IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Shawn D. Greenhalgh, Appellant, v. WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, Respondent.	No. 41249-7-II UNPUBLISHED OPINION

Van Deren — Shawn D. Greenhalgh appeals the trial court's summary judgment order dismissing his claims under the public records act (PRA), chapter 42.56 RCW, against the Washington State Office of the Attorney General (AGO). Greenhalgh contends that summary judgment was improper because the AGO's record search in response to his PRA request was not reasonable, and that penalties should be assessed against the AGO for its failure to provide e-mail "metadata." He also complains that the AGO's charges for electronic copies of responsive records was excessive and improper, and that he is entitled to attorney fees. We affirm.

FACTS

This case concerns three overlapping PRA requests submitted to the AGO by Greenhalgh, a prisoner at the Monroe Correctional Complex.

I. December 2007 Request (PRR-2007-00473)

Greenhalgh submitted a PRA request to the AGO in December 2007 based on his concern that the AGO was involved in supporting new legislation that might curb inmates' use of the PRA. Greenhalgh's letter, dated December 6, 2007, and received by the AGO on December 10, 2007, requested all records pertaining to the AGO's efforts to obtain legislation to modify the PRA. Jerome Lord, an AGO public records officer, responded to the letter on December 17, 2007, indicating that 10 business days would be necessary to identify and gather records responsive to Greenhalgh's request, which Lord designated as PRR-2007-00473. Lord sent Greenhalgh another letter, dated January 2, 2008, extending the collection period to January 11 because responsive records continued to be located.

Then, in a letter dated January 15, 2008, Greenhalgh narrowed his request to "[a]ny and all records pertaining to the [AGO] currently requesting new legislation pertaining to the [PRA], *as pertains to prisoners only*." Clerk's Papers (CP) at 55 (emphasis added). The AGO received Greenhalgh's letter on January 17.

On January 17, Lord sent a letter to Greenhalgh indicating that the "first batch of records" would be available on January 28. CP at 56. Lord identified 181 pages of responsive documents and requested payment of $22.70 prior to the AGO's production of the first batch of records ($18.10 for paper copies at $0.10 per page plus $4.60 for postage). Greenhalgh replied, asking for the first and last pages from the packet and every 10th page in between—e.g., the 10th, the 20th, the 30th, etc.—without enclosing payment for the pages he specified. The AGO received this letter on January 30. The next day, Lord mailed Greenhalgh the 20 requested pages, without first requiring payment, and stated to Greenhalgh that his record request was complete and

considered closed.

Subsequently, by letter dated February 9, Greenhalgh asked Lord to provide "[a]ll emails in the 181 responsive documents not already produced with your January 31, 2008 letter." CP at 61. Two days later, Lord sent another letter to Greenhalgh indicating there were 132 additional pages of e-mails not already sent to Greenhalgh and instructing Greenhalgh to pay $21.11 for copying and postage for all the pages, including the pages Greenhalgh had already received. Greenhalgh never paid this sum to the AGO.

In a February 26 letter, Greenhalgh asked Lord to provide the remaining 132 pages "in electronic format" and a cost letter for the compact disc (CD) and postage. CP at 63. On March 3, 2008, Lord responded by letter quoting a price of $27.90 for the cost of scanning copies of documents into a portable document format, copying or "burning" the records to a CD, and then mailing the CD in an envelope (sleeve) to Greenhalgh.[1]

In response, on March 24, Greenhalgh wrote and asked for one specific page of the records he requested in his December 6, 2007 letter to be burned onto a CD and mailed to him. He enclosed $14.82, calculated to pay for the $12.50 flat set up fee for scanning any number of pages, the per page scanned copy fee for the requested record, the cost of the CD and CD sleeve, and cost of postage. Greenhalgh's letter also advised that he objected to the AGO's "excessive charges and fees." CP at 65. On April 7, Lord mailed Greenhalgh the CD containing the single

[1] At that time, the AGO's Public Records Constituent Services (PRCS) unit, in which Lord worked, did not have scanning equipment and did not copy files to compact discs. Scanning services were centrally provided in the AGO's Mail and Document Services unit (MDS) and sold to other divisions as requested. The fees quoted to Greenhalgh in Lord's March 3, 2008, letter represented the actual cost of obtaining the scanned documents. That procedure changed in June 2009, when PRCS obtained equipment to burn CDs. Thereafter, the PRCS charged requestors only for the CD, sleeve, and postage, and did not charge a per image fee or costs for staff to copy electronic records.

requested page and indicated that "this request is now complete and we will now consider it closed." CP at 66.

