90129-5

No. 311767

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

ANTHONY PREDISIK and CHRISTOPHER KATKE,

Petitioners,

vs.

SPOKANE SCHOOL DISTRICT NO. 81,

Respondent.

SCHOOL DISTRICT'S ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Spokane School District No. 81 ("District"), Respondent below, respectfully submits this Answer to Mr. Predisik's and Mr. Katke's Petition for Review ("Petition").

II. COURT OF APPEALS' DECISION

The Court of Appeals' decision, Division III, Case No. 31176-7-III, was originally filed on January 23, 2014 as an Unpublished Opinion. An Order Granting Motions to Publish was filed on February 27, 2014. The Court's Opinion and Order Granting Motions To Publish are attached in the Appendix, at A-1 through A-12.

III. ISSUES PRESENTED FOR APPEAL

1. Is it a violation of an employee's right to privacy for an agency to disclose records that, on their face, contain no information about specified allegations against that employee?

2. Is it a violation of an employee's right to privacy for an agency to disclose information about an employee's administrative leave prior to the time a neutral adjudicator – such as a hearing officer or arbitrator – determines whether allegations are substantiated?

3. Is it a violation of an employee's right to privacy for an agency to disclose records containing the employee's names when the records do not describe underlying allegations or investigations?

4. Is an agency an "investigative agency" under RCW 42.56.240(1) when it acts as an employer?

5. Are payroll spreadsheets and administrative leave letters "specific investigative records" under RCW 42.56.240(1)?

IV. STATEMENT OF THE CASE

Although the named Respondent in this action, the District is simply the agency holding the three records at issue. The District thus submits this Answer in the interest of obtaining clarity for its own future benefit and for the future benefit of all other agencies in the State as to the above issues.

There are only four relevant facts. First, the District placed Mr. Predisik and Mr. Katke on administrative leave based on separate allegations of misconduct. (CP 12). Second, a reporter for *The Spokesman-Review* requested from the District a copy of a letter sent from the District to Mr. Predisik notifying him that he was being placed on administrative leave. (CP 47). Third, a reporter from KREM 2 requested of the District information, which the District possessed, on all District employees currently on paid/non-paid administrative leave, including the employees' names, the reason they are on leave, how long they have been on leave, and if they are being paid at the moment. (CP 281-82). Fourth, in response to the above two requests, the District identified three

documents that it intended to disclose unredacted. (CP 401; Exhibits 1-3; Exhibit 1 is an administrative leave letter to Mr. Predisik; Exhibits 2 and 3 are spreadsheets with the information sought by KREM). The Exhibits were reviewed *in camera* by the trial court, and were sealed for the Court of Appeals' review.

V. ARGUMENT

A. The District decided to disclose the records at issue pursuant to its interpretation of Supreme Court precedent.

Without any basis in the record or otherwise, the employees here try to impute some type of nefarious motive to the District for deciding to disclose the three records at issue. Petitioners seem to believe that the District somehow wanted to disclose the employees' identities or the allegations against them to embarrass them or to somehow create public fervor against them. *See* Petition, at page 12 ("The District is pushing for the release of the records to generate negative public opinion that will create public animosity toward Mr. Predisik and Mr. Katke, or shame them into leaving."). Petitioners' assertions are untrue, completely without basis in the record or otherwise, and lacking in appreciation for the District's position of simply trying to comply with the Public Records Act and case law handed down by this Court.

The District's only interest in disclosing the records here was, and remains, compliance with the Public Records Act. And, indeed, the four corners of the records revealed no specific allegations against Petitioners that would or even could reasonably be deemed to create public animosity or to shame them. Moreover, the Court can take judicial notice of the fact that all of the information in the three records at issue (including Petitioners' names) is information already known and available for public dissemination – by virtue of the fact that the employees' names are contained in the caption to this case (since plaintiffs did not file in any "John Doe" capacity) and by virtue of the fact that all of the information in the three records is contained in the pleadings and briefing in this case. The District did not make any determination to disclose records based on any motive other than desiring to comply with this Court's precedent under the Public Records Act. In determining whether the records at issue should be disclosed, the District analyzed applicable published case law and conferred with others. Based on that analysis, the District determined that the records are not exempt under RCW 42.56.230(3) because disclosure did not violate Mr. Predisik's or Mr. Katke's right to privacy.

B. Supreme Court precedent relied upon by the District.

In determining the records at issue should be disclosed, the District relied on this Courts' seminal opinion giving meaning to the right to privacy,

Dawson v. Daly, 120 Wn.2d 782, 845 P.2d 995 (1993). In *Dawson*, this Court stated that an employee's right to privacy is violated only if disclosure: (1) would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. *Id.* at 795. This Court relied upon a separate statute, RCW 42.17.255 [now codified at RCW 42.56.050], for this conclusion:

> A person's "right to privacy," "right of privacy," 'privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

Id. at 795; RCW 42.56.050.

