

Public Records Act Case Law Update

October 2025



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 The most recent state court opinions, *published* and *unpublished*, are available on the courts' website here: 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Several state appellate court unpublished decisions are referenced in the attached chart.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 On September 1, 2016, General Rule 14.1 became effective, which allows citation to unpublished decisions as follows: “Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be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In addition, some of the unpublished decisions may have been published after these materials were prepared. Some of the referenced decisions (published and unpublished) may have appealed further after these materials were prepared.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 **2019-2025 as of October 9, 2025** are listed in reverse chronological order, beginning with the most recent decisions.

Issue	Case	Date/Cite	Decision/Issues
2025			
PROCEDURE Scope of Request Adequate Search	Hood v. City of Langley	Unpublished Decided October 6, 2025	- In July 2018 Langley fired its police chief. Hood requested all records related to that decision. In 2019 he filed suit, first pro-se then later retained counsel. The City filed and was successful in a motion for Judicial Review under 42.56.550(3). Hood appeals two issues: 1) that the City and trial court erroneously narrowed his request to less than the actual wording, and 2) the trial court erred as a matter of law that records in the possession of the City's consultant were not public records. - COA affirms the trial court. Consistent with the PRA's strongly worded mandate for broad disclosure, an agency's interpretation of a request cannot be narrower than its language. Based on the actual wording or plain language Hood's request seeks any records related to the city decision, not all records other incidents regarding the chief or the termination in general. The City did not improperly fail to request clarification as this duty arises if any ambiguity remains after applying a broad interpretation. Regarding the consultant's records, a <i>Telford</i> analysis was not necessary. The contractor's records were outside the request's scope.
PROCEDURE Scope of Request Penalties EXEMPTION Effective Law Enforcement	Rodriguez v. Walla Walla	Unpublished Decided September 23, 2025	- Rodriguez sought "All police records...mentioning or related" to himself providing examples of the record types. The City provided a first installment in mid-October 2022 with records for a different Jose Rodriguez and an estimated production date for other records indicating they assembled 450 pages. In late November the City provided six pages and an exemption log for some pages as well as a cover letter indicating most of the report "will be exempt" to protect victims and witnesses under RCW 42.56.240(2). The records were for a murder investigation. One person was charged with those charges later dismissed. The investigation was ongoing. On a motion for summary judgment, the trial court found no PRA violation. - COA reverses and remands. The City's assertion that by providing the requestor with all pages from the police reports that mention his name is rejected. The request clearly asked for all records and reports. It's search correctly understood the scope of the request. Citing <i>Newman</i> and <i>Sargent</i>, RCW 42.56.240(1) categorical exemption is lapses on arrest or filing of charges. It cannot be rejuvenated. On remand the City must provide that sufficiently identifies the records not disclosed and the supporting reasons for withholding. If Rodriguez challenges these exemptions the trial court must conduct an in-camera review. PRA penalty determination is premature due to no determination yet of a wrongful withholding.
EXEMPTION Attorney Client	Methow Valley Citizens Council v. Okanogan County	Unpublished, Decided August 19, 2025	Requester asserted that checklists used to determine the adequacy of water for building permits was improperly redacted. The records included two checklists with a series of numbered questions, corresponding instructions and explanations for the attorney's reasoning for that instruction which were part of a memorandum prepared by the County's attorney. A county employee made copies of the checklists and would hand write notes on them in the review of applications. These were maintained in a locked drawer and not shared with other county employees. The county employee made reference to the use of checklists at a County Commissioner's meeting leading to the request. The County produced copies of the checklists with the questions visible but redacted the advice and analysis from the attorney marking the protected information as Attorney-Client Privileged.

			Following an in-camera review of unredacted documents the trial court concluded the redactions were proper. The COA affirms the trial court, rejecting requester’s four arguments on appeal. First, the checklists are not separate documents from the attorney’s memorandum, they are contained within the memorandum which was created and prepared by the attorney at the County’s request to provide the County with legal advice on how to comply with a Court Order. The employees’ handwritten notes reviewing applications were released. Second, the checklists were not created for administrative purposes. The redacted portions contain legal advice, opinion, and risk assessment, all of which are protected by attorney client privilege. Next, the checklists were not prepared in the regular course of business to ensure compliance with legal requirements. The redacted portions contain the attorney’s assessment and conclusions of when the Court Order regarding water availability applies. Finally, the privileged content of the memorandum and checklist have not been disclosed; reference at the Commissioner meeting was insufficient and certainly did not constitute repeated disclosure.
PROCEDURE Appellate Procedure Pro-Se Litigants	Hood v. City of Langley	Unpublished Decided July 21, 2025	- Hood sued the City of Langley, alleging it violated the PRA when it determined he had abandoned his January 2020 request by not paying the copying fees. On May 7, 2020, the City emailed Hood notifying him records were ready and informed him of the required fee. The May 7, 2020, email resulted in four automated messages that the original message had not yet been delivered. The City resent the message on May 11, 2020, and informed him of the previous errors. On May 19, 2020, the City mailed Hood a letter explaining its attempts. Hood emailed on May 21 acknowledging the letter and sharing he had no indication that emails were not reaching him and requested the four error messages received by the city which it provided. The City closed the request on or about June 10, 2020, as abandoned. April 2021 Hood files suit. The Trial Court dismissed the suit finding he had notice of the fee through the City’s efforts. In June 2023 Hood made additional PRA requests concerning the May 2020 emails and in 2024 moved vacate the 2021 dismissal under CR 60 which the trial court denied. - The COA affirms the Trial Court. Pro se litigants are bound by the same rules of procedure and substantive law as licensed attorneys. A CR 60 motion to vacate is an extraordinary remedy. The finality of judgments is a central value in the legal system and CR 60 represents the limited circumstances under which a judgement can be vacated and is reviewed on an abuse of discretion standard. Hood failed to prove how his “newly discovered” evidence through the 2023 PRA requests could not have been discovered before by exercising due diligence such as a new PRA request, contacting support technicians, or research on the City publicly available code. A mere allegation of diligence is insufficient; A party must state facts that explain why the evidence was not available for trial.
PROCEDURE Appellate Procedure Standing	Eddins v. Asotin County	Unpublished Decided July 17, 2025	While awaiting criminal trial on charges of first-degree burglary, stalking and aiming or discharging a firearm or dangerous weapon, Eddins submitted a PRA request to the Clarkson PD for copies of all police reports mentioning his name, Haynes’ name or other identified individuals. Haynes, was the named victim in domestic violence crimes alleged to have been perpetrated by Eddins. Clarkston provided third party notice to Haynes who filed for immediate and permanent injunctive relief arguing in part that this violated a no-contact order and were attempts to stalk, keep tabs on and traumatize her. The same day the trial court issued an ex-parte order. Eddins submitted request to the City of Clarkson who was subsequently joined in the case. Several weeks later and after

			another PRA request by Eddins to the county, the trial court entered a temporary injunction. After expressing some concerns about the scope of the requested permanent injunction, the Trial Court issued an injunction against both jurisdictions releasing records concerning Haynes to anyone. • The COA dismisses Eddins appeal for lack of standing. The only issue raised on appeal was whether the court had authority to order the City or County from releasing records concerning Haynes to anyone. RAP 3.1 limits appellate review to an aggrieved party. As the party seeking review Eddins has the burden to show he has standing. Standing prevents a party from raising another person's rights. Eddins fails to demonstrate that the injunction's application to others has any adverse effect on his rights or interests.
RECORDS Adequate Search	Neal v. City of Bainbridge Island	9 th Cir. Court of Appeals, Unreported, Decided July 15, 2025	• <i>For history and facts see: Neal v. City of Bainbridge Island</i>, US Dist. Court, W.D. Wash. Decided January 26, 2024. (below) • In a Memorandum Opinion the Court of appeals affirms the lower court's PRA ruling. The PRA requires agencies "make a sincere and adequate search for records" when requested, but agencies are not required to "create or produce a record that is nonexistent." The City met its burden of showing an adequate search for the records. Decisions from the Washington Court of Appeals have determined that there is no PRA violation when a document is destroyed before a request is made. <i>See, e.g., Bldg. Indus. Ass'n of Wash. v. McCarthy</i>, 218 P.3d 196 (2009).
EXEMPTION Deliberative Process	Citizen Action Defense Fund v. State, Office of Financial Management	___ Wn.2d ___, 570 P.3d 694 (2025)	• <i>For history and facts see: Citizens Action Defense Fund v. State, Office of Financial Management</i>, 31 Wn. App.2d 633, 552 P.3d 341 (2024) (below). • The Supreme Court affirms the Court of Appeals finding that the deliberative process exemption under RCW 42.56.280 continues until the legislature has funded the CBA's. The deliberative process exemption's purpose is to allow frank and uninhibited discussion during the decision-making process. It requires [1] that the records contain pre-decisional opinions or recommendations of subordinates expressed as part of a deliberative process; [2] that disclosure would be injurious to the deliberative or consultative function of the process; [3] that disclosure would inhibit the flow of recommendations, observations, and opinions; and finally, [4] that the materials covered by the exemption reflect policy recommendations and opinions and not the raw factual data on which a decision is based. The deliberative process had not ended when CADF made the PRA request, which predated the final statutorily required step in the collective bargaining process. The deliberative process ends when the proposals that resulted from the collective bargaining process are implemented under the statutory framework, and in the unique context of collective bargaining between the State of Washington and state employee unions.
PROCEDURE Standard of Review Inmate Injunctions RECORDS Request Sufficiency	Noyola v. Washington State Department of Corrections	Unpublished, Decided June 24, 2025	• In 2017 Noyola requested his phone logs and phone Personal Allowed Number (PAN) lists. In 2018 he requested records surrounding his custody classification. In October 2020 he sent emails to Jesus Salmeron using David Salmeron's email address for photographs depicting women. Some of these photographs were intercepted and rejected as sexually explicit material. On November 2, 2020, Noyola set DOC a request for "all records for the incoming JPay mail that was rejected that was sent to [me] from David Salmeron" from October 25 through the date of the request. The five-day letter inadvertently left a XX placeholder instead of inserting the actual anticipated date. In February 2021 DOC provided 49 pages to Noyola's attorney as requested. In July 2021 through the JPay review process some records were released. August 3, 2021, Noyola files a PRA suit with

