit regarding claim that county improperly withheld records was properly dismissed where requester failed to comply with one-year statute of limitations in filing action.</li> <li>• The fact that a few responsive records turned up later did not change the result. There was no evidence of deception or bad faith to support an equitable tolling of the statute of limitations. Requester’s argument for application of a discovery rule is unsupported.</li> </ul>

<b>Kennedy v. Skagit County Hospital Dist. No. 1</b>	January 22 2018  Unpublished	<ul style="list-style-type: none"><li>• In this PRA case, requester moved for waiver of the court's civil fees pursuant to General Rule 34.</li><li>• Court found requester was indigent and GR 34 is applicable to civil cases.</li></ul>
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