IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ARTHUR WEST, Appellant, v. DOUG MAH, JEFFREY MYERS, JEFF KINGSBURY, RHENDA IRIS STRUB, JOE HYER, JOAN MACHLIS, KAREN MESSMER, CRAIG OTTAVELLI, CITY OF OLYMPIA, WASHINGTON CITIES INSURANCE AUTHORITY, Respondents.	No. 41694-8-II UNPUBLISHED OPINION

Van Deren, J. — Arthur West appeals the trial court's orders granting summary judgment to the City of Olympia and members of the Olympia City Council, dismissing his claims that the defendants violated the Public Records Act (PRA)[1] and the Open Public Meeting Act (OPMA).[2] Finding no error, we affirm.

[1] Chapter 42.56 RCW.

[2] Chapter 42.30 RCW.

Background Facts

I. April 28, 2008, PRA Request

On April 28, 2008, West submitted the following PRA request to the City:

> 1. All invoices for work performed by Jeffrey Myers, and all records of any funds paid to Mr. Myers or Law, Lyman and Bogdanovich by the City. All communications with Myers.
> 2. All records related to the removal from City offices of any city planning files by Mr. Myers.
> 3. All communications and records related to consideration or the issue of permits on September 5, and for the port marine terminal expansion ans [sic] Weyerhaeuser log yard.
> 4. All public records requests to the City over [sic] since January of 2006, and the responses thereto.
> 5. Any record or communication denying disclosure or inspection and asserting any exemption to disclosure under the PRA.
> 6. All communications and records related to Weyerhaeuser, the Weyerhaeuser corporation or any of its employees agents or representatives.
> 7. All communications and records related to or concerning the Chamber of Commerce and/or the Downtown Business Association or other such association.
> 8. This request covers the period from January 1, 2006 to the present.

Clerk's Papers (CP) at 1603.

The City responded to West's April 28 PRA request five business days later on May 5, requesting clarification of items 4, 6 and 7 and indicating that the City would need until June 26, to fulfill West's request, "[d]ue to the large volume and scope of th[e] request." CP at 1606-07. On May 6, 2008, West clarified his requests and, in regard to item 4, indicated that it included "all city departments excluding the police department." CP at 1609. West also asked how many departments the City had and, when the City responded that it had approximately 1,700 departments, West narrowed his request on May 7 to the City's "Legal, [Community Planning & Development (CP&D)], Public works and General Government" departments. CP at 1615-16.

On May 20, the City informed West of its progress in producing the requested records and

asked West whether his clarification, narrowing the scope of his request on item 4, also applied to his request on item 5, to which West responded, "No" on May 21. CP at 1618. On June 12, the City informed West that it would produce the first installment of records in response to his April 28 PRA request the following week. On June 19, 2008, the City sought further clarification from West on item 7, after it concluded that there were several chambers of commerce in the surrounding area.[3] West responded the same day with the following, "'Chamber' is intended to relate to any chamber organization, including the recognized Washington Chamber, the Washington association of Business. I would also like to see any communications between [t]he city and the chamber, and any records related to the chamber." CP at 1626.

On June 20, the City informed West that the first installment of records related to his April 28 PRA request, consisting of over 18,000 pages, would be available for his review on June 23. That same day, the City also informed West that it anticipated having additional installments of his requested records available on or before August 20. West made an appointment to review the first installment of over 18,000 pages on June 23, but he did not appear for his appointment.

On June 25, the City requested further clarification on item 7 of West's April 28 PRA request and informed West that the Washington Association of Business was not a chamber of commerce organization. West responded the next day and made another appointment to inspect the City's first installment of over 18,000 records on June 27. The City replied on June 26 and July 2, again seeking clarification from West on item 7 of his April 28 PRA request.

On July 14, the City informed West that the second installment of records in response to his April 28 PRA request, consisting of approximately 11,650 pages, was ready for his inspection.

[3] Although the City's request for clarification mentions item 6, the context of the request clearly refers to item 7.

The City's July 14 letter also informed West that it would continue to provide him with installments of records as they became available, that it was still reviewing several documents to determine if exemptions applied, and that it was still working on producing an exemption log identifying redacted or withheld documents. West inspected the second installment of approximately 11,650 records on July 21.

On August 20, the City notified West that a third installment of records in response to his April 28 PRA request was available for his inspection. The City's August 20 letter also notified West that he had appeared to have abandoned his partial inspection of the City's first installment of more than18,000 documents because over 30 days had passed since his last inspection of those documents. A City records system administrator wrote to West, "If I do not hear from you by August 28, I will assume that the large volume of records you have already reviewed were sufficient to your needs and consider your request abandoned and closed." CP at 1682. West responded by making an appointment to review the first set of documents on September 2, but he again did not appear for his appointment. West reviewed a portion of the third installment of records on September 10 and he made an appointment to continue his inspection on September 17, but he did not appear for that appointment.