			DOC counterclaiming for an inmate injunction under RCW 42.56.565. The trial court dismissed the case and ordered a one-year injunction on Noyola filing new PRA requests. Noyola appeals 5 issues. The Court of Appeals affirms issues 1 – 4 and reverses issue 5. 1) Noyola was not denied due process when the superior court ordered him to appear for a deposition. Under CR 30(a) a court may grant leave to depose a party with or without notice. 2) Noyola violated CR 30(h)(3) by his conduct including refusal to answer questions. A party cannot unilaterally limit the scope of his deposition. The trial court did not abuse its discretion in imposing sanctions. 3) While DOC's five-day letter omitted an actual production date, leaving two x's as placeholders, Proclamation 20-25.4 suspended RCW 42.56.520(1) for requests submitted by mail, as Noyola did. 4) An agency does not violate the PRA by failing to produce documents unresponsive to a PRA request. The request was for all records sent by David Salmeron. Based on Noyola's testimony, David sent no messages. Jesus Salmeron set messages through David's email account. 5) The COA reverses the one-year injunction based on a de-novo review; the trial court did not take live testimony or conduct an evidentiary review. The broad categories for an injunction under RCW 42.56.565 include harassment of the agency, a threat to the safety or security of anyone, or assistance in criminal activity; DOC relies on harassment and safety or security. Harassment constitutes repeated public records requests that impede, tire, annoy, or trouble DOC. Harassment might include a prisoner testing the system, but such testing should be repetitive and unjustified before meriting an injunction. Noyola only sent one public records request regarding the photographs. DOC presented no evidence of Noyola tiring its employees. DOC presented no evidence of the expense in responding to Noyola's request, let alone an exorbitant expense. An injunction based on safety is allowed when a public records request endangers the safety of DOC personnel, DOC facilities, or any person. DOC submitted no direct evidence of any endangerment. DOC did not identify any particular photo or page that threatens security or explain how production of the DOC would threaten someone
PROCEDURE Abuse of Discretion	Doe v. Thurston County	4 Wn.3d 906, 569 P.3d 1101 (2025)	- In October 2014, Zink made a PRA request for Thurston County's sex offender records, including any lists or databases, registration records, victim impact statements, and evaluations for special sex offender sentencing alternatives (SSOSAs) and special sex offender disposition alternatives (SSODAs). Four sex offenders sought to enjoin release of unredacted sex offender records in response to a PRA request. After all but one of the offenders' PRA exemption claims were rejected, they moved for voluntary dismissal and to permanently seal their names in court records. The trial court granted the Does' motion and entered a permanent order to (1) maintain the use of pseudonyms in court records pertaining to this case and (2) seal a court record listing the Does' actual names. The COA affirmed in part and reversed in part. - A trial court's decision granting or denying a motion to seal court records is reviewed for abuse of discretion. An order allowing a litigant to proceed or remain in pseudonym, including at the post-dismissal stage, must be justified in accordance with both GR 15 and the <i>Ishikawa</i> factors. The trial court abused its discretion because its findings are insufficient to satisfy GR 15 or <i>Ishikawa</i> as a matter of law. Does arguments in favor of protection are based on fears of retaliation due to their registered offender status and not participation in the PRA action.
PROCEDURE Statute of Limitations	Hood v. Stevens County	Unpublished,	On December 27, 2019, Hood requests audit records from Stevens County between the prosecutor's office and the Town of Springdale, and any discussions among town officials and employees about

		Decided June 3, 2025	the audit. The County sends its five-day letter on December 30, 2019, saying records will be available in two to three weeks. January 6, 2020, a County prosecutor sends an email with search terms from an electronic search indicating it found no records and noting, “We believe this completes your request.” Hood responds to the County asking to look for hard copies but receives no response. March 10, 2020, a paralegal contacts Hood to clarify what request the prior message referred to and shared that the prosecutor no longer worked for the county. On March 16, 2020, the county produces three hard copy records. March 10, 2021, Hood files suit. The Trial Court grants the County’s summary judgement motion based on one year statute of limitations. Hood appeals. • [After the superior court dismissed Hood’s complaint, and the appeal was pending the State Supreme Court issued its opinion in <i>Cousins v. State</i>, 3 Wn.3d 19, 546 P.3d 415 (2024).] The COA holds that the County’s January 6, 2020, email satisfied only one of the three required closing letter components to trigger the one-year statute of limitations. Here, the email sent from the County only satisfied the first by specifying how the PRA request was fulfilled and why the County was closing the request. It did not indicate that the PRA’s one-year statute of limitations to seek judicial review has started to run because the agency does not intend to further address the request, and that the requester may ask follow-up questions within a reasonable time frame. As explained in <i>Cousins</i> the County also failed to respond to Hood’s follow-up questions.
PROCEDURE Pleadings Objections Preservation RECORDS Request Sufficiency PENALTIES Procedural Violations Withholding Records	Sundean v. Town of Wilbur	Unpublished, Decided June 3, 2025	• In 2019 Sundean submits a series of requests. His January 27, 2020, complaint does not make specific allegations of PRA violations, instead claiming that throughout 2019 he made many requests, many of which went unanswered. Eight months later he receives permission to file an amended Complaint that includes a table of requests, but the court indicated it is not making any findings on whether the amended allegations relate back to the original complaint or are barred by the statute of limitations. Through summary judgment motions the court narrows the case to seven instances, dismissing two claims as outside the amended complaint and setting the other five for bench trial. It also denied Wilbur’s motion to dismiss based on statute of limitations. After a bench trial the Trial Court found that Wilbur did not deny his first request for “Records of the Council” but failed to provide an estimated response time in its five-day letter. For the second through fourth, Wilbur did not respond within five days but did produce responsive records awarding penalties based on the production time minus five business days. For the fifth request it provided a five-day letter and later the responsive records but there was no evidence of when. The trial court reduced the attorney’s fees request from \$119,766.25 awarding \$50,000 based on a finding the case was uncomplicated to try, requiring only one attorney, and much of the time was expended clarifying an argumentative complaint, resolving unnecessary motions relating to the complaint and unnecessary discovery complaints. • The COA affirms dismissal of two claims because they were not included in the amended complaint and therefore presumed as withdrawn or abandoned. It properly ruled against Wilbur’s Statute of Limitation claim regarding the amended complaint. The original Complaint’s allegations that Wilbur failed to respond to many requests throughout 2019 was sufficient. Wilbur also did not fail to produce records for request 1 for “Records of the Counsel.” Substantial evidence supports the trial court’s finding that this was for a “very specific record described by statute.” The Clerk testified she searched for anything with this title explaining she did not see a binder, notebook or any record with this title. The Clerk offered minutes and agendas, thinking this might be what he was looking

			for which the requester declined because it was not “records of the council.” Sundean failed to object to the attorney fees award, including the courts failure to apply the lodestar method in determining fees but an award was appropriate based on Wilbur’s failure to send five-day letters and withholding of records.
PROCEDURE Injunction	Poe 5 v. University of Washington	W.D. Washington April 10, 2025	- See <i>Poe 5 v. University of Washington</i> below, decided March 29, 2024, for prior litigation involving in this request. Here petitioners assert that release of their publicly identifying information would violate their constitutional right to information privacy. A December 4, 2024, Memorandum Opinion on interlocutory appeal to the 9th Circuit Court of Appeals observed that basic biographical data, including a person’s name, address, identification, place of birth, telephone number, occupation, sex, description, and legal aliases, is not highly sensitive personal information, and thus categorically does not implicate the constitutional right to privacy. It then remanded for further proceedings. - Preliminary injunction in Federal Court applies the federal standard even though claims arise under state law. But the court must consider whether the party would be entitled to relief under state law. Under the PRA, injunction requires an applicable exemption, and that release would clearly not be in the public interest and would cause substantial and irreparable damage. RCW 42.56.540. Here the plaintiffs fail to show release would clearly not be in the public interest noting that the WA. Sup. Court has observed, “[p]ublic employees are paid with public tax dollars and, by definition, are servants of and accountable to the public. The people have a right to know who their public employees are and when those employees are not performing their duties.” Additionally, they did not show that release of the information would adversely affect the IACUC’s ability to operate.
PROCEDURE Abuse of Discretion Discovery RECORDS Search	Soule v. State	Unpublished April 1, 2024	- On January 3, 2020, Soule requested AGO records related to a 2010 national mortgage settlement as well as personnel records for various individuals. From May 2020 through May 2022 the AGO produced over 30,000 pages of records in 17 instalments. In May 2023 Soule filed suit alleging the AGO, failed to promptly and adequately search for responsive records. The Trial Court entered a scheduling order with deadlines. The trial court quashed a notice of deposition filed two weeks after discovery closed and after the AGO filed its merit briefs and a notice to compel six witnesses to attend a 45 minute merits hearing set at part of the scheduling order. The AGO produced four detailed declarations of its efforts to produce responsive records. The AGO conducted an adequate search. Very few emails were produced due to their deletion prior to the request and consistent with records retention schedules. - Court of Appeals affirms. A superior court’s discovery and prehearing orders are reviewed on an “abuse of discretion” standard; is the decision manifestly unreasonable or based on untenable grounds. While Soule’s reasons for his failure to comply with the discovery schedule may have successfully persuaded other superior courts to extend discovery, the decision here was “within the range of acceptable choices.” PRA disputes are meant to be “expeditious” so that members of the public can quickly learn if they are entitled to the records, and the PRA allows for claims to be decided solely on affidavits. PRA cases are commonly resolved on affidavits and the trial court was entitled to assume the parties would raise the issue of live testimony at the scheduling conference or soon thereafter. The superior court’s reasoning and its decisions were consistent with the PRA’s prescribed procedures. The AGO’s production of over 30,000 pages in 17 installments was prompt and AGO’s efforts to narrow and focus the request shortened the time required. The AGO’s

			declarations, which are presumed to be in good faith, describe an adequate search. The AGO’s search terms were broad enough to potentially include all of the individuals named by Soule. That the agency did not think of other alternative terms suggested by Soule does not make the search unreasonable.
PROCEDURE Clarification RECORDS Search	Hood v. City of Vancouver	33 Wn. App.2d 799, 564 P.3d 1009 (2025) March 4, 2025	- Hood requested an audit report, records the city got from the auditor and all responses, including any policy changes made because of the audit report. City provided a link to the audit report, which by definition includes the City’s official response to the audit report and asked Hood what else he was looking for. Hood repeated his original request. The City’s PRO in internal communications recognized that there were lots of emails between the auditor and the City that are not included in the audit report that could be responsive. City searched its records management system, but did not appear to have searched its email system. It produced about 50 more records, but no emails. Hood obtained 4 emails with the City through a PRA request to the auditor within the time period of his request to the City. Hood waited a year and sued. The trial court dismissed on summary judgment. - Court of Appeals. Because of the presumption of full disclosure, requests should be interpreted broadly. Requestor must request identifiable records, which requires a reasonable description that allows the agency to identify responsive records. It was reasonable to seek clarification because history has shown that Hood’s requests are confusing – but even when an agency seeks clarification, it still must respond to portions that are clear. Here, the request for all records the City “got” from the auditor was clear, and the City acknowledge there were lots of back-and-forth communication with the auditor that were not produced. The request for the City’s “response” to the auditor was not clear because the Audit report itself includes the City’s “response” to the audit. The City’s statement in the closing letter – “if you feel there are any missing document” please let us know – did not qualify as a request for clarification. A requestor who genuinely wants records would respond but does not have to (although it could affect any penalty determination). Trial court improperly granted summary judgment on the adequate search claim because emails the City “got” from the auditor would be responsive and the City’s declarations did not show it searched for emails.
PROCEDURE Injunction Right to Records	Matter of Kelleher	Unpublished February 27, 2025	- This case arises out of a neighbor dispute starting with landscaping and sprinklers and then elevates to threats of violence and the police being called. In 2021 Kelleher petitioned for and was granted a restraining order against the neighbor. Matters escalate further and in 2022 Kelleher asked to renew the order for two years. The request was granted. In 2023 Kelleher sought to enjoin the City of Quincy from releasing records to the neighbor. In a consolidated hearing on a motion to modify the protective order on September 1, 2023, the trial court bars the neighbor from making intrusive PRA requests and converts the protective order to a permanent order. In a separate order it enjoins Quincy from releasing body camera footage of the interior of Kelleher’s house. - On Appeal the neighbor argues two PRA violations. The neighbor argues the trial court’s order enjoining the city of Quincy from answering requests for body camera footage is unlawful because it interferes with his constitutional right to file a public records request. The right to records is statutory not constitutional. The neighbor also argues that RCW 42.56.540 requires a person to file a new civil case when seeking to enjoin disclosure of a public records request. The COA disagrees. “RCW 42.56.540 expressly permits a person to seek to enjoin disclosure by ‘motion and affidavit,’ which was done here.”

