

WAPRO Conference - Fall 2022



Case Law Update

The case law discussion includes decisions issued from May 18, 2022 through October 20, 2022.

Several unpublished appellate decisions are summarized for this presentation. While they may not be cited as precedent they are nonetheless instructive.

DISCLAIMER

This presentation is educational only and is not legal advice or a legal opinion. The PRA changes over time. Later court decisions or changes in statutes can impact these decisions and an agency's obligations.

Records & Searches



West v. City of Lakewood

Unpublished (July 20, 2022)

West sought records related to the shooting and killing of Michael Reinoehl by law enforcement officers. West spelled Reinoehl's name correctly in the subject line, but misspelled it as "Reinoel" in the body of the message. The City conducted a search using only the misspelled name founding no responsive documents. The City also asserted any responsive records would be exempt as an active law enforcement investigation citing RCW 42.56.240(1), but in any event, the Thurston County Sheriff's Office was investigating the incident and referred the Requester. Three days after receiving the notice, Requester filed suit. While aware of the suit but before it was served, the City discovered the spelling error, conducted a new search for records, finding more than 1,500 records (over 7,700 pages) and 11 text messages which it then produced over the next 40 days. The trial court ruled in favor of the City.

- The COA overturned the trial court. The City's search was inadequate. The City failed to follow through on multiple obvious leads including Reinoehl's name spelled correctly in the subject line of his request, knowledge of the incident by agency staff, and other requests for the same or similar records. The assertion of RCW 42.56.240(1) was vague or inadequate. Disclosing documents after the lawsuit is filed does not cure the error of omitting records during the production of records to a request.

Cantu v. Yakima School District No. 7

__ Wn. App.2d __, 514 P.3d 661 (2022)

Cantu believed her daughter was being bullied at school. Over the course of two years she made three records requests. Her first request was made in October 2016. In January 2017, Cantu clarified this request. In April 2018, she made two requests seeking more records including records that would have been within the scope of the January 2017 request as well as other records.

- The District failed to meet its burden of showing its search for records in response to the January 2017 clarification was reasonably calculated to uncover all relevant records. The inadequate search not only failed to discover responsive records, but the inadequate search constituted an aggravating factor the trial court did not consider when calculating the per diem penalty.
- When an agency ignores a request for an extended period of time, such inaction may constitute the constructive denial of records. The District ignored one of the April 2018 requests for an extended period of time, thus wrongfully denying her records.

Continued

Cantu v. Yakima School District No. 7

__ Wn. App.2d __, 514 P.3d 661 (2022)

- The District's narrow interpretation of the April 2018 requests was based on an unreasonable assumption. Consequently, the District wrongfully withheld at least 75 email attachments on the basis that they were nonresponsive to the April 2018 requests. To the extent that any exemptions apply to those email attachments, the records can be redacted during production of those records.
- The PRA procedures outlined in RCW 42.56.550 are not exclusive. The rules of civil procedure also apply in PRA litigation, when not inconsistent.

Hood v. Centralia College

Unpublished (August 2, 2022)

September 23, 2019, Hood submitted the following request, “I learned that your organization was recently audited by the state auditor. May I have all records it got from the auditor and all records of any response to the audit or to the audit report?” The College first requested clarification whether the audit he sought was a 2018 financial audit; Hood responded affirmatively. The College conducted a search, identified, and produced responsive records. Some via link and others for a fee of \$1.80. As part of the production, the College indicated the request was ambiguous and offered it’s understanding of the request with a request to Hood to clarify if its interpretation was incorrect. Hood responded in writing he was unsure what was ambiguous, repeating his request and asking whether the records provided were the only ones received from the Auditor and whether the College had any responses to the audit or the audit report. The College responded identifying the types of records within the \$1.80 that was pending payment. Hood responded thanking the school for the information, expressing that he was most interested in records showing the City’s [sic] response, and that he did not know how he could be clearer. He paid the production fee and the records were produced. Almost one year later Hood filed suit.

Continued

Hood v. Centralia College

Unpublished (August 2, 2022)

- The COA found Hood made a valid request for identifiable records; records that related to the 2018 financial audit. However, his request was ambiguous. The description provided no assistance to the College in locating the records. The request left the door open for multiple interpretations including pre, during and post audit records. Looking to the plain language of the request, the request was ambiguous and failed to provide assistance to the College in searching for and locating responsive records.
- RCW 42.56.520 and WAC 44-14-04003 provide for clarification and an agency is required to ask when faced with an unclear request. The College explained its uncertainty at least twice, in different ways. The court ruled a Requester is required to provide clarification. Hood failed to do so; restating the request was not clarification. The College's search for records was sufficient based on their understanding of the request.
- The COA reversed the trial court on the College's discovery requests. Discovery concerning other agencies from whom Hood requested audit records, how many sought clarification, how many lawsuits he had filed and the court's decision in these cases had no bearing on whether the College reasonably interpreted his request.

Martin v. City of Lakewood

Unpublished (May 28, 2022)

Martin sought two employee investigation files. The investigations were related. One interview was provided for one investigation file but not the other. Martin filed suit approximately seven months later. After the suit was filed the City asked Martin what records he believed were withheld. Based on conversations with Martin's attorney, the City opened a new request.

- Where an agency violates the PRA by failing to provide a public record, subsequent production of the record wrongfully withheld does not protect the agency from liability. The harm occurs at the time the record is withheld, and any intervening disclosure serves only to stop the clock on daily penalties, rather than to eviscerate the remedial provisions of the PRA. The City violated the PRA as a matter of law by failing to conduct an adequate search and by not providing the undeniably related interview.

Curtis v. Dep't of Corrections

Unpublished (May 3, 2022)

Curtis attempted to send his wife a message using an electronic messaging service for inmate communications. The Department reviewed and rejected it, and twice notified Curtis about the rejected message. Curtis then requested the rejection notices. The Department searched for the records, but due to Curtis's imprecise language and its own miscommunication with staff responsible for the search, it was unable to find any documents responsive to Curtis's request.

- The Department conducted a reasonable search for the records and complied with its PRA policy. The evidence does not show the Department's failure to provide the rejection messages to Curtis resulted from any "wanton or willful misconduct" by the Department.

Exemptions



WFSE Council 28 v. State

22 Wn. App.2d 392, 511 P.3d 119 (2022)

The WFSE obtained a permanent injunction on constitutional grounds precluding the State from disclosing the names, birthdates, work addresses and work email of public employees, who certified to the union or State, that they or a family member, are survivors of domestic violence, sexual assault, stalking or harassment (Survivors). The Freedom Foundation appealed contending no public employee has a constitutional right to prevent the State from disclosing this information under the PRA.

- Public employees who are survivors, or whose immediate family members are survivors, of domestic violence, sexual assault, stalking, or harassment, have a substantive due process right to personal security and bodily integrity. This constitutional right under the state created danger principle precludes the State from disclosing their name, physical work location, and work contact information when doing so presents a substantial likelihood that the employee's physical safety or the safety of that employee's family member would be in danger. RCW 42.56.540 requires an individualized assessment for injunctive relief. Remanded for further proceeding on whether Freedom Foundation qualifies as media under RCW 42.56.250(8).

Ekelmann v. City of Poulsbo

__ Wn. App.2d __, 513 P.3d 840 (2022)

Ekelmann's attorney sought property assessments used to establish fair market value of real property s related to property acquisitions for a public works road construction project. The attorney did not indicate he was seeking records on behalf of the property owner. The City produced 2,685 records with redactions. At issue in the litigation were redactions related to the appraisals.

- Affirming the trial court's summary judgment in favor of the City, the COA agreed the plain language of RCW 42.56.260(1)(a) and (1)(b) exempted the redacted information. RCW 42.56.260(1)(a) incorporates provisions of chapter 8.26 RCW which limits certain information to only the owners of real property as it relates to their property. Nothing requires disclosure of this information to the general public. RCW 42.56.260(1)(b) exempts documents prepared for the purpose of considering "the acquisition of real estate by lease or purchase," when public knowledge would likely increase the price. This exemption applies not just to a single property, but to all properties within the project.

Energy Policy Advocates v. Office of the Attorney General

Unpublished (May 17, 2022)

This PRA request was for electronic correspondence records between the AGO and several individuals. The AGO withheld a common interest agreement and redacted several emails as work product under RCW 42.56.290.

- A party does not waive its right to withhold documents by sharing them with other parties. The “common interest” doctrine provides that when multiple parties share confidential communications pertaining to their common claim or defense, the communications remain privileged as to those outside their group. Work product was not waived by communicating with expert who was engaged expressly to provide expert opinion on the issues involved in the potential litigation. The common interest agreement is protected by the work product doctrine because it identifies the parties of potential litigation and the goals the parties hope to achieve.

Denney v. City of Richland

22 Wn. App.2d 192, 510 P.3d 362 (2022)

Public records request was made for two workplace investigation reports prepared by separate outside consultants at the direction of the City attorney. The City asserted work product privilege and did not produce reports. The City policy also required the City investigate the complaints investigated by the consultants.

- Records can have dual purposes—can be created during ordinary course of business and in anticipation of litigation (work product) based on affirmative answers to the following:
 - 1) Was record truly created because of the anticipation of litigation as measured by:
 - a) Did the person who prepared or ordered preparation of the record do so with the intent of preparing for litigation? If yes, then b) was that subjective anticipation of litigation objectively reasonable?
 - 2) Would record have been prepared in substantially the same form but for the prospect of litigation.
- Applying this test, both reports met all parts, and thus were work product. Fact specific test.

Hornbuckle v. [DSHS]

Unpublished (October 20, 2022)

An Attorney made a PRA request to DSHS on behalf of his client for records related to investigation of a nursing facility following patient care complaints; the patient was deceased. A week later DSHS responded providing some records but withholding others. The withheld records were the investigation records. In doing so it asserted 42 C.F. R. 488.325 as an “other statute.” DSHS directed the requester to file a FOIA request with the federal government to obtain other records.

- COA affirms the trial court. The “other statute” exemption provision is not limited to state statutes, but may include relevant federal statutes and regulations. The plain language of the C.F.R. directs what must be release to the public but nowhere does the regulation restrict release to only the identified records. Elsewhere the regulations provide for the release of records under applicable state law. Requester denied access to records, remanded for determination by the trial court.

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Taylor v. Patterson

Unpublished (June 22, 2022)

Taylor, a former Sherriff's Office employee, was informed of the County's intent to release internal investigation records. Taylor filed an injunction petition to enjoin the County from releasing the name of his counselor and an audio tape interview conducted as part of the internal investigation that lead to his termination. Taylor did not object to the transcript of the internal investigation interview being produced.

- Court applies the three part test in RCW 42.56.230(3). The counselor's name and details of Taylor's divorce are personal information. No right to privacy for audio tapes of interview for internal investigation because record is relevant to Taylor's ability to perform his job/service. It does not violate Taylor's right to privacy to disclose the name of his counselor in the internal investigation records because the nature of internal investigations regarding alleged police misconduct are a matter of legitimate public concern.
- Audio tapes v. transcript: Taylor pointed to no case law to suggest that disclosure of one type of document precludes disclosure of another type of document if it has repetitive information. No privacy right for the audio tapes.

Penalties



Kittitas County v. Sky Allphin

Unpublished (May 28, 2022)

During an extended dispute between Allphin and County for records, the Court of Appeals found a PRA violation related to six emails and directed the trial court to determine an appropriate cost, attorney fee, and per diem penalty award. Allphin never scheduled a hearing. Several years later, County asked the trial court to find that Allphin's failure to note the matter for hearing indicated he waived his right to any award relating to the six emails. Trial court determined Requester waived the right to any award.

- The COA reverses the trial court. Waiver requires an element of knowledge and intent, it is a matter of intention. Negligence, oversight or thoughtlessness does not create waiver. Implied waiver occurs when a party's unequivocal acts or conduct demonstrate an intent to waive. Allphin has not shown any intention to waive his right to an award. A mistaken belief that all PRA claims and requests had to be resolved prior to resolving the penalties in this case is not the same as intent to waive. No waiver. Court directs Requester to note penalty hearing within 90 days.

Kitsap County v. Campses

Unpublished (July 12, 2022)

Campses submitted records request to the County for certain Brady material. The County produced two installments and then filed a petition for declaratory judgment asking the court to determine whether certain investigative records were exempt from disclosure as attorney work product. The County voluntarily dismissed the action, waived work product, and provided records to Campses. He argued that the filing of the declaratory judgment action was tantamount to withholding records and requested a penalty and attorney fees. The trial court denied request for penalty/fees as premature.

- Trial court did not abuse its discretion when it denied Campses's motion for a PRA penalty, attorney fees, and costs as being premature. Trial court affirmed.

Williams v. Department of Corrections

Unpublished (September 6, 2022)

Williams, an inmate with DOC, made three PRA requests. For the second request, the DOC sought and received clarification and in response sent an estimate of time for production letter. The letter inadvertently identified records production to occur “*within* business days, *on or before*, 2019.” For all three requests DOC extended the production dates. Trial court dismissed the case.

- COA reverses on one issue. DOC’s production letter omitting a production date violates RCW 42.56.520 because it fails to provide a reasonable estimate of time. The PRA authorizes production extensions and for these requests, based on time consuming nature of the requests, the overall workload of the public records unit, the need to obtain records from the institution, the review and redaction process, and provide third party notice, the records production for all three requests was not unreasonable delayed. While not required by the PRA, DOC provided an explanation for the extensions. COA awards attorney fees and cost for failing to identify a production date.

Procedural



Earl v. City of Tacoma

Unpublished (July 12, 2022)

Earl sought records related to her daughter's shooting death by police. The City produced two installments and closes the request. Earl filed lawsuit in federal court asserting excessive force and wrongful death. During discovery in the lawsuit, and for the first time, the City produces a record that was potentially responsive to the records request. Earl files a PRA lawsuit. Requester argues statute of limitations should be tolled because the City falsely assured her that it had no other responsive records in its closing letter.

- Requester/amici argue that statute of limitations began to run on the date the City disclosed the responsive record in the federal lawsuit—arguing disclosure of that document is the agency's last production of a record. Following *Dotson*, the court rejects this argument. Discovery rule does not apply in PRA actions. Requester does not establish equitable tolling.

Ehrhart v. King County through Public Health – Seattle & King County

Unpublished (August 30, 2022)

Ehrhart made two requests for records related primarily to Hantavirus; one in March 2017, closed August 2017, and the second October 2017. Ehrhart filed a negligence claim in October 2018. In reviewing records provided in discovery, identified 514 records that Ehrhart thought were responsive to the March 2017 request. She amended her suit adding PRA claims. The Trial court dismissed based on statute of limitations.

- COA affirms the trial court. Claim was clearly filed outside of the PRA's one year statute of limitations. Ehrhart failed to show the County acted in bad faith therefor no basis to allow equitable tolling to save the PRA claims. Following *Dotson*, the discovery rule does not apply to PRA cases because the PRA's statute of limitations contains a clear triggering event for the statute of limitations.

Haney v. Dep't of Corrections

Unpublished (May 19, 2022)

Haney makes a records request to the Department of Corrections (DOC) which provides records and closes request. DOC later produces additional records that were found. Haney files a lawsuit. DOC files motion to show cause arguing the merits and also that the statute of limitations (SOL) began running on the date the “records ready letter” was sent (two weeks before the records themselves were produced with a closing letter). Trial court dismissed based on SOL

- SOL argument not appropriate in show cause procedure. SOL period commences on final, definitive response to a public records request. Records ready letter contemplated future action. Final records production that accompanied closing letter is when SOL began. Complaint filed within the SOL.
- On appeal DOC asks COA to rule on merits if COA reverses on SOL. COA declines because trial court did not address merits and should address merits before COA does.

