SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

THE ASSOCIATED PRESS, NORTHWEST NEWS NETWORK, KING-TV ("KING 5"), KIRO 7, ALLIED DAILY NEWSPAPERS OF WASHINGTON, THE SPOKESMAN-REVIEW, WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, SOUND PUBLISHING, INC., TACOMA NEWS, INC. ("THE NEWS TRIBUNE,") and THE SEATTLE TIMES, Plaintiff/Petitioner, vs. THE WASHINGTON STATE LEGISLATURE; THE WASHINGTON STATE SENATE, THE WASHINGTON STATE HOUSE OF REPRESENTATIVES, Washington state agencies; and, SENATE MARJORITY LEADER MARK SCHOESLER, HOUSE SPEAKER FRANK CHOPP, SENATE MINORITY LEADER SHARON NELSON, and HOUSE MINORITY LEADER DAN KRISTIANSEN each in their official capacity, Defendants.	No. 17-2-04986-34 ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This matter came before the Court on Plaintiffs' Motion for Partial Summary Judgment and Defendants' Cross Motion for Summary Judgment. The Court, being fully advised, GRANTS IN PART and DENIES IN PART Plaintiffs' Motion for Partial Summary Judgment and GRANTS IN PART AND DENIES IN PART Defendants' Cross Motion for Summary Judgment. Senate Majority Leader Mark Schloesler, House Speaker Frank Chopp, Senate

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Minority Leader Sharon Nelson, and House Minority Leader Dan Kristiansen (the "Individual Defendants") are "agencies" under the Public Records Act. The Washington State Legislature, the Washington State Senate, and the Washington State House of Representatives are not "agencies" under the Public Records Act.

I. MATERIALS CONSIDERED

The following documents were called to the attention of the Court:

1. Plaintiffs' Motion for Partial Summary Judgment;

2. Declaration of Michele Earl-Hubbard in Support of Plaintiffs' Motion for Partial Summary Judgment, including Exhibits A through G;

3. Defendants' Cross Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment;

4. Declaration of Jeannie Gorrell in Support of Defendants' Cross Motion for Summary Judgment, including Exhibit A;

5. Plaintiffs' Joint Response to Defendants' Motion for Partial Summary Judgment and Plaintiffs' Reply in Support of Plaintiffs' Motion for Partial Summary Judgment;

6. Declaration of Rowland Thompson in Support of Plaintiffs' Motion for Partial Summary Judgment and Response to Defendants' Motion for Partial Summary Judgment;

7. Second Declaration of Michele Earl-Hubbard in Support of Plaintiffs' Motion for Partial Summary Judgment and Response to Defendants' Motion for Partial Summary Judgment, including Exhibits 1 through 10;

8. Defendants' Reply in Support of Cross-Motion for Summary Judgment;

9. Brief of Amicus Curiae Attorney General of Washington;

10. Defendants' Supplemental Brief in Response to Brief of Amicus Curiae Attorney General of Washington;

11. Plaintiffs' Court-Requested Supplemental Brief and Response to Amicus Curiae Brief of Attorney General;

12. Third Declaration of Michele Earl-Hubbard in Support of Plaintiffs' Motion for Partial Summary Judgment and Response to Defendants' Motion for Partial Summary Judgment and in Response to Amicus Curiae Brief of Attorney General;

13. Declaration of Bernard Dean in Support of Defendants' Supplemental Brief in Response to Amicus Curiae by Washington State Attorney General; and

14. Answer to Objection by Amicus Curiae Attorney General of Washington.

II. BACKGROUND

The facts are undisputed on these cross-motions for summary judgment. Between January 25, 2017 and July 26, 2017, the Plaintiffs made various public records requests of the Washington State Legislature, the Washington State Senate, the Washington State House of Representatives, and all 147 elected members of the Legislature. The requests sought records ranging from calendar entries and text messages related to legislative duties, to complaints and investigative reports regarding claims of improper interpersonal conduct within the Legislature. With limited exceptions, the recipients of these requests took the position that the requested records were not public records. According to the recipients, the Public Records Act's applicability to the Legislature is narrowly limited to those records described in RCW 42.56.010(3) with respect to the Secretary of the Senate and the Chief Clerk of the House. Specifically, the recipients relied on the following language:

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> For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

RCW 42.56.010(3). As the requested records did not fall within this narrow definition, no records were provided in response to these requests, other than the limited exceptions referenced above. The Plaintiffs then filed this lawsuit on September 12, 2017, claiming that the Defendants had erred in asserting that the Public Records Act applies in only this limited fashion, and contending that public records subject to disclosure were improperly withheld as a result.

The Court held a hearing on the parties' cross-motions for summary judgment on December 22, 2017. At the hearing, the Court indicated that it understood that, should the Court find that at least a portion of the Legislature was subject to the general requirements of the Public Records Act rather than the more limited requirements detailed in RCW 42.56.010(3) with respect to the Secretary of the Senate and the Chief Clerk of the House, there was at least one document that had been wrongfully withheld from the Plaintiffs, and that the Court would be able to find a violation of the Public Records Act in those circumstances. The Court also stated that, if either party disagreed with this understanding, they should voice that disagreement during the hearing. No party voiced any such disagreement.