Dawson elaborated on the first prong of this test and explained generally what the "right to privacy" means:

> Speaking generally about the right of privacy, we have stated that the right of privacy applies "only to **the intimate details of one's personal and private life**", **which we contrasted to actions taking place in public that were observed by 40 other people.** *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 38, 769 P.2d 283 (1989). The Court of Appeals has explained that the employee privacy definition protects personal **information that the employee would not normally share with strangers**. *Cowles Pub'g Co.*, at 890-91.

Id. at 796 (emphasis added).

Applying that rationale to the case at hand, the District determined that the administrative leave letter did not identify any intimate details as that phrase was used by this Court. Moreover, the fact that Petitioners were placed on administrative leave pending completion of an investigation is a fact of which numerous other teachers in their respective schools would be aware, as soon as it occurs. The spreadsheets – one concerning Mr. Predisik, and the other concerning Mr. Katke – are even more innocuous than the administrative leave letter and certainly do not identify intimate details of the employees' lives. The information contained in all three records does not identify intimate details and the fact of administrative leave is a fact about which numerous others would be aware as soon as the employee does not show up for work.[1]

The District likewise relied on this Court's opinion in *Bellevue John Does 1-11 v. Bellevue School Dist.*, 164 Wn.2d 199, 189 P.3d 139 (2008), which applies the rationale of *Dawson* to certain letters of direction issued by a school district employer to teachers. The records at issue in *Bellevue John Does* contained "criticisms and observations" of the teachers that related to their "competence." The letters did not "mention any substantiated

[1] Again, interestingly, the District wonders how the two employees can say that the information in the three records is information that the employees would not normally share with strangers, given that the employees here shared all of the information (and far more) in their own unsealed Declaration (obviously, to be read by any stranger who would look at their Declarations).

misconduct" by the teachers but the letters of direction did "discuss **specific** alleged misconduct" against the teachers. *Id.* at 211, 224. The type of alleged misconduct was "sexual misconduct against students." *Id.* at 205. This Court, in *Bellevue,* thus addressed records that actually **disclosed** the unsubstantiated allegations of sexual misconduct by a teacher toward a student. This Court held that the identity of the employee within those records is protected by the right to privacy. *Id.*

Given the above, the District determined that *Bellevue* stood for the proposition that disclosure of records which contain **descriptions** of unsubstantiated allegations of sexual misconduct by teachers against students would be highly offensive to a reasonable person. Thus, had the records at issue here included any description of unsubstantiated allegations of sexual misconduct by Mr. Predisik or Mr. Katke, the District would have redacted the employees' names from the records. Since the three records at issue here did not describe any allegations of sexual misconduct by these two employees against students, the District determined that it could not redact the names based on the *Bellevue* opinion.

The District's interpretation of *Bellevue* was not made in a vacuum. The interpretation of *Bellevue* was based, in part, on a subsequent unanimous opinion from this Court – in *Morgan v. City of Federal Way*, 166 Wn.2d 747, 213 P.3d 596 (2009). *Morgan* provides lower courts and agencies with

instruction on how this Court would apply the reasoning of the *Bellevue* case. In *Morgan,* this Court applied its reasoning from *Bellevue* to a public records request for written investigative records. The report at issue in *Morgan* pertained to a municipal court employee's hostile work environment complaint against Municipal Court Judge Michael Morgan. *Id.* at 752.

This Court unanimously upheld the City's decision to release a preliminary investigative record, in part because the "**unsubstantiated** allegations of 'inappropriate behavior'" at hand were not highly offensive:

> ... the allegations – including angry outbursts, inappropriate gender-based and sexual comments, and demeaning colleagues and employees – are nowhere near as offensive as allegations of sexual misconduct with a minor and do not rise to the level of 'highly offensive.'

Id. at 756 (emphasis added). In *Morgan,* this Court pointed out that "many of the allegations are likely true" – which implies that at least some were not. 166 Wn.2d at 756. According to this Court, the report detailing at least some unsubstantiated allegations did not rise to the level of being highly offensive and was ordered to be disclosed in its entirety. *Id.* at 756.

Applying *Morgan*, the District determined that not all records disclosing "unsubstantiated allegations" of misconduct will be "highly offensive." *Morgan* likewise contains an implication that disclosure with

redaction could result in penalties and fees against the District. Again, *Morgan* followed and applied the *Bellevue* rationale.