Kilduff v. San Juan County

Unpublished (May 31, 2022)

On remand from *Kilduff v. San Juan County*, 194, Wn.2d 859 (2019) (holding PRA does not authorize agencies to create administrative exhaustion procedures), trial court addresses merits using live testimonial record created during first trial. The trial court dismissed the lawsuit.

- COA affirms. Kilduff failed to show any bias or prejudice that would have warranted trial judge recusal. Judicial review of PRA actions is de novo. When findings of fact are based on live testimonial record they are reviewed for substantial evidence (citing *Zink*, *Lyft*, others). The testimony demonstrated that the PRO sought clarification of the request over the telephone. While written record is perhaps better, PRA does not require it. There was substantial evidence presented that the Kilduff agreed to modify his request. The requested file was produced to Kilduff as it existed at the time of the request; as redacted for a prior request as agreed. Trial court did not abuse its discretion by denying Kilduff the opportunity to re-present evidence.

Smith v. Golik

Unpublished (May 17, 2022)

Following a records request, Requester files a “petition for emergency writ of mandamus” requesting County Prosecutor, Golik, be required to turn over contents of voicemail pursuant to PRA. Golik filed a motion to dismiss; trial court granted the motion.

- Requester attempts to have his complaints about his public records request addressed through a mandamus action. PRA affords a remedy for the alleged PRA violations – Requester may bring a PRA action to compel production of the voicemail. Because there is a plain, speedy, and adequate remedy for Requester’s complaints, a writ of mandamus is not a proper remedy. Affirm trial court dismissal.

Jovee v. Child Advocacy Center

Unpublished (April 25, 2022)

Jovee and Block sued the Center seeking access to records under the PRA. Both moved to disqualify the sitting judge. Both plaintiffs agreed to consolidate their cases and stay further action pending the outcome of *Shavlik v. Dawson's Place*. After the decision, both sought to amend the complaint alleging the Center agreed to follow the PRA under the contract with the Department of Commerce. Ultimately eight judges heard or were assigned to the case. The final one was Judge Rogers who resoled the case against Jovee and Block awarding approximately \$18,000 in sanctions and attorneys fees.

- Block alleged Judge Rogers violated the appearance of fairness doctrine which asks the question of “how the proceedings would appear to a reasonably prudent and disinterested person.” The doctrine requires evidence of actual or potential bias. A party who proceeds to hearing knowing of potential bias by the trial court waives this objection. Block was aware of her 2020 lawsuit when the current case was assigned to Judge Rogers in 2021. In 2020 Judge Rogers sent an email describing her communication to several judges as “insulting and abusive.” Explaining to a litigant that their conduct is unacceptable and exercising the court’s discretion to place reasonable restrictions on use of email, to prevent future abuse, does not show actual or potential bias.

Application



King County v. Sorensen

Unpublished (September 26, 2022)

King County petitioned for a writ of mandamus compelling Pierce County Judge Philip Sorenson to provide court reporter backup audiotapes and for records from court employees. Prior to filing suit, a King County employee made a PRA request under chapter 42.56 RCW for all records and recordings related to a trial in which Judge Sorenson presided.

- The Courts produce records pursuant to GR 31, not the PRA. The court initially identified 252 records as potentially responsive, ultimately determining only 7 were responsive. The responsibility to produce records lies not on a specific judge but with the court generally and the clerk. Additionally, the rules provide responsibility may be delegated to the court's public records officer. The writ is denied because the judge does not have a duty to produce records.

WAPRO Conference - Fall 2022



Case Law Update - Finis

Public Records Act Case Law Update

October 2022



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 **2019-2022 as of October 20, 2022** are listed in reverse chronological order, beginning with the most recent decisions.

Issue	Case	Date/Cite	Decision/Issues
2022			
EXEMPTIONS Other Statute PENALTIES Denial of Records	Hornbuckle v. Wash. St. Dep't of Social and Health Services	Unpublished October 20, 2022	- An Attorney made a PRA request to DSHS on behalf of his client for records related to investigation of a nursing facility following patient care complaints; the patient was deceased. A week later DSHS responded providing some records but withholding others. The withheld records were the investigation records. In doing so it asserted 42 C.F. R. 488.325 as an "other statute." DSHS directed the requester to file a FOIA request with the federal government to obtain other records. - COA affirmed trial court. The "other statute" exemption provision is not limited to state statutes, but may include relevant federal statutes and regulations. The plain language of the C.F.R. directs what must be released to the public but nowhere does the regulation restrict release to only the identified records. Elsewhere the regulations provide for the release of records under applicable state law.
APPLICATION Judicial Records GR 31	King County v. Sorensen	Unpublished September 26, 2022	- Williams, an inmate with DOC, made three PRA requests. For the second request, the DOC sought and received clarification and in response sent an estimate of time for production letter. The letter inadvertently identified records production to occur "<i>within</i> business days, <i>on or before</i>, 2019." For all three requests DOC extended the production dates. Trial court dismissed the case. - The Courts produce records pursuant to GR 31, not the PRA. The court initially identified 252 records as potentially responsive, ultimately determining only 7 were responsive. The responsibility to produce records lies not on a specific judge but with the court generally and the clerk. Additionally, the rules provide responsibility may be delegated to the court's public records officer. The writ is denied because the judge does not have a duty to produce records.
RECORDS Estimate of Time PENALTIES Technical Errors	Williams v. Department of Corrections	Unpublished September 6, 2022	- Williams, an inmate with DOC, made three PRA requests. For the second request, the DOC sought and received clarification and in response sent an estimate of time for production letter which inadvertently identified records production occurring "<i>within</i> business days, <i>on or before</i>, 2019." For all three requests DOC extended the production dates. Trial court dismissed the case. - COA overturns on one issue. DOC's production letter omitting a production date violates RCW 42.56.520 because it fails to provide a reasonable

			estimate of time. The PRA authorizes production extensions and for these requests, based on time consuming nature of the requests, the overall workload of the public records unit, the need to obtain records from the institution, the review and redaction process, and provide third party notice, the records production for all three requests was not unreasonable delayed. While not required by the PRA, DOC provided an explanation for the extensions. COA awards attorney fees and cost for failing to identify a production date.
PROCEDURE Statute of Limitations	Ehrhart v. King County through Public Health – Seattle & King County	Unpublished August 30, 2022	- Ehrhart made two requests for records related primarily to Hantavirus; one in March 2017, closed August 2017, and the second October 2017. Ehrhart filed a negligence claim in October 2018. In reviewing records provided in discovery, identified 514 records that Ehrhart thought were responsive to the March 2017 request. She amended her suit adding PRA claims. The Trial court dismissed based on statute of limitations. - Trial court affirmed. Claim was clearly filed outside of the PRA's one year statute of limitations. Ehrhart failed to show the county acted in bad faith therefor no basis to allow equitable tolling to save the PRA claims. Following <i>Dotson</i>, the discovery rule does not apply to PRA cases because the PRA's statute of limitations contains a clear triggering event for the statute of limitations.
RECORDS Scope of Request Search PENALTIES Yousoufian Factors PROCEDURE Declaratory Judgment Show Cause	Cantu v. Yakima School District No. 7	8/2/22 ___ Wn. App.2d ___, 514 P.3d 661 (2022)	- Requester believed her daughter was being bullied at school. Over the course of two years she made three records requests. Her first request was made in October 2016. In January 2017, requester clarified this request. In April 2018, she made two requests seeking more records. - The District failed to meet its burden of showing that its search for records in response to the January 2017 clarification was reasonably calculated to uncover all relevant records. The inadequate search not only failed to discover responsive records, but it constituted an aggravating factor the trial court did not consider when calculating the per diem penalty. - When an agency ignores a request for an extended period of time, such inaction may constitute the constructive denial of records. The District ignored one of the April 2018 requests for an extended period of time, thus wrongfully denying her records. - The District's narrow interpretation of the April 2018 requests was based on an unreasonable assumption. Consequently, the District wrongfully withheld at least 75 email attachments on the basis that they were nonresponsive to the April 2018 requests. To the extent that any exemptions apply to those email attachments, the records can be redacted and provided.

			The PRA procedures outlined in RCW 42.56.550 are not exclusive. The rules of civil procedure also apply in PRA litigation, when not inconsistent.
RECORDS Scope of Request Search PROCEDURE Clarification Discovery	Hood v. Centralia College	8/2/22 Unpublished	- September 23, 2019, requester submitted the following request, “I learned that your organization was recently audited by the state auditor. May I have all records it got from the auditor and all records of any response to the audit or to the audit report?” The College first requested clarification whether the audit he sought was a 2018 financial audit; requester responded affirmatively. The college conducted a search, identified, and produced responsive records, some via link and others for a fee of \$1.80. As part of the production the College indicated the request was ambiguous and offered it’s understanding of the request asking the requester to clarify if its interpretation was incorrect. Requester responded in writing that he was unsure what was ambiguous and repeating his request. He also asked whether the records provided were the only ones received from the Auditor and whether the College had any responses to the audit or the audit report. The College identified the types of records within the \$1.80 pending payment production. Requester responded thanking the school for the information, expressing that he was most interested in records showing the City’s [sic] response, and that he did not know how he could be clearer. He paid and the records were produced. Almost one year later requester filed suit. - The COA found requester made a valid request for identifiable records; records that related to the 2018 financial audit. However, his request was ambiguous. The description provided no assistance to the College in locating the records. The request left the door open for multiple interpretations including pre, during and post audit records. Looking to the plain language of the request, the request was ambiguous and failed to provide assistance to Huss in searching for and locating responsive records. - The court found a requester is required to provide clarification. RCW 42.56.520 and WAC 44-14-04003 provide for clarification and an agency is required to ask when faced with an unclear request. Requester failed to do so, and restating the request was not clarification. The College explained it uncertainty at least twice in different ways. - The College’s search for records was sufficient based on their understanding of the request. The College admitted it missed one record, but a request is not measured by whether a record was missed buy the adequacy of the search.

			The COA reversed the trial court on the College's Discovery. The Discovery concerning other agencies from whom the Requester sought "audit" records, how many sought clarification, how many lawsuits he had filed and the court's decision had no bearing on whether the College reasonably interpreted his request.
EXEMPTIONS Scope of Exemption	Ekelmann v. City of Poulsbo	7/19/22 Wn. App.2d ___, 513 P.3d 840 (2022)	- Requester sought property assessments used to establish fair market value of real property for a public works project; a road construction project. The Requester's attorney submitted a request for records related property acquisitions for the road project on his behalf. The request did not indicate he was seeking records on behalf of the property owner. The City produced 2,685 records with redactions. At issue in the litigation were redactions related to the appraisals. - Affirming the trial court's summary judgment in favor of the City, the COA agreed the plain language of RCW 42.56.260(1)(a) and (1)(b) exempted the redacted information. RCW 42.56.260(1)(a) incorporates provisions of chapter 8.26 RCW which limits certain information to only the owners of real property as it relates to their property. Nothing requires disclosure of this information to the general public. RCW 42.56.260(1)(b) exempts documents prepared for the purpose of considering "the acquisition of real estate by lease or purchase," when public knowledge would likely increase the price, applies not just to a single property, but to all properties within the project.
PROCEDURE Declaratory Judgment PENALTY Abuse of Discretion	Kitsap County v. Campese	7/12/22 Unpublished	- Requester submitted records request to County for certain Brady material. County produced two installments and then filed a petition for declaratory judgment asking the court to determine whether certain investigative records were exempt from disclosure as attorney work product. Requester argued that the filing of the declaratory judgment action was tantamount to withholding records. County voluntarily dismissed the action, waived work product, and provided records to requester. Requester requested a penalty and attorney fees. Trial court denied request for penalty/fees as premature. - Trial court did not abuse its discretion when it denied Requester's motion for a PRA penalty, attorney fees, and costs as being premature. Trial court affirmed.
PROCEDURAL Statute of Limitations	Earl v. City of Tacoma	7/12/22 Unpublished	Requester seeks records related to her daughter's shooting death by police. City produces two installments and closes the request. Requester filed lawsuit in district court asserting excessive force and wrongful death. During discovery in a federal lawsuit, the City produces a record that was potentially responsive to the records request for the first time. Requester

			files PRA lawsuit. Requester argues statute of limitations should be tolled because City falsely assured her that it had no other responsive records in its closing letter. Requester/amici argue that statute of limitations began to run on the date the City disclosed the responsive record in the federal lawsuit—arguing disclosure of that document is the agency’s last production of a record. Following <i>Dotson</i>, the court rejects this argument. Discovery rule does not apply in PRA actions. Citing PRA Deskbook: there has been a trend toward making violations and penalties less onerous on agencies. Requester does not establish equitable tolling.
RECORDS Search	West v. City of Lakewood	7/12/22 Unpublished	- Requester sought records related to the shooting and killing of Michael Reinoehl by law enforcement officers. The request spelled Reinoehl’s name correctly in the subject line, but spelled it “Reinoel” in the body. City conducted a search using only the misspelling and found no responsive documents. City also asserted any records would be exempt as an active law enforcement investigation under RCW 42.56.240(1), but in any event, the Thurston County Sheriff’s office was investigating the incident and referred the requester. Three days after receiving the notice, requester filed suit. While aware of the suit, but before it was served, City discovered the spelling error, re-searched for records finding more than 1,500 records (over 7,700 pages) and 11 text messages which it produced over the next 40 days. - The COA overturned the trial court. City’s search was inadequate. City did not cure its error by disclosing documents after Requester filed his lawsuit. City failed to follow through on multiple obvious leads including Reinoehl’s name spelled correctly in the subject line of his request, knowledge of the incident by agency staff, and other requests for the same or similar records. The assertion of RCW 42.56.240(1) was vague or inadequate.
PROCEDURAL Judicial Notice	Estate of Daniel Alexander McCartney v. Pierce County	6/28/2022 Wn. App.2d ___, 513 P.3d 119 (2022)	Trial court did not abuse its discretion when it took judicial notice of public records under ER 201(b). Public records included online county records.
PROCEDURAL Injunction EXEMPTIONS	Taylor v. Patton	6/22/22 Unpublished	Taylor, a former Sherriff’s Office employee, was informed of County’s intent to release internal investigation records. Taylor files an injunction petition to enjoin County from releasing the name of his counselor and an