On October 6, the City provided West with a status update on his April 28 PRA request stating that, due to the large volume of e-mails related to his request, it would take the City until December 4 to "review the remainder of emails for any exemptions and have these records available for inspection." CP at 1694. On December 3, the City informed West that the fourth installment of records related to his April 28 PRA request, consisting of 1,035 e-mails, was available for his inspection. The City's December 3 letter also stated that it was continuing to

review the remainder of e-mails for any exemptions and that it would take the City until approximately January 30, 2009, to complete the responses to West's request.

On January 30, the City informed West that the fifth installment of records related to his April 28 PRA request, consisting of 20 pages of unredacted e-mails and 526 pages of redacted e-mails, was ready for his inspection. The City's January 30 letter also informed West that it had an exemption log available for his review and that the City was still reviewing approximately 900 documents for exemptions. The City estimated that it would finish reviewing the 900 documents for exemptions by March 26. West reviewed the fifth installment of records and received an exemption log on February 4.

On February 11, West obtained an ex parte order to show cause why the City should not be held in violation of the PRA. Pursuant to a trial court order, the City produced the final installment of records related to West's April 28 PRA request, consisting of approximately 620 pages of material and one compact disc (CD) of e-mails, on or before April 15. In total, the City produced over 31,000 pages of documents and seven exemption logs in response to West's April 28 PRA request.

II. August 5, 2008, PRA Request[4]

On August 5, 2008, West submitted the following request to the City:

> Please consider this a public records request under RCW 42.56 for all communications and records of any kind relating to the East Bay development projects, and amendments, all studies, project diagrams or maps, and any other records related to this project and its amendments, to include a complete administrative record.

[4] We refer to this as the August 5 request although the trial court refers to it as the August 7 request because the City had to forward West's request to its clerk's office on August 7, 2008, the proper department for processing PRA requests.

CP at 1553.

On August 6, 2008, the City responded, "I wonder if there [is] a more efficient way to respond to this records request. [CP&D] could provide you access to the full planning files in that time frame. That would mean all of the files, binders, folders and other documents they have on the East Bay short plat. Will that work?" CP at 1553.

West did not reply to the City's August 6 letter and, on August 7, 2008, the City informed West that it was forwarding his PRA request to its clerk's office. The City also informed West that it would take approximately two weeks to come up with an estimate of how long it would take to respond to his August 5 PRA request due to West's "several other records requests pending that involves [sic] a voluminous amount of records." CP at 1553. Additionally, the City informed West that it would assume his earlier PRA requests had a higher priority unless West stated otherwise.

On August 13, the City informed West that permit/project files from the CP&D would be available for his inspection on August 25. The City also sought clarifications from West regarding his August 5 PRA request and estimated that it could not fulfill his request before December 3 due to the volume of this request and due to West's other pending PRA requests.

On August 17, West clarified his August 5 PRA request, stating:

> The time period is for the last 3 years.
> The request is for records related to the short platt [sic] and whatever is planned to be constructed there.
> [A] complete administrative record is the record reviewed by the decision maker, including any staff or other report, study or evaluation.

CP at 1559.

West inspected the CP&D records related to his August 5 PRA request, consisting of

approximately 4,130 pages of documents, on August 25 and September 5. On September 19, the City informed West that a second installment of records related to his August 5 PRA request would be ready for his inspection the following week. In response to West's clarification regarding the "administrative record," the City also informed West that it could not "determine what may or may not have been reviewed by particular people." CP at 1566. West responded the same day, stating, "As for there being no identifiable record, thank you for the admission." CP at 1568.

On October 1, the City informed West that several documents related to his August 5 PRA request were produced to him on September 26 as a result of his discovery request to the Shoreline Hearings Board, and that the City would consider the production of these documents as responsive to his PRA request unless West notified it that he would like to inspect the documents already in his possession. The records referenced in the City's October 1 letter consisted of 19 CDs and approximately 800 pages of documents. The City's October 1 letter also informed West that it was still reviewing additional e-mails related to his PRA request to determine if exemptions applied.

On December 3, the City informed West that a third installment of records related to his August 5 PRA request was available for his inspection. The City's December 3 letter also stated:

> Because there was no appeal of the original East Bay short plat decision to the hearing examiner, no administrative record was created. There was, however, an approval of the East Bay short plat and documents pertaining to that approval. Your general request for all records related to the East Bay short plat covers those records. You received many records responsive to this request in the discovery request for the Shoreline Hearings Board, which I have contacted you about previously.