III. ANALYSIS

A. Preliminary Matters

1. Individual Defendants

The names of the Individual Defendants in the caption of the Complaint in this matter are preceded by their leadership titles rather than "Senator" or "Representative." For example, the

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Complaint states that "Senate Majority Leader Mark Schloesler," rather than "Senator Mark Schloesler," is a defendant. The Individual Defendants argue that this means this case is brought against them in their leadership capacity rather than in their capacity as elected legislators, and that this case should be dismissed against them because no public records requests were made to the Individual Defendants in their leadership capacity. The Court disagrees. Each of the Individual Defendants received at least one of the public records requests at issue in this case. The Individual Defendants cite no authority that distinguishes between their leadership and elected legislator capacity. Further, even if there were such a distinction, the Court would permit an amendment to the Complaint to clarify the issue, as there would be no prejudice to any such amendment. In any event, it is clear to this Court that the Individual Defendants' names are preceded by their leadership titles as a matter of custom that has no bearing on any substance in this case.[1]

2. Propriety of Amicus

Requesting no particular relief, the Defendants object in their Supplemental Brief to the Attorney General filing an amicus brief in this matter, arguing that it creates a conflict of interest under RPC 1.7. The claim is wholly without merit. The comments to the Rules of Professional Conduct indicate that conflict of interest rules apply differently in the context of government

[1] The Plaintiffs also made it clear at the hearing and in their Supplemental Brief that they intended to sue the Individual Defendants as senators and representatives—i.e., as recipients of the public records requests at issue in this case. VRP 90:10-16 (Ms. Earl Hubbard: "The idea was . . . he or she was sued as a Senator or a Representative. We chose only to sue the four leaders because they were the four that we figured it would make the point that the legislative offices were subject to the Act as opposed to [suing] all 147 [members of the legislature."); Plaintiffs' Court Requested Supplemental Brief and Response to Amicus Curiae Brief of Attorney General at 2.

attorneys,[2] Washington courts has repeatedly held different rules apply in the context of government attorneys,[3] the Attorney General has special statutory responsibilities to advise regarding the interpretation of the Public Records Act,[4] and the Attorney General has the authority to act in any court (including filing amicus briefs) on a matter of public concern.[5] Further, RPC 1.7 states that a conflict of interest exists if "the representation of one client will be directly adverse to another client[.]" The Attorney General represents no "client" in filing an amicus brief in this matter. The Attorney General accepted the Court's invitation to file an amicus brief. To do so here is no more a conflict of an interest than it is for the Attorney General to issue an Attorney General Opinion that is adverse to the interests of a state entity, which is no conflict of interest at all.

3. Incorporation of Amicus Brief

At the December 22, 2017 summary judgment hearing in this matter, the Court invited the Attorney General to file an amicus brief in this matter. The Attorney General filed the requested brief on January 10, 2018. The Court agrees with each and every argument and conclusion presented in the brief and incorporates it into this Order as if fully set forth herein. The Court's preferred analysis concerning the Legislature, Senate, and House differs slightly

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[2] RPC 1.6, cmt. 41 ("Various legal provisions, including constitutional, statutory and common law, may define the duties of government lawyers in representing public officers, employees, and agencies and should be considered in evaluating the nature and propriety of common representation.").

[3] *In the Matter of Johnston*, 99 Wn.2d 466, 480, 663 P.2d 457 (1983) (If "actual conflicts of interest" arise, different assistant attorneys general "can, and should, be assigned[.]"); *Sammamish Cmty. Mun. Corp. v. City of Bellevue*, 107 Wn. App. 686, 693, 27 P.3d 684 (2001) (holding that what might be deemed conflicts of interest in the private setting are permitted with screening mechanisms in the public setting).

[4] RCW 42.56.155, .530, .570.

[5] *City of Seattle v. McKenna*, 172 Wn.2d 551, 556, 259 P.2d 1087 (2001); *Young Ams. For Freedom v. Gorton*, 91 Wn.2d 204, 207, 588 P.2d 195 (1978).

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from the Attorney General's, but the Court arrives at the same conclusion. The Attorney General's reasoning is an alternative means of arriving at that conclusion.

B. Principles of Statutory Interpretation

The fundamental principles of statutory interpretation that govern this case are well established:

> Our fundamental goal in statutory interpretation is to discern and implement the legislature's intent. If a statute's meaning is plain on its face, we give effect to that plain meaning as an expression of legislative intent. We derive the plain meaning from the language of the statute and related statutes. When the plain language is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and we will not construe the statute otherwise. However, when the statute is ambiguous or there are conflicting provisions, we may arrive at the legislature's intent by applying recognized principles of statutory construction.

