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SUPREME COURT NO. (to be set)
COURT OF APPEALS NO. 55797-5-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RYAN TAYLOR,

Petitioner

V.

STACI PATTON and CLARK COUNTY,

Respondents

PETITION FOR REVIEW FROM THE COURT OF APPEALS (DIVISION II)

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Ryan Taylor, petitioner, seeks review of the below-referenced Court of Appeals decision.

II. CITATION TO COURT OF APPEALS DECISION

Taylor seeks review of the decision of the Court of Appeals (Division II) in *Ryan Taylor v. Staci Patton* and *Clark County*, No. 55797-5-II, filed on June 22, 2022 (attached).

III. ISSUES PRESENTED FOR REVIEW

A. Did the Court of Appeals err in finding that Taylor does not have a right to privacy in emotionally-laden audio recordings of lengthy interviews conducted with him as part of an internal investigation conducted by the Clark County Sheriff's Office, that touched upon his personal matters, including his marriage and divorce?

B. Did the Court of Appeals err in finding that Taylor's right to privacy would not be violated by the release to the public of the name of his personal counselor?

C. Did the Court of Appeals err in finding that even if Taylor has a right to privacy in the emotionally-laden audio recordings of lengthy interviews conducted with him, that right to privacy would not be violated by the release of those recordings to the public?

D. Should release to the public of the name of Taylor's counselor and of the emotionally-laden audio recordings of lengthy interviews conducted with him be enjoined under RCW 42.56.540?

E. Does this petition involve an issue of substantial public interest that should be determined by the Supreme Court?

IV. STATEMENT OF THE CASE

On May 6, 2021, Taylor filed a petition for injunctive relief in Clark County Superior Court. CP 1-5. His petition related to two public records requests (PRAs) made by respondent Staci Patton to respondent Clark County for records concerning Taylor's previous employment as a

Clark County deputy sheriff. CP 2-3. The second of these requests was for "'the complete personnel file of Ryan Taylor,'" CP 3, including two entire internal investigation files regarding Taylor, CP2. These internal investigation files included "audio recordings and transcripts of all interviews, including a lengthy interview with . . . Taylor." CP 2-3.

In his petition, Taylor made it clear that he did not object "to the release of the vast majority of the requested records." CP 3. He objected only to some specific items, including the name of his counselor and audio tapes of his interview that was a part of the internal investigations. *Id.* He did *not*, in general, object to the release of the *transcript* of his interview. *Id.*

The next day (May 7, 2021), since Clark County was about to release some of the requested records within days, CP 5, Taylor also moved for a temporary restraining order against the release of all the requested

records until a full hearing could be held. CP 6-9. The Clark County Superior Court issued this requested temporary restraining order on May 7, 2021, CP10-11, and extended it on May 14, 2021, CP 12-13.

Taylor filed his brief in support of injunctive relief on May 21, 2021. CP 14-20. Clark County filed its response the same day. CP 21-22. In its response, Clark County admitted that respondent Patton had made public records requests for items concerning Taylor; that the responsive records contained items exclusively from his personnel, payroll, or supervisor or training file; and that some of these records concerned Taylor's "marriage and other personal information." CP 21. However, Clark County stipulated that it did "not take any position regarding Petitioner's [i.e., Taylor's] requested relief." CP 22.

A hearing was held in Clark County Superior Court on May 28, 2021. RP 5-45. Once again, Taylor made it clear that what he was "seeking to exclude is very limited"

and that he understood "completely that most – the vast majority. . . probably . . . 99% of these records are . . . properly subject to disclosure." RP 21-22. Taylor agreed "that the public has every right to know all of the reasons why he was disciplined in Clark County." RP 24. He restated the limited information which he argued should not be disclosed, including his counselor's name and "audio tape of his interview with the disciplinary officers in Clark County Sheriff's Office." RP 22. He again did not object "in general to any of the transcript release." *Id.*

The Clark County Superior Court denied Taylor's request for injunctive relief in entirety. RP 38-41. However, the Court did extend the temporary restraining order for fourteen days to give Taylor an opportunity to appeal. RP 44-45. An order memorializing the Court's ruling was filed on June 2, 2021. CP 23-24.

Notice of appeal was timely filed on June 9, 2021. CP 25-27.

On June 10, 2021, Taylor filed in the Court of Appeals a motion to extend the previously issued temporary restraining order for the length of the appeal. Motion for Stay in Trial Court (June 10, 2021). On the same day (June 10, 2021), the Court of Appeals extended the temporary restraining order pending a response from the respondent(s). Calling for Response (June 10, 2021). On June 11, 2021, respondent Patton filed a response objecting to Taylor's motion "unless the public records that are the subject of this appeal are properly identified." Response (June 11 2021). On June 23, 2021, the Court of Appeals extended the temporary restraining order again but ordered Taylor to specify which records he was seeking to have enjoined from release. Ruling on Motions (June 23, 2021).

On July 2, 2021, Taylor filed a response in the Court of Appeals in which he narrowed his request for injunctive relief to just two items: (1) the name of his counselor and

(2) the audio tape (but *not* the transcript) of his interview conducted as part of the internal investigation into his conduct. Response (July 2, 2021). On July 14, 2021, the Court of Appeals enjoined Clark County from releasing the name of Taylor's counselor and the audiotape of his interview to Patton but lifted the restraining order as to the remainder of Patton's requests. Ruling on Motions (July 14, 2021).

After briefing and oral argument by Taylor and by respondent Patton, the Court of Appeals (Division II) denied Taylor's request for injunctive relief in a 12-page unpublished opinion filed on June 21, 2022 (attached).

