



## **CASE REPORT**

**PUBLIC RECORDS ACT - STATUTE OF LIMITATIONS.** The one-year statute of limitations under the Public Records Act does not begin to run until an agency claims an exemption or last produces a record on a partial or installment basis. *Tobin v. Worden*, \_\_\_ Wn.App. \_\_\_\_ (Division I) (June 21, 2010).

**I. Facts.** On April 22, 2005, Susan Tobin made a public records request to the King County Department of Development and Environmental Services (DDES) for a copy of any complaints filed against her property. On May 3, 2005, DDES staff provided, without a cover letter, a copy of one complaint with redactions. Ms. Tobin later learned from a DDES staff e-mail that DDES received an anonymous letter complaint on property owned by another party. Ms. Tobin requested a copy of that letter. In response to her second request, DDES staff provided a copy of handwritten notes from a telephone conversation. Ms. Tobin again asked for the letter alleging the complaint on the other property. In response, DDES staff re-sent the redacted complaint on her own property. Later, the county filed a code enforcement action against the Tobins. During discovery associated with the code enforcement action, the Tobins requested the original complaint with no redactions and the letter complaint against the other property. The county was unable to produce the documents. The hearing examiner dismissed the code enforcement action, then the Tobins filed a complaint against DDES alleging violations of the Public Records Act. The trial court dismissed the complaint on the county's motion for summary judgment finding that the statute of limitations had run. The Tobins appealed.

**II. Applicable Law and Analysis.** The Court of Appeals reversed, holding that the one-year statute of limitations under the facts here did not begin to run. The Court of Appeals acknowledged the legislature amended RCW 42.56.550(6) to shorten the statute of limitations to one year for actions under the Public Records Act. That language provides the statute of limitations is triggered by one of two occurrences: (1) the agency's claim of an exemption or (2) the agency's last production of a record on a partial or installment basis. Under a plain reading of the statute, the court found that neither occurred, and as such the statute of limitations did not begin to run. The court remanded the case to the trial court for a hearing on the merits and awarded attorneys fees to the Tobins on appeal.

**III. Conclusion.** The result of this case leaves unanswered the question of what statute of limitation applies in the event records are not handled on an installment basis and no exemptions are involved. Whether King County will petition for review is yet to be determined; however, the Washington Department of Corrections has petitioned for review on a similar issue involving the same statute in the nonpublished case *Francis v. Dept. of Corrections*. Until the Supreme Court reverses or the Legislature amends the statute, the uncertainty will continue to exist. If you have any questions relating to the Public Records Act, please contact your city attorney.