O.S.T. ex rel. G.T. v. BlueShield, 181 Wn.2d 691, 696-97, 335 P.3d 416 (2014) (quotation marks and citations omitted). Simply put, "[i]f the language is unambiguous, [courts] give effect to that language and that language alone because we presume the legislature says what it means and means what it says." *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). Courts "should not and do not construe an unambiguous statute. . . . It is not within our power to add words to a statute even if we believe the legislature intended something else but failed to express it adequately." *Vita Food Prods., Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978).

The importance of only resorting to canons of statutory interpretation if the plain meaning of a statute is found to be ambiguous—generally referred to as the "plain meaning rule"—cannot be understated. It is the Legislature's role to balance different policies and determine what the law should be. It is the courts' role to then interpret the law as enacted by the Legislature. *See Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn2d

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542, 567, 958 P.2d 962 (1998) ("Our role is to interpret the statute as enacted by the Legislature, after the Legislature's determination of what . . . best serves the public interest of this state; we will not rewrite the statute."). Respecting the boundaries separating these roles by only wading into the waters of construing a statute when it is ambiguous serves the public, the Legislature, and the courts. The public is served by being able to rely upon the plain meaning of the law when it truly is plain to determine their rights, privileges, and responsibilities. The Legislature is served by being able draft laws by relying upon the courts to apply those laws as plainly written. The courts are served by maintaining the integrity of the judicial branch and avoiding separation of powers concerns and criticism that they are "legislating from the bench." There is a symbiotic relationship between the Legislature and the courts where each relies upon the other to serve its proper role—the Legislature will "say what it means and means what it says" and the courts will adhere to the plain meaning of the law where there is a plain meaning.

Given that courts only resort to "recognized principles of statutory construction" if a statute is ambiguous, *O.S.T.*, 181 Wn.2d at 697, those principles are only discussed below where applicable.

C. Individual Defendants

The Court's analysis in this case begins with whether the Individual Defendants—individual senators and representatives—are "agencies" subject to the Public Records Act. As indicated above, this analysis starts with the text of the statute at issue—the Public Records Act, RCW 42.56—and any related statutes. The Court only moves past that text if the meaning of the statute's text is ambiguous.

The Public Records Act requires that "[e]ach agency . . . make available for public inspection and copying all public records" unless the record is exempt from disclosure. RCW 42.56.070(1). The Act defines "agency" as:

> all state agencies and all local agencies. "State agency" includes every *state office*, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

RCW 42.56.010(1) (emphasis added).

The Public Records Act does not define "state office." "State office" is, however, defined in RCW 42.17A.005(44):

> "State office" means *state legislative office* or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

That same statute further defines "legislative office":

> "Legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

RCW 42.17A.005(29).

RCW 42.17A is a "related statute" vis-à-vis the Public Records Act. The campaign disclosure and contribution laws now contained in RCW 42.17A were passed into law *with* the public record disclosure requirements now contained in RCW 42.56 by Initiative I-276 in 1972. They were located in the same chapter of the Revised Code of Washington until they were separated into separate chapters in 2005. Thus, these statutes epitomize "related statutes" for purposed of determining the plain meaning of a statute. Further, the offices of the Individual Defendants constitute "state offices" under RCW 42.17A.005(44).

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As a result, the plain meaning of the Public Records Act defines the offices of all state senators and representatives to be "agencies" subject to the customary disclosure requirements of the Public Records Act. The Public Records Act applies to "agencies," "agencies" include "state agencies," "state agencies" include "state offices," and "state offices" include "state legislative offices." Therefore, "state legislative offices"—including the Individual Defendants—are "agencies" under the plain and unambiguous meaning of the Public Records Act.

The Defendants advance several arguments against this fundamental syllogism.

1. Alternative Definitions of "Agency"

The Defendants argue that alternative sources of law show that none of the Defendants are "agencies." In short, the Defendants advocate for a definition of agency that is different than that provided in the Public Records Act. However, the Supreme Court has described such efforts to redefine terms that are defined in a statute as being "wholly without merit":

> Ecology contends, we should ignore the definition of a defined term of art ("mixed waste") in favor of the common usage meaning of "waste" and read out of the CPA any and all materials that have not been discarded. *It is an axiom of statutory interpretation that where a term is defined we will use that definition.* Only where a term is undefined will it be given its plain and ordinary meaning. "Mixed waste" and "hazardous substance" are both defined terms within the CPA. Thus, Ecology's contention that the word "waste" limits the application of otherwise clear and unequivocal statutory definitions to circumstances of "release or threatened release" is wholly without merit.

United States v. Hoffman, 154 Wn.2d 730, 115 P.3d 999 (2005) (citations omitted) (emphasis added). The Defendants' efforts to use the same type of argument in this case are similarly without merit.