PROCEDURE Discovery Injunction	Wallin v. Dept' of Corrections	Unpublished February 25, 2025	- Requestor is an inmate serving a life sentence. After he made requests for J-Pay rejection notices and the DOC failed to produce those notices, Requestor sued. Rejection notices are sent directly to the inmate, so here the Requestor would already have these documents. Accordingly, DOC filed a counterclaim for a prisoner injunction under RCW 42.56.565, claiming the requests were meant to harass. DOC obtained communications from J-Pay that showed the Requestor was soliciting others to send emails that would get rejected so the Requestor could request those rejections and sue when they were not produced. Requestor also bragged about a 10-year history of making money for his grandma by filing PRA lawsuits. DOC sought to depose the Requestor to ask about his motives for making requests for records he already possessed. Requestor refused to attend the deposition, despite two court orders for him to attend. Trial court entered default judgment based on Requestor's refusal to attend his deposition. The trial court then held a hearing on the scope of the injunction. Based on Requestor's litigation history, including his lawsuit against the City of Everett for the bikini barista videos, the court entered a permanent, universal injunction, prohibiting all requests during his incarceration absent court approval, and cancelling any pending requests to any agency. - Court of Appels Deposition: normally under RCW 42.56.080, a requestor's motive for making the request is not relevant, and not subject to discovery. But in a prisoner-injunction claim, motive is relevant. Therefore, the Requestor could be questioned about his motives for making the request. J-Pay subpoena: an inmate has no privacy interest in his communications through J-Pay so the subpoena was proper. Default Judgment: before a court can enter a default judgment base discovery violations, it must first find that (1) the violation was willful; (2) it prejudiced the person seeking discovery; and (3) lesser sanctions would be ineffective. Here, because the Requestor claimed to be indigent, lesser monetary sanctions would not work. Therefore, the factors were met. Permanent, universal injunction: RCW 42.56.565 authorizes broad injunctions. Here, Requestor's 10-year history of making PRA request for the purpose of filing lawsuits to make money qualified as harassing behavior and justified the broad scope of the injunction.
EXEMPTIONS Privacy Constitutional PROCEDURE Injunction Standard Pseudonym 3 rd Party Notice	Does 1 v. Seattle Police Department	4 Wn.3d 343, 563 P.3d 1037 (2025) February 13, 2025 Petition for a Writ of Certiorari filed with the US Supreme Court	- Requesters sought the investigation of current and former City police officers who attended then former President Donald Trump's "Stop the Steal" political rally on January 6, 2021, in Washington, D.C. The investigation found the officers did not engage in unlawful or unprofessional conduct. As part of the investigation the officers were ordered to participate and respond to questions. Failure to do so could result in further disciplinary proceedings. The officers sued to enjoin the SPD from releasing unredacted investigation records. The trial court found no applicable exemption to the release. The officers appealed. Requesters cross appealed challenging the Does proceeding with pseudonyms. Court of Appeals reverses finding the officers' identities are protected. - The Supreme Court reverses. Third parties seeking to block release of records must demonstrate application of a specific exemption, as well as that release would clearly not be in the public interest and would cause substantial and irreparable damage (See RCW 42.56.540). 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 so that person may take steps to enjoin release of the record. The person who is the subject of the public record is in the best position to identify what interest, if any, they hold that could be invaded as a result of disclosure of the public records including

			constitutional rights. Starting with statutory exemptions, a person’s right to privacy under the PRA privacy definition is resolved on a series of four questions: First, do the records contain personal information? Second, if so, do the subjects of the records have a right to privacy in that information? Third, if so, would disclosure be highly offensive to a reasonable person? And fourth, is disclosure not of legitimate concern to the public? The records are exempt only if the answer to all four questions is “yes.” Identities of particular people is personal information because it relates to particular people. In this instance the officers do not demonstrate that they qualify under the second factor, they did not show a privacy right in public records about their attendance at a highly public event. Constitutional principles may form a basis for exempting records in this case First Amendment rights to attend political demonstrations asserting that compelled speech in the investigation and now forcing the release of their identities could have an impermissible chilling effect on those rights. In attending a widely publicized rally, with thousands of other including media, the officers took no steps to conceal or hide their identities. The officers also did not make the required showing to proceed under pseudonyms, the <i>Ishikawa</i> factors.
RECORDS Search Personal Devices, <i>Nissen</i> Affidavit	Pilloud v. The Employment Security Department of the State of Washington	33 Wn. App.2d 644, 566 P.3d 124 (2025) February 11, 2025 Publication ordered April 1, 2025.	- On April 19, 2022, Pilloud emailed a request for the names and residential addresses of WA Cares Fund exemption applicants, but a filter routed it to “junk mail.” May 3, 2022, Pilloud followed up with an email and physical mail. ESD found the request and sent a “five day” response on May 6, 2022. ESD’s first estimate for records production was May 27, 2022, it was extended to June 22, 2022, with production occurring June 23, 2022. To produce the record ESD created custom code to extract the data from several ESD databases into a custom spreadsheet of more than 480,000 applicants name, phone number, email address, city, state, and zip code then redacted all the information except the application status citing RCW 50B.04.170(1) which became effective June 9, 2022. The trial court found that ESD responded within five business days from when they had fair notice of the request, provided a reasonable estimate of time, and properly redacted the record. - Court of Appeals: The exemption protects from release information or records obtained by ESD for the purposes of collecting an assessing WA Cares Fund premiums and qualified individuals for benefits. Information concerning exemptions from the WA Cares Fund is inextricably linked with the collection and assessment of premiums and benefits. ESD properly redacted the city, state and zip as part of the residential address. Pilloud presented no authority that an agency is required to produce partially redacted addressees. The timeliness of ESD’s response is moot. The PRA does not provide a freestanding penalty for procedural violations, it is an aggravating <i>Yousoufian</i> factor, but ESD properly redacted the records. Pilloud is not an attorney so not entitled to attorney fees. There was no constructive denial by unreasonable delay of records. ESD extended it production date when it realized it would require custom coding to extract the record.
2024			
RECORDS Search Personal Devices, <i>Nissen</i> Affidavit	Valderrama v. City of Sammamish	33 Wn. App.2d 318, 561 P.3d 288 (2024)	In Jan. and Feb. 2022, Valderrama submitted three records requests to the City which included communications between council members and citizens stored on the council members’ private devices. The City contacted current and former council members and staff, obtaining and providing 43 <i>Nissen</i> affidavits and hundreds of documents. Valderrama filed suit alleging failure to conduct an adequate search and failing to make records available for inspection. The City was still producing

			records at this time and continued to do so. At first records were produced on a regular schedule which slowed while the City awaited responses from three former council members, but which were ultimately received. The Trial Court found that the search was adequate. The COA affirms. An agency's search must be reasonably calculated to uncover all relevant documents; the search need only search those places where a responsive record is reasonably likely to be found. The City demonstrated its actions beyond material doubt that it conducted an adequate search through the good faith, reasonably detailed nonconclusory affidavits describing the accounts and locations searched and the names and search terms used to locate responsive records including why withheld documents are not responsive. Valderrama failed to show evidence of bad faith. Delay or use of encrypted communications systems is insufficient. Valderama presented no legal authority suggesting that to conduct an adequate search an agency must sue its employees to forensically search their private devices.
PROCEDURE Abuse of Discretion	Shavlik v. Snohomish County	Unpublished November 25, 2024	- As part of two PRA cases, Shavlik sought to depose a Snohomish County Superior Court Judge who was formerly a deputy prosecutor for the County. The Trial Court denied the County's motion to quash the subpoena in the first case and denied a motion for a protective order that would have prohibited Shavlik from deposing the Judge as part of the second PRA case. - The COA disagrees and overturns the trial court. Because Shavlik did not show that the Judge's testimony was relevant to the PRA claims, the trial court abused its discretion by denying both motions.
PROCEDURE Untimely Appeal	Grenning v. Dept. of Corrections	Unpublished November 20, 2024	- Department produced records, some redacted, in response to Inmate's public records request. Trial court determined Department violated PRA because it waived any privilege when Department staff showed unredacted email to Inmate. Trial court does not find bad faith and enters order Sept 22. Inmate filed motion for reconsideration. TC denied mot for recon as untimely. Inmate files SJ – TC struck hearing as no claims remain. Inmate files notice of appeal Dec 20. - Motion for reconsideration was untimely, thus did not toll the 30 day appeal period. Even if he had timely filed the motion for reconsideration, court denied the motion on October 10 and appeal not filed until Dec 20 (still untimely). Superior court entered a final order finding a violation of the PRA, but denying bad-faith penalties, on September 22, 2022. The September 22 order triggered the thirty-day period to appeal. Grenning needed to file his notice of appeal by October 22. He filed his notice on December 20, 22. Appeal is untimely and is dismissed.
EXEMPTION Determination PROCEDURE Records Production	Thornwell v. Seattle School Dist. No. 1	Unpublished November 11, 2024	- Thornwell's attorney sought records concerning a complaint Thornwell filed on behalf of her son with the District's Office of Student Civil Rights requesting five types of records but did not ask for any prioritization. The District's first installment date was three months later with seven installments of 1,801 pages over the year. Each installment was on time and provided an estimate for the next installment. The 6th and 7th installment contained records the District debated may have been exempt but which were provided without redaction. Thornwell claims these records should have been produced sooner. - The COA affirms. The District concedes the exemptions it was considering were not applicable. The PRA does not require an agency make exemption determinations on the day of the request. The PRA provides a reasonable time to respond, provided it does so timely and with diligence. When an agency has not yet produced requested records but has not stated that it will refuse to produce them, the agency has not denied access to the records. The District timely and diligently produced all

			responsive records so did not engage in silent withholding. The District's prioritization of clearly non-exempt records, when there was no request to prioritize certain records, even when an initial belief that a record may be exempt was in error, is not a PRA violation; there was no assertion of a lack of diligence and objectively from Thornwell's perspective the District was diligent.
RECORDS Search PROCEDURE Bad Faith	Gronquist v. Wash. State Dept' of Corrections	32 Wn. App.2d 617, 557 P.3d 706 (2024)	- Gronquist sought invoices from DOC for contracted attorneys. DOC gave an estimated production date for approximately two months later and then extended that date twice due to COVID. Five months after the request DOC provided a large number of unresponsive records and did not provide responsive records. The PRA suit was filed almost a year later. DOC produced records over the next year as part of litigation. - Affirming the trial court, the DOC's response was not timely; its search was inadequate. The DOC could show no work on the request for 130 days after the request's receipt except sending the five-day letter, assigning it to a specific department and sending two extension letters. The first search occurred 130 days after the request's receipt. 41 days later an invoice was sent for 242 pages, 150 of which were non-responsive. DOC response was not timely. Adequacy is based assessed on a standard of reasonableness, and DOC did not provide sufficient specific information on the search to adequately judge its reasonableness. To establish bad faith, an inmate must demonstrate a wanton or willful act or omission by the agency; more than simple or casual negligence. By not informing DOC that the production was incomplete, Gronquist made it difficult to prove that the failure to produce certain documents was the result of anything but miscommunication and human error..
PROCEDURE Due Diligence EXEMPTIONS Application FERPA	C.S.A v. Bellevue School District No. 405	32 Wn. App.2d 544, 557 P.3d 268 (2024) October 14, 2024	- After each of three confrontations between CSA and other Newport High School students, CSA made records requests. 1) Request on 12/20/2021 for surveillance recordings. The District told CSA the records would not be provided under the PRA but viewing the recordings would be allowed referencing agency policy and FERPA. CSA reviewed the video. 2) Request on 3/29/2022 for surveillance recordings and 16 other categories of records. The district produced 8 installments over the year. The 8th installment included video from the first incident. The 9th installment produced on 5/19/2023 included four recordings, two of which were redacted under FERPA. 3) Request on 5/19/2022 for all documents from the incident. The district asserted the surveillance recordings were exempt from release under FERPA but they could be viewed later producing redacted copies as before. The trial court found in favor of the District. - The COA reverses the Trial Court's conclusion that the District complied with "the spirit and letter of the PRA. FERPA may be a PRA exemption as an "other statute." FERPA protects the privacy of an "education record" from the public at large but notably affords students and parents the right to review those records. The video was CSA's "education record" leading to the conclusion that FERPA protections did not restrict the release of CSA's records to a PRA request. The Court further concluded that the redactions destroyed the recordings meaning and FERPA does not require redaction of PIP in these circumstances. The COA also concludes that agency did not act with reasonable diligence from "an objective standard from the viewpoint of the requester." This includes consideration of prior requests and communications between the requester and the agency." Because the District had no lawful basis to withhold the video for the first requested video, destroyed the meaning when they were produced a year later, the District did not provide fullest assistance with the timeliest possible action. For the second request, while the district produced 9 installments, the court took issue with not producing the video early, and redacted when it did, the

