



Public Records in Court

WAPRO 2024
Virtual Spring
Conference
May 15-16, 2024

Judge Matthew J. Segal
(ret.)

Pacifica Law Group

Why do we end up in Court?

Irreconcilable Dispute over Records

Money

Political/Public Policy

Litigation Adjacent

Business/Strategic (e.g., the disappointed bidder)

Personal Reasons (e.g., former employee)

Components of a Lawsuit

Specific Dispute

Witnesses

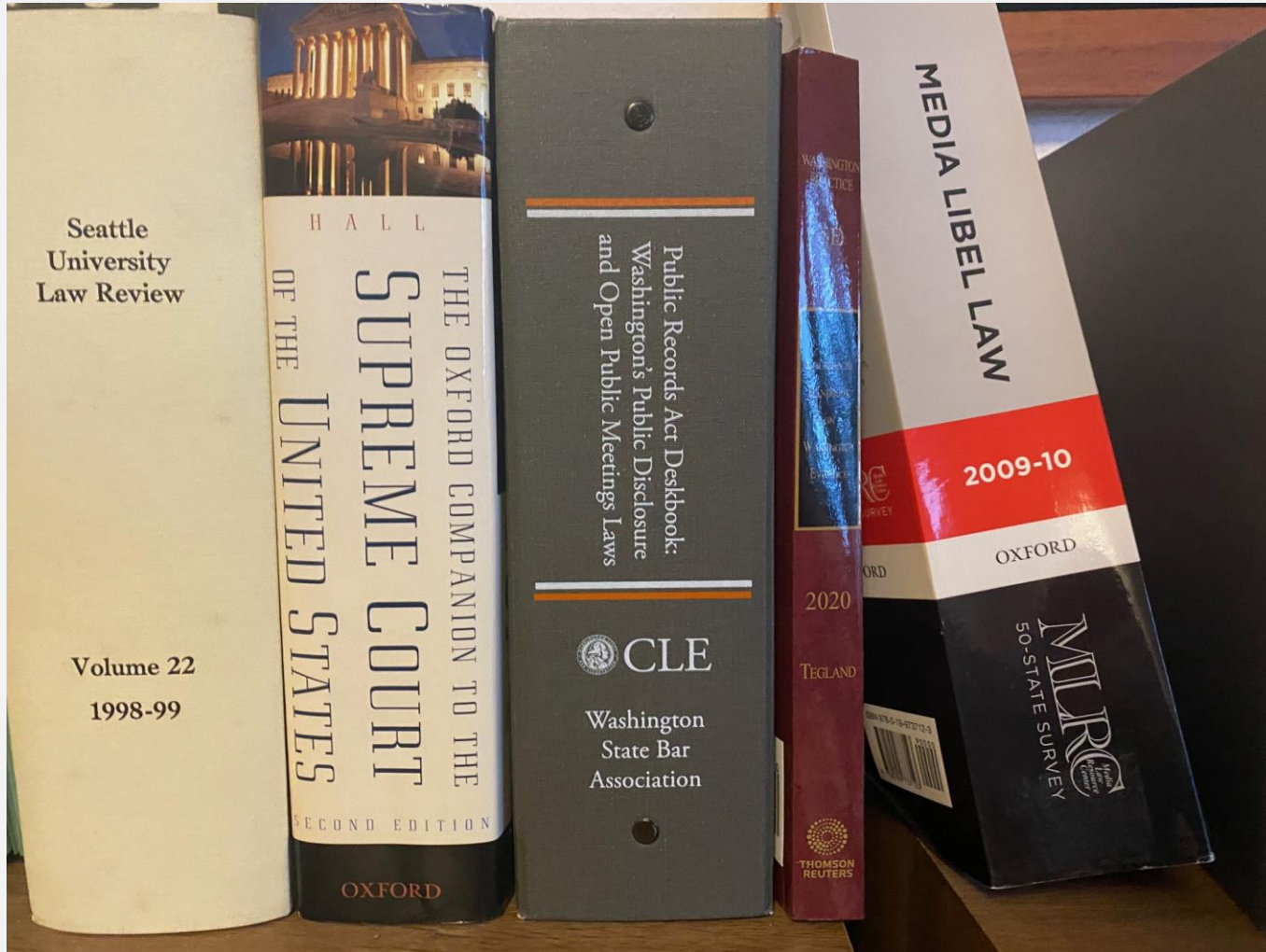
Exhibits (documents)