CP at 1573.

West inspected the third installment of records related to his August 5 PRA request on January 12 and January 22, 2009. On January 29, the City informed West that a fourth installment of records related to his August 5 PRA request was available for his inspection and that the final installment of records would be available by February 20. West did not make an appointment to review the fourth or the final installment of records and, on February 11, filed a complaint in the Thurston County Superior Court and obtained an ex parte order to show cause why the City should not be held in violation of the PRA.

On February 20, the City gave West an exemption log identifying 111 e-mails to and from attorneys representing the City, which amounted to 631 pages of redacted attorney-client or work product material. In total, the City produced over 4,900 pages of documents and 19 CDs in response to West's August 5, 2008 PRA request.

Procedural Facts

West's February 11, 2009, complaint alleged PRA, OPMA, and civil rights violations. West's complaint also included negligence, fraud, defamation, libel, and slander claims. He named the City, Washington Cities Insurance Authority, private attorney Jeffrey Myers, Olympia Mayor Doug Mah, and individual members of the Council as defendants. That same day, West filed a motion for an order to show cause why the City should not be held in violation of the PRA for failing to produce records related to his April 28 and August 5 PRA requests. The trial court issued an ex parte show cause order the same day.

West's OPMA violation claim alleged that members of the Council violated the OPMA on six unspecified occasions between September 9 and November 23, 2008, by deliberating via e-mail, and alleged that the Council unlawfully excluded him from a September meeting.[5] Over the

course of litigating his OPMA claim, West made several discovery requests to the City, which included over 30 interrogatories, 44 requests for production, and 30 requests for admissions. In April 2009, the City responded to West's discovery request by producing CDs containing over 20,000 electronic files of City Council members' e-mails that spanned a two and one-half year period.

The City responded to the trial court's show cause order on February 19, 2009. The City's response asserted that it had complied with the PRA by producing for West—in installments—over 38,000 pages and 19 CDs of public records related to his April 28 and August 5 PRA requests; and that the Washington State Department of Fish and Wildlife (WDFW) endangered species maps West requested were exempt from disclosure under RCW 42.56.430(2)(a). The City's response also stated that the City provided West with several exemption logs for redacted or withheld documents and that it notified West about pending installments of records before West filed his lawsuit. The City supported its assertion that it had complied with the PRA by providing several declarations and exhibits detailing its communications with West about his PRA requests.

The trial court held a hearing on West's first show cause motion on February 20, 2009. Following the hearing, the trial court issued a written order on February 27, which found:

> (1) The City of Olympia's response to the Order to Show Cause is adequate and sufficient at this time, but is subject to further ruling by the Court on any written reply arguments submitted by [West] on or before March 6, 2009;
> (2) The City has standing to assert a public records exemption for WDFW maps of endangered species, subject to further ruling by the Court;
> (3) [West] may reply to the City's response to the Order to Show Cause by March 6, 2009;

[5] Although West's complaint alleged that the Council unlawfully excluded him from a meeting on an unspecified date in September, the record on appeal indicates that his allegation refers to a November 3, 2008, Council meeting.

> (4) The City shall provide for inspection and copying by [West] the final installment responding to [West's] April 28, 2008 public disclosure request, and any privilege logs pertaining to that request, by April 15, 2009;
> (5) The final installment responding to [West's] August 7, 2008 public disclosure request, and any privilege logs pertaining to that request, were made available for [West's] inspection and copying on February 20, 2009;
> (6) [West] may bring another motion to show cause after April 15, 2009. Any hearing on such motion shall be noted with sufficient time to allow defendants at least 10 days to respond to the motion before the hearing date, and up to 10 days for [West] to file a reply to defendants' response.

CP at 76.

On April 10, the City moved for partial summary judgment seeking dismissal of West's damages claims against the named Council members based on legislative immunity under RCW 4.24.470(1)[6] and because West did not comply with the tort claim statute, Chapter 4.96 RCW.[7] West replied to the City's motion on April 28, stating, "Prior to filing this action plaintiff did file a tort claim with the city of Olympia. The fact that counsel do not believe that they need to ensure the accuracy of their representations does not reflect positively upon the impartiality of

[6] RCW 4.24.470(1) provides:

> An appointed or elected official or member of the governing body of a public agency is immune from civil liability for damages for any discretionary decision or failure to make a discretionary decision within his or her official capacity, but liability shall remain on the public agency for the tortious conduct of its officials or members of the governing body.

