

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RONNIE HICKS,)
)
 Appellant,) No. 63489-5-1
)
 v.) DIVISION ONE
)
 STATE OF WASHINGTON,) UNPUBLISHED OPINION
 DEPARTMENT OF CORRECTIONS,)
)
 Respondent.) FILED: June 14, 2010
)

Grosse, J. — Ronnie Hicks appeals the trial court’s order rejecting his claims against the Department of Corrections (DOC) for violations of the Public Records Act (PRA), chapter 42.56 RCW. Because Hicks fails to establish a violation of the PRA, we affirm the trial court’s order denying relief.

FACTS

In August and September 2007, Ronnie Hicks, an inmate in the Monroe Correctional Facility, made a series of requests for records from DOC pertaining to his participation in the Sex Offender Treatment Program (SOTP). In particular, Hicks submitted repeated requests for his “SOTP Termination form.” Public Disclosure Coordinator Jane McKenzie sent Hicks a copy of the form on October 4, 2007.¹ Later, in response to an identical request, Public Disclosure Coordinator Cathy Kopoian sent Hicks a letter dated October 24, 2007, which included the following statement: “The following document was provided to you

¹ Even though DOC’s response took more than five days, the delay was proper because Hicks failed to make the necessary payment of copying charges until October.

on October 4, 2007: 1. SOTP termination form.”

On November 27, 2007, Hicks appealed Kopoian’s response to Appeals Officer Kay Wilson-Kirby. Hicks complained that the termination form he received on October 4 was “forged,” and stated, “I did not sign this document but it appears to have my (& other staff’s) photocopied signatures on it.” Hicks’s appeal was denied.

In August 2008, Hicks filed an action in Snohomish County Superior Court seeking relief under the Public Records Act (PRA), chapter 42.56 RCW. Hicks sought an in camera review of his original SOTP form, an order for DOC to show cause why it denied him access to the form, a copy of the form, and an award of costs and statutory penalties. For the first time, Hicks identified the form he had been seeking as a copy to which new signatures and a date were added when the initial decision to terminate him from the program was reviewed and upheld by additional DOC staff in September 2007. Hicks stated that the copy of the SOTP form that he had received in response to his records request did not match a description of a form in a letter dated October 29, 2007 he had received from SOTP Director Anmarie Aylward in response to his continuing complaints about his termination. In particular, Aylward’s letter includes the following:

On September 12, 2007 the treatment team leaders met to discuss your case and a decision was made to uphold the termination. The form states: “Review and termination upheld.” New dates and signatures were added by Dr. Gerald Hover, Sally Neiland, and Robin Murphy, the date was September 12, 2007.^[2]

² (Emphasis omitted).

In response, DOC provided Kopoian's declaration stating:

On September 13, 2007, I received a public records request for a number of documents from Mr. Hicks, including his "SOTP Termination Form". He did not specify that this form was any different from the one requested two weeks earlier. He also did not provide a date he was seeking on the form. I did not know that there were any changes made to the form after Mr. Hicks's request on August 24, 2007. I believed that he was requesting the exact same form on both requests. When I provided a response to the request made on September 13, 2007, I informed him that he had already received his SOTP Termination form. I did not know that changes had been made to that form until this week. . . . Had Mr. Hicks informed me he was seeking a different version of his SOTP Termination form from the one he received on October 4, 2007, I would have known that he was seeking a form different from the previously requested form. I would have been able to provide that document to him.

DOC also indicated that a copy of the SOTP form with the September 12 signatures was hand delivered to Hicks on September 16, 2008. The trial court found that DOC complied with the PRA and denied Hicks's requests for relief.

Hicks appeals.

ANALYSIS

Judicial review of agency action taken or challenged under the PRA is de novo.³ The PRA requires agencies to produce "identifiable public records."⁴ At a minimum, a person seeking documents must identify or describe the documents with reasonable clarity to allow the agency to locate them.⁵ The PRA does not "require public agencies to be mind readers."⁶

Hicks first contends that the trial court erred by failing to correct its initial finding of fact that DOC provided a copy of the form including the additional

³ Soter v. Cowles Pub. Co., 162 Wn.2d 716, 731, 174 P.3d 60 (2007).

⁴ RCW 42.56.080.

⁵ Hangartner v. City of Seattle, 151 Wn.2d 439, 447, 90 P.3d 26 (2004); Bonamy v. City of Seattle, 92 Wn. App. 403, 410, 960 P.2d 447 (1998).