V. ARGUMENT

A. THE COURT OF APPEALS ERRED IN FINDING THAT TAYLOR DOES NOT HAVE A RIGHT TO PRIVACY IN EMOTIONALLY-LADEN AUDIO RECORDINGS OF LENGTHY INTERVIEWS CONDUCTED WITH HIM AS PART OF AN INTERNAL INVESTIGATION CONDUCTED BY THE CLARK COUNTY SHERIFF'S OFFICE, THAT TOUCHED UPON HIS PERSONAL MATTERS, INCLUDING HIS MARRIAGE AND DIVORCE.

Taylor argued below that emotionally-laden audio recordings of lengthy interviews conducted with him as part of an internal investigation by the Clark County Sheriff's Office, that touched upon his personal matters, including his marriage and divorce, should be exempt from public disclosure under RCW 42.56.230(3) (exempting "[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy"). Opinion at 5.

As an initial matter, the Court of Appeals summarily dismisses this argument by finding that Taylor has *no* right to privacy *at all* in the contents of these audio recordings, Opinion at 6-9, even though the subject matter of his interview (and of the investigation as a whole) relates in part to Taylor's separation and divorce, CP 3, 7, 15; RP 22, 27, 36, 39-40.

These are matters that fall squarely within what the Court of Appeals itself correctly identified as at the core of the right to privacy:

> "'Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget.'"

Predisik v. Spokane School Dist. No. 81, 182 Wn.2d 896, 905, 346 P.3d 737, 741 (2015) (quoting *Hearst Corp. v. Hoppe,* 90 Wn.2d 123, 136, 580 P.2d 246 (1978) (quoting *Restatement (Second) of Torts* § 652D (1977) (§ 652D cmt. b, at 386))) (quoted in Opinion at 7). As the Court of Appeals notes, "The supreme court has used this quote . . . as a guide to determine the type of facts subject to a right to privacy." Opinion at 7.

But the Court of Appeals nevertheless summarily rejects any right to privacy in Taylor's audio recordings based on case law finding no right to privacy in "'a complaint regarding misconduct during the course of public employment [that] is substantiated or results in some sort of discipline'" or in improper off-duty actions that "'bear upon his ability to perform his public office.'" Opinion at 8 (quoting *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 215, 189 P.3d 139 (2008) and *Cowles Publ'g Co. v. State Patrol*, 109 Wn.2d 712, 727, 748 P.2d 597 (1988)(plurality opinion)).

Taylor has never disputed these points. He has not objected to the release of virtually all his personnel records, including all investigative reports with audio recordings of other interviews and the full transcript of his own interview.

However, employer investigations may contain allegations that "encompass some 'past history that [the employee] would rather forget' and could come within that example or others in the *Restatement* that would implicate a privacy right under the PRA." *Predisik*, 182 Wn.2d at 906, 346 P.3d at 741 (quoting Restatement § 652D cmt. b, at 386).

Here, Taylor has sought to enjoin the release of *only* the audio recordings of his interview because of the emotional nature of the recordings. *See* RP 22 ("[T]he actual audio tape . . . contains very emotional kind of background. . . .") *and* RP 23-24 ("[T]hose tapes contain – there's a lot of basically frankly emotions, crying, that kind of thing potentially.")

The Court of Appeals somewhat inconsistently finds that "[t]he audio tapes of the interview and the transcripts of the interview are different records requiring separate analyses" but then that "it does not logically follow that the

transcript would not be exempt from disclosure, but the audio *with the same words* would be exempt" (Opinion at 9)(emphasis in original).

Taylor has not objected to the release of all the transcripts of his interview. He should not thereby be penalized with a finding that because of this concession, he has no right to privacy in the audio recordings of those interviews, even though they contain indisputably private material along with raw personal emotions.

B. THE COURT OF APPEALS ERRED IN FINDING THAT TAYLOR'S RIGHT TO PRIVACY WOULD NOT BE VIOLATED BY THE RELEASE TO THE PUBLIC OF THE NAME OF HIS PERSONAL COUNSELOR.

Although the Court of Appeals holds that Taylor *does* have a right to privacy in name of his counselor, Opinion at 7-8, it goes on to find that that right is not violated by its disclosure to the public, *Id.* at 10. That finding is in error.

Under the Public Records Act, "[a] person's 'right to privacy,' . . . is . . . 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 (cited in Opinion at 9.

While the Court of Appeals correctly cites this law, it confusingly analogizes release of the name of Taylor's counselor to a case where the Supreme Court authorized release of "reports with the officer's name redacted, including internal investigation documents, . . . even if that would have been insufficient to actually protect the officer's identity." Opinion at 10 (citing *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 416, 259 P.3d 190 (2011)(plurality opinion).

The Court of Appeals goes on to conclude that "the nature of internal investigations regarding alleged police misconduct has been found to be a matter of legitimate

public concern, and Taylor's bare assertion that the name of his counselor is not a matter of legitimate public concern does not persuade us." Opinion at 10.

But the name of Taylor's counselor has nothing to do with "the nature of internal investigations regarding alleged police misconduct," *Id.*, and although the Court of Appeals chides Taylor for "not giving . . . any authority nor persuasive argument on the issue," Opinion at 10 (footnote 4), it should be obvious that the name of his counselor is of no legitimate concern to the public but, as argued below, would serve only to titillate the public. For one thing, state (and federal) law place great protections on the privacy of healthcare information, RCW 70.02, particularly mental healthcare information, where even the "fact of admission" is protected, RCW 70.02.230(1).

C. THE COURT OF APPEALS ERRED IN FINDING THAT EVEN IF TAYLOR HAS A RIGHT TO PRIVACY IN THE EMOTIONALLY-LADEN AUDIO RECORDINGS OF LENGTHY INTERVIEWS CONDUCTED WITH HIM, THAT RIGHT TO PRIVACY WOULD NOT BE

VIOLATED BY THE RELEASE OF THOSE RECORDINGS TO THE PUBLIC.