[7] "As a condition precedent to maintaining an action against a governmental entity, [chapter 4.96 RCW] requires the injured party to comply with statutory claim filing procedures." *Pirtle v. Spokane Pub. School Dist. No. 81*, 83 Wn. App. 304, 307, 921 P.2d 1084 (1996).

this court."[8] CP at 1735. The trial court granted the City's partial summary judgment motion based on legislative immunity, but it reserved its ruling on the tort claim issue.

West filed a second show cause motion on April 20, requesting that the City file its exemption logs and the records identified in the exemption logs for *in camera* review by the trial court. West's second show cause motion also requested the trial court to order the City to produce for inspection WDFW endangered species maps and to impose monetary penalties for the City's refusal to produce the maps. The City's response did not oppose West's request for the trial court to review *in camera* the approximately 4,500 pages of documents identified in exemption logs, and it asserted that the WDFW endangered species maps were exempt from disclosure under RCW 42.56.430(2)(a). In support of its contention that the WDFW maps were exempt from disclosure under the PRA, the City attached to its response a confidentiality agreement that it was required to sign before the WDFW would release the maps to the City.

On June 26, the trial court issued a written order that found the WDFW endangered species maps were exempt from disclosure and that the City did not violate the PRA by withholding the maps. The trial court also ordered the City to file the redacted or withheld documents identified in its exemption logs for *in camera* review.

On March 30, 2010, the trial court issued a written ruling following its *in camera* review of the City's redacted or withheld documents. The trial court concluded:

> After examination of all records submitted for *in camera* review I find that only one, B-035, is not exempt under either work product or attorney-client privilege. Given the huge volume of records requested by Mr. West in these two PRA requests, given the conclusion of this court that the redactions in 1,058 of 1,059

[8] West's assertion that he complied with the tort claim statute prior to filing suit is inconsistent with his February 11, 2009, complaint, which stated, "Plaintiff will file a claim for damages for defendants' fraud and negligence with the City, and will seek to bring those claims against the City in this suit after 60 days have passed." CP at 9.

> records were properly withheld, and given the nature of record B-035, I conclude that the [PRA] has not been violated in its responses to Mr. West.

CP at 552-53.

On May 19, West moved for reconsideration of the trial court's ruling, which motion the trial court denied on July 12. On August 6, the trial court entered a written order dismissing all of West's PRA claims with prejudice.

On August 27, the City moved for summary judgment, seeking dismissal of West's remaining claims, including his OPMA, tort, and civil rights claims.[9] The City's summary judgment motion asserted that there was no genuine issue of material fact supporting West's OPMA claims because (1) none of the Council members' e-mails showed that a majority of Council members intended to deliberate about any issues before the Council and (2) the City's evidence showed that West was not excluded from a Council meeting but, instead, he left the meeting on his own volition.

In support of its summary judgment motion, the City provided an Internet link to the audio and video recordings of the Council meeting that West alleged he was unlawfully excluded from attending. The City also attached to its summary judgment motion a copy of the Council's November 3, 2008, meeting minutes, which stated in relevant part:

> Mr. Arthur West, [West's address], made personal comments about a City employee. Mayor Mah cautioned him on limiting testimony to City business. When Mr. West continued speaking and Mayor Mah interrupted him again concerning the nature of his testimony, Mr. West left.
> . . . .
> . . . Mayor Mah and Councilmember Strub expressed disappointment with Mr. West's offensive behavior and comments.

[9] On September 18, 2009, the trial court dismissed West's claims against Jeffrey Myer under CR 12(b)(5) based on insufficient service of process.

CP at 1907.

West's response to the City's summary judgment motion referenced a letter that Timothy Ford, ombudsman for the state attorney general, had sent to the City regarding potential violations of the OPMA and West attached legal memoranda, discussing the applicability of the OPMA to e-mail communications, as well as legal briefs pertaining to other OPMA cases. West's response did not identify any specific evidence supporting his claim and, instead, asserted:

> In order for this court to make a just and equitable determination it will be necessary to review the actual communications between the . . . Council members. However, the CDs provided by counsel are in a very inconvenient format and are not certified to be admissible as evidence.
>
> . . . .
>
> Mr. Ford's record of the investigation he performed ion [sic] behalf of the State is also relevant. Although plaintiff has requested a copy of these records, they have as yet not been voluntarily produced.
>
> The records now in the possession of the Ombudsman and the City are essential to demonstrating the truth of plaintiff's claims that the City violated the [PRA].

CP at 907-908.

Additionally, West's response requested an extension of time to respond to the City's summary judgment motion and to "produce evidence necessary to reply" to the motion. CP at 908. On September 17, West moved to amend his complaint to allege daily violations of the OPMA over a 20 month period, rather than the 6 OPMA violations over a 2 month period that he had alleged in his original complaint. The trial court held a hearing on the parties' motions on September 24 and, that same day, entered an order granting the City's summary judgment motion and denying West's motion for a continuance to amend his complaint. West moved for reconsideration and, on December 17, 2010, the trial court denied West's reconsideration motion and entered a final judgment dismissing all of his claims with prejudice.