A third opinion of this Court applied by the District in its analysis was *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 259 P.3d 190 (2011). In *Bainbridge*, this Court points out that an agency must look only at the content of the document itself in determining whether an employee has a right to privacy in their identity ("An agency should look to the contents of the document, and not the knowledge of third parties when deciding if the subject of a report has a right to privacy in their identity"). *Bainbridge*, 172 Wn.2d at 414. The reason for this bright line rule was, presumably, to assist agencies in not having to guess what others might know about the allegations or the matter. Otherwise, agencies would be required to analyze not just the contents of the report, but the "degree and scope" of other facts. *Id.*

Applying *Bainbridge*, the District was necessarily concerned that nondisclosure of these records, or even redaction of the names from these three documents, would be contrary to the instructions from this Court because the content of the documents themselves did not include any information that was of a highly offensive nature.

In addition to the above case law, weighing on the District was the fact that the Public Records Act discusses privacy rights in the context of

whether information within a **certain record** would be highly offensive. RCW 42.56.050, which defines the "privacy" rights within the Public Records Act, makes clear that "[t]he provisions of this chapter dealing with the right to privacy **in certain public records** do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy **public records.**" (Emphasis added).

Beyond the above, the District was especially conscientious of its need to narrowly construe PRA exemptions, as articulated by RCW 42.56.030 (exceptions are to be "narrowly construed" to promote the policy of disclosure). Moreover, the District was attentive to RCW 42.56.550(3), which describes how the policy of "free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others."

Taken as a whole, RCW 42.56.050, *Bellevue, Morgan* and *Bainbridge* seemed to support the position that the three records should be produced in their entirety.[2] The administrative leave letter and the

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[2] *Columbian Publishing vs. City of Vancouver*, 36 Wn.App. 25, 29, 671 P.2d 280, 283 (1983) was a Division II opinion that likewise influenced the District. *Columbia Publishing* allowed disclosure of statements detailing complaints against a chief of police, including complaints about the Chief's personal habits. *Id.* In short order, the court points out that those records "might embarrass the chief" but they were not highly offensive. *Id.* Accordingly, the records were ordered to be disclosed in their entirety without redaction of the name.

spreadsheets at issue do not disclose or reveal any allegations of sexual misconduct by any teacher toward any student, let alone by Petitioners. Indeed, the records do not even describe the type of unsubstantiated allegations, the disclosure of which would be anywhere near as offensive as that described in *Morgan* (i.e., "angry outbursts, inappropriate gender-based and sexual comments, and demeaning colleagues and employees"). Moreover, neither the letter nor the spreadsheets disclose any intimate details of Petitioners' personal and private life. The records merely identify that Petitioners have been placed on administrative leave pending completion of an investigation into unspecified allegations – using a descriptor that is broad and vague. Nowhere does the content of the records themselves say or imply anything about an investigation into allegations of sexual misconduct with a minor, any more than the records state or imply allegations of verbal or non-verbal misconduct with a minor. Other than identifying that Petitioners are on administrative leave pending completion of an investigation into "allegations," it cannot be deciphered from the records themselves what the specific allegations are.

The Court of Appeals' decision now seems to take the position, contrary to the above, that all unsubstantiated allegations of misconduct – not just unsubstantiated allegations of sexual misconduct against a child – are highly offensive and subject to privacy interests. Appendix, A-9. The

Court of Appeals' decision also seems to mandate that an agency undertake an analysis of what might be ascertained from the contents of a record as well as what might be known beyond the content of the records in determining whether to disclose or redact that record.

The lack of clarity in this area thus presents an issue of substantial public interest that affects every one of the numerous public agencies of this state, their employees and unions, and records requesters. Agencies are frequently confronted with a need to address allegations of misconduct asserted against employees. This often prompts the "transparency" interest of media, public watchdog organizations, and agency constituents. The allegations often result in numerous documents being generated – many times including an initial complaint, a response to the complainant, a letter placing the employee on leave, emails between agency officials, witness notes, witness summaries, miscellaneous notes, correspondence between the agency and the employee or the employee's representative, correspondence within the agency itself, payroll records while the employee remains on leave, and, of course, the final investigation report.

Moreover, agencies face the pressure of daily penalties and attorneys fees if they fail to disclose records. Agencies thus tend toward disclosure whenever the law is in the least bit unclear. As a result, employees (who are already facing the pressures of an employment investigation) are also forced

to face the possibility of additional public scrutiny due to an unsettled area of the law. The lack of clarity in this emerging area of the law forces agencies to err on the side of disclosure, and then forces employees to seek assistance from their union representatives, legal counsel, and the judiciary, to address this lack of clarity. When employees become litigants and agencies are forced into court, substantial taxpayer funds are expended. This further frustrates the very purposes of the PRA from the requester's perspective, as the litigation can result in delays of disclosure for months or even years.