Although the Court of Appeals finds that Taylor has not right to privacy *at all* in the emotionally-laden audio recordings of lengthy interviews conducted with him, Opinion at 6-9, it goes on to find that even if it *had* found such a right to privacy, that right would not be violated by release to the public of the recordings, Opinion at 11.

In doing so, the Court summarily concludes that "a reasonable person in Taylor's position would have understood that the audio would be subject to public disclosure and, therefore, release would not be highly offensive to a reasonable person." *Id.*

This is incorrect. Taylor did not so understand and should not have been expected to so understand, given the nature of internal law enforcement investigations. When law enforcement officers are interviewed as a part of such investigations, they are routinely advised, based

upon *Garrity v. State of N.J.*, 385 U.S. 493, 87 S. Ct. 616, 17 L.Ed.2d 562 (1967), that they are required to respond truthfully but that their responses are for purposes of their employment and may not be used against them criminally. With such advisements, it is not unreasonable for Taylor to have concluded that recordings of his statements were for internal employment purposes only and would not be available for any other purpose, including public records requests.

The Court of Appeals further dismisses Taylor's legitimate concern that snippets of the audio recordings of his interview would be posted out-of-context on social media and circulate in the small county where he currently works, based upon the distinction in the law between merely *embarrassing* material, which must be released and "highly offensive" material, which may be protected. Opinion at 11 (footnote 5)(citing RCW 42.56.550(3) and *West v. Port of Olympia*, 183 Wn. App.

306, 313, 333 P.3d 488 (2014)). But apropos of this distinction, Taylor has conceded that all of the *embarrassing* material in the transcripts of his interviews are subject to release. He objects only to the release of the audio recordings, which *would* be highly offensive.

Finally, and of most concern, the Court of Appeals completely ignores Taylor's argument that there is no legitimate concern of the public in the audio recordings of his interviews by analogy with *Dawson v. Daly*, wherein the Supreme Court ruled that

> [a]lthough RCW 42.17.255 [re-codified as RCW 42.56.050] does not allow a balancing of the employee's privacy interest against the public interest, RCW 42.17.010(11) [re-codified as RCW 42.17A.001(11)] contemplates some balancing of the public interest in disclosure against the public interest in the "efficient administration of government". Interpreting "legitimate" to mean "reasonable" is consistent with a balancing approach. Requiring disclosure where the public interest in efficient government could be harmed significantly more than the public would be served by disclosure is not

> reasonable. Therefore, in such a case, the public concern is not legitimate.

120 Wn.2d 782, 798, 845 P.2d 995, 1004 (1993), *overruled and abrogated in part on other grounds by Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 884 P.2d 592 (1994) and *Soter v. Cowles Pub Co.*, 162 Wn.2d 716, 174 P.3d 60 (2007). With this rationale, the State Supreme Court held that there was no legitimate public interest in disclosure of a prosecutor's job evaluation that did not involve "specific instances of misconduct or public job performance." *Id.* at 800, 845 P.2d at 1005.

Specifically, the Supreme Court found that the harm to efficient government outweighed any public disclosure interest for two reasons:

> First, if public employees were aware that their performance evaluations were freely available to their co-workers, their neighbors, the press, and anyone else who cares to make a request under the act, employee morale would be seriously undermined. The

> likely result would be a reduction in the quality of performance by these employees.
>
> . . .
>
> Second, disclosure could cause even greater harm to the public by making supervisors reluctant to give candid evaluations. . . . The quality of public employee performance would, therefore, suffer because the public employees would not receive the guidance and constructive criticism required for them to improve their performance and increase their efficiency.

Id. at 799-800, 845 P.2d at 1005.

Taylor argued below that an analogous situation is presented here. As has been made clear from the record below, Taylor cooperated extensively with his investigation. His interview was "lengthy," encompassing "hours and hours and hours of audio tape." RP 22. He discussed intimate matters, including his separation and divorce, leading to an emotional, personal recording. RP 22-24. He also made his counselor available. *See* RP 32 ("[T]he deputy sheriff's that conducted the investigation

did, with Mr. Taylor's permission, chat confidentially with his counselor and incorporated those, what they found out.")

However, were law enforcement officers to be aware that such material, including not only transcripts but actual audio tape containing such raw emotional material, would be released to the public, and then potentially to social media, they would be much less likely to cooperate to the extent that Taylor did in internal investigations into their conduct. This would cause harm to the public interest in efficient government that outweighs the public interest in disclosure, especially considering that the public interest in disclosure is fully satisfied here by release of transcripts of the interview.

The Court of Appeals ignores this argument in its written opinion. At oral argument, counsel for Taylor was rhetorically asked if he was "under the impression that officers can opt out of internal investigations" and was told

that "your degree of cooperation is not within your own hands as an officer" and that "cooperation is required as a condition of employment."

Taylor, of course, does not and could not dispute this. However, should law enforcement officers in future internal investigations be aware that actual audio recordings of their interviews will be made public, they will be much less likely to cooperate *to the degree that Taylor did.*

For instance, Taylor did not have to agree to have his interview recorded at all, requiring detailed note-taking that could never be as accurate as a recording. He did not have to be as thorough and detailed as he was, his level of thoroughness and detail having led to the raw personal emotion on display in the audio recordings. Needless to say, all of this would harm the public interest in efficient government, particularly in the context of disciplinary proceedings for law enforcement officers.

D. RELEASE TO THE PUBLIC OF THE NAME OF TAYLOR'S COUNSELOR AND OF THE EMOTIONALLY-LADEN AUDIO RECORDINGS OF LENGTHY INTERVIEWS CONDUCTED WITH HIM SHOULD HAVE BEEN ENJOINED UNDER RCW 42.56.540.