West filed a timely notice of appeal that identified the trial court's September 24 summary judgment order and the trial court's December 17 order denying reconsideration of the September 24 summary judgment order. Additionally, West's notice of appeal stated that he was appealing "all interlocutory and supplementary orders" followed by a handwritten asterisk stating "see attached." CP at 1414. West attached five trial court orders to his notice of appeal in addition to the two orders identified in his notice of appeal: the February 27, 2009, order on the first show cause hearing; an August 21, 2009, order converting certain filed materials to exhibits; the May 8, 2009, order dismissing damages claims against the Council members based on legislative immunity; the June 26, 2009, order on the April 20, 2009, second show cause hearing; and the April 20, 2009, ex parte order to show cause. West did not identify in his notice of appeal the trial court's March 30, 2010, order dismissing his PRA claims following the trial court's *in camera* review; the July 12, 2010, order denying reconsideration of the March 30 order; or the August 10, 2010, order dismissing all of his PRA claims.

ANALYSIS

I. Standard of Review

We review an order granting summary judgment de novo, engaging in the same inquiry as the trial court. *In re Estate of Black*, 153 Wn.2d 152, 160, 102 P.3d 796 (2004); *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The moving party has the burden of proving that there is no genuine issue of material fact. *Black*, 153 Wn.2d at 160-61. If the moving party meets its burden, the burden shifts to the nonmoving party to "'set forth specific facts showing that there is

a genuine issue for trial.'" *Black*, 153 Wn.2d at 161 (quoting *LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975)).

The nonmoving party must set forth evidentiary facts and cannot meet its burden by relying on "speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). In determining whether a genuine issue exists, we construe the facts and reasonable inferences from the facts in the light most favorable to the nonmoving party. *Black*, 153 Wn.2d at 160-61. Factual issues may be decided as a matter of law only if reasonable minds could reach but one conclusion. *Sherman v. State*, 128 Wn.2d 164, 184, 905 P.2d 355 (1995).

II. PRA Claims

West asserts that the trial court erred by granting summary judgment on his PRA claims in favor of the defendants because (1) the City did not have standing to assert an exemption to disclose the withheld WDFW endangered species maps, (2) the withheld WDFW endangered species maps were public records subject to disclosure under the PRA, (3) the City did not timely respond to his PRA requests, and (4) the attorney-client privilege did not apply to several of the documents that the City redacted or withheld from West's inspection. We disagree.

"The PRA is a strongly worded mandate for broad disclosure of public records." *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 714, 261 P.3d 119 (2011). The PRA "stands for the proposition that, '*full access* to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.'" *Progressive Animal Welfare Soc'y v.*

Univ. of Wash., 125 Wn.2d 243, 251, 884 P.2d 592 (1994) (emphasis in original) (quoting former RCW 42.17.010(11) (1975)[10]). Under RCW 42.56.070(1), "Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions [listed in] this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records." "[T]he PRA's 'other statute' exemption allows for a separate statute to preclude disclosure of 'specific information' or entire 'records.'" *Ameriquest Mortg. Co. v. Office of Attorney Gen.*, 170 Wn.2d 418, 440, 241 P.3d 1245 (2010) (quoting RCW 42.56.070(1)).

We review agency actions under the PRA de novo. *Neighborhood Alliance*, 172 Wn.2d 702 at 715 (citing RCW 42.56.550(3)). A public records case may be decided based on affidavits alone. *O'Neill v. City of Shoreline*, 170 Wn.2d 138, 153-54, 240 P.3d 1149 (2010).

A. Standing To Assert PRA Exemption

West first contends that the trial court erred by finding that the City had standing to assert an exemption to disclosure of the WDFW endangered species maps. In support of his contention, West's brief merely states, "The court also erred in allowing the City standing to assert an exemption that the WDFW did not seek to assert" and his brief does not contain any argument or citations to authority. Br. of Appellant at 16. But "[a]ssignments of error lacking argument or citation to authority will not be considered by the Courts of Appeals." *Watson v. Maier*, 64 Wn. App. 889, 899, 827 P.2d 311 (1992); RAP 10.3(a)(6). Although West has filed this appeal pro se, as we have stated in a previous appeal brought by West, "a pro se litigant is held to the same standard as an attorney." *West v. Wash. Ass'n of County Officials*, 162 Wn. App. 120, 137 n. 13,

[10] Recodified as RCW 42.17A.001(11), pursuant to Laws of 2010, chapter 204, section 1102.