C. Disclosure of the records before Petitioners might be able to appeal subsequent District findings is consistent with guiding precedent.

Contrary to the arguments by the employees here, the Court of Appeals' decision that the District must disclose the records before the employees have had an opportunity to obtain neutral review of any District decision is consistent with guiding precedent and does not warrant review by this Court. Case law clearly establishes that the agency determines whether allegations are substantiated, and not some neutral adjudicator – such as a hearing officer or arbitrator.

In *Cowles Publishing Co. v. State Patrol*, 109 Wn.2d 712, 727, 748 P.2d 597 (1988), this Court framed the issue regarding substantiated allegations as one of whether the agency substantiated (or to use the word used in the *Cowles* case, "sustained") the allegations based on an internal

investigation. Contrary to Petitioners' arguments here, it did not matter to this Court whether the agency's determination might be subject to appeal.

Similarly, in *Morgan,* this Court held that, just because an employee disputes substantiated allegations, it does not transform the allegations into "unsubstantiated" allegations. 166 Wn.2d at 756. It follows logically then that, just because an employee "appeals" substantiated allegations, the appeal does not transform the allegations into "unsubstantiated" allegations.

A recent Division Three case, *Allen Martin vs. Riverside Sch. Dist. No. 416* (filed January 30, 2014),[3] likewise follows this Court's instruction. There, the court held that "[t]he allegations were substantiated after the District's investigation and disciplinary action." The *Martin* opinion follows this Court's guidance as to when allegations are "substantiated" for the purposes of RCW 42.56.050 by holding that allegations of misconduct are substantiated following the agency's decision.

D. Applicability of the investigative agency exemption in RCW 42.56.240(1) to this case is not an issue of substantial public interest.

Applicability of RCW 42.56.240(1) is of no substantial public interest here. As the Court will readily see upon examination of the three records, they are not "investigative records" under any possible

[3] The Court of Appeals' decision was originally filed as an Unpublished Opinion. An Order Granting the Motions to Publish was filed on March 18, 2014. The Court's January 30, 2014 Opinion, and March 18, 2014 Order Granting Motion To Publish, are attached in the Appendix, at B-1 through B-9.

interpretation of the statute. This Court has repeatedly held that records are not deemed "specific investigative records" unless they were "compiled as a result of a specific investigation focusing with special intensity upon a particular party." *Prison Legal News, Inc., v. Department of Corrections*, 154 Wn.2d 628, 637, 115 P.3d 315 (2005); *Dawson v. Daly,* 120 Wash.2d 782, 792–93, 845 P.2d 995 (1993) (quoting *Laborers Int'l Union, Local 374 v. Aberdeen,* 31 Wn.App. 445, 448, 642 P.2d 418 (1982)).

Indeed, the administrative leave letter pre-dated the beginning of the investigation. Further, the spreadsheets were the result of the nothing more than payroll tracking as to **all employees** on leave—those records were compiled because of the need to track payroll, not as a result of any investigation. None of the three records arose out of or because of the investigation.

VI. CONCLUSION

Based on the above, the District respectfully requests that the Court grant Petition for Review of the decision of the Court of Appeals and

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provide clarification of the Court of Appeals' decision that the District disclose the requested records with Petitioners' names redacted.

Respectfully submitted this 10th day of April, 2014.

By: _____
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CERTIFICATE OF SERVICE

I do hereby certify that on this 28th day of April, 2014, I served a true and correct copy of the above and foregoing RESPONDENT SCHOOL DISTRICT'S ANSWER TO PETITION FOR REVIEW on the following, in the method indicated:

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Kimberly Reber
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APPENDIX

FILED
FEB. 27, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

ANTHONY J. PREDISIK and CHRISTOPHER KATKE,	)	**No. 31176-7-III**
Appellants,	)	
v.	)	**ORDER GRANTING MOTIONS TO PUBLISH**
SPOKANE SCHOOL DISTRICT NO. 81,	)	
Respondent.	)	

The court has considered the appellants' motion to publish, the respondent's motion to publish, and the City of Fife's third party motion to publish the court's opinion filed on January 23, 2014, and is of the opinion the motions should be granted. Therefore,

IT IS ORDERED that the motions to publish are granted. The opinion filed by the court on January 23, 2014, shall be modified on page 1 to designate it is a published opinion and on page 10 by deletion of the following language:

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

DATED:

PANEL: Judges Kulik, Brown, and Fearing

FOR THE COURT:

LAUREL H. SIDDOWAY
ACTING CHIEF JUDGE

FILED
JAN. 23, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ANTHONY J. PREDISIK and CHRISTOPHER KATKE, Appellants, v. SPOKANE SCHOOL DISTRICT NO. 81, Respondent.	)	No. 31176-7-III UNPUBLISHED OPINION