			district similarly did not act with diligence. For the third request, inspection occurred but not provide the records which the Court concluded was a lack of diligence.
PROCEDURE Appellate Procedure Standing	Love Overwhelming v. City of Longview	32 Wn. App.2d 346, 556 P.3d 692 (2024)	- The City hired Loving Overwhelming (LO) to help process applications from homeless persons apply to stay in the City’s proposed pallet shelter encampment. LO prepared the application forms with LO’s logo, its staff help many of the applicants resulting in the names of LO staff members appearing in those applications. The applications sought sensitive information, including information related to drug use and mental health. Opponents of the pallet shelter project requested the completed application forms. The City provided third-party notice to LO which filed for an injunction. The case was dismissed by the trial court ruling LO did not have standing under RCW 42.56.540 to seek the injunction because LO was not one of the applicants and it was not LO’s confidential information at issue. The trial court authorized immediate release of the records and refused to stay its ruling pending appeal. LO appealed. - The City argued the case was moot because the records had been released. The appeal was not “moot” based in the public-interest exception to mootness: (1) the dispute was public in nature, (2) there was a public interest in resolving the standing question, and (3) the issue was likely to arise in future disputes. The Appellate Court reversed the trial court ruling, holding that that LO had standing to seek the injunction under RCW 42.56.540. That statute allows “a person who is named in the record or to whom the record specifically pertains” to seek an injunction. LO is named in the applications because the applications bore LO’s logo and its employees were named in many of the completed applications. This is a bright-line standard that does not turn on whether LO was seeking to protect its own interests or the interests of the applicants.
PROCEDURE Record on Appeal	Valdez v. Wahkiakum County	Unpublished September 10, 2024	- Valdez was convicted of attempting to hire someone to murder his ex-wife, burning down his neighbor’s home because their testimony was damaging to his position in his divorce, and committing crimes related to his illegal marijuana business. He submitted a PRA request for the criminal investigative file from his case. After an in camera review the trial court ruled the records were exempt as either the mental impressions of the attorney (Pappas v. Holloway, 114 Wn.2d 198, 787 P.2d 30 (1990)); or, (2) notes or memoranda prepared by the attorney from oral communications (Id., and/or Dever v. Fowler, 63 Wn. App. 35, 816 P.2d 1237 (1991)). - The party seeking review has the burden to perfect the record so that, as the reviewing court, has all relevant evidence. An insufficient appellate record precludes review of the alleged errors. The record contains seven pages of clerk’s papers. While Valdez designated a significant portion of other materials, those records were not part of the COA file. Notably absent was the county response to Valdez’s request thus it was not able to conduct a de novo review of that response and therefor affirms the trial court.
PROCEDURE Premature lawsuit RECORDS Estimate of Time	Washington State Tree Fruit Association v. Employment Security Department	Unpublished August 20, 2024	Association requests records related to lawsuit and prevailing wage methodology. Multiple delays in records production. Records produced heavily redacted pursuant to attorney client privilege. Association files lawsuit while records are being produced alleging unreasonable estimate of time and improper withholding/redaction. Trial court dismissed improper withholding/redaction without prejudice because it was premature and finds estimates of time were reasonable when Department’s electronic search software was malfunctioning, Department began working with a software vendor to repair the search functionality, and Department revised its production estimates several times

			with Association. Improper withholding/redaction claim dismissed without prejudice on summary judgment because claim is premature. On appeal Association's claims fail for procedural issues. Association states there was no error in summary judgment ruling, thus nothing to review. Association also fails to develop reasonable estimate of time argument and thus appellate court declines to review the issue.
PROCEDURE Requester Identity	Collins v. Smith	Unpublished August 20, 2024	- Collins filed approximately 150 requests with the City of Port Angeles beginning in February 2019. In November 2019, the city filtered all e-mails from Collins redirecting them to the PRO and the legal department. Due to regular inappropriate behavior towards staff the City initially directed Collins to a single point of contact for all his requests including the submission of future requests. This was later revised to a suggestion in order to provide the most efficient customer service to Collins. At no time did the City indicate it would not fulfill requests submitted outside of the requested points of contact. The email filter remained in place. - The COA affirms the Trial Court's grant of Summary Judgment to the City. An agency may violate the PRA if it uses the requester identity as a basis to deny access to records. Collins identity was not used as a basis by the City to deny access to records. RCW 42.56.080(2) "does not appear to regulate how an agency must internally process PRA requests-so the e-mail filtering decision is not implicated by the prohibition."
PENALTY Abuse of Discretion Silent Withholding Excessive Litigation	Kittitas County v. Sky Allphin	Unpublished July 23, 2024	- In 2012 Allphin made requests for records to Kittitas County resulting in litigation spanning over a decade. In a prior appeal Allphin was found to have been denied access to 6 e-mails with the case remanded for penalties. After 90 days the County filed a motion to determine penalties arguing an appropriate penalty was \$490 arguing it was one records withheld for 98 days. Allphin then filed his own motion asserting that in addition to the six emails, three additional emails were silently withheld for 6173 days asking for a total penalty of \$617,000; plus attorney fees. The trial court determined that the issue on remand was the 6 e-mails. It grouped the emails awarding a penalty of \$490 (1 group of emails * 98 days @ \$5.00 per day) plus attorney fees of \$8,750 which it supported in its written decision applying the Yousoufian factors. - The 2016 COA opinion limited the issue on remand to the 6 e-mails which the COA previously found to have been improperly withheld for 98 days. The trial court's refusal to consider an additional penalty for 3 additional e-mails was not in error. Nor were the 3 e-mails sufficient to merit heightened penalties. There was no evidence of bad faith by the County. The County's conduct throughout the request, including correcting mistakes showed the opposite. The County's conduct in litigation was not excessive or improper. Their motions had been largely successful. There was no abuse of discretion.
EXEMPTION Deliberative Process	Citizen Action Defense Fund v. State, Office of Financial Management	31 Wn. App.2d 633, 552 P.3d 341 (2024) July 16, 2024	Negotiations for the "terms and conditions" for the 2023-25 CBA's commenced prior to June 2022. Agreements were reached and prior to October 1, 2022, they were provided to the OFM Director; found to be financially feasible for the state; and included in the Governor's proposed state budget for the 2023 legislative session. On April 23, 2023, the legislature passed a budget which the Governor signed on May 16, 2023, with certain vetoes not impacting the CBA's. After this the State negotiators and unions signed the 2023-25 CBA's. At issues was a request submitted December 15, 2022. CADF requested the parties original offer letters in negotiations. The Trial Court held the deliberative process exemption inapplicable as the records were no longer pre-decisional.

			The COA reverses the trial court. At the time OFM denied the request, the tentative agreements had not been sent to the governor or legislature for approval, nor had the funding been approved for their implementation. The agreements were not approved and funded by the legislature until April 23, 2023, and governor did not sign the bill until May 16, 2023, but in doing so exercised veto authority over other aspects of the bill.
PROCEDURE Bad Faith	Haney v. Washington State Dept. of Corrections	Unpublished July 11, 2024	- Haney requested “all records used” in his 2018 classification process. On remand from a prior appeal finding his PRA lawsuit was timely, Haney prevailed against the DOC and was awarded \$74,440 in penalties plus \$28,470 in attorney fees and cost by the trial court. It initially provided 42 pages of records. After commencement of the lawsuit, it reassessed the request producing an additional 187 pages of records. The DOC appealed. - The COA affirmed that the DOC violated the PRA when it failed to provide records, which the classification counselor said were used in the process, from various databases. It reversed and remanded on the bad faith determination. The trial court found negligence on the DOC part which it equated to bad faith. Bad faith is more culpable than negligence. It instructs the trial court to focus on the reasons behind the agency’s failure to provide responsive records. If it finds bad faith, it should then apply the Yousofian factors to determine an appropriate penalty.
PROCEDURE Standard of Review – Abuse of Discretion APPLICATION Telford Test Functional Equivalent	Horvath v. DBIA Services	31 Wn. App.2d 549, 551 P.3d 1053 (2024) July 8, 2024	- Horvath alleged a nonprofit corporation providing services within the city’s business improvement district failed to provide records to a PRA request. After an initial request to the City, Horvath requested records directly from DBIA which responded indicating it was not a public agency subject to the PRA but provided some records but declined to provide others. Horvath sued alleging DBIA was the functional equivalent of a governmental agency. The trial court agreed DBIA was not subject to the PRA. - On appeal the standard is “abuse of discretion” because the functional equivalent test requires the trial court exercises its discretion. For purposes of Plaintiff’s requests for public records, Defendant DBIA Services is not a state or local “agency” as defined in RCW 42.56.010 of the Public Records Act. The trial court did not abuse its discretion in its application of all four Telford factors in holding that DBIA is not the functional equivalent of a public agency.
PROCEDURE Statute of Limitations	Soule v. State by and through Ferguson	Unpublished July 2, 2024	- Between July 2019 and January 2020 Soule filed three PRA requests with the AGO. The first request was closed after Soule failed to submit a payment for the 10th installment. The second was closed after the 8th instalment for the same reason. Each installment letter indicated “the request will be administratively closed for nonpayment” if the payment was not received by the date indicated on each letter; May 29, 2021, for the first request and November 12, 2021, for the second. For the third request, Soule paid for 17 installments and the request was closed as fulfilled on May 13, 2022. Soule filed suit on May 12, 2023. The trial court dismisses claims for requests one and two as outside of the statute of limitations. - The COA reverses the trial court. The one-year statute of limitations begins to run when an agency gives final and definitive response to a request. Applying the Cousins explanation of this requirement, the COA finds the notice from the AGO was insufficient to put a non-attorney requester on notice that administrative closure of the request due to non-payment means that the agency would no longer take action on the request or provide further records. Nothing explained the practical or legal consequences of administrative closure.