Because the Court of Appeals holds that the personal information exemption to public disclosure does not apply to the name of Taylor's counselor or to the audio recordings of his interviews, the Court of Appeals does not reach the question of whether production of those records should be enjoined under RCW 42.56.540. Opinion at 11 (footnote 6).

To enjoin disclosure, the Court must find that it "would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions." RCW 42.56.540. The harm can be *either* to the party requesting the injunction *or* to a vital government function. *Ameriquest Mortg. Co. v. Office of*

Attorney General of Washington, 177 Wn.2d 467, 487, 300 P.3d 799, 809 (2013); RCW 42.56.540.

Here, for the reasons already articulated in the previous section, disclosure of the name of Taylor's counselor and audiotapes of his interview is clearly not in the public interest. Furthermore, as has also already been shown, *both* Taylor *and* a vital government function would be substantially and irreparably harmed by the disclosure of these items.

Taylor would suffer irreparable harm by the disclosure since, as the old proverb goes, there is no way to put toothpaste back in the tube. Once the name of his counselor and particularly the audiotapes of his interview are out there, where anyone could put snippets of them out of context on social media, there is no turning back. This showing is sufficient since the statute and case law only require substantial and irreparable harm to *either* Taylor *or* a vital government function.

Here, however, as has also been explained in the previous section, release of the name of Taylor's counselor and of audio tapes of his interview would *also* pose substantial and irreparable harm to a vital government function, namely, effective and efficient law enforcement and particularly the conduct of disciplinary proceedings for law enforcement officers.

E. THIS PETITION DOES INVOLVE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THE SUPREME COURT.

The Supreme Court only accepts petitions for review under specific circumstances, one of them being when "the petition involves an issue of substantial public interest that should be determined by the Supreme Court," RAP 13.4(b)(4). It is upon that basis that the Supreme Court should accept review of this matter.

This case involves several intersecting issues that are all of such substantial public interest that they require guidance from the Supreme Court, including:

1. The emerging issues surrounding the pervasiveness and potential harms caused by social media.

2. Protection of healthcare information.

3. The contours and limits of the right to privacy

4. The need for effective and efficient law enforcement, including and especially in the context of disciplinary proceedings of law enforcement officers.

As should be clear from all of the above, all of these important issues that are much in the public consciousness in recent years are presented by this case. Thus, it is ripe for Supreme Court review.

VI. CONCLUSION

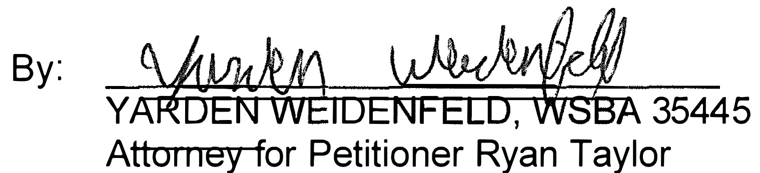
The Supreme Court should grant review of this matter and enjoin release to the public of the name of Taylor's counselor and of emotionally-laden audio recordings of lengthy interviews conducted with him as part of an internal investigation conducted by the Clark

County Sheriff's Office, that touched upon his personal matters, including his marriage and divorce.

DATED this 22th day of July, 2022.

RESPECTFULLY submitted,

I certify that this document contains 3863 words.

By: 
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CERTIFICATE OF SERVICE

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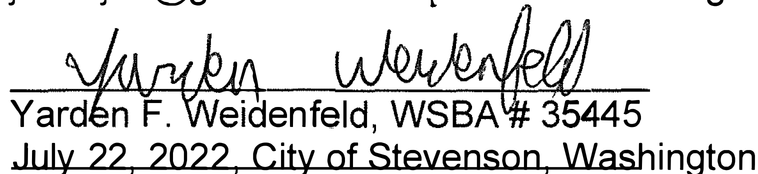
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July 22, 2022, City of Stevenson, Washington

Appendices.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

RYAN TAYLOR, Appellant, v. STACI PATTON and CLARK COUNTY, Respondents.	No. 55797-5-II UNPUBLISHED OPINION

CRUSER, J. — Staci Patton filed requests for public records relating to Ryan Taylor's prior employment at the Clark County Sheriff's Office. After the county notified Taylor about Patton's requests, Taylor filed a petition for injunctive relief to enjoin the county from releasing particular information contained in records related to an internal investigation that led to Taylor's termination from the sheriff's office. Taylor appeals the trial court's order denying his motion for preliminary or final injunction, arguing that the information is exempt from public disclosure under a provision in the Public Records Act (PRA)[1] for personal information contained in employee files. We hold that the information that Taylor seeks to enjoin does not fall under the personal information exemption, and that the trial court properly denied Taylor's request for preliminary or final injunction. Accordingly, we affirm.

[1] Chapter 42.56 RCW.

FACTS

Patton has filed three public records requests seeking records involving Taylor's previous employment as a deputy sheriff in Clark County. Her first request sought findings and reports regarding two internal affairs investigations conducted by the sheriff's office regarding Taylor's conduct. Clark County contacted Taylor to put him on notice that the records had been requested and provided him with a copy of the records production with the county's planned redactions. Patton then filed another request for Taylor's personnel file. Her third request sought all third party notices provided to Taylor regarding Patton's records requests.

Taylor filed a petition for injunctive relief, seeking to enjoin release of the records responsive to Patton's first two requests. His petition claimed that he had "no objection to the release of the vast majority of the requested records." Clerk's Papers at 3. However, he contended that some of the records contained "highly personal information, including the name of petitioner Taylor's counselor and an audio tape and transcript of an interview with his counselor, details concerning petitioner Taylor's separation and divorce, and descriptions or demonstrations of emotions felt by petitioner Taylor." *Id.* He objected to the production of records containing this information, along with "the audio tape of his interview conducted as part of the internal investigations," but he did not object to production of the transcript of the internal investigation interview. *Id.*

Taylor filed a motion for a temporary restraining order, asserting that his objection to the above information was based on two statutory provisions: (1) confidential communications under RCW 18.83.110, and (2) personal information exempt from disclosure under the PRA. The trial

court entered a temporary restraining order prohibiting Clark County from releasing records responsive to Patton's first two requests.