KULIK, J. — Anthony Predisik and Christopher Katke are teachers in the Spokane School District who were placed on administrative leave pending investigations into alleged misconduct. The District received PRA[1] requests for information regarding the allegations against the teachers. Consequently, the District notified the teachers of the specific documents that it would be disclosing. Mr. Predisik and Mr. Katke filed a lawsuit to enjoin disclosure, claiming that the records are exempt from disclosure under RCW 42.56.230(3), as personal information maintained in an employee's file, and under RCW 42.56.240(1), as investigative records compiled by an investigative agency. The

[1] Public Records Act, chapter 42.56 RCW.

trial court determined that the records were not subject to an exemption to the PRA. The court ordered disclosure with the teachers' names redacted from the records. Mr. Predisik and Mr. Katke appeal. We affirm the trial court.

FACTS

Mr. Predisik. Mr. Predisik worked as a counselor at Shadle Park High School in the Spokane School District. In November 2011, the District placed Mr. Predisik on administrative leave pending an investigation into allegations of misconduct. Mr. Predisik denies the allegations.

In March 2012, a reporter for The Spokesman-Review requested a copy of Mr. Predisik's administrative leave letter from the District. The District informed Mr. Predisik that it intended to disclose the letter in response to the PRA request. Mr. Predisik filed a lawsuit seeking to enjoin disclosure of the requested document.

In May 2012, the District informed Mr. Predisik that it received another records request, this time from a reporter at KREM 2 News. Generally stated, the reporter requested information on all district employees on administrative leave, the names of the employees, and the reason for the administrative leave if the leave was related to misconduct. The District told Mr. Predisik that documents that mention his name were

within the purview of the KREM 2 reporter's request. Mr. Predisik also sought to enjoin the disclosure of these requested documents.

Mr. Katke. Mr. Katke worked as a teacher at Glover Middle School in the Spokane School District. On January 11, the District placed Mr. Katke on administrative leave pending an investigation into allegations of misconduct. Mr. Katke denies the allegations.

In May 2012, the District informed Mr. Katke of the records request from the KREM 2 reporter. The District informed Mr. Katke that the KREM 2 request included documents that mentioned Mr. Katke.

Also in May 2012, a reporter from The Spokesman-Review requested from the District any documents related to the investigation into the allegations against Mr. Katke, his resignation, and/or any determination on the investigation. The District informed Mr. Katke of this request. In response, Mr. Katke filed a lawsuit seeking to enjoin disclosure of the requested documents.

Procedural Facts. The District identified three documents for disclosure. One document is an administrative leave letter concerning Mr. Predisik. The other two documents are payroll spreadsheets created in response to KREM 2's request.

The trial court consolidated Mr. Predisik's and Mr. Katke's cases. A hearing was held and the trial court reviewed the requested records in camera. The trial court determined the teachers had a right to privacy in their respected identities in connection with the allegations against them. The court also determined that the public had a legitimate concern in the procedural steps being taken by the District in investigations into the allegations. Accordingly, the trial court ordered the District to disclose the requested records with Mr. Predisik's and Mr. Katke's names redacted to preserve their right to privacy. The teachers appeal.

ANALYSIS

This court reviews decisions under the PRA de novo. RCW 42.56.550(3).

The PRA "is a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). The purpose of the PRA is to provide full access to nonexempt public records. *Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 86 Wn. App. 688, 695, 937 P.2d 1176 (1997).

A party seeking to enjoin production of documents under the PRA bears the burden of proving that an exemption to the statute prohibits production in whole or part. *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 35, 769 P.2d 283 (1989). The PRA exemptions "protect certain information or records from disclosure" and "are

provided solely to protect relevant privacy rights . . . that sometimes outweigh the PRA's broad policy in favor of disclosing public records." *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 432, 300 P.3d 376 (2013). However, exemptions under the PRA are to be narrowly construed to assure that the public interest will be protected. RCW 42.56.030.

RCW 42.56.230(3) exempts disclosure of "[p]ersonal information in files maintained for employees . . . of any public agency to the extent that disclosure would violate their right to privacy."

RCW 42.56.240(1) exempts from public inspection and copying specific investigative records compiled by investigative agencies, the nondisclosure of which is essential to the protection of any person's right to privacy.

Here, the specific documents under review are an administrative leave letter concerning Mr. Predisik, and two payroll spreadsheets, one concerning Mr. Predisik and another concerning Mr. Katke. Mr. Predisik and Mr. Katke contend that the records are exempt from disclosure pursuant to the employee personal information exemption, RCW 42.56.230(3), and the investigative records exemption in RCW 42.56.240(1), in the PRA. Both of these exemptions require Mr. Predisik

and Mr. Katke to establish a right to privacy in their identities and the records, and that disclosure of their identities and the records would violate their right to privacy.