RECORDS PENALTY Abuse of Discretion Bad Faith	Flook v. Wash. State Dept. of Corrections	Unpublished July 2, 2024	- Flook filed a request and was informed there were no responsive records. In response to a second request, Flook received records desired in the first request. Flook filed suit regarding his first request. The trial court found a PRA violation but no bad faith by the department and denied a penalties award. - The COA affirms the trial court. The burden is on the incarcerated offender to prove the agency acted in bad faith as defined by case law. The DOC did not act unreasonably, maliciously or with utter indifference to the consequences when it originally failed to produce the record based on an inadvertent mistake. Once DOC was alerted to the mistake is located and provided the records. While the records officer initially handling the request had incorrect assumptions, nothing suggested a level of conduct to constitute bad faith. The trial court did not abuse its discretion in making this determination.
RECORDS PENALTY Abuse of Discretion	Hood v. City of Langley	Unpublished July 1, 2024	- In 2016 Hood e-mailed the City requesting numerous records associated with its former Mayor. Prior appeal found there to be a question on whether the City conducted an adequate search and whether the Hood intended to narrow his request. Hood v City of Langley, Unpublished, decided January 28, 2019. Three years later Hood filed a motion for partial summary judgment. The City was found to have denied access to certain records from March 2016 to February 2019 imposing a penalty of \$5,315 (\$5 for 1,063 days) finding that four mitigating factors justified a lower penalty. - The COA affirms the penalty award. Trial courts have considerable discretion on application of the Yousefian factors with a holistic review for overall reasonableness; no one penalty factor should control appellate review. The COA will not review a single Yousoufian factor as urged by Hood. Review of a single factor risks distorting the statutorily conferred discretion granted to the trial court and is inconsistent with the standard of review set forth by the Supreme Court. Notably, no party challenged the overall penalty assessment or the factual finding supporting it which the COA then assessed (4 mitigating and no aggravating) finding no abuse of discretion.
PROCEDURE Sufficiency of Pleadings	Washington Election Integrity Coalition United v. Wise	Unpublished June 3, 2024	- In September 2021, WEICU, sued asserting that misconduct by Director Wise tainted the 2020 election results. Included in these claims were alleged PRA violations. The County asserted records were exempt and sought injunctive relief preventing WEICU from obtaining records. The trial court granted summary judgment and dismissed all of WEICU's claims. The court also granted King County's motion to strike the PRA cause of action pursuant to CR 11 and declared that "King County cannot as a matter of law disclose original, spoiled or returned ballots or images of those ballots to the public and cannot provide voter signatures on ballot envelopes for copying. - The COA affirms the trial court. Washington follows the common law rule that corporations appearing in court proceedings must be represented by an attorney. WEICU is a corporation. The Complaint was not signed by an attorney. After the initial Complaint was filed, an attorney began representing WEICU in the proceedings. The attorney was aware of the omission but took no steps to correct the deficiency prior to the award of summary judgment.
PENALTY Abuse of Discretion PROCEDURE Abuse of Discretion	Herrick v. Special Commitment Center	Unpublished May 29, 2024	A prior appeal remanded the issue of whether the SCC conducted an adequate search. Herrick v. Special Commitment Center, Unpublished, decided June 4, 2019. On remand Herrick sought in camera review of certain records asserting it was related to the adequacy of the search. The record presented COA did not indicate how this was resolved. The trial court did not address the adequacy of the search in its oral opinion or written order. It engaged in a Yousoufian mitigating/aggravating analysis and calculated penalties. It found denial of access for 2,917 days awarding \$1 for each day.

			The COA finds that the trial court not conducting an in camera review was not an abuse of discretion. None of the documents attached to the motion for an in camera review contain, or potentially require, redactions and all of the documents were reviewable as part of the show cause process. Penalties review in a PRA case is whether there was an abuse of discretion. The Trial court thoroughly addressed the aggravating and mitigating Yousoufian factors. It is clear that the superior court determined the failure to disclose the records was a potentially neglectful mistake but neither a systemic failure of compliance with the PRA or the result of intentional misconduct or bad faith on the part of the agency. On review no single factor should control because the trial courts have considerable discretion. The superior court's failure to make necessary findings concerning the adequacy of the search was an error. The case was remanded on this issue and based on those findings whether additional penalties are warranted.
RECORDS Scope of request Search	Hood v. City of Prescott	Unpublished April 30, 2024	- Hood made a records request for audit records (similar to request made/litigated by other agencies). The PRO sought clarification. Hood did not answer PRO's questions but stated he "narrowed" his request to certain items. City produced records. Hood then sued. The trial court granted City's motion for summary judgment. Meanwhile, Hood received records from the State Auditor's Office (SAO) which he argues should have been produced by City. Hood produces records from the SOA to the court in a motion for reconsideration, which is denied. - COA begins by looking at the scope of the request and acknowledged that both parties' interpretations of the request are plausible. Whether the City's interpretation was reasonable is a question of fact for the trial court. Thus, evidence shows genuine issue of material fact therefore summary judgment not appropriate. An issue of material fact also exists regarding the adequacy of the search. The City attorney provided a declaration regarding the search, but there was no evidence provided by a person who actually conducted a search. There was no evidence regarding search terms used, locations searched, or type of search performed.
EXEMPTION Investigative Records	Navarro v. Auburn Police Department	Unpublished 4/29/2024	- Requester is a suspect in an attempted robbery. Requester made a records request for the investigation records in June 2020 and January 2021. The City denies both requests claiming the categorical active investigation exemption, RCW 42.56.240(1). Requester files suit and trial court dismisses complaint on summary judgment. Requester receives the investigative file in response to a 3rd records request. Final entry in file is from October 2019 regarding victim being unable to identify the suspect and therefore lacking evidence to forward for criminal charges. Requester moves to vacate prior summary judgment dismissal order arguing City's investigation was not active at time of requests and the Detective perjured himself. - The COA affirms the trial courts denial of the motion to vacate. The City's evidence and Assistant Chief's testimony was credible. Investigations can be kept open until statute of limitations. Trial court did not abuse discretion. When the records requests were made the investigation was open and active.
PROCEDURE Request Receipt	Hood v. Centralia College	Unpublished 4/23/2024	During the discovery phase of the 2020 Hood v. Centralia College litigation, Hood requested documents that the trial and appellate court deemed not responsive to his earlier 2019 PRA request. Other pleadings filed in the litigation made it clear Hood wanted other documents. The College was found to have not violated the PRA regarding the 2019 request. Hood filed suit in March 2023 asserting his requests in the course of the litigation constitutes new PRA requests.

			Hood’s litigation requests were not public records requests. Requesters must give the agency fair notice that they are requesting records under the PRA. None of the request’s characteristics favor the requests being public records requests. Two of the requested records’ characteristics favor fair notice of a request. Fair notice distinguishes PRA requests from those arising from some other legal authority. If a request for records appears to be under an authority other than the PRA, this factor is usually dispositive; it is not a PRA request. A request in “in the shadow” of other legal authority must clearly distinguish itself as a public records request.
PROCEDURE Statute of Limitations	Cousins v. State, Dept. of Corrections	3 Wn.3d 19, 546 P.3d 415 (2024) April 11, 2024	- Cousins makes a records request on July 21, 2016, seeking “any and all records regarding Renee A. Field” – her sister, who died in DOC custody. Multiple times during productions of installments, Cousins stated that records were missing and identified specific records. DOC responded that request was still open and DOC was gathering records. When payment was not received for an installment, DOC closed the request for nonpayment. Cousins asked about the installment and resent payment. DOC produced the installment and stated: “PRU 43037 is now closed. However, if you should have any questions related to this request, you may contact me ...” Within five days Cousins and DOC correspondence renewed regarding records but DOC did not answer all of Cousins’ questions. DOC re-sent its January 2019 closing letter several times. In July 2020 a new PRO reopened the request conducting additional searches. DOC produces additional installments. Cousins filed a lawsuit in January 2021—DOC produced installments until June 2021, at which time DOC informed Cousins “this public records request... is now closed.” Cousins’ counsel contacts DOC and states records are still missing. DOC produces Installment 17 in August 2021. DOC admitted that Installments 8-17 contain hundreds of pages of previously undisclosed responsive records. Trial court granted DOC’s motion for summary judgment and determined the claims were barred by the statute of limitations. The Court of Appeals affirmed dismissal. - Supreme Court reverses. A closing letter must be objectively “sufficient to put [a non attorney requester] on notice” that the one-year limitations period had started running because the agency does “not intend to disclose records or further address [the] request.” Use of the word “closed” is not determinative. To assess the sufficiency of a closing letter, courts and agencies should consult the Model Rules and the guidance provided in this opinion. After issuing a sufficient closing letter, an agency may choose to answer follow-up questions by simply reiterating that the statute of limitations has started running because the agency does not intend to further address the request. - A closing letter is sufficient if it provides at least the following information to the requester, in plain language targeted to a lay audience: (1) how the PRA request was fulfilled and why the agency is now closing the request, (2) that the PRA’s one-year statute of limitations to seek judicial review has started to run because the agency does not intend to further address the request, and (3) that the requester may ask follow-up questions within a reasonable time frame, which may be specified by the agency. If the requester asks timely follow-up questions, the agency is not required to search for additional records, although it may choose to do so. However, if the agency does not intend to further address the request, it must explicitly say so and reiterate that the statute of limitations has started to run. The final, definitive response test is an objective inquiry, so the agency’s subjective intent and the requester’s subjective understanding are not relevant.

			○ The subsequent production of records may be relevant to liability or penalties but ordinarily will not restart the limitations period. Affirms Belenski. Clarifies Dotson did not adopt a bright-line rule that a closing letter will always trigger the statute of limitations. Providing later-discovered records does not restart the PRA's statute of limitations, unless equitable tolling applies. ○ June 2021 letter was final, definitive response to Cousins' request – lawsuit not barred by SOL. Court does “not claim to impose a retroactive standard of strict compliance.” ○ Hobbs does not apply here—lawsuit is not premature.
EXEMPTIONS Constitutional	Poe 5 v. University of Washington Sullivan v. University of Washington	US Dist. Court, W.D. Wash. March 29, 2024	• Animal rights groups sought the names of the members of UW's Institutional Animal Care and Use Committee; a federally mandated committee that ensures experiments that involve animals are carried out in an ethical manner. Prior case held that members did not have a right to associational privacy based on the 1st Amendment. In these two cases, members of the committee assert a right to “informational privacy,” which is a right rooted in the 14th Amendment Due process cause. Under this right, under certain circumstances, when government obtains private information about an individual, the government is required to keep that information confidential. It is very fact specific. It first requires a showing from the person seeking to keep the information confidential that sufficient negative consequences would result if the information was disclosed. In the lead case from the 9th Circuit, the court held that Social Security numbers could qualify as confidential based on the risk identity theft. • Here, the members of the Committee demonstrated a long history of animal rights groups targeting the members of similar committees and their families with harassment. And while a name is not normally considered “private,” under these circumstances the court held it qualified. Next the court balances the potential harm with the public need for the information. Generally, the PRA serves to foster government accountability. But here, because the Committee meetings were open to the public, the added public benefits from disclosing the names of the Committee members was marginal and did not outweigh the risk of harm. Sullivan: the 9th Circuit vacated an injunction based on information privacy because the names of the two lead plaintiffs had already been disclosed. Poe: After the Sullivan decision, other members of the Committee whose names had not been disclosed filed for a new injunction and in Poe the trial court re-issued the injunction for the remaining members. This will go back up to the 9th Circuit.
PROCEDURE Fees Legal Process	Cutler-Flinn v. Wash. State Dept. of Corrections	Unpublished 3/19/2024	• Inmate Requestor (IR) made three requests, including one request for two policies available on DOC's website. First Request: IR did not have access to the internet and requested copies. DOC said it would only produce the record after IR paid copy costs. IR sued, claiming DOC violated RCW 42.56.120(2)(e) by charging copy costs for documents available for free on its website. Second and Third Request. After an attorney made an appearance for IR, DOC sent motion to show cause on second and third request to the attorney, but not the IR. Both failed to respond to motion; court dismissed the two claims. IR's motion to vacate or reconsider was denied. • COA affirms on appeal. First Request: RCW 42.56.120(2)(e) prohibition on copying charges for access to or downloading of records that the agency routinely posts on its public internet website prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means.” Here, the inmate did not have access to a computer or