The trial court then held a hearing to determine whether the temporary restraining order should be continued. At the hearing, Taylor explained that the deputy sheriffs conducting the investigation spoke confidentially with Taylor's counselor and "incorporated" that conversation into their investigation. Verbatim Report of Proceedings (VRP) at 32. Taylor primarily argued that the basis for enjoining release of his counselor's name was because it was a confidential communication.

But Taylor was "most keen on excluding [ ] the audio tapes of his interview." *Id.* at 27. He explained that the interview with the disciplinary officers in the sheriff's office was lengthy and emotional. The trial court asked why Taylor was distinguishing between the transcript of the interview and the audio tapes, and Taylor responded,

> those tapes contain -- there's a lot of basically frankly emotions, crying, that kind of thing potentially. You know, the kind of thing that if, you know, once it's out to the public, Your Honor, there's no limiting it whatsoever. I mean it could go onto Facebook, it could go onto YouTube. I mean it could go anywhere basically.

Id. at 23-24. Although concerned about the audio being "broadcast over social media," Taylor conceded that "the public has every right to know all of the reasons why he was disciplined in Clark County." *Id.* at 24.

In response, Patton pointed out that the audio tapes "were part of the Clark County Sheriff's Office's investigation into the wrongdoing that led to [Taylor's] termination. And the reasons for his termination were unfortunately related to his divorce in that he did things such as improperly use Clark County equipment to -- to spy or stalk his ex-wife, etcetera." *Id.* at 36. The county did not take a position regarding Taylor's petition.

The trial court denied Taylor's motion for preliminary or final injunction because he did not establish that the records fall under an exemption for disclosure under the PRA. Taylor appeals the trial court's order denying his motion for preliminary or final injunction.

This court ordered Taylor to indicate the specific records he sought to enjoin Clark County from producing. Comm'r's Ruling (June 23, 2021). Taylor responded that he only sought to enjoin (1) "the name of his counselor," and (2) "the audio tape of his interview conducted as part of the internal investigations into his conduct (but not the transcript of this interview)." Appellant's Response to Comm'r's Ruling (July 2, 2021) (boldface omitted). This court ruled that Clark County was enjoined from releasing these two pieces of information pending this appeal, but it lifted the restraining order as to the remaining responsive records. Comm'r's Ruling (July 14, 2021).

DISCUSSION

Taylor argues that the trial court erred by denying his petition for injunctive relief with respect to the name of his counselor and the audio tapes of his interview because this information is exempt from public disclosure under the PRA exemption for personal information in employee files. Patton argues that the trial court properly denied Taylor's petition for injunctive relief because the records were not exempt under the personal information exemption. We agree with Patton.

A. Legal Principles

Under the PRA, public agencies must produce all public records upon request unless an exemption applies. RCW 42.56.070(1); *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 407, 259 P.3d 190 (2011) (plurality opinion). When an agency expects to produce

records that pertain to a specific person, that person may seek to enjoin the production under RCW 42.56.540.[2] The party seeking to enjoin the record production bears the burden of proving that an exemption applies. *Bainbridge Island Police Guild*, 172 Wn.2d at 407-08.

"The PRA is a 'strongly worded mandate for broad disclosure of public records.' " *West v. Port of Olympia*, 183 Wn. App. 306, 311, 333 P.3d 488 (2014) (internal quotation marks omitted) (quoting *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775, 791, 246 P.3d 768 (2011)). As a result, "we must liberally construe the PRA in favor of disclosure and narrowly construe its exemptions." *Id.* at 311; RCW 42.56.030. Our review "shall take into account the policy . . . that 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." RCW 42.56.550(3).

Judicial review under the PRA is de novo. *Id.*; *Bainbridge Island Police Guild*, 172 Wn.2d at 407. When evaluating a PRA claim, "we stand in the same position as the trial court." *Bainbridge Island Police Guild*, 172 Wn.2d at 407; *West*, 183 Wn. App. at 311.

B. ANALYSIS

Taylor argues that the information he seeks to enjoin from record production is exempt under RCW 42.56.230(3) and RCW 42.56.050.

The PRA provides an exemption from public disclosure for "[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy." RCW 42.56.230(3). Under this exemption, we

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[2] Under RCW 42.56.540, the records may be enjoined if the trial court finds that an exemption applies and production of the records " 'would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.' " *Bainbridge Island Police Guild*, 172 Wn.2d at 420 (quoting RCW 42.56.540).

must determine "(1) whether the records contain personal information, (2) whether the employees have a privacy interest in that personal information, and (3) whether disclosure of that personal information would violate their right to privacy." *Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d 896, 903-04, 346 P.3d 737 (2015).

1. Personal Information

"Personal information" is not defined in the PRA, but our supreme court has defined "personal information" as " 'information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general.' " *Bainbridge Island Police Guild*, 172 Wn.2d at 412 (quoting *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 211, 189 P.3d 139 (2008)).

At issue here are two types of information: (1) the name of Taylor's counselor and (2) the audio of Taylor's interview conducted by the disciplinary officers as part of the internal investigation, during which Taylor apparently discusses details about his divorce. Both the name of Taylor's counselor and the details about his divorce relate to a particular individual, and therefore, they constitute personal information within the meaning of RCW 42.56.230(3). *See Bainbridge Island Police Guild*, 172 Wn.2d at 412.

