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Washington Court of Appeals Holds Superior Court Permitted to Consider the Small Size of Municipality in Reducing Penalty Under Public Records Act

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In the third appeal related to a 2003 public records request, the [Washington Court of Appeals concluded](#) that in setting a penalty for violations of the Public Records Act, Chapter 42.56 RCW (PRA), the trial court did not abuse its discretion in considering the small size of the City of Mesa and the burden the penalty imposed per capita on its taxpayers.

Courts have authority to enter penalties of up to 100 dollars per day for wrongful withholding of public records under the PRA. The Washington Supreme Court has adopted a sixteen-factor test to determine the size of the penalty. One of these factors is deterrence considering the size of the agency and the facts of the case.

Here, the trial court calculated a penalty based on the sixteen factors, and then reduced the overall penalty amount from approximately \$350,000 to \$175,000, an amount the court deemed "sufficient to deter future conduct" without financially crippling the agency, the City of Mesa. The population of the City is under 500, and the court concluded a per-capita penalty of \$350 was sufficient to deter misconduct. The Court of Appeals concluded that giving greater weight to the deterrence factor and size of the agency in this case was reasonable given the City's limited budget and resources.

The Court also addressed the retroactivity of amendments to the PRA provision regarding penalties. In 2011, the legislature amended the penalty provision, RCW 42.56.550(4), to remove language that penalties should be between five and 100 dollars per day. Under the current language which permits penalties "not to exceed one hundred dollars," per day of wrongful withholding, courts have discretion not to impose penalties if appropriate. The Court determined that this amendment was remedial and therefore retroactive, and could be applied to the calculation of penalties for the 2003 public records request.

If you have any questions, contact a member of our [Public Records & Open Government](#) team.

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