II. June 2008 Request (PRR-2008-00341)

On June 5, Greenhalgh filed a new public records request referring to records that he had requested in December 2007.[2] In his June 5 letter, he referred to the closed public records request by number (PRR-2007-00473) and requested "any and all [of] the e-mails responsive to the above-referenced request, in their original format, not the electronic format you previously offered them in (Scanned)." CP at 68.

Lord responded by letter on June 13, designating this request as PRR-2008-00341, and indicating that 20 additional business days would be necessary to respond to Greenhalgh's request. In a July 15 letter, Lord informed Greenhalgh that 132 pages of responsive records were available but, because the records were provided to Lord in hard copy paper form, he could only provide paper copies or copies scanned to a CD. Lord's letter also included a breakdown of the actual cost to provide the records in either hard copy paper form or electronic format, and said that Lord would provide the records in whichever format Greenhalgh preferred, if he submitted payment by August 16. Greenhalgh did not pay this sum to the AGO.

From August through October, Greenhalgh and the AGO's Public Records Constituent Services unit (PRCS) exchanged letters in which Greenhalgh asked for justification for the copying fees and formatting of the records.[3] The last correspondence with Greenhalgh in this

[2] In his second request, it appears that Greenhalgh incorrectly wrote the date the AGO received his first request because the AGO date stamp reads, "Received 2007 Dec[ember] 10," not "Received December 10, 2008," as stated in his letter. CP at 52, 68 (capitalization, boldface, and underline omitted).

[3] For instance, seemingly prompted by Lord's explanation that he could only provide hard copies

exchange was an October 13 letter from Lord's supervisor, K.P. Bodnar, to which she attached copies of relevant RCWs and WACs authorizing copying costs, and which further explained the costs incurred to produce records in electronic format. The PRCS never received payment from Greenhalgh for any records requested under PRR-2008-00341.

III. January 2008 Request (PRR-2008-00038)

In addition to the PRA requests in December 2007 and June 2008, Greenhalgh filed a PRA request via a letter dated January 14, 2008, in which Greenhalgh designated the following "[s]pecific [r]ecords [r]equested," "The first page of each and every Washington State 'Attorney General's Office Certificate on Public Records Act Claim/Litigation [Settlements,]' involving the Washington State Department of Corrections and inmate-petitioners, dated between January 1, 2005 and January 1, 2008." CP at 86 (underline and capitalization omitted) (fourth alteration in original). The AGO received the request on January 17, 2008, and assigned the matter to Lord.

Lord searched the AGO's "electronic mail vault," using the title that Greenhalgh provided, but found no responsive documents. CP at 48. Lord then searched the AGO's Case Management System (CMS) for the title used by Greenhalgh, but again found no responsive documents. Lord conferred with Bodnar, and together they searched the e-mail vault and CMS, but found no records responsive to Greenhalgh's articulated request.

On January 25, Lord notified Greenhalgh that "[w]e have searched our records and do not have any documents responsive to your request. Because there are no responsive documents, we

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or scanned copies of e-mails because Lord had only received hard copies of those documents, Greenhalgh asked Lord to confirm that the original e-mails had been destroyed. Lord responded that he could provide the e-mails in hard copy or scanned onto a CD at previously quoted prices. Greenhalgh replied, stating that Lord had again refused to provide the 132 pages of e-mails in their "original format" as he had requested, and Greenhalgh demanded that the AGO "explain and justify" its costs for those records. CP at 77.

will now consider your request closed." CP at 88. Greenhalgh had no further communication with the AGO regarding this request before filing the present lawsuit, which was served on the AGO in February 2009.