252 P.3d 406 (2011); see also *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997). Accordingly, we decline to address this issue.

B. WDFW Endangered Species Maps

West also contends that the trial court erred by finding the WDFW endangered species maps were exempt from disclosure. Specifically, West appears to argue that trial court erred because the maps were "public records" under the PRA, citing *Concerned Ratepayers Association v. Public Utilities District No. 1 of Clark County*, 138 Wn.2d 950, 983 P.2d 635 (1999). Br. of Appellant at 14. But the City has not argued below nor on appeal that the WDFW endangered species maps were not "public records" under the PRA and the trial court did not exclude disclosure of WDFW maps on that basis. Instead, the City asserted in its response to the February 11 order to show cause that the WDFW maps were exempt from disclosure under RCW 42.56.430, which provides in relevant part:

> The following information relating to fish and wildlife is exempt from disclosure under [the PRA]:
> . . . .
> (2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, . . . accredited colleges and universities[,] . . . tribal governments[, and] the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive fish and wildlife data may be subject to a confidentiality agreement[.] . . . Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:
> (a) The . . . specific locations of endangered species . . . or threatened or sensitive species classified by rule of the department of fish and wildlife.

Despite the City claiming an exemption to disclosure of the WDFW endangered species maps under RCW 42.56.430, West did not address this statutory exemption at the trial court or

on appeal. Here, the City presented evidence in the form of a declaration from CP&D planning manager, Todd Stamm, together with an attached confidentiality agreement with the WDFW, stating that the requested WDFW maps were exempt from disclosure under the plain language of RCW 42.56.430. This evidence was sufficient to show that there was no genuine issue of material fact supporting West's PRA claim as to the WDFW maps. And, because West has not addressed this statutory exemption, he did not meet his burden to "'set forth specific facts showing that there is a genuine issue for trial.'" *Black*, 153 Wn.2d at 161 (quoting *LaPlante v. State*, 85 Wn.2d at 158). Accordingly, the trial court did not err by finding the WDFW maps exempt from disclosure and it did not err by granting summary judgment in favor of the defendants on that issue.

C. The City's Response to West's PRA Requests[11]

Next, West asserts that the trial court erred by finding that the City adequately responded to his PRA requests and timely provided exemption logs for materials the City redacted or withheld from production. We disagree.

[11] West's brief states that "it was undisputed that [the City] failed to respond to plaintiff's records request of November 18, 2007 within 5 days." Br. of Appellant at 22. This statement has no basis in fact because the City has maintained, and the record shows, that it responded to West's April 28 and August 5, 2008, PRA requests within five business days as former RCW 42.56.520 (1995) required. Furthermore, the subject of this appeal does not include a November 18, 2007 PRA request. Additionally, West's argument relies on facts that are not in the record, including unsupported allegations that the defendants destroyed documents that were subject to his PRA request. Finally, West's brief on this issue includes arguments that are not supported by facts in the record or with citations to legal authority, such as:

> The amount of privileged material is a direct result of City policies to conduct the operations of government behind closed doors and behind a veil of attorney-client privilege and cannot be a reasonable justification for any delay in disclosure. The continuing culture of secrecy and resulting delays in disclosure of records related to City and port development projects are the result of a regular business custom of the port and City to hide records and obstruct review of their determinations.

Br. of Appellant at 29.

The record does not support West's contention that the City did not timely respond to his April 28 and August 5 PRA requests. Here, the record shows that the City responded to West's April 28 and August 5 PRA requests within five business days as former RCW 42.56.520 (1995) required. And, although the City did not complete its production of the records and exemption logs until February 2009, the PRA expressly allows an agency

> [a]dditional time . . . to respond to a request . . . based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

Former RCW 42.56.520.

Here the record clearly shows that the City required several clarifications from West regarding his PRA requests, had to assemble a large amount of material in response to West's PRA requests, and had to determine whether many of the records responsive to West's PRA requests were exempt from disclosure. In response to his April 28 PRA request, the City provided West with over 31,000 pages of documents and seven exemption logs in six installments occurring over a 10 month period.[12] During the course of those 10 months, the City asked for clarifications regarding West's request and provided West with numerous updates regarding his request. In response to his August 5 PRA request, the City provided West with over 4,900 pages of documents, 19 CDs, and an exemption log in five installments over an eight month period. During the course of those eight months, the City asked for clarifications regarding West's request, provided West with numerous updates regarding his request, and was fulfilling his

[12] As we embrace the electronic age, records stored electronically may eventually be searchable by the requesting party rather than by paid agency employees. This would assume that potentially exempt records were segregated before storage for future review by the agency before being released for public searches.

voluminous April 28 PRA request.