Exhibits + Witnesses = Record

Advocates

Decision-Maker

The Role of the Courts Under the PRA



The Role of the Courts Under the PRA

“[J]udicial oversight is essential to ensure government agencies comply with the PDA.”

***Spokane Rsch. & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 100, 117 P.3d 1117 (2005)**

“The statutory scheme establishes a positive duty to disclose public records unless they fall within the specific exemptions. Whether or not they do so is a function reserved for the judiciary by the act.”

***Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 130, 580 P.2d 246 (1978)**

“[L]eaving interpretation of the act to those at whom it was aimed would be the most direct course to its devitalization.”

***Hearst Corp. v. Hoppe*, 90 Wn. 2d 123, 131, 580 P.2d 246 (1978)**

The Role of the Courts Under the PRA

“The underlying guiding spirit of the PRA’s genesis continues to serve as the framework for the judiciary’s application and interpretation of its provisions.”

Public Records Act Deskbook: Washington’s Public Disclosure and Open Public Meetings Laws (2d Ed. 2014), sec. 2.1

The Role of the Courts Under the PRA

“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.”

RCW 42.56.030 (emphasis added)

The Role of the Courts Under the PRA

“The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.”

RCW 42.56.050 (emphasis added)

“The legislature intends to clarify that the public's interest in open, accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants.”

RCW 42.56.904

“Public records officers designated under RCW 42.56.580 and records officers designated under RCW 40.14.040 must complete a training course regarding the provisions of this chapter, and also chapter 40.14 RCW for records retention.”

RCW 42.56.152 (emphasis added)

What Happens in Court?

Requester Suits

- (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records....**
- (2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request or a reasonable estimate of the charges to produce copies of public records, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable....**

RCW 42.56.550(1), (2)

Requester Suits

Hobbs holds that “a requester may only initiate a lawsuit to compel compliance with the PRA *after* the agency has engaged in some final action denying access to a record.” 183 Wash. App. at 935-36, 335 P.3d 1004. ***Hobbs*** was decided in the specific context “when a person has ‘been denied an opportunity to inspect or copy a public record by an agency.’ ” *Id.* at 936, 335 P.3d 1004 (quoting RCW 42.56.550(1)). As the Court of Appeals later clarified, ***Hobbs*** “was not addressing ‘the situation where an agency completely ignores a records request for an extended period.’ ” *Cantu*, 23 Wash. App. 2d at 90-91, 514 P.3d 661 (quoting ***Hobbs***, 183 Wash. App. at 937 n.6, 335 P.3d 1004).

Here, Cousins’ PRA action is based, at least in part, on DOC’s alleged “intolerable delay” in responding to her PRA request, a situation not addressed in ***Hobbs***.... ***Hobbs*** does not support dismissal of Cousins’ entire PRA action.

Cousins v. State, 546 P.3d 415, 435 (Wash. 2024)

Agency Suits

An agency seeking adjudication that it is in compliance with the PRA can file a complaint for declaratory judgment. *Benton County v. Zink*, 191 Wash. App. 269, 277-78, 361 P.3d 801 (2015) (*Zink II*) (affirming by declaratory judgment that no duty exists under the PRA to provide a record response in electronic versus paper format). Injunctive relief may be sought if the agency or person named in the responsive records would be harmed by the release of those records.