Greenhalgh's complaint faults the AGO for failing to conduct an adequate search for documents in response to his January 14, 2008, request, pointing to the documents the AGO sent to another inmate in response to that inmate's subsequent similar request.[4] The other inmate, Clark George,[5] submitted his request to the AGO on March 21, 2008, and the request was assigned to Bodnar. CP at 108. George's request in part sought "[e]ach and every State of Washington 'Attorney General's Office Certificate on Public Records Act Claim/Litigation,' involving the State of Washington Department of Corrections and inmate-petitioners, dated January 1, 2005 through March 1, 2008." CP at 112. Using the title description that George had provided, Bodnar searched the CMS and the e-mail vault and found no responsive records. On March 27, 2008, Bodnar told George by letter that the records he requested could not be located and that his request would be considered closed.

Several months later, on August 7, 2008, George sent the AGO a letter with an attached sample document that contained a legend at the top of the page stating, "ATTORNEY GENERAL'S OFFICE CERTIFICATE ON PUBLIC RECORDS ACT CLAIM/LITIGATION." CP at 115. George's letter requested that the AGO take another look at his request and produce

[4] The complaint was not included in the record on appeal. We interpret Greenhalgh's argument from his trial brief and the summary judgment affidavits.

[5] Documents in the record refer to this second inmate as "Clark George," but the handwritten signature on the March 21, 2008, letter, reads, "George Clark." CP at 113, 112. Because the parties refer to him as "Clark George," we do the same to avoid confusion. CP at 108, 113.

all such certificates.[6]

Bodnar then contacted the other AGO divisions and asked them to use the information from the sample document as a basis to search for records. The corrections division did locate 16 pages of documents responsive to George's request, which Bodnar sent to George on September 19.

After Lord saw Greenhalgh's complaint in February 2009, he asked Bodnar if she was familiar with George's request. Bodnar recalled the situation involving George, but when she sent the records to George in September 2008, she did not make the connection between George's request and Greenhalgh's similar request in January 2008, which had been assigned to Lord. Only when Greenhalgh served his PRA claim on the AGO did Bodnar realize the similarity between George's and Greenhalgh's requests. On March 13, 2009, Bodnar sent relevant records to Greenhalgh that were discovered while responding to George's request.

Greenhalgh's 2009 complaint sought penalties against the AGO regarding his three PRA requests of December 2007, January 2008, and June 2008. Greenhalgh's trial brief focused on three contentions. First, he argued that the AGO failed to comply with his June 5, 2008, request for e-mails in "original format," where such records were responsive to his December 6, 2007, disclosure request. CP at 14. Greenhalgh argued in his trial brief that this failure deprived him of the metadata that he sought for purposes of identifying e-mail correspondents.[7] Second, he

[6] The sample document that George supplied named Greenhalgh as a petitioner. The document appeared to be a pleading, but the "title" that George had used appeared at the top of the page, above the court designation. CP at 115. To the right of the caption and below the cause number, where the document title appears, the pleading read, "PUBLIC RECORDS ACT LITIGATION SETTLEMENT PAYMENT." CP at 115.

[7] Greenhalgh admitted in subsequent briefing that "eventually [Greenhalgh] did get what he asked for . . . in July 2009, after he filed this lawsuit." CP at 147-48.

contended that his January 14, 2008, request for certificates regarding settlements of PRA claims with inmates was sufficient, as demonstrated by the fact that the AGO found such documents for another inmate who requested the same records and, thus, the AGO's search regarding Greenhalgh's records request was not reasonable. Third, Greenhalgh contended that the $12.50 set up fee that the AGO charged for providing electronic copies of records on a CD was excessive and improper.

The AGO moved for summary judgment, supported by affidavits from Lord and Bodnar that set out the events as above described and included copies of all relevant correspondence. On August 20, 2010, the trial court granted the AGO's summary judgment motion.

Greenhalgh sought reconsideration only as to the trial court's determination that the AGO's search of its records was reasonable regarding Greenhalgh's request for certificates of settlement. Greenhalgh argued that Lord's and Bodnar's declarations failed to aver that all files likely to contain requested materials were searched as required by *Neighborhood Alliance of Spokane County v. County of Spokane*, 153 Wn. App. 241, 258, 224 P.3d 775 (2009), *aff'd in part and rev'd in part*, 172 Wn.2d 701, 261 P.3d 119 (2011). The AGO responded by pointing to the declarations of Lord and Bodnar and submitting a second declaration of Bodnar. Bodnar's second declaration explained more directly that her searches of the CMS and e-mail vault systems were "searches of the electronic databases held in common with all of the divisions of the AGO." CP at 271. Greenhalgh objected to Bodnar's second declaration. In a September 10, 2010, order, the trial court admitted Bodnar's second declaration and denied Greenhalgh's motion for reconsideration. Greenhalgh appeals.