2. Responsibilities of the Secretary and Clerk

The Defendants also argue that the Public Records Act's distinction between an "agency" and "the office of the secretary of the senate and the office of the chief clerk of the house of representatives" demonstrates that none of the Defendants are "agencies" under the Public Records Act. While this argument applies with different force as to the Legislature, Senate, and House as defendants, and is discussed further in that respect below, it is without merit as to the Individual Defendants. There is nothing inconsistent or ambiguous about the offices of individual legislators being subject to the full requirements of the Public Records Act as "agencies" and the Secretary of the Senate and the Chief Clerk of the House having more limited obligations under the Act. The Secretary of the Senate and the Chief Clerk of the House are separate entities from the offices of individual senators and representatives. While different policy arguments could be raised regarding why these entities should or should not be treated the same or differently, it is not the role of the Court to weigh such policies. Such arguments cannot render an otherwise unambiguous statute ambiguous.[6]

3. RCW 40.14.100

The Public Records Act defines "public records" in the context of the Secretary of the Senate and the Chief Clerk of the House as including "legislative records" as defined in RCW 40.14.100, which states:

> As used in RCW 40.14.010 and 40.14.100 through 40.14.180, unless the context requires otherwise, "legislative records" shall be defined as correspondence,

[6] Throughout the arguments of both the Plaintiffs and the Defendants, repeated references are made to what can be considered extrinsic evidence of legislative intent. This ranges from organizational charts and internal policies to deskbooks and Wikipedia entries. Given that the Court bases its conclusions on this case on the plain meaning of the statutory language (as to the Individual Defendants) and a mandatory principle of statutory construction (as to the remaining Defendants), it would be inappropriate for the Court to consider these other materials. They are not only outside the statutory text, they are also not even part of the relevant legislative history.

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> amendments, reports, and minutes of meetings made by or submitted to legislative committees or subcommittees and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions, but *does not include* the records of an official act of the legislature kept by the secretary of state, bills and their copies, published materials, digests, or multi-copied matter which are routinely retained and otherwise available at the state library or in a public repository, or *reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature*.

(emphasis added). The Defendants contend that the express exclusion of records in the possession of senators and representatives indicates that such records are intended to be exempted from disclosure.

There is no support for this argument. On its face, RCW 40.14.100 simply excludes such records from being "legislative records," meaning that the Secretary of the Senate and the Chief Clerk of the House are not responsible for the unique collection, preservation, and production obligations that are associated with legislative records. *See, e.g.*, RCW 40.14.130 (detailing the process through which the Secretary of the Senate and the Chief Clerk of the House collect such records and coordinates with the state archivist regarding the preservation and disposition of such records). As noted above, the Secretary of the Senate and the Chief Clerk of the House are separate entities from the offices of senators and representatives. The disclosure responsibilities of one need not affect the responsibilities of the other. Further, this statutory scheme regarding "legislative records" predates the enactment of the Public Records Act. Laws of 1971 ex.s, ch. 102, § 5. In no manner can these provisions be considered to exempt any records from disclosure under the Public Records Act, enacted later. Accordingly, these provisions have no relevance to the responsibilities of the Individual Defendants under the Public Records Act.

4. Amendments to the Public Records Act

a. Amendments Generally

The Defendants devote significant effort to arguing that amendments made to the Public Records Act over time demonstrate that the Defendants are not "agencies" under the Public Records Act.

As an initial matter, the Court questions whether such an analysis is appropriately considered at the plain meaning step of statutory interpretation before a statute has been deemed ambiguous. There is nothing "plain" about requiring citizens to access archived session laws to determine the "plain meaning" of a law that might govern their rights and responsibilities. Further, amendments to a statute over time is, quite literally, legislative *history*, and legislative history is only properly considered if and when the plain meaning of a statute has been deemed ambiguous.

While it is true that some recitations of what courts consider at the plain meaning stage of statutory interpretation includes references to "amendments," in none of the cases Defendants cite does a court rely upon an amendment to contradict or otherwise alter what would be the plain and unambiguous meaning of the statute. To the contrary, these cases (1) cite the rule regarding amendments without applying it, (2) consider amendments that render an otherwise ambiguous statute unambiguous, or (3) consider amendments to determine that they are consistent with the otherwise plain meaning of the statute.[7] This Court does not need to decide,

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[7] *See Wright v. Lyft, Inc.*, --- Wn.2d ---, 406 P.3d 1149, 1151-53 (Wash. 2017) (using amendments as the "most effective way to navigate [the] complexity" of the statute at issue, described by United States District Court Judge as "rather labryinthe"); *Bloomstrom v. Tripp*, 189 Wn.2d 379, 390, 402 P.3d 831 (2017) (citing the rule that amendments may be considered without applying that rule in its analysis); *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 440-41, 395 P.3d 1031 (2017) (considering amendments and concluding that they confirmed the otherwise plain meaning of the statute); *Lenander v. Washington State Dep't of*

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however, whether it is appropriate to consider amendments to the Public Records Act at the plain meaning step of statutory interpretation. Even if the Court were to consider such amendments, they confirm the otherwise plain and unambiguous meaning of the Public Records Act that the offices of senators and representatives are subject to the Public Records Act as "agencies."

b. 1995 Amendments

In 1995, when the laws concerning public records and campaign finance and disclosure were still located in the same chapter of the Revised Code of Washington, that chapter was revised in two ways relevant to this case. First, the Legislature added a definition for "state office." That definition, currently codified at RCW 42.17A.005(44), remains unchanged to this day:

> "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

At the time of that amendment, as now, public records were defined to be "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any *state or local agency*[.]" Laws of 1995, ch. 397, § 1(36) (emphasis added). Also, at the time of that amendment, as now, "agency" was defined to include "all state agencies," including "every state office." Laws of 1995, ch. 397, § 1(1).