Personal Information			audio tape interview conducted as part of the internal investigation that lead to his termination. Taylor did not object to the transcript of the internal investigation interview being produced. • Court applies the 3 part test in RCW 42.56.230(3). The counselor and details of Taylor’s divorce are personal information. No right to privacy for audio tapes of interview for internal investigation because record is relevant to Taylor’s ability to perform his job/service. It does not violate Taylor’s right to privacy to disclose the name of his counselor in the internal investigation records because the nature of internal investigations regarding alleged police misconduct are a matter of legitimate public concern. • Audio tapes v transcript: “Taylor has pointed to no case law to suggest that disclosure of one type of document precludes disclosure of another type of document if it has repetitive information.” No privacy right for audio tapes.
PROCEDURAL Injunction Standard EXEMPTIONS Birthdate/Personal Info CONSTITUTIONAL Due process	Washington Federation of State Employees, Council 28 v. State	6/13/22 22 Wn. App.2d 392, 511 P.3d 119 (2022)	• The WFSE obtained a permanent injunction precluding the State from disclosing the names, birthdates, work addresses and work email of public employees, who certified to the union or State, that they or a family member, are survivors of domestic violence, sexual assault, stalking or harassment (Survivors). The Freedom Foundation appealed contending no public employee has a constitutional right to prevent the State from disclosing this information under the PRA. • Public employees who are survivors, or whose immediate family members are survivors, of domestic violence, sexual assault, stalking, or harassment, have a substantive due process right to personal security and bodily integrity. This constitutional right precludes the State from disclosing their name, physical work location, and work contact information when doing so presents a substantial likelihood that the employee’s physical safety or the safety of that employee’s family member would be in danger. RCW 42.56.540 requires an individualized assessment for injunctive relief. The case was remanded for further proceeding on whether requester qualifies as media under RCW 42.56.250(8).
EXEMPTIONS Work product	Denney v. City of Richland	5/31/2022 22 Wn. App.2d 192, 510 P.3d 362 (2022)	• Denney made a records request for two workplace investigation reports prepared by separate outside consultants. City asserted work product privilege and did not produce reports. Reports were required by the City’s policies. • Records can have dual purposes—can be created during ordinary course of business and in anticipation of litigation. A two part test determines whether a dual purpose record is work product: 1) was the record truly created because of the anticipation of litigation—requires both a subjective

			and objective inquiry; 2) would the record have been prepared in substantially the same form but for the prospect of litigation. Part one from above requires a two part analysis: A) did the person who prepared or ordered preparation of the record do so with the intent of preparing for litigation? If yes, then B) was that subjective anticipation of litigation objectively reasonable? Applying this test, both reports meet all parts of test, and thus are work product.
PROCEDURAL Standard of Review	Kilduff v. San Juan County	5/31/22 Unpublished	- On remand from <i>Kilduff v. San Juan County</i>, 194, Wn.2d 859 (2019) (holding PRA does not authorize agencies to create administrative exhaustion procedures), trial court addresses merits using live testimonial record created during first trial. Trial court dismissed lawsuit. - COA affirmed. Requester failed to show any bias or prejudice that would have warranted trial judge recusal. Judicial review of PRA actions is de novo. When findings of fact are based on live testimonial record they are reviewed for substantial evidence (citing <i>Zink</i>, <i>Lyft</i>, others). Clarification of a request may occur over the telephone. While written record is perhaps better, PRA does not require it. There was substantial evidence that requester agreed to modify his request. File was produced to requester as it existed at the time of the request. Trial court did not abuse its discretion by denying requester the opportunity to re-present evidence.
PROCEDURAL Statute of Limitations	Haney v. Dept of Corrections	5/19/22 Unpublished	- Requester makes a records request. The Department provides records and closes request. Sometime later the Department produces additional records that were later found. Requester files suit. DOC files a motion to show cause and arguing the merits and also that the statute of limitations began running on the date the records ready letter was sent (two weeks before the records themselves were produced with a closing letter). The trial court dismisses based on statute of limitations. - Statute of Limitations argument not appropriate in show cause procedure. SOL period commences on any final, definitive response to a public records request. Records ready letter contemplated future action. Final records production that accompanied closing letter is when SOL began. Complaint filed within the statute of limitations. On appeal DOC asks COA to rule on merits if COA reverses on SOL. COA declines because trial court did not address merits and should address merits before COA does.
PROCEDURAL Writ of Mandamus	Smith v. Golick	5/17/22 Unpublished	Following a records request, requester files a “petition for emergency writ of mandamus” requesting County Prosecutor Golik be required to turn over contents of voicemail pursuant to PRA. Golik filed a motion to dismiss, trial court granted the motion.

			Requester attempts to have his complaints about his public records request addressed through a mandamus action. PRA affords a remedy for the alleged PRA violations – requester may bring a PRA action to compel production of the voicemail. Because there is a plain, speedy, and adequate remedy for requester’s complaints, a writ of mandamus is not a proper remedy. COA affirm trial court dismissal.
EXEMPTIONS Work Product PROCEDURAL Detail of Findings	Energy Policy Advocates v. AGO	5/17/22 Unpublished	- Requester submitted a PRA request for electronic correspondence records between the AGO and several individuals. The AGO withheld a common interest agreement and redacted several emails as work product under RCW 42.56.290. - A party does not waive its right to withhold documents by sharing them with other parties. The “common interest” doctrine provides that when multiple parties share confidential communications pertaining to their common claim or defense, the communications remain privileged as to those outside their group. Work product was not waived by communicating with expert who was engaged expressly to provide expert opinion on the issues involved in the potential litigation. The common interest agreement is protected by the work product doctrine because it identifies the parties of potential litigation and the goals the parties hope to achieve.
RECORDS Search PROCEDURAL Bad Faith	Curtis v. Dep’t of Corrections	5/3/2022 Unpublished	- Requester attempted to send his wife a message using an electronic messaging service for inmate communications. The Department reviewed and rejected the message. Twice it notified Curtis about the rejected message. Curtis then requested the rejection notices. The Department searched for the records, but due to Curtis’s imprecise language, and its own miscommunication with staff responsible for the search, it was unable to find any documents responsive to Curtis’s request. - The Department conducted a reasonable search for the records and complied with its PRA policy. The evidence does not show the Department’s failure to provide the rejection messages to Curtis resulted from wanton or willful misconduct.
RECORDS Search	Martin v. City of Lakewood	4/28/2022 Unpublished	- Requester sought two employee investigation files. The investigations were related. One interview was provided for one investigation file but not the other. Requester filed suit approximately seven months later. After the suit was filed the City asked the requester what records he believed were withheld. Based on conversations with Martin’s attorney, the City opened a new request. - Where an agency violates the PRA by failing to provide a public record, subsequent production of the record wrongfully withheld does not protect

			the agency from liability. The harm occurs at the time the record is withheld, and any intervening disclosure serves only to stop the clock on daily penalties, rather than to eviscerate the remedial provisions of the PRA. The City violated the PRA as a matter of law by failing to conduct an adequate search and by not providing the undeniably related interview.
PENALTIES Waiver	Kittitas County v. Sky Allphin	4/28/2022 Unpublished	• During an extended dispute between requester and County for records, the Court of Appeals found a PRA violation related to 6 emails. It directed the trial court to determine an appropriate cost, attorney fee, and per diem penalty award. The matter was never scheduled for hearing. Several years later, the County asked the trial court to find that requester's failure to note the matter for hearing indicated he waived his right to any award relating to the six emails. Trial court determined requester waived his right to any award. • Waiver requires an element of knowledge and intent, it is a matter of intention. Negligence, oversight or thoughtlessness does not create waiver. Implied waiver occurs when a party's unequivocal acts or conduct demonstrate an intent to waive. Requester has not shown any intention to waive his right to an award. A mistaken belief is not the same as intent to waive. No waiver was found. The court directs requester to note penalty hearing within 90 days.
PROCEDURAL	Jovee v. Child Advocacy Center	4/25/22 Unpublished	• Jovee and Block sued the Center seeking access to records under the PRA. Both moved to disqualify the sitting judge, Judge Appel, and the cases were reassigned to Judge Okrent. Both plaintiffs agreed to consolidate their cases and stay further action pending the outcome of <i>Shavlik v. Dawson's Place</i>. After the decision, both sought to amend the complaint alleging the Center agreed to follow the PRA through the contract with the Department of Commerce. The case was heard by 8 different Judges, with many subsequent recusals, ultimately being assigned to visiting Judge Bender. As Block had done with a prior Judge, she immediately began sending derogatory emails to Judge Bender who responded with an order prohibiting either party from contacting her directly and limiting emails to one per day. Block continued. Eventually Bender recused herself. Judge Rogers was the next judge to inherit the case who denied a motion to recuse himself and eventually heard a motion on the merits without oral argument. After the case was dismissed and sanctions awarded, Block alleged Judge Rogers violated the appearance of fairness doctrine because she had sued him before; motion denied and Block appealed

			The critical analysis for the appearance of fairness doctrine is how the proceedings would appear to a reasonably prudent and disinterested person. A party asserting a violation of the appearance of fairness doctrine must show evidence of actual or potential bias. A party who proceeds to hearing, knowing of potential bias by the trial court, waives this objection. Block was aware of her 2020 lawsuit when the current case was assigned to him in 2021 including Judge Rodgers email telling her she was “insulting and abusive” to several judges and saying they were taking steps to block her email. Explaining to a litigant that her conduct is unacceptable and exercising the discretion to place reasonable restrictions on her use of email to prevent future abuse does not show actual or potential bias.
	Washington Federation of State Employees v. State of Wash.	3/28/2022	Withdrawn and superseded by 6/13/22 opinion (above)
EXEMPTIONS Birthdate/Personal Info. PROCEDURAL Legislative changes	Washington Education Association v. Wash. State Dept. of Retirement Systems	3/28/2022 21 Wn. App.2d 736, 507 P.3d 1 (2022)	- Freedom Foundation made public records requests to DRS and OFM seeking names and birthdates of certain public employees. The day after the requests, SHB 1071 went into effect, amending 42.56.590(10) which relates to data breaches and specifically defines personal information as a name linked to a birthdate. Unions sought preliminary injunction arguing that the new definition effectively amended 230(3)s definition of personal information to include name and birthdate together. The trial court issued a preliminary injunction. Requester filed interlocutory appeal; review was granted. While the appeal was pending, Legislature amended 42.56.250(8), exempting from disclosure the month and year of birth of public employees, except to the news media. - The Court of Appeals noted that there is no evidence of intent for the statute to apply retroactively. But a newly enacted statute generally applies to all cases pending on direct appeal and not yet final if the triggering event has yet to occur. The triggering event in PRA matters is release of the record not the date of request. Because the records here have not been released the triggering event has not occurred and 42.56.250(8) applies to the requests. The record does not contain sufficient facts about whether or not the Freedom Foundation qualifies for the news media exception. The plain language of 42.56.590(10)(a) limits the application of the definition to security breach contexts, therefore does not effect the language of 42.56.230(3). <i>WPEA</i> holding controls here and RCW 42.56.230(3) does not exempt public employee birthdates from disclosure. Court remands.

PROCEDURAL Discovery PENALTIES Penalty factors	Hood v. Columbia County	3/8/22 Published in Part	- Requester sought records related to an audit. County produced records. Requester waited almost one year and filed lawsuit. County sought discovery regarding requester's motivations including the number of PRA lawsuits, settlements, and records requests. Requester refused to answer. County sought to compel discovery. Trial court ordered requester to answer discovery and requester appealed. - Court of Appeals reversed. The 2011 legislature declined to amend the PRA to make it more difficult for disingenuous PRA litigants to recover penalties. <i>City of Lakewood v. Koenig</i>, 160 Wn. App. 883, 250 P.3d 113 (2011) did not hold that a PRA litigant's motive for seeking profit is irrelevant—the court did not reach that question. The proper focus for setting penalties is on the agency's conduct or motivation, not the requestor's motivation.
PROCEDURAL Sanctions	Martin v. City of Lakewood	3/1/2022 Unpublished	- Requester sought two employee investigation files. One interview was provided for one investigation file but not the other. Requester filed suit. Trial court agreed with City's arguments the interview was not sufficiently related to the file for which it was not produced and in any event requester "eventually" received all of the documents. City then requested and was granted sanctions against requester asserting suit was "frivolous and advanced without reasonable cause." - Given the PRA's broad mandate for disclosure and resulting obligation of agencies to make an adequate search for responsive records, requester's claims cannot be characterized as frivolous. In the record, there are rational arguments based on both fact and law the interview in question was sufficiently relevant to both investigations. The superior court abused its discretion in its awarding sanctions to the City
PROCEDURAL Premature lawsuit RECORDS Estimate of Time	Twin Harbors Fish and Wildlife v. Wash. Dep't of Fish and Wildlife	2/23/2022 Unpublished	- In 2016, requester sought any and all documents and communications related to four categories of records (and subcategories). Agency and requester spoke in agency attempt to clarify request; volume of responsive records reduced minimally. Record contains ample evidence regarding the agency response: the volume of responsive records, the time spent, the number of staff searching, the places searched, the PRA caseload, and the production of installments. In 2019, while request still open, requester filed a lawsuit. - There must be some agency action, or inaction, indicating that the agency will no longer be providing responsive records. Agency was still producing installments here so no denial of records; lawsuit is premature. Record demonstrated that clarification was sought, there was ongoing

			communication with the requester, over 50 agency staff searched for records in various locations, meetings were held to review records, 38 installments were produced (approximately once a month), all in addition to existing work and other public records requests. Plaintiff failed to show that agency improperly used the installment procedure and estimated response times to unduly delay its response.
PROCEDURAL PRA Not Other Law Enf. Tool RECORDS Estimate of Time Undue Delay	West v. Dep't of Fish and Wildlife	2/8/2022 Unpublished	- Requester made a request for two specific rulemaking files. Agency responded with several links and began producing records in installments. Requester filed suit, while request still open, alleging unreasonable delay in disclosure of records and unreasonable estimate of time. Trial court dismissed PRA claims. - Requesters claim that agency's alleged failure to maintain rulemaking files pursuant to APA would be an APA claim and is not a proper PRA claim. An agency promptly responds in producing records the agency's response is thorough and diligent. This is a fact-specific inquiry. Agency's estimated response times were reasonable. Request was voluminous, records spanned multiple agency departments, review and redaction required, key staff members left agency, Covid occurred, existing duties of public records officers were high volume. These facts established 2-3 months between installments was reasonable. There was no undue delay. Nothing in the PRA requires an agency prioritize certain requested records over others.
2021			
EXEMPTIONS Student Records/FERPA	Baxter v. Western Washington University	12/27/2021 20 Wn. App.2d 646, 501 P.3d 581 (2021)	- Three journalists requested final results of disciplinary proceedings, including student's names where it was determined a student was responsible for a crime of violence or nonforcible sexual offense. The University produced records but redacted the names of the offenders, citing RCW 42.56.230(1). After the journalists filed a lawsuit, the University notified the named persons that it intended to release the names. Seven of those persons intervened in the lawsuit, seeking to prevent release of their names. The University released the names of individuals who did not intervene. Trial court held that the names were not exempt from disclosure. - The term "public schools" as used in RCW 42.56.230(1) does not contemplate postsecondary educational institutions (colleges and universities). The "final results" exception to FERPA allows disclosure of the "final results of any disciplinary proceeding" where the alleged student committed "any crime of violence" or "nonforcible sex offense" in violation of the institution's rules or policies. WAC regulations at issue do not

			constitute an "other statute" under section .070(1) where there is no corresponding and related statutory provision exempting the information. University code of conduct notified students that some student records could be released to the public. Trial court affirmed.
EXEMPTIONS Work Product PROCEDURAL Detail of findings	Energy Policy Advocates v. Office of the Attorney General	11/30/2021 Unpublished	- Requester made request for certain, specific records. Agency produced records with work product redactions. Records included emails between AAGs transmitting a litigation memo from an AAG to other AAGs and emails between AAGs and client agency. A hearing was held on affidavit. Following the hearing and in camera review, the trial court determined the redactions were work product and dismissed the lawsuit. - Court of Appeals affirmed. Alleged lack of findings in trial court order is immaterial because appellate review is de novo. Agency need not identify specific litigation at issue for work product to apply. Agency does not waive work product by including client on work product communications.
PROCEDURAL Premature lawsuit	O'Connor v. Lewis County	11/9/2021 Unpublished	- Requester submitted prr for various billing records on June 25. County responded and began gathering records. Several communications occurred between County and requester before first installment was released on September 24. County informed requester it continued to work on the request. Requester filed a PRA lawsuit on October 3, alleging denial of a public record and unreasonable estimate of time. The County produced two more installments of records and closed the request. - County admitted that an unreasonable estimate of time was given and settled the claim through an offer of judgment. Trial court denied County's motion for summary judgment finding that lawsuit was not premature as <i>Hobbs</i> was distinguishable. - Court of Appeals reverses. In an action challenging an agency's denial of a records request, a requestor cannot initiate a lawsuit until the agency has denied and closed the request at issue. Court cites <i>Hobbs</i> and subsequent cases. County was still responding to request so no denial.
PROCEDURAL Information Request	Estate of Jonny Torres	10/28/2021 Unpublished	Following hospitalization of a student, the school district's assistant superintendent instructed the school's security to save all video recorded by the school on September 7 that included the student beginning with his PE class. This was done. Consistent with usual practices, video is deleted and written over after 30 days. Tragically, the student died. More than 30 days after the September 7, the estate made a public records request seeking any documents, videos, CDs, writings, or emails involving the District related to the student. The District provided responsive emails and then video footage from September 7. The estate attorney responded that that "hours of video