2. Right to Privacy

"Personal information is exempt from production only when that production violates an employee's right to privacy." *Id.*; RCW 42.56.230(3). The PRA provides a test for when a person's right to privacy is violated, but it does not clearly identify when the right to privacy exists. *Bellevue John Does*, 164 Wn.2d at 212. The supreme court has concluded that "a person has a right to privacy under the PRA only in 'matter[s] concerning the private life.' " *Predisik*, 182 Wn.2d at

904 (alteration in original) (internal quotation marks omitted) (quoting *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 135, 580 P.2d 246 (1978)).

The PRA's right to privacy "will not protect everything that an individual would prefer to keep private." *Id.* at 905. Rather, it protects a narrower subset of private information:

> "Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget."

Id. (internal quotation marks omitted) (quoting *Hearst*, 90 Wn.2d at 136). The supreme court has used this quote, from the Restatement (Second) of Torts § 652D, Comment d (1977), as a guide to determine the type of facts subject to a right to privacy. *See Predisik*, 182 Wn.2d at 905-06; *Cowles Publ'g Co. v. State Patrol*, 109 Wn.2d 712, 720-27, 748 P.2d 597 (1988) (plurality opinion).[3] In *Predisik*, the court concluded that there is no right to privacy under the PRA regarding the fact that a public employer is investigating one of its employees, but that the "[a]gencies and courts must review each responsive record and discern from its four corners whether the record discloses factual allegations that are truly of a private nature." *Predisik*, 182 Wn.2d at 906.

Regarding the name of Taylor's counselor, this information does not directly concern any misconduct or investigation beyond the fact that the disciplinary officers spoke with the counselor.

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[3] *Predisik* was decided under the current statutory scheme for the PRA, but *Hearst* was a precursor to the current test provided in RCW 42.56.050 to determine when a right to privacy has been violated. *See Predisik*, 182 Wn.2d at 900; *Hearst*, 90 Wn.2d at 134-38; former RCW 42.17.255 (1987), *recodified as* RCW 42.56.050 (LAWS OF 1987, ch. 403, § 2). *Cowles* was similarly decided under former chapter 42.17 RCW, which was titled the public disclosure act. *Cowles*, 109 Wn.2d at 718.

But the name of the counselor specifically does not relate to the investigation. As a result, this information appears to be of a private nature, and Taylor has a right to privacy regarding this information. *See id.* at 905-06.

Regarding the audio tapes, however, in *Cowles*, the supreme court held that disclosure of a police officer's name in connection with a complaint of misconduct, substantiated after an internal investigation, does not violate the right to privacy. 109 Wn.2d at 727. " 'Instances of misconduct of a police officer while on the job are not private, intimate, personal details of the officer's life' because the misconduct 'occurred in the course of public service.' " *Bellevue John Does*, 164 Wn.2d at 213 (quoting *Cowles*, 109 Wn.2d at 726); *see also id.* at 215 ("when 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."). In addition, a police officer does not have a right to privacy for actions while off duty that are improper and "bear upon his ability to perform his public office." *Cowles*, 109 Wn.2d at 727.

Therefore, Taylor does not have a right to privacy regarding the audio tapes of his interview for internal investigation by the sheriff's office. Although we have little information concerning the contents of the tapes, Taylor argues that "the subject matter of [his] interview (and the investigation as a whole) relates in part to Taylor's separation and divorce," making them a private matter. Br. of Appellant at 12. Taylor's pleadings at the trial court did not discuss the circumstances of the internal investigation, but Patton's argument at the hearing suggested that Taylor's divorce was related to the basis for the internal investigation and his subsequent termination. This means that Taylor's alleged misconduct was committed either during the course of Taylor's service or

was off duty but bears upon Taylor's ability to perform his service and, therefore, Taylor does not have a right to privacy regarding this information. *See Cowles*, 109 Wn.2d at 727.

The audio tapes of the interview and the transcripts of the interview are different records requiring separate analyses, and the county has an independent duty to produce each record unless an exemption applies. Taylor argues that the audio tapes contain more emotional and personal content than the transcripts of the interview and, thus, the tapes are subject to the personal information exemption while the transcripts are not. He states that "any *legitimate* concern of the public in the content of Taylor's interview would be satisfied by release of the transcripts of that interview." Br. of Appellant at 15. However, it does not logically follow that the transcript would not be exempt from disclosure, but the audio *with the same words* would be exempt. And Taylor has pointed to no case law to suggest that disclosure of one type of document precludes disclosure of another type of document if it has repetitive information. Because Taylor does not have a right to privacy regarding the audio tapes of his interview, it was not error for the trial court to deny his petition seeking to protect the tapes from public disclosure.

3. Violation of Right to Privacy

"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 (emphasis added). Both of these requirements must be shown in order for a party to prove that a person's right to privacy has been violated. *Bainbridge Island Police Guild*, 172 Wn.2d at 415-17; *West*, 183 Wn. App. at 317 n.3. "[W]hether disclosure of particular information would be highly offensive to a reasonable person must be determined on a case by case basis." *West*, 183 Wn. App. at 315.

In *Bainbridge Island Police Guild*, the supreme court explained that "the public [has] a legitimate interest in how a police department responds to and investigates [an allegation of sexual misconduct] against an officer." 172 Wn.2d at 416. The court held that disclosure of an officer's identity in relation to an unsubstantiated allegation of sexual misconduct was highly offensive. *Id.* at 414-15. But disclosure of reports with the officer's name redacted, including internal investigation documents, did not violate the officer's right to privacy, even if that would have been insufficient to actually protect the officer's identity. *Id.* at 416. "Because the nature of the investigations is a matter of legitimate public concern, disclosure of that information is not a violation of a person's right to privacy." *Id.* at 417.

