



## CASE REPORT

**PUBLIC DISCLOSURE ACT - FAILURE TO RELEASE PUBLIC RECORDS - CALCULATION OF PENALTIES.** If an agency fails to release records in violation of the Public Disclosure Act, the trial court must assess a penalty of not less than \$5 or greater than \$100 per day the agency withholds the requested records. The court may, but is not required to assess the penalty on a per day, per record basis. **Yousoufian v. Office of Ron Sims**, \_\_\_ Wn.2d \_\_\_, 2004 WL 2187112 (Wash.).

**I. Facts.** In 1997 Mr. Yousoufian made two public disclosure requests to the Office of the King County Executive for records related to studies on sports stadiums. Over the course of several months, King County released many of the records requested. In March of 2000, Mr. Yousoufian filed suit against the County. During the discovery process, King County located additional responsive records and provided those records to Mr. Yousoufian. The trial court found that King County's delay in releasing the records violated the Public Disclosure Act ("PDA") and awarded penalties to Yousoufian. The court placed the records into 10 groups based on time of production and subject matter, reduced the penalty period 527 days (stating that 120 days was reasonable time to find an attorney), then applied a penalty rate of \$5 per day for the 10 groups of records. Mr. Yousoufian appealed, claiming the trial court awarded him an insufficient amount. King County did not appeal the court's grouping of records. The court of appeals affirmed the trial court's refusal to award penalties on a per record basis and its subtraction of 527 days from the penalty period. Mr. Yousoufian appealed to the supreme court.

**II. Applicable Law and Analysis.** The supreme court determined that the plain language of RCW 42.17.340(4) requires a trial court to award a penalty upon a finding of a PDA violation. It concluded that RCW 42.17.340(4) does not require the assessment of per day penalties for each requested record, stating that the purpose of the statute is better met when the penalty is increased based on an agency's culpability rather than the size of the plaintiff's request. The court found that the trial court abused its discretion when it subtracted 527 days from the penalty period, stating that the PDA does not contain a provision granting the trial court discretion to reduce the penalty period if it finds the plaintiff could have filed suit earlier than it did. Finally, the court found that a penalty of \$5 per day was unreasonable considering that the county acted with gross negligence and remanded to the trial court for imposition of penalties greater than the \$5 per day minimum.

**III. Conclusion.** In the event a trial court finds that an agency violated the PDA, the court must assess a penalty within the statutorily prescribed range of not less than \$5 but not greater than \$100 per day the records were improperly withheld. If multiple records are withheld, the court is not required to assess the penalties for each record withheld. While the court has the discretion to determine the penalty rate, the court may not reduce the penalty period. Thus, if a requester waits to file suit up to the 5-year statute of limitations set out in RCW 42.17.410, an agency will be responsible for paying the penalty on the entire 1,825-day period, whether or not it acted in good faith, upon a finding that it violated the PDA. Whether it acted in good faith would be considered by the trial court in determining the daily penalty rate.