ANALYSIS

Greenhalgh argues that the trial court erred in granting summary judgment to the AGO based on a determination that the AGO's record search was reasonable. He also argues that the AGO should have produced the records he wanted as metadata and that the costs imposed by the AGO are excessive. We disagree.

I. Standard of Review

We review a trial court's grant of summary judgment de novo, engaging in the same inquiry as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). "A material fact is one that affects the outcome of the litigation." *Owen v. Burlington N. Santa Fe R.R. Co.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005). When considering a summary judgment motion, we must construe all facts and reasonable inferences in the light most favorable to the nonmoving party. *Lybbert*, 141 Wn.2d at 34. 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).

Our review of agency actions under the PRA is de novo; similarly, we review interpretations of law de novo. *Neighborhood Alliance*, 172 Wn.2d at 714. 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).

ii. Reasonableness of AGO Search

Greenhalgh first contends that the trial court erred in determining that the AGO conducted a "reasonable search" in response to his January 14, 2008, public records request. "The PRA is a strongly worded mandate for broad disclosure of public records." *Neighborhood Alliance*, 172 Wn.2d at 713. 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.'" *Neighborhood Alliance*, 172 Wn.2d at 713-14 (quoting *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994)). The PRA requires agencies "to disclose any public record on request unless [the record] falls within a specific, enumerated exemption." *Neighborhood Alliance*, 172 Wn.2d at 714 (citing RCW 42.56.070(1)).

The test for adequacy of a search for records under the PRA is the same as under the federal Freedom of Information Act, 5 U.S.C.A. section 552. *Neighborhood Alliance*, 172 Wn.2d at 718-19. Accordingly, "the focus of the inquiry is not whether responsive documents do in fact exist, but whether the search itself was adequate." *Neighborhood Alliance*, 172 Wn.2d at 719. "The adequacy of a search is judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents." *Neighborhood Alliance*, 172 Wn.2d at 719. "What will be considered reasonable will depend on the facts of each case[; thus, w]hen examining the circumstances of a case, . . . the issue of whether the search was reasonably calculated [to lead to the discovery of the requested documents] and therefore adequate is separate from whether additional responsive documents exist but are not found." *Neighborhood Alliance*, 172 Wn.2d at 719 (citations omitted).

Agencies are required to make more than a perfunctory search and to follow obvious leads as they are uncovered. *Neighborhood Alliance*, 172 Wn.2d at 719 (citing *Valencia–Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326, 336 U.S. App. D.C. 386 (1999)). The search should not be limited to one or more places if there are additional sources for the information requested. *Neighborhood Alliance*, 172 Wn.2d at 719. "Indeed, 'the agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.'" *Neighborhood Alliance*, 172 Wn.2d at 719 (quoting *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68, 287 U.S. App. D.C. 126 (1990)). "This is not to say, of course, that an agency must search *every* possible place a record may conceivably be stored, but only those places where it is *reasonably likely* to be found." *Neighborhood Alliance*, 172 Wn.2d at 719.

Where, as here, the concern is the adequacy of the search in the context of a summary judgment motion, the agency bears the burden, beyond material doubt, of showing that its search was adequate. *Neighborhood Alliance*, 172 Wn.2d at 720. "To do so, the agency may rely on reasonably detailed, nonconclusory affidavits submitted in good faith. These should include the search terms and the type of search performed, and they should establish that all places likely to contain responsive materials were searched." *Neighborhood Alliance*, 172 Wn.2d at 720.

Here, the AGO attached to its summary judgment motion the declarations of Lord and Bodnar, the AGO's PRCS unit personnel who handled Greenhalgh's records requests. Those declarations described the procedures employed to search for records responsive to Greenhalgh's January 14, 2008, request. As the declarations explain, Greenhalgh's January 2008 request appeared to concern pleading documents. Greenhalgh's January 14 letter was very specific, requesting:

> The first page of each and every Washington State "ATTORNEY GENERAL'S OFFICE CERTIFICATE ON PUBLIC RECORDS ACT CLAIM/LITIGATION [SETTLEMENTS]", involving the Washington State DEPARTMENT OF CORRECTIONS and inmate-petitioners, dated between January 1, 2005 and January 1, 2008.