Ret. Sys., 186 Wn.2d 393, 404-06, 377 P.3d 199 (2016) (using history of legislative amendments as a means of explaining a statute's meaning in a manner that was consistent with the otherwise plain meaning of the statute). Notably, *State Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002), the case originally cited for the rule that amendments may be considered as part of the plain meaning step of statutory interpretation, does not actually state such a rule.

Second, the Legislature amended the definition of "public record" to have a unique meaning with respect to the Secretary of the Senate and the Chief Clerk of the House. The then-new language, currently codified at RCW 42.56.010(3), also remains unchanged to this day:

> For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

Relatedly, the Legislature also amended other portions of the public records portions of the chapter that treated the Secretary of the Senate and the Chief Clerk of the House separately from "agencies" generally. *See, e.g.*, RCW 42.56.090 ("Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives for a minimum of thirty hours per week.").

The Defendants argue that the new definition of "state office" should be limited to the campaign finance portions of the law, as those were the only portions of the statute where new references to "state office" were added through the 1995 amendments. But they cite no authority that supports this argument. Rather, "[t]he Legislature is presumed to know the law in the area in which it is legislating[.]" *Wynn v. Earin*, 163 Wn.2d 361, 371, 181 P.3d 806 (2008). At the time of the 1995 amendments, "agency" was defined to include "state office." The Legislature is presumed to have known that. As a result, the two actions the Legislature took in 1995, described above, taken together, demonstrate that the offices of senators and representatives were intended to be considered "agencies" under the Public Records Act, while the Secretary of the Senate and Chief Clerk of the House were not.

c. 2005 and 2007 Amendments

In 2005, the Legislature amended the laws concerning public records and campaign finance and disclosure by splitting them into separate chapters in Title 42 of the Revised Code of Washington. The Public Records Act was moved to RCW 42.56, where it continues to reside today. Initially, RCW 42.56 did not have any definitions located within it. Instead, it stated that the "definitions contained in RCW 42.17.020 apply throughout this chapter." Laws of 2005, ch. 274, § 101. RCW 42.17.020, in turn, continued to contain the relevant definitions that existed after the 1995 amendments, described above.

In 2007, the Legislature gave the Public Records Act its own definition section. It stated that the "definitions in this section apply throughout this chapter unless the context clearly requires otherwise." Laws of 2007, ch. 197, § 1. The 2007 amendment included definitions for "agency," "public record," and "writing," but nothing else. *Id.* These amendments did not alter the prior definition of "public record" or "agency" in any way relevant to this case. Agency continued to include "all state agencies," including "every state office." A definition for "state office" was not included in these amendments, but the already existing definition of "state office" contained in RCW 42.17.020 (now RCW 42.17A.005) remained unchanged.

The Defendants argue that "[t]hese amendments must be given weight as signaling purposeful changes." Generally, this principal is only applied in circumstances where the retroactivity of a change in law is considered. But the Defendants have cited several cases from 1978 and before where this rule was considered outside that context. The origin of this line of cases appears to be *Graffell v. Honeysuckle*, 30 Wn.2d 390, 400, 191 P.2d 858 (1948), which stated:

> The following statement, taken from 50 Am.Jur. 261, Statutes, § 275, expresses the general attitude of the various courts in construing amendatory statutes:
>
> "In making material changes in the language of a statute, the legislature c[a]nnot be assumed to have regarded such changes as without significance, but must be assumed to have had a *reasonable motive*. Where a statute is amended, it will not be presumed that the difference between the two statutes was due *to oversight or inadvertence* on the part of the legislature. To the contrary, the presumption is that every amendment of a statute is made to effect some purpose, and effect must be given the amended law in a manner consistent with the amendment. The general rule is that a change in phraseology indicates persuasively, and raises a presumption, that a departure from the old law was intended, and amendments are accordingly generally construed to effect a change, particularly where the wording of the statute is radically different."

(emphasis added). Assuming, without deciding, that this remains good law, the Defendants cite no law for the proposition that this rule is to be applied at the plain meaning stage of statutory interpretation. In other words, there is no authority for the proposition that the otherwise plain and unambiguous meaning of a statute can be altered or rendered ambiguous by presuming a material change in an amendment. Even if the Court were to consider this rule at this stage, however, no party is suggesting that the 2005 and 2007 amendments were due to "oversight or inadvertence," and no party is advocating that the Legislature had anything other than a "reasonable motive" in making those amendments. The 2005 amendments expressly states what its motive was:

> The legislature finds that chapter 42.17 RCW contains laws relating to several discrete subjects. Therefore, the purpose of this act is to recodify some of those laws and create a new chapter in the Revised Code of Washington that contains laws pertaining to public records.