Under this logic, it does not violate Taylor's right to privacy to disclose the name of his counselor in the records responsive to Patton's requests. Patton's two requests at issue call for documents related to the Clark County Sheriff's Office internal investigation into Taylor's conduct. At the hearing, Taylor explained that the deputy sheriffs conducting the investigation spoke confidentially with Taylor's counselor and "incorporated" that conversation into their investigation. VRP at 32. While we are not insensitive to the desire to keep the aspects of private matters such as these out of public view, the nature of internal investigations regarding alleged police misconduct has been found to be a matter of legitimate public concern, and Taylor's bare assertion that the name of his counselor is not a matter of legitimate public concern does not persuade us. *See Bainbridge Island Police Guild*, 172 Wn.2d at 417.[4]

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[4] Although Taylor suggests that the name of his counselor is not of legitimate public concern, he has not given us any authority nor persuasive argument on the issue and, thus, has not established that the name of the counselor is not of legitimate public concern. *See* RAP 10.3(a)(6) (directing each party to supply in its brief, "argument in support of the issues presented for review, together with citations to legal authority").

Regarding the audio tapes, because the public has a legitimate concern in the investigation, even if we concluded that Taylor had a right to privacy in the audio tapes of his internal investigation interview, disclosure of the tapes would not violate this right to privacy. As the parties acknowledge, the audio tapes potentially contain more information that could provide context to inform a credibility assessment. An interested member of the public may, therefore, glean more information about the legitimacy and thoroughness of the investigation and result by listening to the audio. Furthermore, a reasonable person in Taylor's position would have understood that the audio would be subject to public disclosure and, therefore, release would not be highly offensive to a reasonable person.[5]

Because disclosure of the internal investigation documents "is not a violation of a person's right to privacy, it does not fall into the category of 'personal information' exempt under [RCW 42.56.230(3)]." *Bainbridge Island Police Guild*, 172 Wn.2d at 417-18. Therefore, Taylor has not shown that a valid exemption would apply to enjoin the records from production, and the trial court did not err by denying his petition.[6]

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[5] Taylor's argument that release of the audio tapes is highly offensive centers on the idea that the audio would spread on social media and be damaging to Taylor in the small community where he currently works. However, RCW 42.56.550(3) directs courts that "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." Therefore, the term "highly offensive" must mean "something more than embarrassing." *West*, 183 Wn. App. at 313. "Because police officers are entrusted with the responsibility of enforcing society's laws and protecting citizens from harm, their credibility depends upon their own personal compliance with the law and with behaviors that promote public order and citizen safety." D. W. Stephens & D. L. Carter, *Police Ethics, Integrity, and Off-Duty Behavior: Policy Issues of Officer Conduct*, *in* POLICE DEVIANCE 29 (Thomas Barker & David L. Carter eds., 1994).

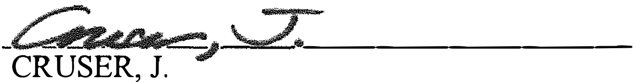
[6] We need not address whether Taylor met the requirements to enjoin production of the records under RCW 43.56.540 because, in order for that provision to apply, the records must fall under a specific exemption. *Bainbridge Island Police Guild*, 172 Wn.2d at 420.

No. 55797-5-II

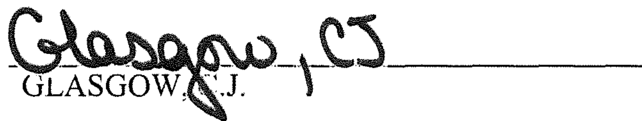
CONCLUSION

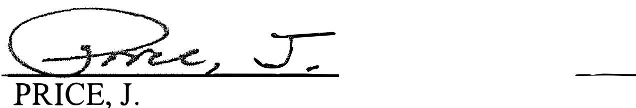
We hold that neither the name of Taylor's counselor nor the audio of his internal investigation interview are exempt from public disclosure under RCW 42.56.230(3) and RCW 42.56.050. Accordingly, we affirm the trial court's order denying Taylor's motion for preliminary or final injunction.

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 in accordance with RCW 2.06.040, it is so ordered.


CRUSER, J.

We concur:


GLASGOW, C.J.


PRICE, J.

RCW 42.17A.001 Declaration of policy. It is hereby declared by the sovereign people to be the public policy of the state of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

(7) That the concept of attempting to increase financial participation of individual contributors in political campaigns is encouraged by the passage of the Revenue Act of 1971 by the Congress of the United States, and in consequence thereof, it is desirable to have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, 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.

The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected. In promoting such complete disclosure, however, this chapter shall be enforced so as to ensure that the information disclosed will not be misused for arbitrary and capricious purposes and to ensure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed. [2019 c

428 § 2; 1975 1st ex.s. c 294 § 1; 1973 c 1 § 1 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.010.]

Effective date—Finding—Intent—2019 c 428: See notes following RCW 42.17A.160.

RCW 42.56.050 Invasion of privacy, when. 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. The 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. [1987 c 403 § 2. Formerly RCW 42.17.255.]

Intent—1987 c 403: "The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in "*In Re Rosier*," 105 Wn.2d 606 (1986). The intent of this legislation is to make clear that: (1) Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records. Further, to avoid unnecessary confusion, "privacy" as used in RCW 42.17.255 is intended to have the same meaning as the definition given that word by the Supreme Court in "*Hearst v. Hoppe*," 90 Wn.2d 123, 135 (1978)." [1987 c 403 § 1.]

Severability—1987 c 403: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 403 § 7.]