CP at 86. Greenhalgh's request appears to contain a pleading title copied directly from a case caption.

Lord's declaration describes how he searched the AGO's e-mail vault system and then the CMS, "using the title stated in Mr. Greenhalgh's request." CP at 48. When Lord found no responsive documents in either database, he consulted his supervisor, Bodnar. Bodnar then assisted Lord in running the search again in the e-mail and CMS systems but, again, found nothing. Lord then sent Greenhalgh a letter setting forth verbatim Greenhalgh's January 14, 2008, request and stating, "We have searched our records and do not have any documents responsive to your request. Because there are no responsive documents, we will now consider your request closed." CP at 88. Bodnar's second declaration emphasized that "[t]he searches of the CMS database and email vault system [we]re searches of the electronic databases held in common with all of the divisions of the AGO." CP at 271.

Greenhalgh contends that the AGO's search in response to his January 14, 2008, request was obviously inadequate because the AGO subsequently found records in response to George's nearly identical request. He contends that this circumstance raises a question of material fact about the adequacy of the AGO's search in response to his January 14 request sufficient to defeat summary judgment.

But the circumstances surrounding the AGO's discovery of responsive records to George's request differ from the facts of Greenhalgh's case. Notably, the AGO initially found no

records in response to George's request and so informed him. It was only after George provided the AGO with additional information, enabling the AGO to expand its search, that responsive documents were found. George provided the AGO with a sample document of the type he was requesting. No such additional information was provided to the AGO regarding Greenhalgh's request.

Moreover, "the issue of whether the search was reasonably calculated [to lead to the discovery of the requested documents] and therefore adequate is separate from whether additional responsive documents exist but are not found." *Neighborhood Alliance*, 172 Wn.2d at 719. And, the search must be reasonably calculated to uncover all relevant documents. *Neighborhood Alliance*, 172 Wn.2d at 719. An agency is not required to search "*every* possible place a record may conceivably be stored, but only those places where it is *reasonably likely* to be found." *Neighborhood Alliance*, 172 Wn.2d at 719.

Here, Greenhalgh's request logically appeared to be for pleadings bearing a specific title. The AGO conducted searches for such documents in its division-wide case management and e-mail systems. The declarations describing those searches identify the search terms used, the databases searched, and they establish that all the places reasonably likely to contain responsive materials were searched.

We hold that the evidence shows that the searches here of multiple common record systems was reasonably calculated to uncover all relevant documents that Greenhalgh requested on January 14, 2008, and the evidence does not raise material issues of fact that would defeat summary judgment.

III. Metadata Request

Greenhalgh next contends that, because the AGO failed to comply with his June 5, 2008, request until July 23, 2009,[8] a penalty for nondisclosure should be assessed against the AGO for that time period. Again, we disagree.

On June 5, 2008, Greenhalgh requested that e-mails that were collected in response to his December 2007 request be provided in their "original format" rather than scanned. CP at 68. He contends that, although he did not ask for metadata at that time, his purpose in making his June 5, 2008, request was to enable him to receive the metadata that would identify the e-mail correspondents. Greenhalgh's brief refers to "*O'Neill*,"[9] for the notion that "email including metadata is a form of public record under the [PRA]." Br. of Appellant at 23. But our Supreme Court's decision in *O'Neill*, 170 Wn.2d 138, does not assist Greenhalgh.

In *O'Neill*, our Supreme Court described metadata as "'data about data' or hidden information about electronic documents created by software programs." 170 Wn.2d at 143 (quoting Jembaa Cole, *When Invisible Electronic Ink Leaves Red Faces: Tactical, Legal and Ethical Consequences of the Failure to Remove Metadata*, 1 Shidler J.L. Com. & Tech. 8, ¶ 7 (2005), *available at* http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/360/vol1_no2_art8.pdf?sequence=1). "'Metadata' is 'information describing the history, tracking, or management of an electronic document.'" *O'Neill*, 170 Wn.2d

[8] Greenhalgh received responses to yet another PRA request for e-mails (PRR-2009-023, submitted in June 2009) that is not at issue in this case.