Cantu v. Yakima Sch. Dist. No. 7, 23 Wn. App. 2d 57, 80, 514 P.3d 661 (2022)

Agency Suits

The Washington Coalition for Open Government (WCOG) requested public records from the Washington State Association of Municipal Attorneys (WSAMA) about WSAMA's amicus brief activities.

WSAMA, a private nonprofit organization, fulfilled the requests but sued for declaratory judgment that it is not an “agency” under the Public Records Act (PRA), chapter 42.56 RCW.

Washington State Ass'n of Mun. Att'ys v. Washington Coal. for Open Gov't, 15 Wn. App. 2d 1050, 2020 WL 7342171, at *1 (2020)

Reverse Suits

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

RCW 42.56.540

Summary Judgment

If the underlying facts are not in dispute, either party may move for summary judgment. CR 56(c). While similar in appearance to an evidentiary hearing on affidavits, there are material differences to a summary judgment hearing. For instance, in considering a motion on summary judgment, the facts are considered in a light most favorable to the nonmoving party and summary judgment is generally appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.

Cantu v. Yakima Sch. Dist. No. 7, 23 Wn. App. 2d 57, 80, 514 P.3d 661 (2022)

Ambiguous Communications

Hood v. City of Prescott (April 30, 2024)

“Here, both parties’ interpretation of the scope of the request is plausible. Hood indicated that he was “narrowing” his request to “all records of any response to the Accountability [R]eport date 03/28/2019, # 1023325.”

He then followed this sentence with either clarification or additional requests. Whether the City’s interpretation of Hood’s request was reasonable is a question of fact. Since the evidence is sufficient to create a genuine issue of material fact, the scope of Hood’s request must be decided at a fact-finding hearing not on summary judgment.”

https://www.courts.wa.gov/opinions/pdf/396185_unp.pdf

Appeals

We review all questions regarding an agency's obligations under the PRA de novo. Fact-finding hearings on PRA claims are unique. When the trial court enters findings on disputed evidence presented solely in the form of affidavits, the reviewing court is not bound by the trial court's findings on disputed factual issues.

Cantu v. Yakima Sch. Dist. No. 7, 23 Wn. App. 2d 57, 80, 514 P.3d 661 (2022) (citations omitted).

Penalty calculations under the PRA are reviewed for abuse of discretion.

Id. at 81.

“When determining the amount of a PRA penalty, the existence or absence of an agency's bad faith is the principal factor considered by the trial court.”