Laws of 2005, ch. 274, § 1. Similarly, the title of the 2007 amendments state that it is "[r]elat[es] to making adjustments to the recodification of the public records act[.]" 2007 c 197. In short, the Legislature was reorganizing these laws to make them easier to understand.

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It is unnecessary and improper to turn to legislative history where, as here, a statute is not ambiguous. Even if the Court were to consider the relevant legislative history, however, it would confirm the above conclusions. Courts "frequently look[] to final bill reports as part of an inquiry into legislative history." *State v. Bash*, 130 Wn.2d 594, 601, 925 P.2d 879 (1996). The Final Bill Report for the 2005 amendments states:

> The public records disclosure statutes are codified between the statutes on campaign finance reporting and campaign finance contribution limits, making responsibility for enforcement of the public records disclosure statutes unclear[.]
>
> The public records disclosure statutes are recodified, amended, and reorganized as a new chapter to be cited as the Public Records Act. Exemptions from disclosure are reorganized into separate sections and, where possible, grouped by discrete subjects[.]
>
> Statute cross-references are changed to reference the new chapter. No exemptions are modified, deleted, or added.

Final Bill Report on Substitute HB 1133 at 1-2 (Wash. 2005). The Final Bill Report for the 2007 amendments states:

> Agency, public record, and writing are defined. Previous references to definitions in Chapter 42.17 RCW are referenced to Chapter 42.56 RCW.

Final Bill Report on Substitute HB 1445 at 1 (Wash. 2006). The 2005 amendments were a reorganization effort and the 2007 amendments were cleanup to that effort.

The Defendants further assign significance to the fact that RCW 42.56 no longer contains a definition of "state office" following the 2005 and 2007 amendments. But nothing about the reorganization of these statutes into separate chapters under Title 42 caused them to no longer be "related statutes." "We derive the plain meaning from the language of the statute and related statutes." *O.S.T.*, 181 Wn.2d at 696-97. As noted above, RCW 42.17A and RCW 42.56 were originally passed into law together as part of Initiative 276 and were located in the same chapter

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until 2005. This is the epitome of being "related statutes" that courts consider when determining the plain meaning of a statute. These amendments do nothing to change that fact.

The Defendants also contend that the separation of the Public Records Act from the definition of "state office" has relevance for the canons of statutory interpretation of (1) *expressio unius est excusio alterius* (the expression of one thing is the exclusion of others) and (2) the use of different words is presumed to have different meanings. But the Court will not construe statutes using canons of statutory interpretation unless a statute is ambiguous, and the Public Records Act is not ambiguous in this regard. *Vita Food Prods., Inc.*, 91 Wn.2d at 134 (Courts "should not and do not construe an unambiguous statute."); *see also O.S.T.*, 181 Wn.2d at 700-01 ("It would make sense to apply the maxim expression unius est exclusio alterius *if the statutory language was ambiguous*[.]" (emphasis added)). Further, even if the Court were to apply such canons, the Defendants' arguments are without merit. There is no list that references one "state office" but omits the offices of senators or representatives. Nor are there different or inconsistent terms used in different portions of the relevant statutes. The Public Records Act applies to "agencies," which includes "state offices," which includes "state legislative offices." At no point in that definitional chain is there an inconsistent use of terms or some list that expressly includes other state offices but omits the offices of senators and representatives.

In short, rather than furthering the Defendants' arguments, the amendments to the Public Records Act over time confirm that it applies to the offices of senators and representatives as "agencies."

5. Treatment of the Judiciary

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"[T]he judiciary is not included in the PRA's definition of 'agency.'" *City of Federal Way v. Koenig*, 167 Wn.2d 341, 343, 217 P.3d 1172 (2009). The Defendants repeatedly refer to this fact and attempt to liken themselves to the judiciary to argue that they are also not an "agency" under the Public Records Act. As to the Individual Defendants, however, this argument may be disposed of in short order. As noted above, the "state offices" considered to be agencies under the Public Records Act are "state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer." RCW 42.17A.005(44). Unlike state legislative offices, the judiciary is not included in this definition. While there are other reasons why the judiciary is not subject to the Public Records Act, and other distinctions between the judiciary and the Legislature relevant to those issues, this distinction in the statutory text is sufficient to reject this argument in this case.