Generally, the right to privacy applies "only to the intimate details of one's personal and private life." *Spokane Police Guild*, 112 Wn.2d at 38. Under the PRA, a person's right to privacy "is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public." RCW 42.56.050. It is not enough that the disclosure of personal information may cause embarrassment to the public official or others. RCW 42.56.550(3). Even if the disclosure of the information would be offensive to the employee, it shall be disclosed if there is a legitimate or reasonable public interest in the disclosure. *Tiberino v. Spokane County*, 103 Wn. App. 680, 689, 13 P.3d 1104 (2000).

"[W]hen a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right to privacy in the complaint." *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 215, 189 P.3d 139 (2008). However, "[w]hen an allegation is unsubstantiated, the teacher's identity is not a matter of legitimate public concern." *Id.* at 221. Teachers have a right to privacy in their identities when the complaint involves unsubstantiated or false allegations because these allegations concern matters involving

the private lives of teachers and are not specific instances of misconduct during the course of employment. *Id.* at 215.

When a document does not detail the unsubstantiated misconduct and a teacher is not disciplined or subject to any restriction, the name of the teacher should be redacted before disclosure. *Id.* at 226-27. "This result protects the public interest in overseeing school districts' responses to allegations . . . and the teacher's individual privacy rights." *Id.* at 227. Redaction of the name transforms a record from one that would be highly offensive if disclosed to one that is not highly offensive if disclosed. *Id.* at 224.

Mr. Predisik and Mr. Katke have a right to privacy in their identities, and their right to privacy will be violated if the records are disclosed without redacting their names. The teachers have a right to privacy in their identities because the misconduct alleged in the record has not yet been substantiated. The disclosure of their identities in connection to the unsubstantiated allegations could be highly offensive and is not of public concern. *See id.* at 220-21. While *Bellevue John Does* addresses unsubstantiated allegations of sexual misconduct, disclosure of unsubstantiated allegations of other types of misconduct can be offensive because it also subjects the teacher to gossip and ridicule without a finding of wrongdoing. *See id.*

However, Mr. Predisik's and Mr. Katke's right to privacy can be protected by redacting their names from the records. Absent information regarding Mr. Predisik's and Mr. Katke's identities, disclosure of the requested records does not violate the teachers' right to privacy. The administrative leave letter and the spreadsheets are not highly offensive when identifying information is redacted. *See id.* at 224. Also, the public has a legitimate interest in the administrative leave letter and spreadsheets, even when the allegations of misconduct have not been substantiated and the teachers' names are redacted. The public has a legitimate interest in seeing that a government agency conducts itself fairly and uses public funds responsibly. *Tiberino*, 103 Wn. App. at 690 (quoting *Yakima Newspapers, Inc. v. City of Yakima*, 77 Wn. App. 319, 328, 890 P.2d 554 (1995)). "The public can continue to access documents concerning the nature of the allegations and reports related to the investigation and its outcome, all of which will allow concerned citizens to oversee the effectiveness of the school district's responses. The identities of the accused teachers will simply be redacted to protect their privacy interests." *Bellevue John Does*, 164 Wn.2d at 221. Mr. Predisik and Mr. Katke do not have a privacy interest in the redacted records because the remaining information in the records is not highly offensive and the public has a legitimate concern in the District's operations.

Mr. Predisik and Mr. Katke contend that disclosure of the redacted records still violates their right to privacy because the public could figure out their identities in the redacted records. The records requests served on the District specifically identified the teachers as the subject of the request. The teachers' contention fails. Production of a redacted record is permitted even though redaction is insufficient to protect the person's identity. *See Koenig v. City of Des Moines*, 158 Wn.2d 173, 182-83, 142 P.3d 162 (2006). Nonexempt information in a record must be produced, even if disclosure of this information would result in the court's inability to protect the identity of an individual. *See Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 417-18, 259 P.3d 190 (2011). In *Bainbridge*, the court recognized that the circumstances of a public record request may result in others figuring out the identity of the individual whose name has been redacted to protect his privacy interest. *Id.* at 418. Still, the court held that even though the individual's identity must be redacted, the requested records must be disclosed because they were not statutorily exempt under the PRA. *Id.* Here, the redacted records are not exempt even though it is possible for a third party to conclude that Mr. Predisik or Mr. Katke is the subject of the records.