[9] *O'Neill v. City of Shoreline*, 145 Wn. App. 913, 187 P.3d 822 (2008), *aff'd in part and rev'd in part*, 170 Wn.2d 138, 240 P.3d 1149 (2010). Greenhalgh asserts in his brief that our Supreme Court affirmed *O'Neill*,145 Wn. App. 913; when, in fact, the Supreme Court affirmed in part, reversed in part, and remanded for further proceedings. *O'Neill*, 170 Wn.2d at 154.

at 145 (internal quotation marks omitted) (quoting *Lake v. City of Phoenix*, 222 Ariz. 547, 548 n. 1, 218 P.3d 1004 (2009)). "'Most metadata is generally not visible when a document is printed or when the document is converted to an image file.'" *O'Neill*, 170 Wn.2d at 146 (quoting *Williams v. Sprint/United Mgmt. Co.*, 230 F.D.R. 640, 646 (D.Kan., 2005)).

In *O'Neill*, our Supreme Court held that an electronic version of a record, including its embedded metadata, is a public record subject to disclosure under the PRA. 170 Wn.2d at 147-48. But the *O'Neill* court then explained that, even though "metadata is included within the PRA's definition of a 'public record,' this does not necessarily mean that a government agency must provide metadata every time a request for a public record is made." 170 Wn.2d at 151. Instead, *O'Neill* requires that a request for metadata must be specific and clear. 170 Wn.2d at 151-52.

Here, Greenhalgh did not specifically ask for metadata in his June 5, 2008, records request. *See O'Neill*, 170 Wn.2d at 154 (request to see e-mail does not inherently include a request to see metadata). Accordingly, we are unconvinced by Greenhalgh's contention that the AGO did not provide responsive records to his June 5, 2008, request because the agency did not produce e-mail copies that included metadata.

Moreover, the record indicates that the e-mails in question had been available to Greenhalgh since January 23, 2008. Greenhalgh, however, never submitted payment for either hard copies or preparation of electronic copies. Greenhalgh submitted a new request dated June 4, 2009, for the e-mails in question and he subsequently paid for production and received electronic copies of those e-mails.

Daily penalties under the PRA are "applicable only for the time the requester was 'denied

the right to inspect or copy said public record.'" *Neighborhood Alliance*, 172 Wn.2d at 724 (quoting RCW 42.56.550(4) (2005))[10] *see also Gronquist v. Dep't of Corr.*, 159 Wn. App. 576, 586, 247 P.3d 436, *review denied*, 171 Wn.2d 1023 (2011) (The Department of Corrections did not withhold documents; the inmates simply refused to pay for copies.). Under these facts, we hold that Greenhalgh has identified no basis for an assessment of penalties based on the AGO's alleged failure to produce records in a particular format. *See Mechling v. City of Monroe*, 152 Wn. App. 830, 849, 222 P.3d 808 (2009), *review denied*, 169 Wn.2d 1007, 236 P.3d 206 (2010) ("there is no provision in the PDA that expressly requires a governmental agency to provide records in electronic form"); *see also Mechling*, 152 Wn. App. at 850 (agency "has no express obligation to provide the requested e-mail records in an electronic format").

IV. Charges for Actual Costs

Greenhalgh next contends that the $12.50 set up fee for electronic copies quoted in Lord's March 3, 2008, letter violated RCW 42.56.120. RCW 42.56.120 provides in relevant part:

> A reasonable charge may be imposed for providing copies of public records . . . [,] which charges shall not exceed the amount necessary to reimburse the agency . . . for its actual costs directly incident to such copying. Agency charges for photocopies shall be imposed in accordance with the actual per page cost *or other costs established and published by the agency*. In no event may an agency charge a per page cost greater than the actual per page cost *as established and published by the agency*. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page.

(Emphasis added.)

[10] Former RCW 42.56.550(4) (2005) was in effect during the time Greenhalgh made his PRQ requests. Laws of 2011, ch. 273, § 1 (effective July 22, 2011), amended the amount of daily penalty that the trial court may award under this sub-section. No substantive changes were made that affect our analysis.

We have recently addressed this statute, noting that an agency cannot "charge a fee for inspecting public records or for locating public documents and making them available for copying." *Gronquist*, 159 Wn. App. at 583 (citing RCW 42.56.120). "But an agency may impose a reasonable charge for providing copies of public records, *so long as the charges do not exceed the amount necessary to reimburse the agency for its actual costs incident to such copying*. RCW 42.56.120." *Gronquist*, 159 Wn. App. at 583-84 (emphasis added).