6. Absurd Results

The Defendants contend that the Public Records Act's specific references to "the offices of the Secretary and the Chief Clerk . . . show[] that specific legislative records provisions cover the whole of the Legislature." They argue that to "conclude otherwise would render the absurd result wherein the Legislature would have excluded several categories of documents from production by the offices of the Secretary and the Chief Clerk, but the same documents could be procured by sending a PRA request to an individual legislator or some other official or employee in the Legislature." Regarding the need to avoid absurd results, the Supreme Court has said the following:

> It is true that we "will avoid [a] literal reading of a statute which would result in unlikely, absurd, or strained consequences." However, this canon of construction

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> must be applied sparingly. *See Duke v. Boyd*, 133 Wash.2d 80, 87, 942 P.2d 351 (1997) ("Although the court should not construe statutory language so as to result in absurd or strained consequences, neither should the court question the wisdom of a statute even though its results seem unduly harsh." (citation omitted)). Application of the absurd results canon, by its terms, refuses to give effect to the words the legislature has written; it necessarily results in a court disregarding an otherwise plain meaning and inserting or removing statutory language, a task that is decidedly the province of the legislature. This raises separation of powers concerns. Thus, in *State v. Ervin*, 169 Wash.2d 815, 824, 239 P.3d 354 (2010), we held that if a result "is conceivable, the result is not absurd."

Five Corners Family Farmers v. State, 173 Wn.2d 296, 310-11, 268 P.3d 892 (2011) (some citations omitted). It is "conceivable" that the Legislature to have determined that the Secretary of the Senate and the Chief Clerk of the House should be, by and large, insulated from public records requests so that they may focus on other responsibilities. In fact, the Public Records Act expressly recognizes the burdens even the more limited responsibilities placed upon the Secretary and Clerk given the unique environment in which they operate and the significant responsibilities they already have related to the collection and preservation of legislative records. RCW 42.56.100 ("the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions"); *see also* RCW 40.14 *et seq.* (detailing responsibilities regarding legislative records). The Legislature is in the best position to determine how different burdens are best allocated between its subordinate parts in its unique environment. The Court will not disturb that judgment. Such a result is not absurd.

The Defendants also claim that considering each legislator to be an "agency" under the Public Records Act would lead to absurd results given various responsibilities "agencies" have under the Public Records Act. *See, e.g.*, RCW 42.56.040(1) ("Each state agency shall separately state and currently publish in the Washington Administrative Code . . . [information regarding

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their public records procedures]."); RCW 42.56.070 (requiring "each agency" to index certain records and information); RCW 42.56.080(2) ("Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency."); RCW 42.56.090 ("Public records shall be available for inspection and copying during the customary office hours of the agency . . . for a minimum of thirty hours per week[.]"). The interpretation of these requirements as applied to the Individual Defendants is not before the Court, but if they were, there is nothing *absurd* about these requirements being imposed upon the Individual Defendants, especially given that individual legislators could pool resources to help address these requirements as a group.

7. Legislative History

Given that the Public Records Act is not ambiguous as to the Individual Defendants, there is no need to engage in any analysis of the relevant legislative history. The relevant legislative history, however, confirms the Court's conclusion in one simple but important way: nowhere in the relevant legislative history did the Legislature indicate it was effectively exempting itself in whole from the Public Records Act. If the Legislature were taking such an action, the Court would certainly expect to see that referenced somewhere in the legislative history. But it is not. This is further support for the plain meaning of the law as to the Individual Defendants.

8. Separation of Powers

Lastly, the Defendants cite separation of powers considerations in support of their positon. Specifically, they cite *Rousso v. State*, 170 Wn.2d 70, 239 P.3d 1084 (2010), in support of this argument. *Rousso* states:

> It is not the role of the judiciary to second-guess the wisdom of the legislature[.] . . . These purely public policy determinations demonstrate why the legislature, and not the judiciary, must make that call. . . . Indeed, the judiciary's making such public policy decisions would not only ignore the separation of powers, but would stretch the practical limits of the judiciary.

Id. at 75, 88 (citation omitted). This Court agrees that this case presents separation of powers issues. It is the separation of powers that mandates strict compliance with the plain meaning rule of statutory interpretation, which prohibits deviating from plain and unambiguous statutory language. It is out of respect for the Legislature's role in determining the law that courts adhere to this rule. Courts "presume the legislature says what it means and means what it says." *Costich*, 152 Wn.2d at 470. Here, the Legislature has said that the offices of senators and representatives are subject to the Public Records Act as agencies. If the Legislature disagrees, it can to say something different by amending the law.

In short, the plain and unambiguous language of the Public Records Act establishes that the Individual Defendants are subject to the Public Records Act as "agencies." The Defendants attempts to alter or render ambiguous that language are without merit. Accordingly, the Individual Defendants are subject to the Public Records Act as "agencies" under the plain and unambiguous meaning of the law and have violated the Public Records Act by failing to respond to the Plaintiffs' public records requests as such.

D. Legislature, Senate, and House

1. Ambiguity

The Court reaches the opposite conclusion regarding the Legislature, Senate, and House. While the plain meaning of the Public Records Act speaks to the inclusion of state legislative

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offices as "agencies," it does not speak to the Legislature, Senate, or House—either to include or exclude them. Again, the Public Records Act defines agencies as:

> all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

RCW 42.56.010(1). This definition is simply silent as to the Legislature and its chambers. The Plaintiffs argue that the Legislature is included under the "division" portion of this definition. While such an interpretation would certainly be reasonable, the Court cannot say that a contrary interpretation would not also be reasonable.

