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Legal Alerts

# SEIU and Freedom Foundation Continue to Battle Over Public Records in the Washington Court of Appeals

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In the most recent two of a string of cases involving branches of the Service Employees International Union and nonprofit organization Freedom Foundation, each party emerged with one victory and one loss. First, in *Freedom Foundation v. SEIU Healthcare Northwest Training Partnership*, Division I of the Court of Appeals concluded that the Training Partnership was not the functional equivalent of a public entity under Washington's Public Records Act (PRA), Chapter 42.56 RCW. The Training Partnership is a nonprofit organization formed by SEIU 775, which is the exclusive bargaining representative of individual providers of in-home care service providers, as well as three private in-home service provider employers. The partnership provides training that in-home service providers are required to obtain under state law.

Freedom Foundation submitted a public records request directly to the Training Partnership, which responded that it was not an entity subject to the PRA. After the Training Partnership denied the request, Freedom Foundation sued for violation of the PRA. The Training Partnership moved for summary judgment, arguing it was exempt from the PRA as an ERISA multi-employer welfare benefit plan, and in the alternative, that it was not the "functional equivalent" of a public agency under the four factors outlined in *Telford v. Thurston County*. The trial court granted summary judgment in favor of the Training Partnership.

The Court of Appeals affirmed, holding that the Training Partnership was not the functional equivalent of a public agency and therefore not subject to the PRA. Examining the first *Telford* factor (government control), the court concluded that state law did not require the Training Partnership to perform a governmental function, and that DSHS's statutory enforcement obligations were not delegated to the Training Partnership. As to the second *Telford* factor (government funding), the Court noted that while the percentage of funds the Training Partnership receives from the state weighed in favor of finding the entity was a functional equivalent, its funding was a fee-for-services model, which weighed against functional equivalence. The court then concluded that the third and fourth *Telford*factors weighed against functional equivalence because DSHS did not exercise control over the Training Partnership's day-to-day operations, and because private actors, not the government, created the Training Partnership entity.

In the second case, SEIU Local 925, the labor union representing child care providers, sought an injunction to prevent the release of provider names and contact information to Freedom Foundation in response to a public records request made to the Washington State Department of Children, Youth, and Families. The

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trial court denied the request for injunction, and SEIU appealed. Division II of the Court of Appeals affirmed. The court first held that recently passed voter Initiative 1501 did not apply retroactively to exempt the requested information. The court found no voter intent to apply the statutes retroactively and further held that the statutes were not remedial or curative. Because Freedom Foundation's records request was submitted before the statutes took effect, those statutes did not apply to the request.

Further, the court held that former RCW 74.04.060(4) did not prevent disclosure of provider information to Freedom Foundation. The plain language of the statute did not prevent disclosure of lists or names of individuals sought for political purposes, but rather only prevented disclosure of lists or names of applicants and recipients of public assistance. Because no exemption applied to prevent release of the requested information, the court did not reach the additional question of whether the standards for an injunction would be satisfied.

If you have any questions, contact a member of our Public Records & Open Government team.

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