

JAN 07 2016

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

NEIL ANDERSON,)	
)	NO. 13-2-00235-7
Petitioner,)	
)	ORDER AWARDING
vs.)	STATUTORY PENALTIES
)	
CLARK COUNTY, WASHINGTON,)	[Clerk's Action Required]
)	
Respondent.)	

THIS MATTER came on regularly before the undersigned judge of the above entitled court on November 13, 2015, on the motion of petitioner Neil Anderson for statutory penalties under the Public Records Act. Petitioner was represented by and through his attorney, Gregory Ferguson. Respondent Clark County, Washington, was represented by and through its attorney, William Richardson. The court considered the records and files herein, the materials submitted concerning the motion, and the arguments of the parties.

Based on the foregoing review, and the court being fully advised, now, therefore, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The respondent improperly withheld requested public records from the petitioner from February 9, 2013, to September 23, 2014.
 - a. On January 22, 2013, Clark County provided redacted public documents in response to Neil Anderson's written request for public records. The sole basis for not

providing the redacted portion of these records was the respondent's assertion of a temporary exemption for "invasion of privacy" The redaction log which accompanied the disclosed records asserted that the redacted materials were exempt as follows:

"Disclosure of information about the person: (1) would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public."

b. The respondent indicated that a portion of the records had been redacted based "upon a third party's request for a protective order" and that the deadline for obtaining the protective order was February 8, 2013. The basis for potential permanent redaction was described as the right of privacy of a public employee, RCW 42.56.240(3). The redaction log described the procedures outlined in RCW 42.56.540, which allows the employee, the employing agency or the agency's representative to file a motion for injunction based upon this statutory exemption.

c. In the explanation provided in the log, the respondent indicated the unreleased portions of the records would be withheld until February 8, 2013, and "shall be released at that time if not otherwise protected." The employee, the employing agency and the agency's representative did not seek a protective order. The respondent did not offer any further legal basis for withholding the redacted portions of the records after February 8, 2013. The redacted portions of the records were not released until September 23, 2014.

2. The petitioner properly requested the records and objected to improper withholding of the records in his initial and amended complaints. The request for statutory penalties is not barred by the statute of limitations.

3. In determining the appropriate statutory penalties in this case, the court has considered the following relevant factors, as outlined in *Yousoufian v Office of Ron Sims*, 168 Wn. 2d 444, 229 P. 3d 745 (2010):

a. The agency's initial response to the records request was timely, reasonable and in keeping with procedural requirements and exceptions. The public records request was served on August 29, 2012. Three installments of records were provided between October 16, 2012, and November 5, 2012. The responses were appropriate given the nature and format of the documents.

b. The delay before the fourth installment was provided was also reasonable, as questions had been raised by a public employee as to whether release of the records would violate his right to privacy. While general guidelines would provide for a shorter deadline for the employee to seek injunctive relief, the time allowed in this instance, given the circumstances of the employee and responding agency personnel, was not unreasonably lengthy.

c. The delay in releasing the redacted portion of the records provided in the fourth installment was untimely, unreasonable and not in keeping with PRA procedural requirements and exceptions. Given current case law, the redacted material was clearly not covered by the right of privacy exemption. The respondent offered no further explanation for the agency's failure to release the redacted materials after the employee decided not to seek injunctive relief.

d. The record establishes that agency employees received proper training and supervision concerning public records requests, and that they initially followed that

training. As to the redacted materials, agency employees disregarded their training and did not receive appropriate supervision to correct these deficiencies.

e. The noncompliance with regard to the redacted materials does not demonstrate bad faith. But the more personal nature of the relationship between the affected employee and responding employees, along with the embarrassing nature of the material, shows that noncompliance was caused by more than mere negligence. The agency's actions were grossly negligent, and reckless with regard to the rights of the public to access these materials.

f. Accusations of criminal misconduct against a public employee involved with the administration of justice, and the investigative response to such accusations, are of public importance. Such importance was foreseeable to the respondent.

4. Based on the foregoing factors, statutory penalties are warranted, for all of the County's failures to comply in this case, in the sum of sixty dollars (\$60.00) per day for a total of 591 days. The total award for penalties is \$35,460.00. This amount adequately addresses the respondent's actions and should deter future misconduct in similar cases.

5. This matter is scheduled for presentation of judgment on **Friday, January 15, 2016 at 9:00 am (Department 9 Civil Motion Docket)**. The clerk shall note the case for hearing at that time. The court shall provide a copy of this order, as notice of the hearing date and time, to the attorneys for the parties.

DATED this 6th day of January, 2016.

/s/ ROBERT A. LEWIS

JUDGE ROBERT A. LEWIS