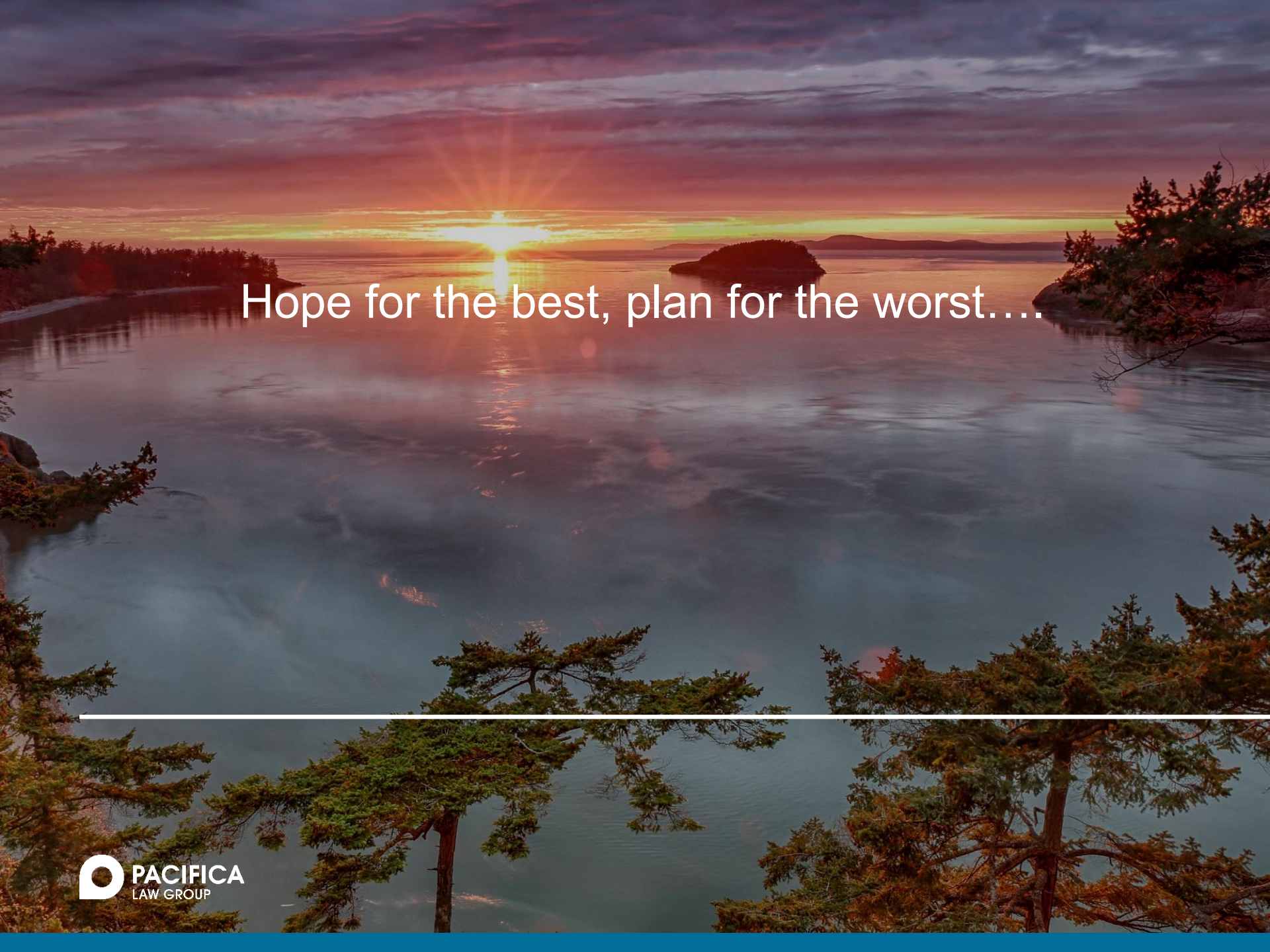
[Zink v. City of Mesa](#), 162 Wn. App. 688, 703, 256 P.3d 384 (2011)

Good Faith

Prompt Response
Helpfulness of Agency
Training
Strict Compliance
Reasonable Explanations

Bad Faith

Delayed Response
Dishonesty
Lack of Training
Lack of Strict Compliance
Unreasonable Explanations



Hope for the best, plan for the worst....

Unique Aspects of PRA Litigation

Limited Judicial Discretion

Exemptions & Burden of Proof

Strong Legal Presumptions

Very Broad Scope

Extensive Case Law

Mandatory Attorney's Fees

One-way attorney's fees exposure

Penalties – a form of punitive damages

Unique Aspects of PRA Litigation

- With that said, there IS discretion as to the following:**
- Whether to award penalties**
 - The amount of fees to award if a requester prevails in whole or in part**
 - Whether certain records are public records of your agency**
 - Whether certain records are responsive**
 - Whether to review records *in camera***
 - How to characterize or scope a violation if one occurs**

Making a Case Out of It



Making a Case Out of It

Consider the following:

What is the dispute about by the time it gets to court? Have the records been provided?

How was the requester treated?

Is good faith evident from the court record?

Were you transparent?

How will you feel if you testify or your communications become exhibits?

What will your advocate tell the decision-maker?

Questions?

REMEMBER:

***Building the
record STARTS
with you.***