⁶ Bonamy, 92 Wn. App. at 409.

notations on September 16, 2007. Hicks argues that he actually received the copy in September 2008. Kopoian's declaration indicates that she sent the copy with the additional signatures to be hand delivered to Hicks on "September 16, 2007." This date is clearly a typographical error as DOC agrees that the copy with the signatures was delivered to Hicks in September 2008. And the record indicates that the trial court granted Hicks the relief he requests on March 4, 2009 by ordering, "The Court modifies the findings to reflect the correct date." Because this order was sufficient to correct the mistaken date, Hicks fails to demonstrate error.

Hicks next contends that the trial court erred by denying him an award of costs and statutory penalties for the 312 days between November 11, 2007 and September 16, 2008, during which he alleges DOC improperly denied him access to the copy of the SOTP form with the additional signatures. Hicks asserts that in response to SOTP Director Aylward's October 29 letter describing signatures placed on his SOTP form on September 12, he sent a letter to Aylward on November 11, 2007 requesting a copy of the SOTP form with the additional signatures. Hicks contends that his November 11 letter sufficiently distinguished the modified SOTP form from the copy he had been provided on October 4, 2007 and constituted a proper request under the PRA. He claims that DOC denied him access to the document until September 2008 in violation of the PRA.

But the record does not support Hicks's claim. First, the record does not include any letter dated November 11 from Hicks to Aylward or substantiate that

Hicks made a request under the PRA on November 11 to Aylward or anyone else. Second, nothing in the record indicates that Aylward was DOC's designated public disclosure coordinator and Hicks does not claim that she was.⁷ Where an agency has properly designated a public disclosure coordinator, the agency may not be penalized for failing to respond to requests submitted to other agency employees.⁸

Moreover, the record shows that Hicks did not clearly describe the document he was seeking, i.e., a copy of the SOTP form with the September 12, 2007 signatures, until September 2008 during argument in the trial court. DOC did not refuse to provide Hicks with a copy of that version of his SOTP form and did not contend that any exemption prevented release of the form. Instead, Kopoian reasonably believed that Hicks simply repeated his request. Hicks's second request did not include any additional description of the form to communicate that it had been altered since his last request. Moreover, Hicks's appeal to Wilson-Kirby appeared to be a claim that his signature had been forged rather than a claim that he was entitled to a new copy of the form based on proper additions made by SOTP staff after he had received a document responsive to his prior public records request. Under these circumstances, because Hicks fails to demonstrate that DOC violated the PRA, the trial court did

⁷ In a footnote in his reply brief, Hicks argues that SOTP Program Director Sally Neiland's November 16, 2007 letter directing Hicks to cease addressing "[c]orrespondence containing demands, accusations, threats and name-calling" to SOTP staff demonstrates that Neiland was "officially respond[ing] to [his] November 11, [2007] request in the capacity of a Public Disclosure Coordinator." Nothing in the letter or the record supports this claim.

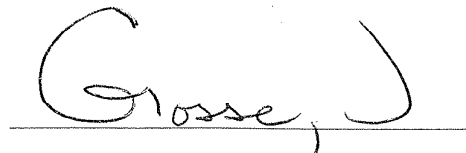
⁸ Parmelee v. Clarke, 148 Wn. App. 748, 759, 201 P.3d 1022 (2008).

not err in denying his request for costs and penalties.

Finally, Hicks contends that the trial court abused its discretion by refusing to conduct an in camera review of the original document. The trial court denied Hicks's request for an in camera review of the original document because it was "satisfied that the copies of the form provided in response to [Hicks's] request are accurate copies." Hicks appears to argue that an in camera review of the original document was required to establish that his signature had been forged or to support his claim of bad faith on the part of DOC.

The PRA provides that courts may examine a record in camera to determine whether disclosure is proper.⁹ But DOC did not resist disclosure here and did not contend that any record Hicks sought was exempt from disclosure under the PRA. Once Hicks identified the document he was seeking as the SOTP termination form including the additional September 12, 2007 signatures, DOC provided a copy of that document. Contrary to Hicks's assertions, nothing in the record indicates that the trial court was required to conduct an in camera review of the original document under the circumstances here.

Affirmed.

A handwritten signature in cursive script, reading "Grosse, J.", is written above a horizontal line.

WE CONCUR:

⁹ RCW 42.56.550(3).

Jan, J.

Cox, J.