			of Jonny Torres on September 7, 2017, have not been provided” and asked for an explanation of whether video had been lost, destroyed or was not being produced for some reason. The District replied and said it would look into it but did not respond again. • The Estate did not show that the District failed to produce all responsive security video in its possession at the time of the request. The PRA does not require agencies to research or explain public records, but only to make those records accessible to the public. The District's failure to answer the Estate's lawyer's questions about additional records was not a violation of the PRA.
PROCEDURAL Standing	West v. City of Tacoma	10/19/2021 Unpublished	• In a previous appeal in this case, the CoA found the City violated the PRA and remanded for penalties. The trial court imposed penalties as well as ordered PRA training for City department heads. The court made it clear that it did not intend the training requirement to be part of the penalty imposed against the City. Rather, the training requirement was imposed in order to have a deterrent effect on the City. Requester appealed arguing the trial court abused its discretion when it imposed “a training-based penalty” on the City as a means to ensure future compliance with the PRA. And further argued that a trial court may impose only a monetary penalty to deter future noncompliance with the PRA. • Requester is not an aggrieved party regarding training requirement. Requester did not show he is in any way impacted by the training requirement, that it affected the monetary penalty the trial court imposed, or that it affected his personal property or rights. Appeal is dismissed because requester is not an aggrieved party. • Court does not analyze propriety of trial court’s ordering of training requirement.
EXEMPTIONS Juvenile Specific Intelligence Information PROCEDURAL Pseudonyms	Does 1-4 v. King County	9/7/2021 Unpublished	• Newspaper requester made records request for records related to prosecutor’s office decision to decline to file sexual assault charges against several high school football players. County provided notice that it intended to release records redacting identifying information of the victim, suspects, witnesses who requested to remain anonymous. One juvenile witness and three juvenile suspects filed to enjoin disclosure. Because they were juveniles, they used pseudonyms in pleadings. A TRO was granted and juveniles moved for a permanent injunction and to proceed in pseudonym. Trial court denied injunction, approved County’s redactions, and allowed use of pseudonyms.

			• Court of Appeals found RCW 13.50.050 is an “other statute” that exempts records related to the commission of juvenile offenses. But 13.50 RCW does not preclude release of adult suspect’s file under argument that they “pertain to juvenile suspects.” Redaction of juvenile’s identity was sufficient. Claims of sexual assault against the suspects were uncharged, thus public has no legitimate interest in their identity. But there is legitimate interest in overseeing police investigation of sexual assault allegations. Only the identity is exempt. Trial court did not error in granting motion to proceed under pseudonym,
PROCEDURAL Appellate Process Trial Procedure	Dimond v. King County	8/30/2021 Unpublished	• Between 2012 and 2015 Dimond made more than 25 PRA requests. In 2015 while the county was producing records in installment, Dimond filed suit. From 2015 to 2018, while making additional requests, the county continued providing records links through its online portal which she did not access. In March 2018 the county filed for summary judgment with an April hearing date. The motion was cancelled to pursue settlement negotiations. In August, her attorney withdrew. Following further unsuccessful settlement negotiations, the county’s original motion was rescheduled for October 19, to which she responded, “Thanks for letting me know.” She later filed a “Notice of Unavailability” for the October hearing date as well as a continuance motion for at least 90 day. The county objected. Dimond failed schedule a hearing on her motion. On October 19, Dimond did not appear, and the court dismissed the suit “with prejudice” which she learned about when she check the online docket on November 1 filing a motion for reconsideration on November 30. The following February Dimond retained new legal counsel that filed a CR 60 motion alleging “an appearance of impropriety and an appearance of a lack of impartiality and fairness” by the trial court which was denied. Counsel also filed an appeal of the original ruling and later included the denial of the CR60 motion. • The appeal for the original order was untimely. RAP 5.2 requires appeals within 30 after entry of an order. A timely motion for reconsideration will extend the appeal window but these must be filed within 10 days. In this case, the reconsideration was untimely. She unsuccessfully argued that the court had to notify or serve her of the October. Judgments are deemed entered when delivered to the clerk; there is no obligation on the court to serve its orders. Her lack of diligence in monitoring her case does not amount to “extraordinary circumstances or a gross miscarriage of justice” warranting an extension of time to appeal. Establishing judicial misconduct

			is a high burden of proof which Diamond failed to meet. Rulings themselves almost never constitute a valid showing of bias and the record supports the court's decisions throughout the proceedings.
PROCEDURAL Request Receipt Fair Notice PENALTIES Abuse of Discretion RECORDS Search Later Identified Records	O'Dea v. City of Tacoma	8/24/2021 19 Wn. App.2d 67, 493 P.3d 1245 Published in Part	• In March 2017 requesters attorney sent two PRA request to the city via US. Mail. They were never received. The city learned of the requests when they were attached to a lawsuit filed in November 2017 alleging failure to respond. The city answered the lawsuit but did forward a copy of the requests to the PRO and not start responding to the PRA requests until nine month later. The trial court held that the city had an obligation to start responding when they were received as part of the law suit. In August 2018, when they were sent to the PRO by the city's attorney, the PRO responded within 5 days providing dates for records productions in both requests. • Affirming the trial court, the two attachments put the city on fair notice that it had received a request for records which is comprised of two elements each of which has three subparts as follows: Element 1 - Characteristics of the request: 1(a) - The language. 1(b) - The format. 1(c) - The receipt. Element 2 – Characteristics of requested records: 2(a) – Whether it is a request for records vs information contained in records. 2(b) - Whether the records were actual public records. 2(c) - Whether it was reasonable for the agency to believe the requester was requesting under an independent non-PRA authority. In this case all of the factors relating to the characteristic of the request favor the requestor. "No authority limits the context under which a PRA request may be received, so long as the request provides fair notice." Other records requested by O'Dea as part of the disciplinary process did not put the city on fair notice that they were PRA requests. The COA reversed the trial court \$2.6 M penalty, not including attorney fees, as an abuse of discretion because the overall amount was manifestly unreasonable. In remanding the matter the COA commented that "we cannot lose sight of the fact that public records penalty awards are ultimately paid with taxpayer dollars." The trial court decision had only five sentences mentioning three aggravating factors; no discussion of why mitigating factors did not apply or any discussion of why this response was particularly egregious. The requester's failure to pursue a show cause motion or respond to the request for clarification should be a significant mitigating factor. Even if there was an unreasonable initial delay for records production, once it begins production, it is entitled to a reasonable amount of time to process the request; the court can set penalties at \$0 per day. \$63,360 in additional penalties for 12 responsive records found after

			closing the request reversed. The city demonstrated its initial search was reasonable. Unsupported allegations of additional responsive records insufficient, additional records search not required.
PROCEDURAL Statute of Limitations	Singh v. State of Washington	8/16/2021 Unpublished	- As part of a lawsuit involving alleged illegal actions by the UW concerning her deceased husband's employment, Singh alleged PRA violations regarding UW's response to her records request. On January 27, 2017, Singh requested records. The UW responded producing two installments on May 3 and June 17, 2017. The second installment included a statement that "this concludes the [UW's] response to your public records request. Two years later, on June 4, 2019, Singh filed an amended complaint alleging the UW failed to conduct an adequate search for records. The original complaint was filed on September 14, 2018. - The COA affirmed the trial court's dismissal of the PRA claims. PRA claims must be filed within one year of the agency's claim of exemption or the last production of a record. There was no dispute the PRA claim was filed more than one year after the UW closed the request. "Equitable tolling" which would allow a time barred suit to proceed was not applicable in this case. There was no evidence of "bad faith, deception, or false assurances" by the UW. Singh's argument that records produced in discovery should have been produced in response to the records request, were not sufficient extend the one-year deadline.
PROCEDURAL Statute of Limitations	Bogen v. City of Bremerton	8/10/2021 18 Wn. App.2d 676. 493 P.3d 774 (2021)	- In November 2018, Bogen submitted a public records request to the City. On January 28, 2019, after providing two installments of responsive records, the City notified Bogen that no additional responsive records could be located and that the City considered Bogen's PRA request to be fulfilled and closed. On January 28, 2020, Bogen filed a complaint against the City alleging that the City had violated the PRA on various grounds. The City moved to dismiss Bogen's PRA claims under CR 12(b)(6), arguing that Bogen had filed the action after the one-year statute of limitations had expired arguing that the day the request closed counted as day 1. The trial court agreed. - The COA reversed. RCW 42.56.550(6) provides, "Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis." The general counting statute RCW 1.12.040 and CR 6(a), both of which relate to the computation of time periods was integral to the interpretation of RCW 42.56.550(6). RCW 1.12.040 provides, "The time within which an act is to be done . . . shall be computed by excluding the first day, and

			including the last, unless the last day is a holiday, Saturday, or Sunday, and then it is also excluded.” Similarly, under CR 6(a) “In computing any period of time prescribed or allowed by . . . any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included.” Reading RCW 42.56.550(6) together with, RCW 1.12.040 and CR 6(a) establishes that the “within one year of” time period stated in RCW 42.56.550(6) must begin the day following the triggering event.
RECORDS Search Production PROCEDURAL Strict compliance	Hood v. City of Nooksack	8/2/2021 Unpublished	• Requester sought certain records related to an audit performed on the City. The City responded to the request by directing requester to Auditor’s website but did not provide a hyperlink. Following cross motions for summary judgment, the trial court found no PRA violation. • The COA reverses and remands. Agencies must strictly comply with PRA requirements. The City did not strictly comply with the PRA because RCW 42.56.520(1)(b) requires production of records or hyperlink to the agency’s website. Substantial compliance is not enough in the determination of whether the agency has complied with the PRA’s requirements. Substantial compliance and good faith may be factors in assessing penalties. Regarding the adequacy of search, the PRO’s declaration shows a lack of search and the record suggests the potential existence of some records responsive to Hood’s request. Thus, questions of fact remain regarding whether it was reasonable or adequate to conduct no search.
PROCEDURAL Appellate Process Trial Procedure	Strand v. Spokane County	6/15/2021 Unpublished	• Strand appealed the County’s 2018 assessment for her property. Strand then submitted a PRA request for records showing the basis for the assessment. The day after the request, the County acknowledged receipt and provided the first installment. Strand submitted clarification and the County proceeded to produce records in installments over the next few months. During this time, she provided the County examples of records she believed were responsive to her request; records provided in prior PRA responses. Almost a year after the County closed the request, Strand filed suit. • The COA affirmed the trial court’s granting summary judgement to the County. The County provided a reasonable estimate of time, fullest assistance and timely action on Strand’s request through its initial response and by providing and meeting projected installment dates even with business interruptions caused by COVID-19. The County conducted an adequate search for records supported by facts, not conclusions, in the County’s affidavits. Strand’s conclusions on why the search efforts were insufficient and lacked explanation. The records she attached from prior

			requests with different “scopes” did not support a violation in this case. Records printed from a database after the request were responsive. Failure to produce them would likely have been a PRA violation.
PROCEDURAL Federal Action Federal Injunction Standard	Does 1-10 v. University of Washington	6/11/2021, Unpublished 9 th Cir. COA 849 Fed. Appx 706.	• This decision is the continuation of an ongoing third party injunction action in federal court. In 2016 the requester sought to inspect or obtain copies of all documents that relate to the purchase, transfer, or procurement of human fetal tissues, human fetal organs, and/or human fetal cell products at the [UW] Birth Defects Research Laboratory from 2010 to present.” The records included names, work and personal phone numbers and email addresses. The UW provided notice of its intent to release records which resulted in the ongoing litigation. • At issue is a preliminary injunction granted to Doe plaintiffs 1, 2 and 6. In federal court, a preliminary injunction is granted if a plaintiff seeking a preliminary injunction demonstrates they are (a) likely to succeed on, or at least have a serious question going to, the merits, (b) that they are likely to suffer irreparable harm in the absence of preliminary relief, (c) that the balance of equities tips in their favor, and (d) that an injunction is in the public interest. Only the first factor was at issue on appeal. In this case there is a particularized, personal link between Does 1, 2, and 6 and their claimed First Amendment protected activities. That finding was not “illogical, implausible, or without support in inferences that may be drawn from the record.” The district court’s reinstatement of the preliminary injunction was affirmed.
RECORDS Search Production Other Agencies EXEMPTIONS Specific Intelligence Information PENALTIES Yousoufian Factors Abuse of Discretion	Banks v. City of Tacoma	6/2/2021 Unpublished	• Requester sought records regarding the City’s use of cell site simulators, aka “stingray,” including acquisition use or lease records, all communication regarding stingray with other government personnel, warrant applications and outcome records. Through discovery and by comparing records from non-City sources requesters challenged the adequacy of the search. Requesters also challenged the City’s redactions and withholding of records. Requester awarded penalties based on categories of records between \$50 - \$80 per day for 324 days. • Court of Appeals: Records Search: The failure to locate and disclose a record is not a per se violation of the PRA. The standard is the adequacy of the agency’s search. The search must be “reasonably calculated to uncover all relevant documents” but is not required to “search every possible place a record may conceivably be stored.” While there was testimony about the PRO’s customary process for records searches, including for similar requests, the COA negatively comments on the lack of a contemporaneous

			written log or description of the people and departments contacted about this request, the lack of a contemporaneous list of the places searched or the search terms used. The City erred in not producing two records from similar prior requests responses. These are locations where records were reasonably likely to be found. The COA faults the city for not using a request index, tracking spreadsheet or at least offering the other responses in total to the requester even if they would have been overbroad responses. If the search was burdensome, the city could have provided a reasonable estimate based on the burden and used installments. There was a question of whether the City was in possession of the Stingray “Users Manual.” Paper copies had been destroyed or returned but based on testimony there was a question of whether an electronic copy was transmitted to the city as part of a software update. The City was not required to conduct additional requested searches including records alleged held by South Sound 911 which maintained some records for the city under contract. The requester’s rationale for the search was speculative and the city’s testimony supported that there was no reason for responsive records to be held by South Sound 911. Request interpretation and processing: The city’s general policy of not providing blank templates to requesters unless specifically requested violated the PRA. A warrant template was clearly within the scope of the records request. Records Production: While some responsive records were available on the city’s website, availability alone is insufficient. The City violated the PRA in not providing a link to the requester. Exemption: Specific intelligence information (RCW 42.56.240(1)) The make, model, and pricing information about the city’s cell site simulators constituted specific intelligence information was properly withheld as specific intelligence information under RCW 42.56.240(1). The city and requesters experts provided evidence not provided in <i>West v. City of Tacoma</i> allowing the court to conclude how criminals could determine and use information about the capabilities of various cell site simulators to thwart their effectiveness and evade law enforcement detection. Penalties: The trial courts award of penalties between \$50 - \$80 per day was generally upheld. The award was overturned for one group of records. The fact that 3 citizen review reports available on the agency website should have been a mitigating factor not aggravating factor. The lack of production was an oversight, \$80 per record is excessive and therefor an abuse of discretion.
EXEMPTIONS	Green v. Pierce County	5/27/2021	Requester sought photo, birth date, rank, position, badge number, badge for all detention/jail staff and deputies hired on specific dates. RCW