West does not address the portion of former RCW 42.56.520 allowing additional time to respond to a PRA request under the circumstances present here, and he does not provide any legal authority supporting his argument that the City's response was untimely under these circumstances. Rather, West appears to argue that the City's response to his PRA requests was untimely due to a "deliberate strategy to impermissibly abridge [his] rights." Br. of Appellant at 30. But this argument has no support in the record, and we hold that the trial court did not err by finding that the City's response to West's PRA requests was timely under former RCW 42.56.520.

D. Redacted or Withheld Records

Next, West contends that the trial court erred in its March 30, 2010, ruling following *in camera* review of e-mail communications the City redacted or withheld from production under the attorney-client communications and work product privileges. Specifically, West appears to argue that the trial court erred by finding that 1,058 of the 1,059 documents reviewed *in camera* were properly withheld or redacted under the attorney-client or work product privilege.[13]

Because West did not designate the trial court's March 30 ruling following *in camera* review in his notice of appeal, we decline to address this issue for failure to comply with RAP 5.3(a)(3). *See, e.g., Willapa Grays Harbor Oyster Growers Ass'n v. Moby Dick Corp.*, 115 Wn.

[13] Although West argued at the trial court that the trial court erred by finding no PRA violation where the City improperly withheld 1 out of 1,059 documents, he did not assign error, make arguments, or cite any legal authority regarding this aspect of the trial court's ruling. Accordingly, we do not address that issue. *See State v. Olson*, 126 Wn.2d 315, 321, 893 P.2d 629 (1995) ("when an appellant fails to raise an issue in the assignments of error, in violation of RAP 10.3(a)(3), *and* fails to present any argument on the issue or provide any legal citation, an appellate court will not consider the merits of that issue").

App. 417, 426 n. 3, 62 P.3d 912 (2003). Moreover, West did not designate in his notice of appeal any other trial court decision prejudiced by the March 30 ruling, which designation may have allowed for our review under RAP 2.4(b).[14] Accordingly, we decline to address this issue.

III. OPMA Claims

West also contends that the trial court erred by granting summary judgment in favor of the defendants on his OPMA claims because members of the Council violated the OPMA through e-mail communications. West further contends that the trial court abused its discretion by failing to consider a letter from the attorney general's ombudsman in its summary judgment ruling. We disagree.

Under the OPMA, "All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency." RCW 42.30.030. The OPMA's purpose is to permit the public to observe the steps employed in reaching a governmental decision. *Cathcart v. Andersen*, 85 Wn.2d 102, 107, 530 P.2d 313 (1975). We interpret the OPMA liberally. RCW 42.30.910.

To prevail on an OPMA claim, a plaintiff must establish that (1) members of the governing body, (2) held a "meeting," (3) in which the governing body took "action" in violation of the OPMA, and (4) the members of the governing body knowingly violated the statute. *Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 558, 27 P.3d 1208 (2001); *see* RCW 42.30.120. A "meeting" under the OPMA occurs if a majority of the governing members discuss or consider

[14] For example, had West designated in his notice of appeal the trial court's July 12, 2010, order denying reconsideration of the March 30 ruling or the August 10, 2010, order dismissing all of his PRA claims, which order relied on the trial court's March 30 ruling, review would be proper under RAP 2.4(b). RAP 2.4(b) provides in part, "The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if . . . the order or ruling prejudicially affects the decision designated in the notice."

agency business. *Wood*, 107 Wn. App. at 564. Although a "meeting" under the OPMA may occur through the use of e-mail communications, "the mere use or passive receipt of e-mail does not automatically constitute a 'meeting.'" *Wood*, 107 Wn. App. at 564.

An "action" under the OPMA does not occur unless "governing body members . . . communicate about issues that may or will come before [it] for a vote." *Wood*, 107 Wn. App. at 565. "Thus, the OPMA is not implicated when members receive information about upcoming issues or communicate amongst themselves about matters unrelated to the governing body's business via e-mail." *Wood*, 107 Wn. App. at 565 (citing RCW 42.30.070); *Equitable Shipyards, Inc. v. State*, 93 Wn.2d 465, 482, 611 P.2d 396 (1980)).

Here, the City's summary judgment motion asserted that there was no genuine issue of material fact supporting West's OPMA claim because none of the Council's e-mails showed that a majority of the members intended to conduct a meeting about an action that may have or did come before the Council. The City's assertion that West lacked any evidence supporting his OPMA claims was sufficient to shift the burden to West to set forth facts showing a genuine issue of material fact for trial. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). But West's response to the City's summary judgment motion did not identify any specific facts supporting his OPMA claim and, instead, he requested an extension of time to "produce evidence necessary to reply" to the City's summary judgment motion. CP at 908. This was an insufficient showing to survive summary judgment.

