

You've Been Served

PRA Litigation for PRA Professionals
and Attorneys





But first a word from our Attorneys...

This material is for informational purposes only and is not intended as legal advice, nor as a substitute for the legal advice of an attorney. You should contact your own legal counsel if you have a question regarding your legal rights or any other legal issue.



Outline

- + Anatomy of a Lawsuit
- + Requester Suits
- + 3rd Party Injunctions
- + Inmate Injunctions

Anatomy of a Lawsuit

Trial Court

Pleading – Filing

Plaintiff, the filing party, files a **Complaint** and **Summons** outlining the claims and requested outcome. The **Respondent**, the target of the suit, files an **Answer** identifying their position and defenses.

Discovery

The parties gather information through various legal tools.

- + Interrogatories
- + Depositions
- + Request for Admission
- + Request for Production
- + Subpoena Duces Tecum

Resolution

Trial or other hearing where the judge decides whether the plaintiff is entitled to the outcome requested.

Appeals

A party asks the Court of Appeals or the Supreme Court to review the Trial Court's decision.

Requester Initiated Lawsuit

Complaint and Summons

Valid Claims

- + Estimate of Time
- + Denial of Access to Records
 - + Defective Search
 - + Exemption Not Proper
 - + Delay in Records Production
- + Estimate of Charges



You've Been Served

Invalid Claims

- + PRA Procedural Issues*
 - + No 5-day Response
 - + PRO Identification
 - + Training - PRO and Officials
 - + Adopting PRA Policy
 - + Records Index
- + Records Retention
 - + Records Retention Violation
 - + PRA Log (untested)

* But see *Yousoufian* aggravating factors.

Requester Initiated Lawsuit

Answer – 20 days

Respond to Allegations

- + Will admit some assertions from the Complaint
 - It is a public agency subject to the PRA
 - That the court “has jurisdiction”
 - That you received a PRA request
- + May deny some assertions...
 - That you received a PRA request
 - That the agency did an improper search
 - That it violated the PRA
 - Legal conclusions

Defenses

- + Failed to state a claim on which relief can be granted
- + Statute of Limitations
- + Failure to properly serve
- + Records not public records
- + Records properly exempt with exemption log
- + Search was adequate
- + Records did exist, but previously destroyed
- + Agency acted in good faith

Requester Initiated Lawsuit

Discovery Phase

Scheduling Conference

- + Use the scheduling conference to establish the issues and deadlines i.e. discovery cutoff
- + How is the case going to be resolved (Hearing or Trial)
- + Consider separating violation from penalty
- + PRA cases are meant to be expeditious

Thurston County LCR 16

- + Scheduling conference within 28 days
- + Status hearing must address:
 - + Issues in dispute
 - + Set hearing date and briefing schedule for resolution
- + Will in camera review occur, must be ordered by the court



Requester Initiated Lawsuit

Discovery Phase

Purpose: To lead to the discovery of admissible evidence

Interrogatories – Depositions - Request for Admission
Request for Production - Subpoena Duces Tecum

- Rules of discovery apply in PRA cases the same as in any other civil action
- Agency may send or receive discovery requests
- Either party may inquire into any information relevant to the suit
- May seek a protective order to limit what must be produced or how the disclosed material can be used
- Recent court decision held that seeking information during discovery as to a requestor's motivation and/or bad faith when making PRRs is not appropriate

What's the PRO's role in discovery?

Requester may send additional PRA requests, technically not discovery but allowed.

You've Been Served

Requester Initiated Lawsuit

Resolution

De novo review, meaning court reviews the matter on its own without regard to the agency's decision

Mediation

- Required in some courts
- Neutral 3rd party helps guide the parties to a resolution

Motions

- Motion to Show Cause
- Motion for Summary Judgment
- Motion for In Camera Review

Trial

- Live Testimony in Court



Requester Initiated Lawsuit

Resolution - Motions

- **Motion to Show Cause**
 - Filed by the requestor/plaintiff
 - Requires the agency to “show cause” as to why it refused to provide requested records or show why the estimates of time/charges were reasonable
 - Burden is on the agency
- **Motion for Summary Judgment**
 - Can be filed by either party
 - Moving party bears the burden to prove the absence of any genuine issue of material fact and that the party is entitled to judgment as a matter of law
 - Purely speculative claims about the existence and discoverability of records will not overcome an agency affidavit which is accorded a presumption of good faith
- **Motion for In Camera Review**
 - Can be requested by either party
 - Give the Court an opportunity to review exempt/confidential records without redaction and determine whether agency properly applied exemptions