As previously stated, both the employee personal information exemption in RCW 42.56.230(3) and the investigative records exemption in RCW 42.56.240(1) hinge

on whether Mr. Predisik's and Mr. Katke's right to privacy would be violated by disclosure. We conclude that Mr. Predisik and Mr. Katke do not have a privacy interest in the redacted records. Therefore, an examination into the other requirements of these exemptions is not needed. The redacted records are not exempt from disclosure under RCW 42.56.230(3) or RCW 42.56.240(1).

We affirm the trial court.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

WE CONCUR:

Brown, J.

Fearing, J.

FILED
MARCH 18, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

ALLEN MARTIN,	)	**No. 31178-3-III**
	)	
Appellant,	)	
	)	
v.	)	**ORDER GRANTING**
	)	**MOTION TO PUBLISH**
RIVERSIDE SCHOOL DISTRICT NO. 416,	)	
	)	
Respondent.	)	

The court has considered Riverside School District's motion to publish the court's opinion of January 30, 2014; Cowles Publishing Company's joinder in the motion to publish; and Allen Martin's response. The court is of the opinion the motion to publish should be granted. Therefore,

IT IS ORDERED the motion to publish is granted. The opinion filed by the court on January 30, 2014, shall be modified on page 1 to designate it is a published opinion and on page 8 by deletion of the following language:

> A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

DATED: March 18, 2014

PANEL: Judges Kulik, Brown, and Fearing

FOR THE COURT:

KEVIN M. KORSMO
CHIEF JUDGE

FILED
JAN. 30, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ALLEN MARTIN, Appellant, v. RIVERSIDE SCHOOL DISTRICT NO. 416, Respondent.	)	No. 31178-3-III UNPUBLISHED OPINION

KULIK, J. — A reporter from The Spokesman-Review submitted a public records request to Riverside School District for information regarding former teacher Allen Martin, including records pertaining to Mr. Martin's termination. Mr. Martin sought to enjoin the District from disclosing the requested records. The trial court found that the records did not fall under any of the claimed exemptions to the Public Records Act (PRA)[1] and ordered release. Mr. Martin appeals. He contends that disclosure of the records would violate his right to privacy, and that disclosure is barred under the employee personal information exemption and the investigative records exemption of the PRA. We disagree and, therefore, affirm the trial court's order disclosing the records.

[1] Chapter 42.56 RCW.

FACTS

Mr. Martin is a teacher who taught in Riverside School District. In the fall of 2011, the District placed Mr. Martin on administrative leave pending an investigation into allegations of misconduct. Mr. Martin and a consenting adult, who was a former student, engaged in sexual conduct in Mr. Martin's classroom.[2] As a result of the conduct, the District served Mr. Martin with a notice of probable cause for discharge, RCW 28A.405.300, and a notice of probable cause for nonrenewal, RCW 28A.405.210.

In April 2012, Jody Lawrence-Turner, a reporter for The Spokesman-Review, submitted to the District a request for public records. The PRA request asked for "any information regarding teacher/coach Allen Martin including emails containing his first or last name, or both, within the last six months, administrative leave notification or letter, documentation regarding cause for termination, available investigative information about his actions, any memos containing his first or last name, or both and any termination documents." Clerk's Papers (CP) at 50.

The District informed Mr. Martin about the request and stated that it would disclose the requested records unless Mr. Martin sought to enjoin the disclosure.

[2] While the requested records in this case are sealed, this information has been disclosed to the public.

Accordingly, Mr. Martin filed a lawsuit to prevent disclosure. The Cowles Publishing Company, which owns The Spokesman-Review, joined as a defendant.

The trial court ordered disclosure of the requested records. The court found that the exceptions cited by Mr. Martin did not apply. Mr. Martin appeals the trial court's decision. During pendency of this appeal, an arbitrator upheld the District's decision to terminate Mr. Martin.

ANALYSIS

This court reviews decisions under the PRA de novo. RCW 42.56.550(3).

The PRA "is a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). The purpose of the PRA is to provide full access to nonexempt public records. *Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 86 Wn. App. 688, 695, 937 P.2d 1176 (1997).

A party seeking to enjoin production of documents under the PRA bears the burden of proving that an exemption to the statute prohibits production in whole or part. *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 35, 769 P.2d 283 (1989). The PRA exemptions "protect certain information or records from disclosure" and "are provided solely to protect relevant privacy rights . . . that sometimes outweigh the PRA's broad policy in favor of disclosing public records." *Resident Action Council v. Seattle*

Hous. Auth., 177 Wn.2d 417, 432, 300 P.3d 376 (2013). However, exemptions under the PRA are to be narrowly construed to assure that the public interest will be protected. RCW 42.56.030.

RCW 42.56.230(3) exempts disclosure of "[p]ersonal information in files maintained for employees . . . of any public agency to the extent that disclosure would violate their right to privacy."

