

Washington Supreme Court Unanimously Rules in Favor of Pacifica Client Woodland Park Zoo

*Significant Public Records Act opinion provides guidance for
nonprofits and other entities that partner with government*

In a case of first impression, the Washington Supreme Court issued a unanimous, 9-0 opinion yesterday holding that the Woodland Park Zoological Society, a private nonprofit organization that operates the Woodland Park Zoo (“Zoo”), is not subject to Washington’s Public Records Act (“PRA”). *See Fortgang v. Woodland Park Zoo*, ___ Wn.2d___, No. 92846-1 (Jan. 12, 2017). The Supreme Court also adopted a test for determining when the PRA applies to nonprofits and other private entities that provide public benefits with at least partial government support. The test appropriately limits the PRA’s application only to those situations where an entity has “effectively assumed the role of government.” Pacifica attorneys Paul Lawrence, Greg Wong, and Alanna Peterson represented the Zoo in the litigation and appeals.

Like many nonprofits, the Zoo provides a public benefit and does so with the support of local government. The Zoo receives most of its funding from private sources, although it also receives some funding from the City of Seattle and King County pursuant to contract.

The Zoo received several PRA requests for its internal documents. After the Zoo declined to provide all of the requested documents, the requestor sued claiming that the Zoo should be subject to the PRA based on its receipt of public funding and oversight provisions in its contract with the City of Seattle.

The trial court and Court of Appeals agreed with the Zoo that the PRA does not apply. In doing so, the courts applied a test established by the Courts of Appeals to determine when a private entity is the “functional equivalent” of a public agency and, therefore, should be subject to the PRA. The case presented the first time the Supreme Court agreed to consider when the PRA should apply to private entities.

The Supreme Court adopted and clarified the Court of Appeals’ well-reasoned, four-factor functional equivalency test. The first factor is whether the entity performs a government function. The Court noted that this requires an entity perform an “inherently governmental function” that cannot be delegated to the private sector. *Id.* at *19-21.

The second factor considers the percentage and nature of government funding a private entity receives. *Id.* at *21-25. The Court clarified that the percent of an entity’s revenue from public sources is the “foremost consideration.” *Id.* at *24. While declining to set a fixed threshold, the Court indicated that public funding of less than 50% of an entity’s overall revenue weighs against the PRA’s application. Further, a fixed allocation funding scheme, such as receipt of

designated levy funds, weighs in favor of applying the PRA, while a fee-for-service arrangement weighs against it. *Id.* at *24.

The third factor is the extent of government control. Here, the relevant consideration is the extent government is involved in a private entity's day-to-day operations. *Id.* at *26. The extent to which a private entity is regulated by government, for example by contractual audit and oversight requirements, is irrelevant. *Id.* at *27.

The fourth and final factor is whether the entity was created by government action. *Id.* at *16. This factor considers whether the entity was created by or for government. *Id.* at *29. It does not concern whether the entity has entered into contracts that are governed or authorized by statute. *Id.* at *30.

Weighing those four factors, the Court held that the Zoo is not subject to the PRA. *Id.* at *30-31.

Communities are enriched when government is allowed to collaborate with nonprofits and other private entities to provide public benefits. The Court's decision ensures that the PRA is applied as intended to government agencies, while providing room for governments, nonprofit organizations, and private entities to cooperate and contract. Pacifica Law Group was proud to represent the Zoo in this matter.

[Read the Court's decision here >](#)