			the internet so was asking for copies “through other means.” Therefore, DOC did not violate the PRA by requiring IR to pay for copies before DOC provided the records. Second and Third Request: Based on the actions of the attorney who purported to represent the IR, DOC reasonably concluded that the attorney did in fact represent the IR. DOC was only required to serve the attorney, and by failing to respond to the show cause motion, the IR waived his right to challenge the dismissal of the claims.
RECORDS Search PENALTIES Yousoufian Factors	Contreras v. City of Tacoma	US Dist. Court, W.D. Wash. March 15, 2024	• Contreras was detained by Tacoma PD Officers in July 2020. He was released at the scene after which he expressed concern to supervisors about his treatment. On April 24, 2021, he requested records regarding the incident. May 10, 2021, TPD responded it had no records. A request to South Sound 911 produced a CAD log. Later TPD produced three installments; 1) Internal Affairs records on March 16, 2022, provided “as a courtesy,” 2) CAD printouts on May 17, 2022 as part of its Rule 26 disclosures, and 3) Field Information Reports (FIR) discovered on February 21, 2023 but not produced until November 14, 2023. Contreras filed suit alleging various claims including PRA violations of an inadequate search. • On motion for summary judgment in a PRA case, the agency “bears the burden, beyond material doubt, of showing its search was adequate. While South Sound 911 holds the CAD log, TPD can search the CAD log and in this case input information into the log. TPD violated the PRA when it failed to provide the CAD log. FIR’s are the officer’s descriptions of the events from July 2020. While they may have been stored in South Sound 911 systems, TPD officers prepared them; they are public records wherever they may be stored citing Nissen. The searches were inadequate by failing to search South Sound 911 given that TPD uses and prepares records stored there. TPD did not follow obvious leads for responsive records. TPD did not violate the PRA in not producing the IA records. These records were prepared outside of the date range specified in the request. The overall conduct triggered many Yousoufian aggravating factors, total penalty of \$45,780 plus reasonable attorneys’ fees and costs.
RECORDS Search	Neal v. City of Bainbridge Island	US Dist. Court, W.D. Wash. January 26, 2024	• On December 16, 2020, requester filed a public records request seeking “the video and audio zoom recordings for all Island Center Subarea Planning Process meetings. Prior to making the request, the City had informed the requester that it only maintained audio which it posted on its website; while the meetings occurred via Zoom, only audio was downloaded, video was deleted. The trash file in Zoom was reviewed for records. The city produced one video from the day of the request and a later open house recording. • The PRA does not require that an agency produce a record that does not exist at the time of the request. Declarations establish that the Recordings and Trash folders of the City’s Zoom account were the only locations the videos could reasonably be found. Recordings were not in either location on the day of Plaintiff’s request. As such, Defendant satisfied its burden of showing the videos did not exist. Defendant satisfied its burden of showing it searched all places the videos were reasonably likely to be found. Plaintiff questions why the City did not search other locations, seemingly relying on an email from a councilmember to Plaintiff expressing a “hope[] that if there is a backup of the recording,” it could be retrieved does nothing to help establish that the files were reasonably likely to be found in a backup, or even that “backup” locations actually existed.

RECORDS Undue Delay	Spokoiny v. Univ. of Washington Medical Center	US Dist. Court, W.D. Wash. January 5, 2024	- Requester worked at the UWMC as an RN. After resigning from employment, she filed suit alleging numerous claims including a PRA violation related to two requests. Requester asserts UWMC intentionally delayed records production for two years. The requester claimed that for a June 17, 2020, request records were available by October 30, 2020, and for an April 1, 2021, request, requester asserts records were available on April 7, 2021. UWMC produced records in batches starting March 5, 2021, through August 17, 2023. - The requester erroneously equates “available records” with those “ready for production.” Looking to Conklin v. UWMC the court concluded that based on global circumstances (COVID 19), the UWMC backlog of other requests ahead of hers, and the 1.5 million pages of records requiring review as relevant factors in the determination the UWMC was diligently working on the request. UWMC acted reasonably with respect these particular requests and the requester presented no evidence from which a reasonable factfinder could conclude that it did not.
2023			
EXEMPTIONS Constitutional	Sullivan v. University of Washington	Unreported 9 th Cir. Court of Appeals December 13, 2023	See Poe v. University of Washington (above)
EXEMPTIONS Attorney Billing Records Attorney Privileged Communications	San Juan County v. Wash. Coalition for Open Government	Unpublished 11/13/2023	- Requester sought all invoices, contracts, correspondence, notes, bids, proposals, records relating to conflicts of interest, meeting minutes, and any other records relating to [San Juan] County’s use of outside counsel in the ongoing litigation of Kilduff v. San Juan County. A month later the county provided heavily redacted invoices; hours and dollar amount billed was not redacted. Requester challenged redactions claiming over-redaction. The County filed a cross motion for Summary Judgement asserting the documents were relevant to an ongoing controversy and therefore exempt. Following in camera review the court found the descriptions of the work performed could be redacted in its entirety; line by line redaction was not necessary. - COA affirms the lower court. RCW 42.56.290 is a categorical exemption applicable to material that would not be discoverable under the civil rules. This includes work product and attorney-client privileged material in ongoing litigation. The invoices documented the actions the attorneys took, the hours spent, and the amount charged for the ongoing Kilduff case. As a result, they constitute work product. The unredacted records detail exactly the activities counsel took in the litigation and are privileged materials. RCW 42.56.904 includes “other laws.” This brings RCW 42.56.290’s protection of WP and ACP within the scope of RCW 42.56.904. The County did not treat WCOG differently from other Requesters. The “redaction codes” applied to the records, provided with code sheet, was a sufficiently detailed brief explanation.
PROCEDURE Application EXEMPTIONS Medical Records	Wallin v. Wash. State Dept. of Corrections	Unpublished 9/12/2023	Requester sought all sexual offender treatment and assessment program SOTAP records for women inmates with redactions to protect their identities. The request implicates 96 women and potentially thousands of records. DOC withheld all the records after determining they contained health care information and were otherwise records related to mental health 70.02 RCW. DOC argued UHCIA was the exclusive means of obtaining patient files and if PRA applied, the records were mental

Mental Health Records PENALTY Abuse of Discretion			health records which were exempt from disclosure. The trial court ruled that DOC violated the PRA and ordered disclosure with appropriate redactions. The trial court awarded half of Requester's costs but denied penalties. Court of Appeals affirms in part; reverses in part. Both UHCIA, ch. 70.02 RCW, and PRA apply to public inspection of patient records. The requested records are mental health records that are exempt pursuant to RCW 70.02.230(1). But, DOC did not sufficiently identify the records that were being withheld. DOC did not identify the number or specific types of records that were being withheld in a denial letter or in a separate log. However, DOC has no PRA obligation to log every single document that DOC compiled, obtained, or maintained in the course of providing mental health services due to the broad protection for mental health service records under RCW 70.02.230(1).
EXEMPTIONS Voting Records Amendments	Washington Election Integrity Coalition United v. Schumacher, et al	28 Wn. App.2d 176, 537 P.3d 1058 (2023) 9/12/2023 <i>See also:</i> W.E.I.C.U. v. Hall, 634 F.Supp.3d 977 (2022) (Thurston Cnty.), W.E.I.C.U. v. Bradick (Cnty), W.E.I.C.U. v. Anderson, (Pierce Cnty.), W.E.I.C.U. v. Kimsey (Clark Cnty.), W.E.I.C.U. v. Fell (Snohomish Cnty.), W.E.I.C.U. V. Wise (King Cnty.).	- Requester made requests for original ballots, ballot images, spoiled ballots, adjudication records, ballot envelopes, and returned ballots, for the purpose of performing a "full forensic audit" of the counties' elections in Franklin and Lincoln Counties. Both Counties responded that many of the requested records were exempt. Requester challenges the Counties conduct during election as well as PRA claims. Both superior courts dismissed the claims. - Three published opinions all involving the Requester recognized that ballots and other ballot-related records are exempt from PRA disclosure due to an "other statute." The COA followed White I and White II: Article VI, section 6 of the Washington Constitution, provisions of Title 29A RCW, and administrative regulations adopted by the secretary of state exempt the requested ballot records. They were properly withheld by Lincoln and Franklin Counties. - While this lawsuit was pending, the legislature enacted RCW 42.56.425. The COA does not address this exemption; it was not properly briefed.
PROCEDURE Injunction Standard Standing EXEMPTIONS Birthdate/Personal Info Amendments CONSTITUTIONAL Due process	Wash. Federation of State Employees v. State	2 Wn.3d 1, 534 P.3d 320 (2023) 8/24/2023 <i>Court of Appeals Decision: Washington Federation of</i>	- The WFSE, and other unions, 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 COA decided that the threat of harm to some public employees was more than hypothetical and a determination on the scope of an employees' right to a PRA exemption would be final and conclusive as required under the UDJA, but that the unions failed to present sufficient, admissible evidence of a "state created danger" to satisfy the PRA injunction standard; RCW 42.56.540. - The WA. Sup. Court affirms. The unions have associational standing to bring suit. The unions failed to present admissible evidence of an individualized harm to warrant permanent injunctive relief under RCW 42.56.540. Also, they properly brought a justiciable controversy under the UDJA on behalf of their members. However, on the merits, the Court reversed regarding the state created

		<i>State Employees, Council 28 v. State</i> , 22 Wn. App.2d 392, 511 P.3d 119 (2022)	danger doctrine. No party provided a Gunwall analysis; whether the state Constitution confers greater civil liberties than the US Constitution, or otherwise argued that Washington law requires the State to prevent third-party harm. While on appeal the legislature enacted RCW 42.56.250(1)(i). The case was remanded for the superior court to consider the new exemption.
PROCEDURE Statute of Limitations Request Receipt Fair Notice Standard of Review RECORDS Silent Withholding	Brittig v. Mason County Fire Dist. No. 6	Unpublished 8/8/2023	- Following a contentious public meeting and brief confrontation between the Requester and a FD Captain, Brittig made two records requests. Request One: submitted 4-5-2019, closed 10-3-2019. Request Two: submitted 4-17-2020 closed 5-6-2020. On 4-23-2020 Brittig files suit over Request One. On 8-27-2020, Brittig files an Amended Complaint to include Request Two. The Court allows a 2nd Amended Complaint on 12-21-2020 adding an additional claim on Request One. The case was resolved based on the party's motions and affidavits. Claims include that the FD changed the content of records provided; the trial court agrees. Brittig also asserts that a communication with the attorney as part of the lawsuit, was in fact a new request for records "silently withheld." After a motion for reconsideration, the trial court agrees." - In accepting Brittig's declarations, the trial court made a credibility determination. However, since the trial court did not hear live testimony, the COA need not defer to the trial court, instead it made independent factual determinations based on the affidavits. Based on the FD's consistency, which was supported by some of Brittig's declarations, and that Brittig's "supporting witness" provided information learned directly from Brittig, the COA rules in favor of the FD. It concluded the FD did not change the records. Brittig's email to the district's attorney, while in active litigation, was a request for stipulation to amend, not a new PRA request. The 2nd request to amend was more than a year after the FD's last records production and therefore, barred by the one year SOL.
EXEMPTIONS Other Statute	Kertchen v Washington State Patrol	27 Wn. App.2d 556, 532 P.3d 1055 (2023) 7/25/2023	- Requester, an attorney, sought records from the WSP from the WSP's Criminal History Document Archive and Retrieval database. The request was for disposition reports from the Lynnwood Municipal Court and Federal Way District Court for a client that had plead guilty. WSP withheld the records citing RCW 43.43.710 which prevents the WSP from releasing its internal files and records relating to the commission of any crime by any person to the public or for any personal purpose. Kertchen argued RCW 10.97.050 provides for release of conviction records allowing for release of the records. - The COA affirms the trial court. RCW 43.43.710 is an "other statute." Under the plain language of the statute the records are exempt from release. Conviction records are available through the WATCH system, but access to records through WATCH does not undermine the exemption in RCW 43.43.710.
EXEMPTIONS Other Statute	Miller v. Washington State Dept. of Revenue	27 Wn. App.2d 415, 532 P.3d 187 (2023) 7/5/2023	Miller sought records through four PRA requests to the DOR in an effort to clarify the applicable local tax rate for boats and planes purchased out of state under the "first use" rule. For one request, DOR identified two tax determinations as fully exempt from release. Tax determinations are written determinations issued to a taxpayer by the DOR following an informal hearing, if any, regarding the taxpayer's challenge to a tax assessment, tax collection, or refund denial. Miller filed suit alleging failure to perform adequate searches, improperly withholding documents, and failing to promptly produce records.