News Media Exception PROCEDURAL Burden of Proof		197 Wn.2d 841, 487 P.3d 499 (2021)	42.56.250(8) applies but contains news media exception. Requester states he is news media. Following research and advice Sheriff's office withheld photographs and birth dates under RCW 42.56.250(8). Trial court found requester was news media. Appeal heard by Supreme Court. Burden of proving news media exception to exemption falls on requester – requester is in better position to prove they are news media. RCW 5.68.010(5)(a) and RCW 5.68.010(5)(b) contain two part tests to determine whether entity and individual (respectively) meet definition of news media. Requester's YouTube channel does not fit into any of the categories of traditional news outlets listed in the statute, nor is it an "entity." An "entity" must be something with a legal identity separate from the individual. Requester also does not individually meet definition of news media. Supreme Court acknowledges statutory definitions might not have kept pace with social media but nods to Legislature for any such change. Trial court reversed.
PROCEDURAL Federal Action EXEMPTIONS Intelligence Information, Privacy CONSTITUTIONAL Cruel and Unusual Punishment	John Does v. Wash. State Dep't of Corrections	5/17/2021 ___ F. Supp.3d ___ (2021) E.D. Washington	- After a leak revealed DOC was moving transgender female inmates from male facilities to female facilities, various requesters sought records to confirm whether this was occurring. DOC identified a variety of responsive records but provided third-party notice to an organization that represented the interests of transgender inmates. The transgender inmates filed a federal lawsuit seeking an injunction. To obtain an injunction, the inmates need to show they are "likely" to prevail or that they have raised a "serious question" and disclosure would cause significant harm. - The Court granted a preliminary injunction finding they were likely to prevail on five claimed exemptions. 1) 8th Amd. of the US Const, cruel and unusual punishment: disclosure of their transgender status would pose a substantial risk to their safety. 2) 14th Amd. of the US Const, privacy: disclosure would pose a significant risk to their safety and there is no penological purpose in disclosing this information. 3) Wash. St. Const. Article 1, Section 7 – Privacy (<i>Caution!</i>); information about transgender status is considered private and disclosure under the PRA is not narrowly tailored. 4) Specific Intelligence Information (RCW 42.56.240(1)) (<i>Caution!</i>); the records are exempt because they can be used to help ferret out criminal activity. 5) Health care information (RCW 42.56.360) (<i>Caution!</i>); some of these records were created to facilitate healthcare.
EXEMPTIONS	John Does v. Cowlitz County	3/30/2021 Unpublished	Requester sought names, DOB, addresses, photographs, offense summary records for all level one sex offenders held by Cowlitz County. Does 1 – 15 sued to enjoin release of their level one, sex offender records arguing that

Intelligence Information, Privacy Public Interest PROCEDURAL Use of Records Injunction Standard			the records were exempt as specific intelligence information the disclosure of which would violate their right to privacy. They also argued that the release of records was not in the public interest and release would irreparably damage them. The trial court did not enjoin release. • The COA affirmed the trial court. The specific intelligence information exemption under RCW 42.56.240(1) is a narrow exemption confined to particular methods, procedures, gathering or analyzing secret information, information about an enemy or conclusions drawn from such information. The general biographical information and offense summaries, while the records may be intelligence information they do not reveal the secretive level of information required. There may be the potential for the invasion or Does personal lives and may frustrate the safety and rehabilitation of sex offenders, the potential use of public records for improper or criminal purposes is a matter for the legislature. The injunction standard for PRA cases is under RCW 42.56.540, not CR 65.
EXEMPTIONS Waiver PROCEDURAL Sufficiency of Pleadings	Yakima School Dist. No. 7 v. Magee	3/18/2021 Unpublished	• Magee, an attorney, requested to inspect and copy records “associated or related” to the school pre-employment drug testing program. Due to the nature of this request and a high number of requests, YSD anticipated the first of 33 installments to be available in approximately three months. Magee inspected the first few installments making copies of hundreds of pages. At the same time the district sent letters to Magee indicating that records may be exempt from production first as a general statement then identifying RCW 42.56.250(2). YSD asked for responses which Magee did not provide so YSD filed in Superior Court to resolve the issue. • Affirming the trial court, YSD had standing under the UDJA, chapter 7.24 RCW. The PRA’s requirement to produce non-exempt records places YSD with “zone of interest.” YSD faced “great peril of paying [PRA] penalties” meeting the injury in fact requirement. YSD had not waived exemptions under RCW 42.56.250(2). For the three installments, YSD expressly preserved its intent to assert an exemption, first through a general statement then providing further specific information. The COA notes that YSD should have more promptly identified the exemptions but in this case, the delay was in large part attributable to the request’s scope and that it was initially unclear. Magee’s filings at the COA did not comply with the appellate rules. Rather than striking them as requested, Magee was sanctioned \$1,000.
RECORDS Search	West v. Office of the Governor	3/15/2021	• West sought records of (1) requests for a declaration of emergency or use of emergency powers by the governor to address homelessness and (2) any

Other agencies records Later identified records PENALTIES Yousoufian Factors Abuse of Discretion		Unpublished	responses thereto or communications concerning the requests. The search located and provided items for the first half but omitted the search for responsive records to the second half. The search included numerous databases, email, hard copy files, electronic files, voice mails, notes and state issued cell phones providing record approximately a month after the request. A week later, West filed suit at which time they realized the oversight regarding the second half of the request, completed an additional search identifying 176 additional responsive records that were provided to West. Included in the second batch were redacted emails with the AGO seeking legal advice. Those emails indicated they had been shared internally within the AGO. In total, the delay of records for the second installment was 14 days. The Court of Appeals affirmed that the search was reasonable based on the reasonably detailed, non-conclusory affidavits, submitted in good faith, that included information on the search terms, types of searches conducted, and locations that establishes places likely to contain responsive records were searched. In this instance that included review of nearly 2,000 emails, appropriate departments, databases, shared drives, hard copy folders and inquiries to specific key personnel. Agencies are not required to go beyond their own records, in this case, records from the AGO. The trial court did not abuse its discretion when it limited West's discovery to matters related to the second search for records. The trial court's \$14.00 penalty although at the low-end of the range, was appropriate based on the violation. It was the result of an oversight. The agency otherwise responded reasonably and promptly to the request, and promptly cured the oversight when it was caught.
APPLICATION Def'n of Public Record Personal Devices and Accounts	West v. Clark County	January 20, 2021 Unpublished	- West sought posts from council member's personal Facebook page claiming the posts were public records prepared by the council member in their official capacity. The County verified that it did not maintain the Facebook page, contacted the council member, obtained an affidavit from the council member that the page did not contain any public records and sent it to West. - Personal Facebook account posts may be public records if they are within the individuals "scope of employment." Individuals are responsible for searching their personal accounts and devices for public records and if an employee claims information on a personal account or device is not a public record, must submit an affidavit or declaration. In this case the posts discussed the council member's personal opinions on various issues, there

			was no evidence that that the post's further the County's interests, did not contain details regarding Council discussion, decision or other actions. The Court of Appeals agreed that if anything the posts advanced the council member's own interests by establishing his views on particular policies and inviting discussion among constituents. The Trial court properly excluded the screen shots under ER 201 which allows the court to take judicial notice of adjudicate facts not in dispute. In this case, West sought admission of the posts to prove the issue at hand, that the posts were in fact public records. • <i>Concurring opinion</i> - the current version of the PRA does not preclude request like this, where the requestor already has the records, but that the PRA "was not designed to impose penalties for not producing records, easily accessible and available to the public and that have already been obtained. "Making these types of requests forces agencies to expend resources responding and litigating these types of cases wastes judicial resources."
PENALTIES Yousoufian Factors Abuse of Discretion EXEMPTIONS	Cortland v. Lewis County	January 20, 2021 Unpublished	• Cortland requested copies of hearing transcripts prepared by court reporters and purchased by the County. The County asserted RCW 42.56.290 as an exemption concluding Cortland could not obtain copies of the transcripts that Lewis County had paid for in civil litigation. Requester asserted that the transcripts were improperly withheld public records and the superior court agreed. "Although custom and fairness may require court reporters to be paid for copies of transcripts, this custom is not embodied as an exemption to the Public Records Act. Custom and fairness are not reasons to restrict access to public records under the Public Records Act." Cortland appealed the penalty award. • Court of Appeals affirmed the superior court's award of \$11,950 to be split amongst the three requesters. Review of PRA penalties is extremely deferential to the trial court under an "abuse of discretion" standard. The award was not an abuse of discretion because it was not manifestly unreasonable or based on untenable grounds or reasons. <i>Yousoufian</i> establishes mitigating and aggravating factors but application of those factors is highly case specific. The trial court is not required to apply a specific aggravating or mitigating factor. While the fifth mitigating factor and the fourth aggravating factor are parallel, requiring analysis of the reasonableness of the agency's actions, the trial court is not required to aggravate or mitigate. The court is not required to choose between these factors. There was no evidence that the agency acted in bad faith. The court's treatment of each transcript as a single record and set a penalty of

			\$10 per day per record was well within the superior court's broad discretion.
EXEMPTIONS Brief Explanation Code System PROCEDURAL Format of Production	Berg v. City of Kent	January 19, 2021 Unpublished	- The Berg's attorney submitted a PRA request as part of an ongoing land use dispute over the Berg's use of their property for the storage of vehicles and heavy equipment; an expansion of an auto repair business historically operated on the property. The request sought any and all records, including metadata, that relate to or refer to a former code enforcement officer for the City. The City sought clarification via a telephone conversation which was subsequently memorialized. The City produced records in three installments, with the final one including "pdf's" of emails and an exemption log. At the time of the initial production, the City was unable to produce records in native format and redact protected information. As a result, it was unable to produce the metadata. After the Bergs filed suit, in working with the Kent Police Department's forensic detective, the City was able to export metadata from the emails to a spreadsheet. It then produced the spreadsheet with some redactions along with an exemption log. The metadata included sender name, recipients, delivery date, email subject line, body of the email, and information about attachments. - The Court of Appeals upheld the trial court's dismissal of the PRA claims. The challenge centered on the format in which the City produced metadata, "exporting metadata ... was 'disingenuous; and eliminated 'the public's ability to receive both searchable emails with corresponding metadata.'" Critical in the court's dismissal was the Berg's failure to present evidence to rebut the City's assertion that it was impossible to produce the metadata digitally and maintain necessary redactions. The Bergs also did not identify any information produced in the spreadsheet not previously produced. The exemption logs provided sufficient information to allow the Bergs to make a threshold determination about whether the claimed exemption applied. The log identified each email's delivery date, time, names of senders and recipients, subject line, number of pages, a code describing the basis for the exemption and a code key.
2020			
RECORDS Motion for Protective Order EXEMPTIONS Medical Records	Seattle Children's Hospital v. King 5	December 28, 2020 10 Wn. App.2d 365, 483 P.3d 785 (2020)	Seattle Children's Hospital (SCH) experienced years of recurring instances of aspergillus mold infections in surgical patients, reporting two new cases in 2018, which it reported to King County Public Health (KCPH). KCPH contacted the CDC to help investigate the latest outbreak. King 5 made a request to KCPH for records related to the outbreak. KCPH compiled records and determined no exemption applied. KCPH provided third party

		Motion to publish granted 3/22/2021	notice to SCH. SCH agreed to release most of the records, but argued some contained information protected under the HCIA (70.02 RCW), HIPAA and the quality improvement (QI) exemption in the PRA. SCH filed for an injunction. While this was occurring, DOH received a similar request that included many of the same documents. DOH was added to the suit. The trial court initially granted then dissolved an injunction concerning approximately 800 pages of records. • Court of Appeals: Affirmed the trial court. Third party injunctions require the trial court to determine 1) whether the records are exempt and if yes, 2) whether disclosure is against public interest and would cause substantial and irreparable damage. For records to be exempt under a QI program, records must be created specifically for a QI committee; records created specifically for, and collected and maintained by a QI committee. This prevents hospitals from funneling all records through the committee to prevent disclosure. Narrowly construing the QI exemption, emails between SCH and KCPH/DOH were not created as part of the inner workings of the QI committee, KCPH/DOH did not recall being informed that they were assisting a QI process, rather were part of a public health investigation. Certain records were not surgical site infection reports exempt under RCW 42.56.360(1)(c). While certain infection reports are required, aspergillus surgical site infections are not. Unresolved by the COA is the redaction necessary to deidentify records. While DOH rules may allow for application of more protective HIPAA standards to the records the court declined to say the heightened redaction standard was required remanding this issue to the trial court.
APPLICATION Telford Test Functional Equivalent PENALTIES Application of Statute	Washington State Association of Municipal Attorneys v Washington Coalition for Open Government	December 14, 2020 Unpublished Petition for review denied.	• Requester sought records about WSAMA's amicus brief activities. WSAMA provided records with exemption logs while maintaining it was not an "agency" under the PRA. It then sought declaratory judgment to resolve the issue. Trial court determined WSAMA was an agency and awarded attorney fees. • Court of Appeals: Reversed the trial court. The goal of the <i>Telford</i> test is to prevent the government from operating in secrecy via a private surrogate. Balancing the <i>Telford</i> factors WSAMA is not the functional equivalent of an agency. Records created or used by members may be the employing city's records. Award of attorney fees reversed because plaintiff had not prevailed against an agency in the right to receive public records.
PROCEDURAL Trial Process	Thurura v. Department of Corrections	December 8, 2020	• In an effort to prove a due process violation after being found to have committed an infraction the inmate requested records about the evidence.

