

SUPREME COURT OF WASHINGTON

Spokane Research & Defense Fund v. City of Spokane

155 Wash. 2d 89 (2005) · Decided August 11, 2005

SUMMARY

The Washington Supreme Court holds that disclosure of public records after litigation does not moot claims for attorney fees, costs, and statutory penalties under Washington's Public Disclosure Act. The court further holds that a requester need not cause the disclosure to obtain prevailing-party status, and that show cause proceedings are discretionary, intervention is permissible, and summary judgment may be used in Public Disclosure Act cases. The court reverses the Court of Appeals and remands for proceedings on the merits.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Sanders, J.; Alexander, C.J.; C. Johnson, J.; Madsen, J.; Bridge, J.; Chambers, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.
JURISDICTION	Washington
DECIDED	August 11, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioners sought review of a published Court of Appeals decision affirming dismissal of their Public Disclosure Act claims and denial of attorney fees, costs, and sanctions. The Washington Supreme Court granted review, denied the city's motion to dismiss, reversed, and remanded.
STANDARD OF REVIEW	De novo judicial review of agency actions challenged under RCW 42.17.250 through RCW 42.17.320.
PRECEDENTIAL VALUE	precedential
PARTIES	Spokane Research & Defense Fund, Tim Connor, Rhubarb Sky, L.L.C. v. City of Spokane

TOPICS

- judicial review of agency action
- administrative law
- appellate procedure
- summary judgment
- statutory interpretation

PRACTICE AREAS

administrative law

public records

appellate procedure

civil procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Public Disclosure Act claims were moot after the city disclosed the requested records during related litigation.
2. Whether res judicata barred the action because Connor's earlier related action had proceeded to judgment.
3. Whether a requester must cause disclosure of records to qualify as a prevailing party entitled to fees, costs, and statutory penalties under the Public Disclosure Act.
4. Whether obtaining a statutory show cause order is mandatory to pursue a Public Disclosure Act claim or recover statutory remedies.
5. Whether intervention is permissible in a Public Disclosure Act action.
6. Whether summary judgment is an appropriate procedure for prosecuting Public Disclosure Act claims.

HOLDINGS

1. Disclosure of requested records before judgment does not moot a Public Disclosure Act claim when the requester still seeks a determination that the records were wrongfully withheld and statutory fees, costs, or penalties remain available.
2. Res judicata did not bar Connor's claims because the city waived any objection to litigating a subset of the earlier claims in the later action by failing to oppose intervention or raise the defense while both actions were pending.
3. A Public Disclosure Act requester need not prove that the lawsuit caused the agency to disclose the records in order to qualify as a prevailing party and seek fees, costs, and statutory penalties.
4. The PDA's show cause procedure is discretionary rather than mandatory; a requester may pursue a PDA claim through an ordinary civil action.
5. Intervention is permissible in a PDA action when the intervenor asserts claims concerning the same factual circumstances and seeks the same relief.
6. Summary judgment is an appropriate procedure for prosecuting Public Disclosure Act claims.

KEY QUOTATIONS

"A case is moot when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief." (155 Wash. 2d at 99)

"Subsequent events do not affect the wrongfulness of the agency's initial action to withhold the records if the records were wrongfully withheld at that time." (155 Wash. 2d at 103-104)

"A show cause procedure is discretionary, not mandatory, and intervention is appropriate in this situation, as is summary judgment." (155 Wash. 2d at 104)

FACTUAL BACKGROUND

Tim Connor requested extensive City of Spokane records concerning the River Park Square project. The city withheld many documents, initially marking them with filler pages and later asserting attorney-client privilege and work-product protection. After related litigation caused the city to disclose most of the records, Connor and Spokane Research & Defense Fund continued seeking review of whether the records had been improperly withheld from the outset and whether fees, costs, and statutory penalties were warranted.

PROCEDURAL HISTORY

Tim Connor requested Spokane public records concerning the River Park Square project and later sued after the city withheld documents based on attorney-client privilege and work-product claims. Spokane Research & Defense Fund filed a related action, and Connor intervened. The superior court dismissed the claims as moot, found that Connor had not caused disclosure, and concluded that the remaining documents were privileged. The Court of Appeals affirmed, reasoning that Connor had not obtained a show cause order and that summary judgment was incompatible with the Public Disclosure Act.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the trial court for further proceedings on the merits of Connor's Public Disclosure Act claims, including whether the records were improperly withheld and whether fees, costs, and statutory penalties should be awarded.

CASES CITED

- Spokane Research & Defense Fund v. City of Spokane, 121 Wn. App. 584, 586, 590-92, 89 P.3d 319 (2004)
- Progressive Animal Welfare Society v. University of Washington, 125 Wn.2d 243, 252, 884 P.2d 592 (1994)
- In re Adoption of B.T., 150 Wn.2d 409, 415, 78 P.3d 634 (2003)
- King County v. Central Puget Sound Growth Management Hearings Board, 142 Wn.2d 543, 549 n.6, 14 P.3d 133 (2000)
- Westerman v. Cary, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994)
- Landry v. Luscher, 95 Wn. App. 779, 783-86, 976 P.2d 1274 (1999)
- Hayes v. City of Seattle, 131 Wn.2d 706, 711-12, 934 P.2d 1179, 943 P.2d 265 (1997)
- Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 131, 580 P.2d 246 (1978)
- Progressive Animal Welfare Society v. University of Washington, 114 Wn.2d 677, 682, 684, 686-88, 790 P.2d 604 (1990)
- Amren v. City of Kalama, 131 Wn.2d 25, 29-30, 35-36, 929 P.2d 389 (1997)
- Oliver v. Harborview Medical Center, 94 Wn.2d 559, 564, 618 P.2d 76 (1980)

- Coalition on Government Spying v. King County Department of Public Safety, 59 Wn. App. 856, 862-63, 801 P.2d 1009 (1990)
- Tacoma Public Library v. Woessner, 90 Wn. App. 205, 951 P.2d 357 (1998)
- Yousoufian v. Office of King County Executive, 152 Wn.2d 421, 433, 98 P.3d 463 (2004)
- Zesbaugh, Inc. v. General Steel Fabricating, Inc., 95 Wn.2d 600, 603, 627 P.2d 1321 (1981)
- Canterwood Place L.P. v. Thande, 106 Wn. App. 844, 847, 25 P.3d 495 (2001)
- In re Detention of Aguilar, 77 Wn. App. 596, 600, 892 P.2d 1091 (1995)
- King County Water District No. 90 v. City of Renton, 88 Wn. App. 214, 227, 944 P.2d 1067 (1997)
- CLEAN v. City of Spokane, 133 Wn.2d 455, 947 P.2d 1169 (1997)
- Hangartner v. City of Seattle, 151 Wn.2d 439, 90 P.3d 26 (2004)
- Newman v. King County, 133 Wn.2d 565, 947 P.2d 712 (1997)
- King County v. Sheehan, 114 Wn. App. 325, 333, 349-50, 57 P.3d 307 (2002)
- Miller v. Department of State, 779 F.2d 1378, 1389 (8th Cir. 1985)
- Tacoma News, Inc. v. Tacoma-Pierce County Health Department, 55 Wn. App. 515, 525, 778 P.2d 1066 (1989)

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