Requester Initiated Lawsuit

Resolution - Motions

Agency Affidavits & Declarations

- Agency affidavits are accorded a presumption of good faith
- Agency may rely on reasonable detailed, nonconclusory affidavits submitted in good faith
- Affidavits should include:
 - Facts surrounding PRR
 - Search terms used
 - Type of search performed
 - Details regarding the places searched, including personnel consulted
 - Exhibits supporting the facts should be attached
 - Explanation regarding why certain records were not found/do not exist, if applicable

Requester Initiated Lawsuit

Resolution – Trial

- Very rare in PRA cases
- Trials are the same as any other civil case
 - Opening
 - Witnesses are called for testimony
 - Parties may stipulate to facts
 - Closing argument



Requester Initiated Lawsuit

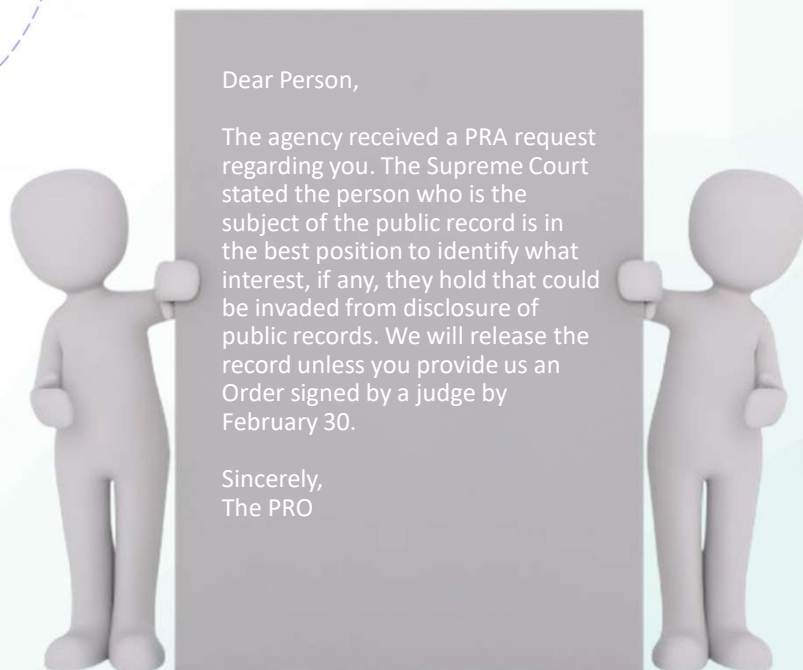
Resolution - Final Order

- Court will enter a final order resolving claims through findings of fact and conclusions of law
- Any penalty is based on *Yousoufian* aggravating and mitigating factors taken as a whole
- If agency found to have violated the PRA, requester entitled to attorney's fees and costs
- Assure the courts reasoning is well documented in the order, if appealed some issues are de-novo but others (such as fees/costs) are reviewed on "an abuse of discretion"



3rd Party Injunctions

Third-party who is named in a record or is the subject of a record may seek an injunction to prevent release of the record



- The requestor must be named as a party
- Suit can be filed in the county in which record is maintained or the party seeking the injunction resides
- Party seeking the injunction has the burden to prove:
 - A PRA exemption applies, and
 - Disclosure “would clearly not be in the public interest and would substantially and irreparably damage any person, or ... vital governmental functions.”
- An agency could also seek an injunction

Incarcerated Requester Injunctions

The inspection or copying of any nonexempt public record by persons serving criminal sentences may be enjoined

Who - Any agency, person named in the record, or person to whom the requests specifically pertains

Scope – current request or future requests by the same person or entity owned/controlled by them

Basis – the court must find by a showing of a preponderance of the evidence

- Request was made to harass or intimidate the agency/its employees
- Fulfilling the request would likely threaten security of correctional facilities
- Fulfilling the request would likely threaten the safety/security of staff/inmates (or their families) or any other person, or
- Fulfilling the request may assist criminal activity

Factors – other requests by requestor, type of records sought, purpose of the request, whether disclosure would harm persons/vital government interest, whether request seeks significant/burdensome # of records, security, deterrence of criminal activity

Discovery into requesters motives and history allowed

Risk Management Strategies

- Keep detailed records regarding:
 - PRR dates/deadlines and agency responses
 - Search efforts (terms, locations, people, follow up's, etc.)
- Provide clear, professional, and helpful communication with requestors.
 - Remember your audience, write to non-legally trained readers!
- Be honest. Don't try to hide mistakes.
- Stay current on training (PRO, agency leaders and staff training, or lack thereof, can be a mitigating or aggravating factor for penalties).
- Don't delay unnecessarily.
- When in doubt, contact agency legal counsel, MRSC, or Washington AG's Local Government PRA Consultation Program.

Thank You



Ann Marie J. Soto

AnnMarie@madronalaw.com

425.201.5111, ext. 4



Morgan Damerow

PRAConsultation@atg.wa.gov

360.570.3418