RECORDS Search		Unpublished	At issue was a request for meta data from the initial incident reports filed by two staff members. DOC conducted an initial search in one location finding no responsive records. Following initiation of the suit, a second broader search found scanned copies in pdf format but no records with meta data. DOC filed a “Motion to Show Cause” whether there was a PRA violation. • Court of Appeals: The show cause motion is only available to requesters in order to determine whether the agency has violated the PRA. RCW 42.56.550(1). An agency may invoke judicial review under 42.56.550(3) combined with a CR(7)(b) motion. (Decision lists CR 7(c) in error) Key is that the Agency bears the burden of proof. The initial search was inadequate as there were other locations where records were reasonably likely to be found. However, no PRA violation because penalties are for improper denial of access to record but in this instance there were no responsive records. Requester entitled costs and fees but not PRA penalties.
PROCEDURAL Protective Order re Publication of Records CONSTITUTIONAL Free speech	Catlett v. Teel	December 7, 2020 15 Wn. App.2d 689, 477 P.3d 50 (2020)	• Requester made several records requests to county sheriff’s office for records involving his former girlfriend. Various police and incident reports were produced. Requester made the records requests through third party independent internet service, MuckRock, which, by default, publishes the public records produced online. Requesters can click “Embargo” and the public records will not be published. But the Embargo function expires after 30 days and the records will then be published online. The individual named in the records, former girlfriend, asked requester to take down the records and requester did then click “Embargo.” Other communications occurred between requester and former girlfriend that eventually caused former girlfriend to seek a protection order against requester. Trial court issued protection order and found that requester’s publication of public records requests on the internet so as to “have them appear when [former girlfriend’s] name was searched on the internet” constituted unlawful harassment. Requester appealed. • Court of Appeals: Trial court reversed. US Supreme Court has held that the publication of public records is protected speech under the First Amendment. Washington Supreme Court has explained that the Washington Constitution provides broader protection than does the First Amendment to the publication of public records. When information enters the public record—regardless of how that occurs—the public generally has access to that information pursuant to the Public Records Act, chapter 42.56 RCW. Actions in causing public records to be published is also protected under the Washington Constitution. The contested public records were

			lawfully disclosed to the requester, thus, individual named in the record has no claim to a privacy interest in these records that would preclude requester from publishing them. However, an individual's right to privacy may prevent the disclosure of certain information pursuant to a public records request, the disclosure of public records is not here at issue. Protection order entered against requester violates his constitutional right to speak freely.
PROCEDURAL Appellate Procedure Further action on mandate and remand PENALTIES Abuse of Discretion	Zellmer v. King County	November 16, 2020 Unpublished <i>(See October 5, 2020 decision.)</i>	- Requester made records request to King County and later filed a lawsuit alleging that County failed to produce all records. The trial court determined that no PRA violation existed and dismissed the lawsuit. The Court of Appeals reversed, finding that the County's methodology was flawed. However, the Court of Appeals declined to assess penalties (because requester was an inmate and there was no finding of bad faith) and declined to award fees because requester did not seek them at the trial court nor at the Court of Appeals. A mandate was eventually issued by the Court of Appeals. Requester moved trial court for a case schedule, seeking fees. The trial court dismissed the action and requester appeals. - Court of Appeals: Trial court affirmed. An appellate court's mandate is binding on lower courts and must be strictly followed. A trial court acting otherwise interferes with an appellate court's jurisdiction.
PROCEDURAL Sufficiency of Pleadings Premature Suit	Madrid v. Adkina	11/13/2020 U.S. Dist. Court, W.D. Wash.	- Requester sought records including audio and video his encounter with the City of Arlington's police. While the city was producing records, requester filed suit alleging it had denied access to records. - Plaintiff's challenge failed. The PRA authorizes two challenges, denial of a requested record and an unreasonable estimate of time. Denial may occur when it appears that an agency will not or will no longer provide responsive records. The city was still producing records when the suit was filed, denial of records claims was premature. The pleadings did not allege facts indicating the time estimate was unreasonable. Requester cannot rely on factual allegations raised in response to a motion for summary judgement to allege new PRA claims.
RECORDS Search PROCEDURAL Claims Untimely (premature lawsuit)	McDaniels v. Department of Corrections	November 2, 2020 Unpublished	An inmate made three requests to the DOC related to food purchases. The requests built off each other with the addition of sometimes-inaccurate information received from corrections staff including from the superintendent's office. After searching for responsive records in numerous locations, DOC determined there were no responsive records in the department's possession for the first and second request. The third request

			was still open. McDaniels filed suit challenging DOC actions for all three requests. • Court of Appeals: Affirming the trial court's decision, the first and second requests were for records that do not exist. The department conducted an adequate search in numerous locations and following leads. Mistaken statements by agency staff do not change whether a record exists. The Court dismissed claims regarding the third request as not properly before the court; the request was open at the time the suit was filed citing <i>Hobbs v State Auditor's Office</i>. An "umbrella food contract" negotiated and held by another agency was not responsive, DOC did not possess a copy and had no duty to obtain records from another agency.
PROCEDURAL Federal Action EXEMPTIONS Properly Asserted CONSTITUTIONALITY 1st & 14th Amendment	Boardman v. Inslee	October 21, 2020 978 F.3d 1092 (2020)	• Requesters' jobs are covered by collective bargaining agreements but have elected to not pay dues and therefore are not members of the unions. With the assistance of the Freedom Foundation, requesters campaigned to replace the bargaining representative and to inform individuals of their right to not pay representation fees. Historically they relied on PRA requests to obtain contact information of other service providers covered by the collective bargaining agreements. In 2016, voters by initiative passed I-1501 designed to protect the safety and security of seniors and vulnerable individuals which included making the contact information of service providers exempt. RCW 42.56.640(1). Requesters challenged certain provision of I-1501 alleging violations of U.S. Constitution. • 9th Circuit COA: It is a well settled principle that the First and Fourteenth Amendments do not guarantee the public a right of access in information generated or controlled by government. The disclosure of government controlled information is left to the political process that the legislature may resolve one-way or the other. However, denying access to records based on content or viewpoint restrictions of protected speech may implicate First Amendment and is appropriate for the court's consideration. No violation found because the I-1501 denies access to all requesters irrespective of their views; requester's altering their intended use would not change the outcome. Disclosure of the requested material required by other statute and legal duty of representation by RCW 41.56.080 is not viewpoint discrimination.
EXEMPTIONS Properly asserted (attorney-client) PROCEDURAL	Zellmer v. King County	October 5, 2020 Unpublished	• Inmate requester made a public records request for emails between the King County Department of Adult and Juvenile Detention staff and their attorneys. The County withheld records under the attorney-client privilege and included an exemption log that provided: (1) the type of record, (2)

Exemption Log			date, (3) author, (4) subject matter, (5) page numbers, (6) recipients, both “to and CC’s,” (7) applicable exemptions; (8) action taken, and (9) a brief explanation of how the exemption applies. The requester sued, arguing that the agency was required to provide a physical copy of each email with the body and communications redacted. On summary judgment, the trial court dismissed all claims, finding that the County did not violate the PRA. The requester appealed the dismissal. • Court of Appeals: Trial court affirmed. While the PRA provides that agencies may withhold only the exempted portions of certain documents and disclose the rest, the entirety of the emails, absent the subject line, were exempt under attorney-client privilege, RCW 5.60.060(2)(a). The information that was provided in the exemption log is the same information that would have been provided had the agency individually redacted each record. Court notes that similar arguments were made and same result was had in <i>Block v. City of Gold Bar</i>, 189 Wn. App. 262 (2015).
PROCEDURAL Federal action EXEMPTIONS Properly asserted No waiver CONSTITUTIONALITY 1 st Amendment	Cortland v. Pierce County	September 21, 2020 488 F. Supp.3d 1027 (2020)	• Requester made a records request for a specific deputy prosecuting attorney’s identification badge, which included his photograph. The County redacted the ID badge citing RCW 42.56.250(8), which exempts from disclosure photographs of criminal justice agency employees. Requester filed a lawsuit alleging that County waived use of exemption when the employee wears the ID badge around his neck, thereby displaying the photograph in the public domain. Requester also argued that RCW 42.56.250(8) is unconstitutional because it contains a “content-based restriction on speech.” • Federal District Court: Dismissed the matter. <i>Constitutional arguments:</i> Requester’s argument that the statute is unconstitutional because it exempts employee photographs for PRA requests made by members of the public while allowing members of the news media to receive the photographs fails. There is no First Amendment right to access government records. The exemption does not implicate the First Amendment and the carve-out for news media to access the information is not facially unconstitutional. Court cites <i>Boardman v. Inslee and Houchins v. KQED</i>, 438 U.S. 1 (1978). <i>Exemption and Waiver arguments:</i> Requester bears the burden of demonstrating waiver. Requester did not establish that County intentionally placed ID badge photograph in the public domain. Wearing it around employee’s neck was not enough. County provided evidence that ID badge photo was the official photograph kept in the employee file.

PROCEDURAL Statute of Limitations RECORDS Search	Zellmer v. Department of Labor & Industries	September 15, 2020 Unpublished	- Requester made four public records requests to the L&I seeking medical records and authorizations related to his L&I claim later filing suit challenging the first three. The Department sought clarification for the first request but requester did not respond. The Department requested clarification for the first three requests. They did not locate any records, informed requester and closed the requests. The Department produced records in response to the fourth request. - Court of Appeals: Trial court affirmed. The complaint was filed over one year from the date the first request was closed, therefore, the statute of limitations time bars requester's allegations related to that request. Equitable tolling does not toll the statute of limitations here. The Department's search of multiple divisions and locations for records was adequate.
PROCEDURAL Inspection APPLICATION Defn of public records RECORDS Search	Bacolod v. DOC	August 11, 2020 Unpublished	- Inmate made three requests for: (1) in-person inspection of electronic files concerning him, (2) a list of inmates who downloaded a specific song and (3) rejected messages in the inmate messaging system due to sexually explicit content. Trial court dismissed the claims and he appealed. - Court of Appeals: Trial court affirmed. In-person inmate inspection of files other than physical copies of their central and medical files is not required. Review of any electronic file by inmates would not allow the DOC to carry out its necessary functions, as supported by DOC's policies, and would present significant logistical and security concerns. Regarding downloaded song records, evidence showed that records did not exist. An agency has no duty to produce a nonexistent record. Finally, the request for records from the messaging system was not for identifiable records. The system could not be searched with a key word search and would have required DOC to research every rejection individually to determine whether it was responsive. Additionally, the messages were between inmates and their family and friends, were not used by the DOC in a manner that would transform them from private to public and therefore not related to the conduct of government.
PROCEDURAL Appeal Process Insufficient Pleadings	Cortland & Green v. Lewis County	July 21, 2020 Unpublished	- After prevailing on the merits in his PRA suit the court ruled that requester was entitled to reasonable attorney fees and costs and set that amount but denied \$255 in costs for the penalty hearing transcript. Requester appealed the superior court's order denying those costs. - Court of Appeals: Trial court affirmed. The court declined to reach the merits of the appeal because requester failed to provide the court with an adequate record on appeal. The court adopted requester's proposed order on

			fees and costs, which did not make specific findings as to why the court did not award the \$255 transcript cost. Requester failed to provide the court with the transcript of the court's oral ruling on attorney fees and costs.
PROCEDURAL Claims Untimely (premature lawsuit) – records still being produced	Cortland v. Lewis County	July 21, 2020 14 Wn. App.2d 249, 473 P.3d 272 (2020)	• In 2016 requester made a PRA request and the agency responded that the request was being processed and subsequently asked for clarification of the request's time frame. Initially three installments of Court records were produced pursuant to GR 31.1. The county concluded it also possessed responsive records in its own capacity producing them under the PRA in a fourth installment. The county also notified the requester that subsequent productions would be subject to the "newly" authorized fees. The suit was filed the following day. For the 5th installment, requester was notified of the cost, which was not paid, and the request was closed. • Court of Appeals: Superior Court reversed. The county was still collecting records, 3,600 yet to be produced, when requester filed suit. Upon notice of 5th installment, requester expressed discontent with fee, did not claim the records and request was closed. County did not deny access to records because it did not reasonably appear it would no longer produce records and never denied access. Because there was no denial of access, there was no final agency action under RCW 42.56.550(1) and therefore no PRA cause of action.
PROCEDURAL SOL/Timeliness RECORDS Search Later identified records	Dotson v. Pierce County	June 2, 2020, <i>Amended in part</i> July 8, 2020 13 Wn. App.2d 455, 464 P.3d 563 (2020)	• In 2016, requester made PRA requests and the agency provided records in installments then closed the request. It later found additional responsive records and provided them to the requester. The requester sued, more than one year after the closing date letter. The parties filed cross summary judgment motions. The superior court found the requester's PRA action was untimely. • Court of Appeals: Superior court affirmed. "Because Dotson filed her action more than one year after the County's final, definitive response, her action was untimely." In addition, the requester did not seek or argue equitable tolling of the statute of limitations, so waived that claim on appeal. (The superior court had nevertheless found no "gamesmanship" by the agency or other facts to support equitable tolling.) Finally, the "discovery rule" does not apply in PRA cases. "[T]he PRA statute of limitations contains triggering events that enable a requester to know that a cause of action has accrued, and the legislature enacted no discovery rule exception."
EXEMPTIONS Employee Records	Herrick v. Department of Social and Health	May 19, 2020	• Requester was a former detainee at the Special Commitment Center. He requested records concerning a female employee (her photograph) and mail

RECORDS Creation	Services, Special Commitment Center	Unpublished	log records. The superior court found the agency properly redacted the photo but had not properly provided the mail logs. The superior court awarded a penalty. Both parties appealed. • Court of Appeals: Agency agreed that judgment order with respect to the photograph was improperly entered and requested remand to address other bases to redact the photo, which the court granted. The court stated, “Also, we doubt the subject photograph is exempt under RCW 42.56.230(1) or RCW 42.56.240. See DeLong, 157 Wn. App. at 130-31 (employee photograph is not exempt from disclosure under the privacy exemption because it is not the type of intimate personal information the PRA intended to protect).” • With respect to the mail logs, the court found the requested record of the requester’s personal mail log did not exist so reversed the superior court, but there were factual issues about the general institutional mail log. Superior court reversed and case remanded.
PROCEDURAL SOL/Timeliness	Denney v. City of Richland	May 7, 2020 195 Wn.2d 649, 462 P.3d 842 (2020)	• Case involves timeliness of requester’s appeal from superior court summary judgment and costs award decision for the agency. The underlying dispute involved a PRA request and an attorney work product exemption. Both sides filed summary judgment motions. When the agency prevailed, the requester appealed, but at the Court of Appeals it was determined that the appeal was untimely and was dismissed. The requester sought further review at the State Supreme Court. • Supreme Court: While requester’s appeal was untimely under the court rules, in this case there was “excusable error” because the “circumstances of [requester’s] case are sufficiently extraordinary that treating his appeal as untimely would be a miscarriage of justice.” Case remanded to the Court of Appeals for further proceedings consistent with the opinion, with this notice to future appellants: “Nevertheless, we caution future, similarly situated appellants that our appellate rules establish the correct procedure on review: a summary judgment order disposing of all substantive legal issues can constitute a final, appealable judgment regardless of a subsequent attorney fees award.”
PENALTIES Abuse of Discretion	Diemond v. King County	April 27, 2020 Unpublished <i>(Petition for review denied)</i>	• Requester sought county records and filed a PRA lawsuit. The county acknowledged that its response was untimely and proposed a statutory penalty up to \$28,350. In her response, requester argued for a \$1,464,615 penalty and moved for an evidentiary hearing to dismiss the county’s summary judgment motion. The trial court determined an evidentiary hearing was unnecessary and awarded requester \$74,140. Requester filed

			various other motions including motions to amend the judgment, which were denied and the requester appealed. • Court of Appeals: Trial court affirmed. Trial court did not abuse its discretion in refusing to amend the judgment.
RECORDS Search	Benitez v. Skagit County	April 20, 2020 Unpublished	• Inmate requester submitted a public records request to Skagit County seeking all “communications” to or from the deputy prosecuting attorney in his criminal case. Believing he had not been given all the records responsive to his request, he filed suit under the PRA. The superior court granted summary judgment for the county and dismissed the complaint. • Court of Appeals: There is a material issue of fact as to whether the county conducted an adequate search for records; case remanded to superior court.
EXEMPTIONS Employee Records Personal Information Brief Explanation	Church of Divine Earth v. City of Tacoma	April 14, 2020 13 Wn . App.2d 497, 466 P.3d 789 (2020) <i>(Petition for review denied)</i>	• Requester sought five years of two city department directors’ performance evaluations, and the city provided the records with redactions including pursuant to RCW 42.56.230(3) (personal information) the disclosure of which would violate the employees’ right to privacy. The requester sued to challenge the exemptions and the agency’s brief explanation of the exemptions. The superior court granted summary judgment for the city. • Court of Appeals: Trial court affirmed. The redacted portions of the performance evaluations contained exempt personal information. The city’s brief explanation in its exemption log, which included the statutory citations and a pinpoint cite to <i>Dawson v. Daly</i>, was sufficient.
APPLICATION Telford Test Functional Equivalent	McKee v. Paratransit Services	April 7, 2020 Unpublished	• Requester sought five years of records from a private nonprofit entity that provided brokered transportation services to qualified Medicaid recipients. Superior court ruled that the entity was not a public agency for PRA purposes. • Court of Appeals: Superior court affirmed. Nonprofit entity is not a “public agency” under the <i>Telford v. Thurston County Bd of Commissioners</i> factors.
EXEMPTION Employee Investigation PRA Amendment / Application of New Law	Doe v. Wash. State Comm. Coll. Dist. No. 17 et al.	March 10, 2020 Unpublished <i>(Motion to publish has been filed by a non-party)</i>	• Media requesters sought records related to the alleged sexual misconduct of a community college acting president who had resigned. Records included correspondence, texts, and other records. Agency provided notice to the complainants, who sued as Jane Does to enjoin disclosure of identifiers. Trial court entered injunction under RCW 42.56.230(3) prohibiting disclosure of identifying information of the complainants. • Court of Appeals had originally reversed the trial court in 2019. The Court of Appeals later withdrew its opinion, reversed its 2019 decision, and issued this new decision in 2020.