The definition of "state office" provides no additional clarity:

> "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

RCW 42.17A.005(44). It is not clear whether the reference to "state legislative office" means to include the Legislature and its chambers as well, or whether this definition means to exclude the Legislature by not mentioning it. Considering the plain language of the Public Records Act and related statutes does not provide any additional clarity.

The Court finds that the Public Records Act is ambiguous as to whether the Legislature and its chambers are "agencies." As a result, the Court must turn to "recognized principles of statutory construction" to resolve the issue. *O.S.T.*, 181 Wn.2d at 697.

2. Principles of Construction

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When the language of the Public Records Act is ambiguous, the Act has its own, express principle of construction:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

RCW 42.56.030. This is a "strongly worded mandate for broad disclosure of public records." *Freedom Foundation v. Gregoire*, 178 Wn.2d 686, 694-95, 310 P.3d 1252 (2013).

This is not the only principle of statutory construction that applies here though, however. "[A] court *must not* interpret a statute in any way that renders any portion meaningless or superfluous." *Broughton Lumber Co. v. BNSF Ry Co.*, 174 Wn.2d 619, 634, 278 P.3d 173 (2012) (emphasis added). It is this principle that determines the outcome of the applicability of the Public Records Act to the Legislature and its chambers as "agencies." As noted above, the Public Records Act repeatedly differentiates between "agencies" and the Secretary of the Senate and the Chief Clerk of the House.[8] To interpret the Public Records Act as defining "agencies" to include the Secretary of the Senate and the Chief Clerk of the House would impermissibly render these repeated, separate references to the Secretary of the Senate and the Chief Clerk of the

[8] *See, e.g.*, RCW 42.56.070(8) ("This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to..."); RCW 42.56.080 ("Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives..."); RCW 42.56.520 ("Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives.").

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House superfluous. Accordingly, the Court "must" find that Secretary of the Senate and the Chief Clerk of the House are not agencies under the Public Records Act. A necessary corollary of this is that the Legislature and its chambers, of which the Secretary of the Senate and the Chief Clerk of the House are a part, are not "agencies" either. If they were, there would be no need to separately reference their subordinate components—Secretary of the Senate and the Chief Clerk of the House—throughout the Public Records Act.

This is not inconsistent with the Court's prior conclusion that state legislative offices are "agencies" on the Public Records Act. As indicated above, the Secretary of the Senate and the Chief Clerk of the House are separate and distinct entities from the offices of senators and representatives. The Legislature is free to designate one part of itself to be an "agency" and not another part.

This is also not inconsistent with the mandate that the Public Records Act be liberally construed. While the Act must be liberally construed, courts cannot use that mandate as license to write into the law what is not there or do ignore other, mandatory principles of statutory construction.

Accordingly, the Court concludes that the Legislature, the Senate, and the House of Representatives—with the exception of the offices of senators and representatives—are not "agencies" under the Public Records Act. Their responsibilities under the Public Records Act are those detailed as to the offices of the Secretary of the Senate and the Chief Clerk of the House of Representatives.

3. Policy Concerns

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When the Court indicated at the summary judgment hearing in this case that it was likely to reach this conclusion—that state legislative offices are "agencies" under the Public Records Act but the Legislature, Senate, and House of Representatives were otherwise not "agencies"—counsel for the Plaintiffs articulated a concern that this would lead to a "black hole" of records. In short, the concern is that records legislators did not want to become public would be housed in some other part of the Legislature that is not subject to the same rigorous disclosure requirements as the offices of senators and representatives.

As an initial matter, it is not for the Court to address policy concerns such as this. Policy making is left to the Legislature and it would violate the separation of powers for the Court to second-guess those decisions and rewrite the Public Records Act to conform with some different policy.

Nonetheless, it is premature at this juncture to raise such concerns. Public records must be disclosed in response to public records requests even when they are in the possession of a third party. *See, e.g., Nissen v. Pierce Cty.*, 183 Wn.2d 863, 881-82, 357 P.3d 45 (2015); *Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 722, 354 P.3d 249 (2015). The relevant inquiry is whether the record is "prepared, owned, used, or retained" by an agency, not simply where it is located. Simply put, the tactics the Plaintiffs express concern regarding would not work. Whether and how specific records are subject to disclosure will be the subject of the next stage of this case.

IV. CONCLUSION

The plain and unambiguous language of the Public Records Act applies to the offices of senators and representatives—including the Individual Defendants—as "agencies." By failing to

respond as such, the Individual Defendants have violated the Public Records Act. In contrast, the Public Records Act applies to the remaining portions of the Legislature, Senate, and House of Representatives as detailed in the Act regarding the offices of the Secretary of the Senate and the Chief Clerk of the House. Those defendants have not violated the Public Records Act.

Dated: January 19, 2018

Judge Chris Lanese

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