			COA affirms the trial court granting DOR’s motion for summary judgment. DOR’s withholding of two unpublished tax determinations as fully exempt from disclosure based on their status as confidential tax information under RCW 82.32.330(1)(c) was not a PRA violation. While the general PRA expectation is to redact, this is one of the identified “no-redaction” required provisions and are fully exempt. Tax information under RCW 82.32.330(1)(c) is defined to include not just information provided or that is unique to the tax payer, but also includes “a part of the written determination that is not designated as precedent.”
RECORDS Search	Cutler-Flinn v. Washington State Dept. of Corrections	Unpublished 7/5/2023	- C-F, an offender in DOC custody, waived his presence at a Custody Facility Plan. On February 18, 2020, approximately a month after the CFP, he requested all records used in that process. The public records coordinator requested records not in “OnBase,” and ECM system, from C-F’s classification counselor. DOC identified and produced five pages of records to Flinn on March 16, 2020. On June 1, C-F filed a complaint in Thurston County Superior Court, alleging that the DOC violated the PRA (1) by failing to conduct an adequate search for responsive records and (2) by failing to respond to his records request “within the terms and time frames of the PRA.” He also filed numerous discovery motions. - The COA affirmed the trial court’s finding that DOC’s search was reasonable, and therefore, adequate. Accordingly, the court concluded that the DOC did not violate the PRA in response to C-F’s request. DOC performed an adequate search reasonably calculated to uncover all relevant records. DOC checked appropriate electronic files and contacted appropriate individuals, including C-F’s classification counselor who in turn searched all places where responsive records may reasonably likely be found, such as e-mails, OnBase, and OMNI. It was not necessary to contact other review team members as they reviewed the same records as the classification counselor, which was limited, and auto generated from databases searched for records.
CONSTITUTIONAL Association PROCEDURE Injunction Standard	Doe 1 v. Seattle Police Department	27 Wn. App.2d 295, 531 P.3d 821 (2023) 6/26/2023	- Requesters sought the investigation of current and former City police officers who attended former President Donald Trump’s “Stop the Steal” political rally on January 6, 2021, in Washington, D.C. The investigation into their conduct found the officers did not engage in unlawful or unprofessional conduct. As part of the investigation the officers were ordered to participate and respond to questions. Failure to do so could result in further disciplinary proceedings. The officers brought suit to enjoin the SPD from releasing unredacted investigation records. The trial court found no applicable exemption to the release. The officers appealed. Requesters cross appealed challenging the Does proceeding with pseudonyms. - COA reverses the trial court. The party seeking an injunction has the burden of proof to demonstrate likelihood they will prevail. The “other statute” provision incorporates exemptions in other legislative enactments, but also those derived from the state or federal constitutions. The PRA must give way to constitutional mandates. The moving party must identify an exemption and that release 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. The First Amendment to the United States Constitution protects the right of individuals to engage in political expression and association. The State has no compelling interest in disclosure of the Does’ identities in the requested records. The Does established a constitutional privacy right that would be impinged by disclosure.

RECORDS Undue Delay	Beidler v. Snohomish County	Unpublished 5/8/2023	- On March 12, 2021, Beidler requested primarily records relating to the County's Driving Review Board but also litigation and maintenance records from other departments, and records related to collisions and injuries. The county compiled over 6300 pages of records and other media files potentially responsive to the request. It produced records in 7 installments between May 4 and December 8, 2021, producing 824 pages and other media files actually responsive. Beidler sent a demand letter to the county on December 21, 2021 seeking remaining records and attorney fees. Between January 13 and June 10, 2022 the County provided 7 more installments of 3,564 pages along with other media files. March 9, 2022, Beidler files suit. - COA affirms Trial court's grant of summary judgment to the County. Agencies must disclose records in a timely fashion based on whether the agency's response was thorough and diligent. The County provided its initial response within 5 business days as required. Considering the size of the request and the complexity of the review process, providing records in installments was not unreasonable. Unlike Cantu, here the county responded within 5 business days, provided the first installment as indicated, provided installments every four to six weeks, provided accurate information on its ongoing installment estimates, and provided unrebutted evidence of its efforts to satisfy the request. Beidler's claim that the County failed to allocate sufficient resources failed, no unreasonable delay.
EXEMPTIONS Necessary for effective law enforcement RECORDS Scope of Request	West v. Thurston County	Unpublished 4/13/2023	- On October 20, 2020, West requested records and communications concerning the investigation, apprehension and killing of Michael Reinoehl. The police action involved a consortium of agency officers, none of which were Thurston County Sheriff's Office (TCSO) deputies. TCSO became the lead agency for the required Independent Investigation Team (IIT). The County explained the invitation was active and ongoing asserting all records were exempt under RCW 42.56.240(1). From discussions at a hearing on the matter, the County understood West clarified his request, producing approx. 80 pages of non-investigative records on Nov. 30, 2020. West asserted the records were always within the scope of his request. - The IIT investigation into the use of deadly force under RCW 10.114.011 determines the officer's criminal liability. Active criminal investigations are categorically exempt under RCW 42.56.240(1), (Newman v. King County, Sargent v. City of Seattle.) West encouraged the COA to override the categorical exemption based on public policy reasons, it declined to do so. Other agencies released records involving this incident, but that does not alter the County's ability to rely on the categorical exemption; the County's investigation was unique. The majority of the records from the Nov. 30 production were not requested with sufficient clarity, however, public updates about the investigation, were wrongfully withheld.
RECORDS Creation of Records PROCEDURE Show Cause PENALTY Abuse of Discretion	Herrick v. DSHS	Unpublished 2/22/2023	- On remand from Herrick v. Dep't Soc. And Health Services, No. 37362-2 (unpublished) (2020), through a motion to show cause, DSHS established it does not maintain individual mail logs and the production of general mail log contained information requester sought. Trial court ordered \$1 a day penalty for improperly redacted photograph. - Agencies may make motions to show cause in PRA actions. DSHS is not obligated to create an individual mail log. Production of general mail log contained information that requester sought. No abuse of discretion in ordering total penalty of \$636. Prevailing requesters are entitled to award of costs and trial court did not award costs. This was an error.

CONSTITUTIONAL Association PROCEDURE Federal Injunction Standard	Sullivan v. University of Washington	2/17/2023 60 F.4 th 574 (2023)	- The UW, as required by the Animal Welfare Act, appoints a committee to assess animal care and treatment practices as required in experimental research facilities. Some committee members participate anonymously because of personal, family and pet safety concerns. PETA requested committee appointment letters under the PRA. UW provided 3rd party notice of intended records release to the committee members. They sought to enjoin release as a violation of US and State Constitutional rights affiliation, association and expression. The District Court granted a preliminary injunction. PETA appealed. - The US Constitution's First Amendment protects the right of those who join together to advance shared beliefs, goals, and ideas, which, if pursued individually, would be protected by the First Amendment. This may be infringed by compelled "disclosure of the fact of membership in a group seeking anonymity. The letters of appointment exist only because the Committee members appointment, not to enhance effective advocacy of their views or lawful private interests, but rather to fulfill federal requirements.
PROCEDURE Premature lawsuit	Blackburn v. State, Dept. of Social and Health Services	Unpublished 2/9/2023	- DSHS's pursued administrative child support against Blackburn (BB) who responded with legal action against DSHS. On June 8, 2018, BB requested records "that concerned her" from DSHS. 60 days later DSHS produced 437 pages, some with redactions, and closed the request. On January 11, 2019, BB again requests records. DSHS provided records 12 days later, with clarification of the request, and closed the request. July 2, 2019, BB made a third request directly to Western State Hospital. Through a conversation with BB on August 30, 2019, DSHS learned BB intended to request a broader scope of records for the 2nd request than in DSHS's clarification. DSHS reopened the second request with a final installment produced August 26, 2020. BB filed suit over the second request on September 5, 2019. - Denial of a requested record is a prerequisite for filing an action for judicial review of an agency decision under the PRA. Only after an agency has taken final action, or inaction, indicating the nonproduction of responsive records is a PRA suit "ripe." DSHS took no final action while it continued to provide responsive records in installments.
PROCEDURE Statute of Limitations Equitable Tolling	O'Dea v. City of Tacoma	Unpublished January 17, 2023	- Requester made a records request to the City for records related to a shooting investigation. Requester files a lawsuit. The final installment of records produced occurred on October 2, 2018. In response to the trial court order finding PRA violation and ordering any additional records to be produced within 30 days, the City declares that to best of its knowledge the City has produced all records. Tacoma appealed the final judgment and Court issues O'Dea v. City of Tacoma, 19 Wn. App. 2d 67, 493 P.3d 1245 (2021). On September 30, 2019, during discovery in wrongful termination case City produces records that requester believes is responsive to the request. September 29, 2020, requester files lawsuit alleging failure to produce records pursuant to trial court order in O'Dea I and alleges "fraud on the court" regarding declaration. - The PRA statute of limitations is 1 year. Subsequent productions of records does not modify the date of the final definitive agency response. Requester argues equitable tolling. Because the court does not know whether the subsequent record produced in discovery is actually responsive, Court cannot conduct equitable tolling analysis or "fraudulent assurances" analysis. Equitable tolling analysis is fact specific (though court notes equitable tolling is sparingly applied).