			New Court of Appeals decision: The 2019 enactment of the amendment to RCW 42.56.250 (HB 2020), which exempts the names of harassment complainants, other accusers, and witnesses from public disclosure, applies to the unreleased records in this case. The amendment applies prospectively to the records pending before the court. Case remanded to determine if the amendment shields the information that the plaintiff Jane Does seek to protect.
PROCEDURAL SOL/Timeliness Equitable Tolling	Gipson v. Snohomish County	March 2, 2020 Unpublished	- Plaintiff requester filed his PRA action more than one year after the agency's final installment. Trial court dismissed suit as not complying with the PRA one-year statute of limitations, and there was no basis to apply "equitable tolling" of the statute. - Court of Appeals: Trial court affirmed. The PRA statute of limitations is one-year. Requester provided no evidence to support equitable tolling; that is, that the county acted in bad faith, engaged in any deception, or falsely claimed it did not have responsive records. Requester also failed to establish that he acted with due diligence and he provided no explanation as to why he did not seek clarification from the agency sooner. He provided no explanation as to why he waited 13 months to file his lawsuit. "And he presented no evidence that the county took any action that prevented him from filing the lawsuit in a timely manner."
APPLICATION Other Agency Records RECORDS Duty to Search	Cortland v. Lewis County	February 25, 2020 Unpublished <i>(See similar February 4, 2020 decision)</i>	- Plaintiff requester sought former county law library board records. He received responses to each request but filed suit over several alleged PRA claims. The trial court dismissed the claims. - Court of Appeals: Trial court affirmed. County responded to records request by denying request and directing him to resubmit his request to the superior court. The superior court is not an agency subject to the PRA. The county had no duty to go beyond its own records to respond to the request directed to a nonexistent superior court agency. County had no duty to go beyond its own records in conducting a search. Requester provided no evidence that the county held responsive records that it would have uncovered in a more thorough search. Plaintiff did not challenge trial court's finding of fact that he received timely response and records to each request.
PROCEDURAL Appeal Process Mootness	Cowlitz Tribal Gaming Authority v. Clark County Sheriff's Office and Angus Lee	February 25, 2020 Unpublished	Plaintiff tribal gaming authority sought an injunction to enjoin disclosure of surveillance videos from a tribal casino in PRA requests directed to the county sheriff's office. The trial court denied the injunction and the case was appealed. During the appeal, the requester withdrew his requests.

			• Court of Appeals: The appeal is moot because the requester withdrew his requests. While moot, the court also declines to consider the case (as case involving a matter of important public interest), since the requester's briefing on appeal "is wholly inadequate."
RECORDS Search Estimate of Time	Millennium Bulk Terminals Longview v. Washington State Dep't of Ecology	February 25, 2020 Unpublished	• Plaintiff requester sought to build a coal export terminal, which required an Environmental Impact Statement (EIS). After the EIS was published, the requester requested Department of Ecology records of the "data and assumptions" used to prepare the EIS. The agency responded in installments. After it received some installments, including records from a contractor, requester sued claiming the agency failed to provide reasonable time estimates, failed produce 26 documents and that its search was inadequate. Trial court found the agency's production times were reasonable, the search was adequate, and the requested documents were disclosed. Trial court dismissed claims. • Court of Appeals: Trial court affirmed. Regarding the search, many of the records came from the contractor and the agency also conducted "broad searches across multiple agency programs." The agency spent approximately 795 hours and produced over 377,000 documents. The agency "performed its searches in a manner reasonably calculated to find all relevant documents" given the search terms the requester used in its request (noting the requester also "implicitly concedes that there are more accurate terms to describe the documents and underlying data that its original request sought.")
RECORDS Search Other Agency Records PROCEDURAL PRA Not Other Law Enf. Tool	Cortland v. Lewis County, Lewis County Law Library Board	February 4, 2020 Unpublished	• Plaintiff requester sought former county law library board records. Board was no longer functioning (it was nonexistent) and the county prosecutor responded that the records are governed by court rule, not the PRA. Requester did not resubmit request under court rules. Trial court found that the county violated state law when it dissolved the board, the board was not a judicial agency when it existed, and the county should have provided records under the PRA. Trial court assessed a PRA penalty and awarded attorneys' fees. • Court of Appeals: Trial court reversed. County did not owe a duty under the PRA to produce records because it dissolved the library board ("The PRA is not an enforcement tool for violations of unrelated statutes.") County did not have a duty to produce records where the superior court, not the county, held the responsive records. The PRA also does not compel an agency to go beyond its own records in order to produce responsive records.

RECORDS Search Scope of Request EXEMPTIONS Wrongfully asserted Investigative Records – Specific Intelligence Information	West v. City of Tacoma	January 28, 2020 12 Wn. App. 2d 45, 456 P.3d 894 (2020)	- Plaintiff requester sought city police department records regarding cell site simulator (CSS) technology. The city provided records and some were redacted. Trial court found redactions met the PRA’s specific intelligence exemption at RCW 42.56.240(1) but some records wrongfully asserted attorney client privilege. Trial court imposed a penalty and dismissed other claims regarding other records. - Court of Appeals: Trial court affirmed in part, reversed in part; case remanded. Redacted records did not meet specific intelligence information exemption because the CSS make, model and pricing information was outside the scope of the exemption. The exemption should be narrowly defined to intelligence information such as gathering or distributing secret information, information about an enemy, or conclusions drawn from such information. - Regarding allegations concerning other records wrongfully withheld, Plaintiff’s pleadings provided sufficient notice to the city that those records were also at issue. Trial court erred in dismissing claim regarding existence of two documents because there were issues of material fact. The city did not conduct an adequate search for records “beyond a material doubt” when it did not search or provide email communications; the request for “any records” includes emails.
2019			
APPLICATION Definition of Agency	The Associated Press <i>et al.</i> v. The Washington State Legislature <i>et al.</i>	Dec. 19, 2019 194 Wn.2d 915, 454 P.3d 93 (2019)	- Plaintiff media requesters made multiple identical requests seeking records at the State Legislature, including legislators’ calendars, text messages, emails and other records. Certain records were provided, but others were not because it was contended that they were not “public records” as defined in the PRA. The requesters filed suit regarding four of the requests. The trial court found state legislators and their offices were “state agencies” subject to the PRA, but the Legislature, House of Representatives and Senate were not. Appeals followed. - State Supreme Court: Trial court affirmed. Under the plain meaning of the PRA, individual legislators are “agencies” subject in full to the PRA’s general public records disclosure mandate. However, the institutional legislative entities (the House, the Senate and the Legislature) are not similar “agencies” because they are not included in the definitional chain, but they are subject to the PRA’s narrower public records disclosure mandate by and through each chamber’s respective administrative officer.

PROCEDURAL Policy overly restrictive No Exhaustion Requirement	Kilduff v. San Juan County	Dec. 12, 2019 194 Wn.2d 859, 453 P.3d 719 (2019)	- Plaintiff requester submitted PRA request to county, received some records. Requester contended county failed to conduct reasonable search and silently withheld records. Requester sued. County had PRA procedure requiring exhaustion of the agency's administrative remedies before filing a PRA suit and contended requester did not exhaust. Requester challenged the exhaustion requirement. Requester also challenged agency's Public Records Officer's simultaneous service as a county council member. Trial court dismissed the PRA exhaustion claim. Trial court found the <i>quo warranto</i> ouster action involving the PRO to be frivolous and imposed sanctions. - Supreme Court: Trial court reversed on the PRA exhaustion claim: PRA does not require exhaustion of internal appeals at agency before a requester files a PRA lawsuit, and here, requester received a final agency action on his request. Trial court correctly dismissed ouster claim as requester lacked standing to bring that claim; however, sanctions are reversed. Attorneys' fees issue remanded to trial court because the merits of the PRA claim concerning the records has yet to be resolved.
RECORDS Creation of Records	Strand v. Spokane County & Spokane County Assessor	Dec. 12, 2019 Unpublished <i>(Petition for review denied)</i>	- Plaintiff requesters submitted PRA requests for six groups of records. The one group at issue concerned certain real property inspection records, which requester asked to be compiled into four columns in a spreadsheet. County responded that it did not generate such a record from its database, and provided information about the property data. County provided other records. Requesters contended they were entitled to entire downloaded database, and sued. Trial court dismissed the PRA claims with prejudice. - Court of Appeals: Trial court affirmed. Assessor has no obligation under the PRA to produce records it does not have. The PRA does not require agencies to create or produce nonexistent records, under <i>Fisher Broadcasting v. City of Seattle</i>.
APPLICATION Telford Test Functional Equivalent PENALTIES Attorney Fees/Costs Abuse of Discretion	Strand v. Council 2 – Wash. St. Council of County & City Emps.	Dec. 12, 2019 Unpublished	- Plaintiffs sought union's records under PRA. Union did not provide records, stating it was not a government agency. Requesters sued. Trial court dismissed action, and awarded the union's attorneys' fees against requesters for filing a frivolous action. - Court of Appeals: Trial court affirmed. Union is not a public agency under PRA, or the functional equivalent of a public agency under <i>Telford v. Thurston County Bd of Commissioners</i> factors. Trial court did not abuse its discretion in awarding attorneys' fees and costs ("the concern is whether the Union and Local 1553 were subjected to the expense and inconvenience of a claim that had no prospect of succeeding.")

APPLICATION Telford Test Functional Equivalent	Shavlik, West v. Dawson Place	Nov. 25, 2019 111 Wn. App. 2d 250, 452 P.3d 1241 (2019) <i>(Petition for review denied)</i>	- Plaintiffs sought records from a private nonprofit organization (child advocacy center), contending it was the functional equivalent of a government agency so it was subject to the Public Records Act. The trial court ruled to the contrary, finding the nonprofit was not subject to the PRA. - Court of Appeals: Trial court affirmed. Plaintiffs failed to establish that the nonprofit was the functional equivalent of a government agency under the <i>Telford v. Thurston County Bd of Commissioners</i> factors.
EXEMPTIONS PRA Amendments Vested Right	SEIU Local 925 v. State et al.	Oct. 31, 2019 194 Wn.2d 546, 450 P.3d 1181 (2019)	- Requester Freedom Foundation requested list of names and contact information of child care providers. Trial court denied union's request for injunction. Court of Appeals affirmed. - Supreme Court: Court of Appeals reversed. Exemptions created by RCW 42.56.640 and RCW 43.17.410 established through Initiative 1501 apply to restrict release of the records in this case. - The PRA does not create a "vested right" in release of records under the law at the time of the request (overruling case law to the contrary, <i>Dragonslayer</i>) – "nothing in the PRA itself indicates any intent to adopt a blanket time-of-request rule." A court must proceed on a "case-by-case basis" to determine the intent underlying any PRA-related amendment or other new law.
EXEMPTIONS Privacy Narrowly Construed	WPEA et al. v. Wash. St. Ctr. For Childhood Deafness and Hearing Loss et al.	October 24, 2019 194 Wn.2d 484, 450 P.3d 601 (2019)	- Requester Freedom Foundation made PRA requests for state employee union members' names associated with birth dates. Unions filed injunction proceeding to enjoin disclosure, citing PRA exemptions and state constitutional privacy interests (Art. 1, Sec. 7). Trial court did not enjoin disclosure but Court of Appeals had enjoined disclosure. - State Supreme Court: State employees do not have a privacy interest against disclosure of public records containing birth dates associated with their names. Neither PRA's current exemptions nor State Constitution's right of privacy permit redaction. Court of Appeals reversed. "The privacy protection afforded by the PRA is narrow, and it extends an individual the right of privacy 'only in 'matter[s] concerning [their] private life.'" "The interest in confidentiality, or nondisclosure of personal information, has never been recognized by this court as a fundamental right." "The unions 'have not established ... that birth date information constitutes a private affair.'"

			○ “Disclosure of birth date information is not ‘highly offensive’ under our precedent, and it serves legitimate public interests, furthering the policy of the PRA to promote transparency and public oversight.” Addressing identity theft and other “legitimate concerns” with release of birth dates is a legislative call: “That policy decision is not ours to make.”
APPLICATION Defn of public records PROCEDURAL Scope of Protective Order	Wilkerson v. State	October 15, 2019 Unpublished	• Requester (DOC employee) sought records related to workplace investigation of another DOC employee. Subject of records claimed the records were requested solely to harass her and release would cause irreparable injury. Trial court determined records were not public records, and entered injunction prohibiting disclosure. DOC appealed. • Court of Appeals: Trial court reversed. Case remanded for in camera review and to determine if any records are exempt. Further, any order enjoining disclosure shall apply only to the parties to this litigation.
PROCEDURAL Standing Requests Installments are not new requests EXEMPTIONS Applicable at time of request Identify asserted exemptions No duty to inform of exemption’s expiration RECORDS Search At time of request	Gipson v. Snohomish County	October 10, 2019 194 Wn.2d 365, 449 P.3d 1055 (2019)	• Requester sought “voluminous” records related to the employment investigation of him regarding an alleged unfair practice (workplace sexual harassment). County provided records in five installments but withheld some records under the active and ongoing investigation exemption at former RCW 42.56.250(5)[now (6)]. Requester sued nearly one year after the last installment, arguing that since the agency investigation ended during the production of installments the agency could no longer apply the exemption. Trial court and Court of Appeals rejected requester’s arguments. • Supreme Court: Court of Appeals affirmed. Agency properly applied exemption. (1) Court adopts Court of Appeals “bright-line rule” in <i>Sargent I</i> that the PRA does not provide for “standing requests.” Instead, a requester must make “refresher requests.” (2) Installments are not new stand-alone requests. (3) “With any request, the receiving agency determines any applicable exemptions <i>at the time</i> the request is received.” (4) An agency is required to provide only records in existence at the time the request is made. (5) “Many agencies have large volumes of public records requests.” (6) “[T]he PRA does not require agencies to inform the requester when an exemption expires. The act only requires agencies to inform the requester of any exemptions they claim.” (7) “[T]he PRA ‘does not require that agencies provide updates to previous responses, or monitor whether documents properly withheld as exemption may later become subject to disclosure.’”
PENALTIES	Hoffman v. Kittitas County	September 26, 2019	• Non-inmate requester filed PRA action alleging the county’s response to his records request violated the PRA. Trial court found violations and applied