RCW 42.56.070(7)(b) provides:

> Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost *or other costs*, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost *or other costs*, if any.
> . . . .
> In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, *unless those costs are directly related to the actual cost of copying the public records*. Staff time to copy and mail the requested public records may be included in an agency's costs.

(Emphasis added.) *See also* WAC 44-14-07003 ("As with charges for paper copies, 'actual cost' is the primary factor for charging for electronic records.").

Here, in response to Greenhalgh's December 2007 records request, Lord gathered documents that included 132 pages of e-mails. Lord informed Greenhalgh that the documents were available for a copy fee of $0.10 per page plus postage. Greenhalgh responded, asking that the e-mails be produced in electronic format and that Lord send him a cost letter. Lord responded that "[t]here is a $0.10 per page fee to scan each page onto the dis[c] (132 pages @ $0.10 per page = $13.20), $0.75 for a blank [CD-recordable], $0.15 for a dis[c] sleeve, a set up fee of $12.50 and postage in the amount of $1.32 for a total of $27.90." CP at 64 (boldface omitted).

Greenhalgh then asked for a single page to be scanned and burned onto a CD, and he enclosed the correct payment of $14.82. In his response, he also objected to the AGO's "excessive charges and fees." CP at 65.

Greenhalgh now contends that the set up fee is improper because it is above the "fifteen cent[s]" maximum per page charge noted in RCW 42.56.120. But RCW 42.56.120 makes allowance for "other costs established and published by the agency." When Lord provided the cost letter to Greenhalgh, the PRCS unit bought imaging and CD burning services from the AGO's MDS at the prices designated in that division's published price list. The PRCS unit paid such cost to MDS out of its own budget, just as it would pay for services provided by the state printing shop or any other outside vendor.[11] Accordingly, the set up fee and imaging costs charged to the PRCS were the *actual costs* that PRCS incurred in obtaining the electronic copies requested by Greenhalgh.

While agencies are encouraged to provide low cost electronic copies where available and feasible, *see* WAC 44-14-07003, passing through the actual costs to produce the requested records on a CD to Greenhalgh was not improper under the facts of this case, and we so hold. *See Gronquist*, 159 Wn. App. at 583-84 (agency may impose reasonable charges to reimburse its actual costs of providing copies of public records).[12]

V. Attorney Fees

[11] The PRCS unit charged all public records requestors the actual charges that it incurred from MDS for imaging and CD burning services, until the PRCS later obtained its own equipment for such services.

[12] The AGO gave Greenhalgh the option of either receiving the records as photocopies at $0.10 per page or as images on a CD at actual cost; and he chose the more expensive option.

Finally, Greenhalgh contends that he is entitled to attorney fees as the prevailing party under RAP 18.1(a) and former RCW 42.56.550(4). Because he does not prevail, this claim fails.

RAP 18.1(a) permits fees on appeal, "[i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses on review." Former RCW 42.56.550(4) provides in relevant part that "[a]ny person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record . . . shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action." But Greenhalgh has not prevailed in any court. Accordingly, we decline to award him costs or attorney fees. *See O'Neill*, 170 Wn.2d at 152 (award of fees and costs under former RCW 42.56.550(4) is appropriate only if the court has found a violation of the PRA).

The AGO also contends in a single sentence that it "should be awarded costs and fees *allowed under law* for prevailing on this appeal." Br. of Resp't at 27 (emphasis added). This is an inadequate request for fees.

To receive an award of attorney fees on appeal, a party must devote a section of its opening brief to the fee request. RAP 18.1(b). *Phillips Bldg. Co. v. An*, 81 Wn. App. 696, 704-05, 915 P.2d 1146 (1996). The court rule requires "more than a bald request for attorney fees on appeal." *Phillips*, 81 Wn. App. at 705. The party seeking costs and fees must provide argument

and citation to authority to establish that such awards are warranted. *Phillips*, 81 Wn. App. at 705. The AGO has not done so, and we deny the AGO's request for costs and fees on appeal.

We affirm.

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 pursuant to RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Penoyar, C.J.

Worswick, J.