EXEMPTIONS Employee Scope of Exemption RECORDS Estimate of Time Search PROCEDURE Abuse of Discretion	Conklin v. University of Washington	Unpublished January 3, 2023	- Conklin was an osteopathic surgeon who applied for, but was not accepted to, the UW's congenital cardiac surgery fellowship program. Over a period of about two years, he and his attorneys submitted four separate records requests. The first request was a very broad request; one of the broadest the assigned PRO had every managed. The others were also substantial. In addition the PRA office was also responding to hundreds of other requests. - The estimates of time, assessed by a forward looking evaluation at the time of the request, was reasonable. An agency must respond promptly to a public records request judged by (a) UW's thoroughness in responding to the request, (b) UW's demonstration it was diligently working on the requests, (E.g. while 307 and 282 days between installments for one of the requests is a long wait, it was a very broad and complex request, with tens of thousands of documents to review, requiring large exemption logs), and (c) the PRO's other requests. UW's records search for the second request was not reasonable, it failed to search the director's email for contracts. Whether requested in-camera review is needed to evaluate applicability of an exemption is determined by: "(1) judicial economy, (2) the conclusory nature of the agency affidavits, (3) bad faith on the part of the agency, (4) disputes concerning the contents of the documents, (5) whether the agency requests an in camera inspection, and (6) the strong public interest in disclosure. Remanded on this issue and for penalty determination.
2022			
EXEMPTIONS Deliberative Process	Washington State Council of County and City Employees v. City of Spokane	12/8/2022 200 Wn.2d 678, 520 P.3d 991(2022)	The City enacted an ordinance requiring collective bargaining between the city and union representatives be conducted in a manner that was open to the public. The Union challenged alleging the matter was preempted by state law and therefore unconstitutional. The trial court ruled in favor of the union. Trial court affirmed on direct review to the Supreme Court. The Public Employees' Collective Bargaining Act (PECBA), chapter 41.56 RCW, preempts the field of collective bargaining through the PECBA and the Public Employment Relations Commission regulations. The Court found support for legislative preemption in the PRA's deliberative process exemption as held in Am. Civ. Liberties Union of Wash. V. City of Seattle, 121 Wn. App 544, 89 P.3d 295 (2004), commenting that the PRA excludes labor negotiations from the public disclosure requirements.
PROCEDURE Cause of action RECORDS Search	Worthington v. Washington State Legislature	Unpublished October 25, 2022	- Requester sought records from Senator Hasegawa, the 2016 House Rules committee and aides regarding a communication from Joy Beckerman on a specified date and time. Each chamber produced some records, but none from the specified date/time were located. The Senate informed requester that Senator Hasegawa did not have the same cell phone that he did in 2016 and therefore records from that phone no longer existed and could not be searched. Requester filed a lawsuit alleging improper destruction of records and inadequate search. - Trial court properly granted a motion to dismiss regarding Senator Hasegawa's phone records as Senate established and Worthington failed to refute that cell phone records did not exist at the time of the request and therefore were not destroyed. Senate was not obligated to obtain phone records from service provider. Centralized email/calendar/voicemail/text message searches were conducted of named legislators and of aides' email/calendar (as aides did not receive cell phones). Former employees did not need to be contacted. The search was adequate.

PROCEDURE Adequate Remedy	Matter of Tax Foreclosure Sale Surplus of 58 Rosehaven Circle	Unpublished October 20, 2022	- In 2016, through a civil lawsuit an attorney, obtained a judgement against the property owner. In 2018 the property was later foreclosed resulting in surplus funds held by the county. During the foreclosure and a year later the attorney discussed the judgment and surplus funds with the prosecutor and treasurer. In 2020 the attorney filed a Writ of Mandamus. The county filed a motion to dismiss which was converted by the trial court into a summary judgment. Before that was heard, the attorney filed a motion to amend adding a “vague claim the prosecutor had failed to respond to a public records request within five business days.” Trial court denied the motion to amend. - COA affirmed the trial court. A PRA claim may not be pursued in a mandamus action because there are other plain and adequate legal remedies for this claim through a separate action. A remedy is not inadequate merely because it is attended with delay, expenses, annoyance, or even some hardship.
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 U.S.C. 1306 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 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 in the C.F.R. Elsewhere the regulations provide for the release of records under applicable state law.
APPLICATION Judicial Records GR 31	King County v. Sorenson	200 Wn.2d 252, 516 P.3d 388 (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.
RECORDS Estimate of Time PENALTIES Technical Errors	Williams v. Department of Corrections	Unpublished August 30, 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 “within business days, on or before, 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 response date. 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 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.
RECORDS Scope of Request Search PENALTIES Yousoufian Factors PROCEDURE Declaratory Judgment Show Cause	Cantu v. Yakima School District No. 7	8/2/22 23 Wn. App.2d 57, 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 by 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 22 Wn. App.2d 798, 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.
PROCEDURE 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 Dotson, 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.
PROCEDURE Judicial Notice	Estate of Daniel Alexander McCartney v. Pierce County	6/28/2022 22 Wn. App.2d 665, 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.
PROCEDURE Injunction EXEMPTIONS Personal Information	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 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.
PROCEDURE Injunction-Standard EXEMPTIONS Birthdate/Personal Info	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.

CONSTITUTIONAL Due process			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.
PROCEDURE Standard of Review	Kilduff v. San Juan County	5/31/22 Unpublished	- 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. 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 Zink, Lyft, 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.
PROCEDURE 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.

PROCEDURE 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 PROCEDURE 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 PROCEDURE 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.
PROCEDURE	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 Shavlik v. Dawson's Place. 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. PROCEDURE 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). WPEA holding controls here and RCW 42.56.230(3) does not exempt public employee birthdates from disclosure. Court remands.
PROCEDURE Discovery PENALTIES Penalty factors	Hood v. Columbia County	3/8/22 21 Wn. App.2d 245, 505 P.3d 554 (2022) 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. City of Lakewood v. Koenig, 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.
PROCEDURE 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
PROCEDURE 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.
PROCEDURE 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 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 PROCEDURE 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.
PROCEDURE 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 Hobbs 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 Hobbs and subsequent cases. County was still responding to request so no denial.
PROCEDURE 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.
PROCEDURE 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 PROCEDURE 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.
PROCEDURE Appellate Process Trial Procedure	Diemond v. King County	8/30/2021 Unpublished	- Between 2012 and 2015 Diemond made more than 25 PRA requests. In 2015 while the county was producing records in installment, Diemond 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. Diemond failed to schedule a hearing on her motion. On October 19, Diemond 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 Diemond 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 Diemond failed to meet. Rulings themselves almost never constitute a valid showing of bias and the record supports the court’s decisions throughout the proceedings.
PROCEDURE 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 (2021) 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 records 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.
PROCEDURE 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.
PROCEDURE 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 PROCEDURE 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.
PROCEDURE 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.
PROCEDURE Federal Action Federal Injunction Standard	Does 1-10 v. University of Washington	6/11/2021, Unpublished 9th 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 West v. City of Tacoma 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 News Media Exception PROCEDURE Burden of Proof	Green v. Pierce County	5/27/2021 197 Wn.2d 841, 487 P.3d 499 (2021)	- Requester sought photo, birth date, rank, position, badge number, badge for all detention/jail staff and deputies hired on specific dates. RCW 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 Not reported in F. Supp. 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 (Caution!); 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)) (Caution!); the records are exempt because they can be used to help ferret out criminal activity. 5) Health care information (RCW 42.56.360) (Caution!); some of these records were created to facilitate healthcare.
EXEMPTIONS Intelligence Information, Privacy Public Interest PROCEDURE Use of Records Injunction Standard	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 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 PROCEDURE 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 Other agencies records Later identified records PENALTIES Yousoufian Factors Abuse of Discretion	West v. Office of the Governor	3/15/2021 Unpublished	• 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 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. - Concurring opinion - 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. Yousoufian 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	Berg v. City of Kent	January 19, 2021	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

PROCEDURE Format of Production		Unpublished	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) Motion to publish granted 3/22/2021	- 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 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 Telford test is to prevent the government from operating in secrecy via a private surrogate. Balancing the Telford 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.
PROCEDURE Trial Process RECORDS Search	Thurura v. Department of Corrections	December 8, 2020 Unpublished	- In an effort to prove a due process violation after being found to have committed an infraction the inmate requested records about the evidence. 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 records but in this instance there were no responsive records. Requester entitled to costs and fees but not PRA penalties.
PROCEDURE 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.
PROCEDURE 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.
PROCEDURE 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 PROCEDURE 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 Hobbs v State Auditor's Office. 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.
PROCEDURE Federal Action EXEMPTIONS	Boardman v. Inslee	October 21, 2020	Requesters' jobs are covered by collective bargaining agreements but have elected to not pay dues and therefor 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

Properly Asserted CONSTITUTIONALITY 1st & 14th Amendment		978 F.3d 1092 (2020)	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 of 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) PROCEDURE Exemption Log	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) 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 Block v. City of Gold Bar, 189 Wn. App. 262 (2015).
PROCEDURE 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. Constitutional arguments: 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 Boardman v. Inslee and Houchins v. KQED, 438 U.S. 1 (1978).

			Exemption and Waiver arguments: 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.
PROCEDURE Statue of Limitations RECORDS Search	Zellmer v. Department of Labor & Industries	September 15, 2020 Unpublished	- Requester made four pubic 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.
PROCEDURE 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.
PROCEDURE 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.
PROCEDURE 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.
PROCEDURE 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 RECORDS Creation	Herrick v. Department of Social and Health Services, Special Commitment Center	May 19, 2020 Unpublished	- Requester was a former detainee at the Special Commitment Center. He requested records concerning a female employee (her photograph) and mail 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.
PROCEDURE 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	Diamond 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 Dawson v. Daly, 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 Telford v. Thurston County Bd of Commissioners 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, denied.)</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.

PROCEDURE 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.
PROCEDURE 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	Cortland v. Lewis County, Lewis County Law	February 4, 2020	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

Other Agency Records PROCEDURE PRA Not Other Law Enf. Tool	Library Board	Unpublished	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.
PROCEDURE Policy overly restrictive	Kilduff v. San Juan County	Dec. 12, 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

No Exhaustion Requirement		194 Wn.2d 859, 453 P.3d 719 (2019)	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 quo warranto 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 Fisher Broadcasting v. City of Seattle.
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 Telford v. Thurston County Bd of Commissioners 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 Telford v. Thurston County Bd of Commissioners factors.
EXEMPTIONS 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, Dragonslayer) – “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 PROCEDURE 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.
PROCEDURE 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 Sargent 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 at the time 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 Abuse of Discretion No separate Bad Faith analysis on review Yousoufian factors are guidance not exclusive	Hoffman v. Kittitas County	September 26, 2019 194 Wn.2d 217, 449 P.3d 277 (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 the non-exclusive Yousoufian 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 Yousoufian are reviewed under an abuse of discretion standard and trial court did not abuse its discretion. The Yousoufian 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."
PROCEDURE 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 Block v. City of Gold Bar.
PROCEDURE Insufficient Pleadings	In the Matter of the Recall Petition	September 12, 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

	of Christa “Teagan” Levine	194 Wn.2d 99, 448 P.3d 764 (2019)	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
PROCEDURE 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 Nissen v. Pierce County (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 personal 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.
PROCEDURE 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)	Requester requested times/locations of all contracting appointments for individual providers during certain dates. Affected party sought injunction. SEIU 775 v. DSHS, 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

Distinction between Requesters		<i>(Petition for review denied)</i>	treated 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.
PROCEDURE 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.
PROCEDURE 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 Amendments	Doe v. Washington State Comm. College Dist. # 17 et al.	June 17, 2019 Unpublished <i><u>(Opinion withdrawn. See new March 10, 2020 decision)</u></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 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."

PROCEDURE 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.
PROCEDURE 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.
PROCEDURE 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 PROCEDURE 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 Hobbs v. State, 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 <i>(Petition for review denied)</i>	- Requester sought records on property valuation work relevant to her residence. PRA Complaint alleged County delayed disclosure and withheld responsive documents. Records had been provided but some had been overlooked and were later discovered. Requester appeared pro se in the litigation, but had consulted with an attorney. - 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.
PROCEDURE 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.
PROCEDURE Timeliness of appeal	Palmer v. King County et al.	March 4, 2019 Unpublished <i>(Petition for review denied)</i>	- 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 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.”

PROCEDURE 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, Nissen v. Pierce County. 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.
PROCEDURE 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 Yacobellis v. Bellingham). (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.
PROCEDURE 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>	• (Publishing and amending August 21, 2018 decision). 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.

PROCEDURE 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.
PROCEDURE 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: Puget Sound Advocates for Retirement Action et al. v. State et al; and SEIU Local 925 v. State et al.)