West's appellate brief similarly fails to identify any e-mail communication showing an

OPMA violation.[15] His appellate brief does appear to argue that the redacted or withheld e-mail communications would show that the Council violated the OPMA, but "speculation[and] argumentative assertions" are insufficient to raise a genuine issue of fact. *Seven Gables*, 106 Wn.2d at 13. Accordingly, the trial court properly granted summary judgment in favor of the defendants on West's OPMA claims.[16]

West's brief also fails to provide any argument or citations to legal authority supporting his contention that the trial court erred by failing to consider a letter from the attorney general's ombudsman in ordering summary judgment in favor of the defendants. Instead, West merely recites the content of the excluded evidence and asserts that the trial court erred by failing to consider it. Accordingly, we decline to address that issue.

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[15] Although West's brief contains several quotes from Council members' e-mail communications, without any citations to the approximately 2,000 page record indicating where these quotes can be found, he does not address the requirement that the e-mails show that a majority of the Council members communicated about issues concerning agency business. At oral argument, West clarified that his concern arises when a quorum of a governing body is meeting in person but are communicating via an electronic medium with each other during that meeting and the communications are not made public. Wash. Court of Appeals, *West v. Mah*, No. 41694-8-II, (June 26, 2012), at 3 min., 50 sec. (on file with court). We recognize the legitimacy of this concern but on this record West does not present evidence that a quorum of the Council was communicating via electronic media on issues before the Council or likely to come before the Council.

[16] West does not assign error to the portion of the trial court's summary judgment order related to his claim that the Council violated the OPMA by excluding him from a meeting. West does state in another section of his brief, without any citations to the record or legal authority, that the trial court

> also erred in determining that West had no claim for ejection from a public meeting, violation of the OPMA, a pattern of concealment of evidence, or any other claims, based on counsel's self serving "evidence": that lacked credibility or any basis in fact or law, and based upon the Court's improper ex parte consideration of evidence.

Br. of Appellant at 42.

This statement, without more, is insufficient to trigger appellate review and we decline to address the issue. RAP 10.3(a)(6).

IV. CR 56(f) Motion for Continuance

Next, West asserts that the trial court abused its discretion by denying his CR 56(f) motion for a continuance to allow him to develop evidence supporting his claims. We disagree.

CR 56(f) states:

> Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may . . . order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

A trial court does not abuse its discretion by denying a CR 56(f) motion to permit further discovery if based on any one of the following three reasons: "'(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.'" *Pelton v. Tri-State Mem'l Hosp., Inc.*, 66 Wn. App. 350, 356, 831 P.2d 1147 (1992) (quoting *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989)).

Here, West offered no good reason for the delay in obtaining the desired evidence because his lawsuit had been pending for over 18 months before the City moved for summary judgment. And by May 2009, more than 15 months before the City filed its motion for summary judgment, West had received over 40,000 pages of records and 19 CDs containing e-mail communications responsive to his public records requests, as well as CDs containing over 20,000 files of Council e-mail communications pursuant to his discovery request. And, West could not state what evidence would be established through additional discovery. Instead, he merely claimed that evidence already in his possession, but which he claimed he did not have adequate time to review,

supported his OPMA claim. Accordingly, the trial court did not abuse its discretion by denying West's CR 56(f) motion for a continuance.

V. Additional Claims

Throughout his brief, West appears to raise additional issues that are inadequately argued or lack citation to authority, and we do not address them. For example, West states:

> The Order of Dismissal is premised upon a failure to accommodate violative of the [Americans with Disabilities Act (ADA)], and a denial of substantive and procedural due process under false color of draconian and biased misapplication of [*Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)] to "railroad" plaintiff in violation of the express language of [*Celotex*] regarding discovery and CR 56(f).

Br. of Appellant at 43.

But West does not state in his brief how the trial court violated the ADA, what reasonable accommodations he requested from the trial court, or what legal authority supports his contention that the trial court violated the ADA. Accordingly, this argument is insufficient for appellate review. RAP 10.3(a)(6). West also appears to argue that the trial court misapplied the CR 56 summary judgment standard for dismissing his civil rights claims. But West failed to offer any evidence supporting his civil rights claims at trial and, thus, the trial court properly dismissed those claims. *See White v. Solaegui*, 62 Wn. App. 632, 636, 815 P.2d 784 (1991) ("Summary judgment is properly granted when the nonmoving party fails to offer any evidence opposing the motion.").

We affirm the trial court's summary judgment rulings in all respects.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Quinn-Brintnall, J.

Johanson, A.C.J.