Abuse of Discretion No separate Bad Faith analysis on review Yousoufian factors are guidance not exclusive		194 Wn.2d 217, 449 P.3d 277 (2019)	the non-exclusive <i>Yousoufian</i> penalty factors to award a \$15,498 penalty (50 cents per page/photo/video per day, for 246 days). Court of Appeals affirmed at 4 Wn. App. 2d 489, 422 P.3d 466 (2018). Requester sought further review. Supreme Court: Trial court and Court of Appeals affirmed. Penalty awards under <i>Yousoufian</i> are reviewed under an abuse of discretion standard and trial court did not abuse its discretion. The <i>Yousoufian</i> factors “are offered only as a guidance, may not apply equally or at all in every case, and are not an exclusive list of considerations.” Supreme Court declined to carve out separate standards of review for particular factors such as bad faith. “Engaging in de novo review of the bad faith factor would risk distorting its role as one piece of a holistic, discretionary determination of the appropriate penalty amount.”
PROCEDURAL Initial Response No Full Estimate of Time Required	Health Pros Northwest, Inc. v. State	September 17, 2019 10 Wn. App. 2d 605, 449 P.3d 303 (2019) <i>(Petition for review denied)</i>	- Requester challenged agency’s initial timely response to records request, which acknowledged request and stated the agency would provide a date later for when the first installment would be produced, within 45 business days or on or before a date certain. Agency provided a first installment before that date, and stated it would continue to gather and provide records, which it did. Trial court found the initial response was insufficient, but the agency had acted with reasonable diligence in responding to request including by providing records in installments. Attorneys’ fees awarded at the superior court. - Court of Appeals: Trial court affirmed. (1) Former RCW 42.56.520(3) required the agency to provide an estimate of when it would provide the first installment, not when it would fully respond to the request. (2) An agency’s response that states only a date by which the agency will give an estimate for when the first installment of records will be provided does not comply with former RCW 42.56.520(3). (3) Additional attorneys’ fees not awarded for the appeal.
RECORDS Exemptions required conversion Brief Explanation Format of Records	Shavlik v. City of Gold Bar	September 16, 2019 Unpublished	- Requester made a PRA request for a 2009 email sent to the city’s former mayor. City produced the email in PDF format due to needed redactions, but did not provide it in native format with the metadata. Requester sued, sought to take several depositions (which was denied by the trial court), and argued that the city had to produce the email in its native format with the metadata, and the city failed to provide an adequate exemption log. Trial court conducted an in camera review and dismissed the claims. - Court of Appeals: Trial court affirmed. (1) Requester did not meet her burden to establish that deposing the former mayor or the current mayor

			might lead to discovery of admissible evidence. (2) Nothing in the PRA obligates an agency to disclose records electronically. Citing the Model Rules, the court noted that an agency should provide records in either their original format or if the records are not in a generally commercially available format, an agency should provide them in a reasonably translatable electronic format if possible. The city explained that the email could not be produced in native format because it was redacted and producing it in native format would reveal the redacted information. Thus, the city was not required to produce the email in native format with metadata. (3) The city explained the page numbering on the exemption log and that no additional content beyond the redaction was withheld, and the brief explanation provided was the same as the court found adequate in <i>Block v. City of Gold Bar</i>.
PROCEDURAL Insufficient Pleadings	In the Matter of the Recall Petition of Christa “Teagan” Levine	September 12, 2019 194 Wn.2d 99, 448 P.3d 764 (2019)	- Recall petition filed in the superior court seeking to remove a Tonasket city council member, based on various allegations. One allegation concerned “improperly withholding public records” under RCW 42.56; petitioner claimed agency did not provide all records responsive to her two PRA requests concerning a camera installation at the police department, including text and social media records. Trial court found the petition legally and factually insufficient to proceed and dismissed the charges. - Supreme Court: Trial court affirmed. On the public records allegation, the trial court correctly held that the claims were based only on speculative statements and unwarranted conclusions. For example, - While petitioner claimed certain records were not produced (call logs), she never requested those records. - Her request for in camera review was directed to the police department, not the court. - The respondent city council member is not the custodian of records for the police department
PROCEDURAL Insufficient Pleadings	In the Matter of the Recall Petition of Jill Ritter	September 12, 2019 194 Wn.2d 85, 448 P.3d 755 (2019)	Recall petition filed in the superior court seeking to remove a Tonasket city council member, based on various allegations. One allegation concerned “improperly withholding public records” under RCW 42.56; petitioner claimed agency did not provide all records responsive to her two PRA requests concerning a camera installation at the police department, including text and social media records. Trial court found the petition legally and factually insufficient to proceed and dismissed the charges.

			• Supreme Court: Trial court affirmed. On the public records allegation, the trial court correctly held that the claims were based only on speculative statements and unwarranted conclusions. For example, ○ While petitioner claimed certain records were not produced (call logs), she never requested those records. ○ Her request for in camera review was directed to the police department, not the court. • The respondent city council member is not the custodian of records for the police department.
APPLICATION Definition of public records Scope of employment test only for private devices/accounts	SEIU Local 925 v. Univ. of Washington, Freedom Foundation	September 5, 2019 193 Wn.2d 860, 447 P.3d 534 (2019)	• Records request for records related to union organizing by several state university faculty, including email records of one faculty member stored on the university's server. University could not determine definitively whether certain email records were "public records" as defined in RCW 42.56.010(3), so it treated them as public records, found no statutory basis for withholding them (apart from a few exemptions not at issue in the case). The agency provided third party notice to the faculty member and the union that these records would be released unless prevented by court order. The trial court and later the Court of Appeals held that the email records were not "public records" and enjoined their disclosure. • Supreme Court: Court of Appeals reversed. The "scope of employment" test from <i>Nissen v. Pierce County</i> (used to determine whether a public employee's/official's record on a personal device was made within the scope of his/her employment so qualifies as a public record) applies only to writings created or stored on an employee's <i>personal</i> device/account. The test should not be extended to records on public agencies' email servers. While mere retention of an email record on a government server is insufficient, by itself, to bring an email within the scope of the PRA, in this case, many of the requested emails likely relate to conduct of government. Case remanded to apply proper analysis, and to consider statutory and constitutional exemptions cited by the union.
PROCEDURAL Estimate of Time Challenges to estimate Notice to Interested Third Party	Freedom Foundation v. DSHS	August 6, 2019 9 Wn.App.2d 654, 445 P.3d 971 (2019) <i>(Petition for review denied)</i>	• Requester requested times/locations of all contracting appointments for individual providers during certain dates. Affected party sought injunction. <i>SEIU 775 v. DSHS</i>, 198 Wn. App. 745 determined no injunction should issue. After that decision, before any petition for review was filed, requester made another records request, for the same records, with an additional time period. Agency responded and estimated 30 business days to produce records; notified affected third parties. One of the parties asked to review the records to determine if it should seek an injunction. The agency treated

Distinction between Requesters			this as a public records request and produced the records to that party 4 days later, before producing to original requester. • Court of Appeals: Lawsuit was not untimely when suit initiated before agency took final action because challenge to estimate of time does not require final action before suit. Estimate of time to respond to request was reasonable. Agency is not required to provide an explanation for its time estimate. Whether an estimate is reasonable must be based on forward-looking evaluation at the time of the estimate, not a backward-looking evaluation after the fact. Agency did not unlawfully distinguish between requesters because PRA allows agency to delay production of records to allow affected party to obtain court order.
PROCEDURAL SOL/Timeliness	Davidson v. Pacific County	July 23, 2019 Unpublished	• Requester filed three PRA cases all seeking the same records; all cases were dismissed, last one in December 2015. Requester filed a motion for reconsideration 21 months later; the superior court denied it. During the litigation, superior court also found one of requester's actions was frivolous and advanced without reasonable cause, and imposed sanctions. • Court of Appeals: Requester's appeal to Court of Appeals was untimely under appellate rules, as was his motion to reconsider under superior court procedures. Appeal dismissed.
PROCEDURAL Appeal Process Insufficient Pleadings	Williams v. Dep't of Corrections	July 2, 2019 Unpublished	• Inmate request for copies of his mental health treatment plan under PRA and Uniform Health Care Information Act (HCIA) (RCW 70.02). Agency argued HCIA applied, not PRA. Trial court dismissed claims. • Court of Appeals: Inmate failed to designate essential documents on appeal necessary to review his claims; did not comply with appellate court rules. Trial court affirmed.
RECORDS Search PENALTIES Inmate Litigation Bad Faith	Padgett v. Dep't of Corrections	June 25, 2019 Unpublished	• Inmate request for certain telephone records from inmate telephone system, which is through a contract with a third-party vendor. Certain records were not provided under the mistaken belief that they were not available to the agency. • Court of Appeals: Affirmed trial court ruling that agency did not provide the fullest assistance when responding to the request. However, agency did not act in bad faith, which is a required showing when an inmate seeks penalties under the PRA. Court did not need to reach issue of whether search was reasonable, because PRA violation already established and inmate could not receive penalties; therefore, this issue was moot. An issue of whether the inmate and his counsel should receive discovery sanctions was remanded for further development of the record. Inmate not awarded attorneys' fees or costs.

EXEMPTIONS Harassment Investigations PRA Amendments	Doe v. Washington State Comm. College Dist. # 17 et al.	June 17, 2019 Unpublished <u>(Opinion withdrawn. See new March 10, 2020 decision)</u>	- Media requesters sought records related to the alleged sexual misconduct of a community college acting president who had resigned. Records included correspondence, texts, and other records. Agency provided notice to the complainants, who sued to enjoin disclosure of identifiers. Trial court entered injunction under RCW 42.56.230(3) prohibiting disclosure of identifying information of the complainants. - Court of Appeals: Trial court reversed. “We hold that RCW 42.56.230(3), a subsection of the Public Records Act, does not shield the identifiers from release since no evidence shows that the type of records were such that the community college would hold the records in files maintained for the benefit of employees.”
PROCEDURAL Fees for Records Combining Requests Timeliness RECORDS Search	Herrick v. Special Commitment Center	June 4, 2019 Unpublished	- Resident at Special Commitment Center made numerous PRA requests, and filed a lawsuit concerning five of them. Trial court granted agency’s motion for summary judgment dismissal. Agency also submitted several affidavits. - Court of Appeals: Agency (1) did not violate PRA as to cost and payment requirements; (2) did not violate PRA by combining requests (“The SCC’s decision to open a new request, instead of reviving abandoned requests, did not violate the PRA.”); (3) adequately searched for the meeting minutes request but did not show that it had adequately searched “beyond material doubt” for certain other records; and (4) did not violate the PRA timeliness requirements. Case remanded.
PROCEDURAL PRA cases are civil – no special rules except specific PRA provisions EXEMPTIONS Properly Asserted APPLICATION Other Agency Records	Block v. Spokane County	May 8, 2019 Unpublished	- Requester asked for a videotape of an alleged assault of a juvenile at a mall, which that might have been acquired by the county sheriff during the investigation. County did not possess a copy, was in the process of obtaining it, and explained to requester that RCW 13.50 would apply in any event. Within a month, the requester filed a PRA suit. - County moved for summary judgment and dismissal arguing that RCW 13.50 provided exclusive means of obtaining the requested juvenile records. After several weeks, requester asked for hearing to be delayed for six months so she could conduct discovery. Trial court denied request since discovery would not impact the fact that RCW 13.50 was controlling, and granted the county’s motion. - Court of Appeals: Trial court affirmed. Requester did not offer a reason for her delay in obtaining evidence. The procedures in RCW 13.50 governed the access to records, and she did not have access to the records under that statute.

PROCEDURAL SOL/Timeliness	Wolfe v. WSDOT	May 7, 2019 Unpublished <i>(Petition for review denied)</i>	- Requester made a records request in 2008 and again in 2011. In the 2011 search, agency found and produced three records responsive to the 2008 request. Requester filed PRA lawsuit in 2012 making various PRA claims about his 2008 request. Trial court rejected agency's statute of limitations argument and awarded requester costs and fees, and assessed a penalty. - Court of Appeals: Trial court reversed. PRA's one-year statute of limitations barred all claims, and, there was no basis to equitably toll the statute of limitations.
RECORDS Format of Records Internet link PROCEDURAL Claims Untimely – records still being produced	Strahm v. Snohomish County	May 6, 2019 Unpublished <i>(Petition for review denied)</i>	- Requester made three public records requests. County responded and was providing records in installments. Requester also asked for records to be provided in a Database File (DBF) format. He asked for some records to be provided in PDF format. County provided linked online records from its website, and other electronic records native format. It also had paper records that were responsive. County has also asked for a 10 percent deposit for scanned paper copies; it also made paper records available for inspection. The County closed one request; was still processing two requests. - Requester sued county claiming violations of PRA. Sought \$500,000. - County filed a summary judgment motion arguing it complied with PRA on one request; and was still processing other two requests and had been in steady communication with requester about those. Therefore, County argued that under <i>Hobbs v. State</i>, PRA lawsuit was premature. Trial court agreed; dismissed case. - Court of Appeals: Trial court affirmed. No penalties or costs awarded. With respect to formatting issues with some of the records, and citing the Model Rules, "That the County did not provide records in native or DBF format did not constitute a violation of the PRA." County was also not required to convert paper records to a PDF. County properly responded by providing link to records on its website, and directing where paper copies could be inspected. <i>Hobbs v. State</i> applied to two of the requests, requiring dismissal because the agency had not closed those requests and was still working with and communicating with the requester. "Each of the County's communications evidenced its efforts to provide Strahm with responsive documents."
PENALTIES Attorney Fees	Strand v. Spokane County	April 11, 2019 Unpublished	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

		<i>(Petition for review denied)</i>	overlooked and were later discovered. Requester appeared pro se in the litigation, but had consulted with an attorney. • 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 and were dismissed.
PROCEDURAL Injunction Process Scope of Injunction	Janssen v. DSHS, Payne	March 19, 2019 Unpublished	• Sexually violent predator (SVP) made multiple PRA requests concerning a female DSHS staff member, relating to her personally. She sought an injunction from disclosure. • 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. • 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.
PROCEDURAL Timeliness of appeal	Palmer v. King County et al.	March 4, 2019 Unpublished	• 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 to vacate the order under CR 60(b), that was denied, and the requester appealed but abandoned the appeal. Appellate review was

		<i>(Petition for review denied)</i>	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. • 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."
PROCEDURAL Format of Production Brief Explanation EXEMPTION Work product privilege	Washington Coalition for Open Gov't v. Pierce County	February 20, 2019 Unpublished <i>(Petition for review denied)</i>	• 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. • 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.
PROCEDURAL Over Production of Records Search EXEMPTIONS Claims of Exemption	Hood v. Langley	January 28, 2019 Unpublished <i>(Petition for review denied)</i>	• PRA requester challenged sufficiency of agency's search for records, including mayor's calendar records and laptop records. • 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.) • 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.

PROCEDURAL Class certification Pseudonyms Permanent injunction	Doe v. Pierce County, Zink	January 23, 2019 – Order to Publish 7 Wn. App. 2d, 157, 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 denied)</i>	• <i>(Publishing and amending August 21, 2018 decision).</i> • This PRA case is the latest in a series of appellate decisions involving release of certain sex offender records, including SSOSA and SSODA evaluations. • Court of Appeals: upheld some trial court rulings, reversed others, in this decision involving multiple claims and counterclaims. Case remanded for further proceedings. • 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)). • 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.
PROCEDURAL Motion for Protective Order – Order to Show Cause EXEMPTIONS Burden to apply FEES Prevailing party need not initiate suit	Asotin Co. v. Eggleston	January 17, 2019 7 Wn. App. 2d, 143, 432 P.3d 1235 (2019)	• PRA request involving legal costs incurred by county. County had asked court to decide whether exemptions apply, and to what extent. • 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.
PROCEDURAL Federal action	Boardman v. Inslee	January 10, 2019 354 F.Supp.3d 1232 (W. Dist. Wash. 2019)	• 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. • 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.

			• (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>)
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