RCW 42.56.240(1) exempts from public inspection and copying specific investigative records compiled by investigative agencies, the nondisclosure of which is essential to the protection of any person's right to privacy.

Mr. Martin contends that the records are exempt from disclosure pursuant to the personal information exemption, RCW 42.56.230(3), and the investigative records exemption in RCW 42.56.240(1), in the PRA. In both of these exemptions, Mr. Martin must establish that he has a right to privacy in the records and that disclosure of the records would violate his right to privacy.

Generally, the right to privacy applies "only to the intimate details of one's personal and private life." *Spokane Police Guild*, 112 Wn.2d at 38. Under the PRA, a person's right to privacy "is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of

legitimate concern to the public." RCW 42.56.050. It is not enough that the disclosure of personal information may cause embarrassment to the public official or others. RCW 42.56.550(3). Even if the disclosure of the information would be offensive to the employee, it shall be disclosed if there is a legitimate or reasonable public interest in the disclosure. *Tiberino v. Spokane County*, 103 Wn. App. 680, 689, 13 P.3d 1104 (2000).

"[W]hen a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right to privacy in the complaint." *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 215, 189 P.3d 139 (2008). However, teachers have a right to privacy in their identities when the complaint involves unsubstantiated or false allegations because these allegations concern matters involving the private lives of teachers and are not specific instances of misconduct during the course of employment. *Id.*

Mr. Martin contends he has a right to privacy in his identity and the personal information in the records because the information concerned his private life and was not specific incidents of misconduct during the course of employment. He maintains that his relationship with a consenting adult is a matter concerning his private life, and that it did not happen within the course of performing his public duties. He also contends that his

conduct cannot be considered sexual misconduct as defined by WAC 181-88-060 because the conduct did not occur with a present student. His contentions fail.

We conclude that Mr. Martin does not have a right to privacy in the records because the records contain substantiated allegations of misconduct that occurred during the course of employment. *See Bellevue John Does*, 164 Wn.2d at 215. His sexual encounter can be considered misconduct even though it does not fit the definition of sexual misconduct in WAC 181-88-060. Mr. Martin had a sexual encounter on school grounds, with a former student, during a holiday in the school year. The District considered this conduct an inappropriate use of a school facility and a complete disregard for the school environment. Mr. Martin's actions involved misconduct.

The allegations of misconduct were substantiated. Mr. Martin admitted to his conduct. The District completed an investigation into the allegations and found that sexual intercourse occurred on school property with a former student and terminated Mr. Martin. The District did not need to wait until the arbitrator completed review of the decision before disclosing the record. The allegations were substantiated after the District's investigation and disciplinary action. Mr. Martin does not have a right to privacy in the records pertaining to the District's investigation and his termination resulting from the misconduct.

Furthermore, disclosure of Mr. Martin's identity and the requested records would not violate Mr. Martin's right to privacy. Mr. Martin fails to establish both prongs of RCW 42.56.050. Admittedly, the first prong is satisfied. "[D]isclosure of the identity of a teacher accused of sexual misconduct is highly offensive to a reasonable person." *Bellevue John Does*, 164 Wn.2d at 216. However, he fails to satisfy the second prong of the right to privacy test. The public has a legitimate interest in the disclosure of Mr. Martin's identity and the requested records. The identity of a public school teacher and the substantiated allegations regarding the teacher's misconduct that occurred on school grounds is of legitimate interest to the public. Also of legitimate public interest is the District's investigation and handling of the matter. As mentioned in *Bellevue John Does*, even when the allegations of misconduct are unsubstantiated, "the public may have a legitimate concern in the nature of the allegation and the response of the school system to the allegation." *Id.* at 217 n.19. Disclosure of Mr. Martin's identity and the requested records would not violate Mr. Martin's right to privacy.

As previously stated, both the employee personal information exemption in RCW 42.56.230(3) and the investigative records exemption in RCW 42.56.240(1) hinge on whether Mr. Martin's right to privacy would be violated. Because we conclude that Mr. Martin does not have a right to privacy in his identity and the requested records,

examination into the other requirements of these exemptions is not needed. Disclosure of Mr. Martin's identity and the requested records is not exempt under RCW 42.56.230(3) or RCW 42.56.240(1).

Mr. Martin contends redaction of his identity would not protect his right to privacy. This argument is moot based on our conclusion that Mr. Martin does not have a right to privacy in the documents and the documents are not exempt from disclosure.

Mr. Martin also contends that if this court orders disclosure, this court should also order the District to redact any private information that is listed in RCW 42.56.250. Mr. Martin did not request redaction of this information at trial.

We affirm the trial court's order releasing the records.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

WE CONCUR:

Brown, J.

Fearing, J.