RCW 42.56.230 Personal information. The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of children, youth, and families;

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs;

(iii) For the family members or guardians of a child who is subject to the exemption under this subsection (2) if the family member or guardian has the same last name as the child or if the family member or guardian resides at the same address as the child and disclosure of the family member's or guardian's information would result in disclosure of the personal information exempted under (a)(i) and (ii) of this subsection; or

(iv) For substitute caregivers who are licensed or approved to provide overnight care of children by the department of children, youth, and families.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093;

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicard issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW

46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in (c) of this subsection (7) and this subsection (7)(d) that is subject to public disclosure;

(8) All information related to individual claim resolution settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals. The board of industrial insurance appeals shall provide to the department of labor and industries copies of all final claim resolution settlement agreements;

(9) Voluntarily submitted information contained in a database that is part of or associated with enhanced 911 emergency communications systems, or information contained or used in emergency notification systems as provided under RCW 38.52.575 and 38.52.577;

(10) Until the person reaches eighteen years of age, information, otherwise disclosable under chapter 29A.08 RCW, that relates to a future voter, except for the purpose of processing and delivering ballots;

(11) All information submitted by a person to the state, either directly or through a state-licensed gambling establishment, or Indian tribes, or tribal enterprises that own gambling operations or facilities with class III gaming compacts, as part of the self-exclusion program established in RCW 9.46.071 or 67.70.040 for people with a gambling problem or gambling disorder; and

(12) Names, addresses, or other personal information of individuals who participated in the bump-fire stock buy-back program under *RCW 43.43.920. [2021 c 89 § 1. Prior: 2019 c 470 § 8; 2019 c 239 § 2; (2019 c 239 § 1 expired July 1, 2019); 2019 c 213 § 2; 2018 c 109 § 16; 2017 3rd sp.s. c 6 § 222; prior: 2015 c 224 § 2; 2015 c 47 § 1; 2014 c 142 § 1; prior: 2013 c 336 § 3; 2013 c 220 § 1; prior: 2011 c 350 § 2; 2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

***Reviser's note**: RCW 43.43.920 expired January 1, 2020.

Effective date—2021 c 89: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 16, 2021]." [2021 c 89 § 7.]

Expiration date—Effective date—2019 c 239 §§ 1 and 2: "(1) Section 1 of this act expires July 1, 2019.

(2) Section 2 of this act takes effect July 1, 2019." [2019 c 239 § 4.]

Effective date—2019 c 239: "This act is necessary for the immediate preservation of the public peace, health, or safety, or

support of the state government and its existing public institutions, and takes effect immediately [April 30, 2019]." [2019 c 239 § 5.]

Application—2019 c 239: "The exemptions in this act apply to any public records requests made prior to April 30, 2019, for which the disclosure of records has not already occurred." [2019 c 239 § 3.]

Findings—Intent—Effective date—2018 c 109: See notes following RCW 29A.08.170.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2013 c 336: See note following RCW 46.08.066.

Effective date—2011 c 350: See note following RCW 46.20.111.

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—2009 c 510: See RCW 31.45.901.

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

RCW 42.56.540 Court protection of public records. The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice. [1992 c 139 § 7; 1975 1st ex.s. c 294 § 19; 1973 c 1 § 33 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.330.]

RCW 42.56.550 Judicial review of agency actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request or a reasonable estimate of the charges to produce copies of public records, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that 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. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis. [2017 c 304 § 5; 2011 c 273 § 1. Prior: 2005 c 483 § 5; 2005 c 274 § 288; 1992 c 139 § 8; 1987 c 403 § 5; 1975 1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.340.]

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Application of chapter 300, Laws of 2011: See note following RCW 42.56.565.

RCW 70.02.230 Mental health services, confidentiality of records —Permitted disclosures. (1) The fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies may not be disclosed except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid authorization under RCW 70.02.030.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, including Indian health care providers, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

(i) Employed by the facility;

(ii) Who has medical responsibility for the patient's care;

(iii) Who is a designated crisis responder;

(iv) Who is providing services under chapter 71.24 RCW;

(v) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

(c)(i) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts, including tribal courts, as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional or designated crisis responder is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional or designated crisis responder shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) By a care coordinator under RCW 71.05.585 or 10.77.175 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.05 or 10.77 RCW;

(l) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

(m) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(n) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(v). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(v);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(o) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(p) Pursuant to lawful order of a court, including a tribal court;

(q) To qualified staff members of the department, to the authority, to behavioral health administrative services organizations, to managed care organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(r) Within the mental health service agency or Indian health care provider facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(s) Within the department and the authority as necessary to coordinate treatment for mental illness, developmental disabilities, or substance use disorder of persons who are under the supervision of the department;

(t) Between the department of social and health services, the department of children, youth, and families, and the health care authority as necessary to coordinate treatment for mental illness, developmental disabilities, or substance use disorder of persons who are under the supervision of the department of social and health services or the department of children, youth, and families;

(u) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(v)(i) Consistent with the requirements of the federal health insurance portability and accountability act, to:

(A) A health care provider, including an Indian health care provider, who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

(B) Any other person who is working in a care coordinator role for a health care facility, health care provider, or Indian health care provider, or is under an agreement pursuant to the federal health insurance portability and accountability act with a health care facility or a health care provider and requires the information and records to assure coordinated care and treatment of that patient.

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2)(v) must take appropriate steps to protect the information and records relating to mental health services.

(iii) Psychotherapy notes may not be released without authorization of the patient who is the subject of the request for release of information;

(w) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (v) of this subsection;

(x) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(y) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

(z) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of

residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(aa) To all current treating providers, including Indian health care providers, of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department or the authority may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department, or the authority, if applicable, shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. Neither the department nor the authority may release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(bb)(i) To the secretary of social and health services and the director of the health care authority for either program evaluation or research, or both so long as the secretary or director, where applicable, adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, ..., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . ."

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary, or director, where applicable;

(cc) To any person if the conditions in RCW 70.02.205 are met;

(dd) To the secretary of health for the purposes of the maternal mortality review panel established in RCW 70.54.450; or

(ee) To a tribe or Indian health care provider to carry out the requirements of RCW 71.05.150(6).

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives

treatment for a substance use disorder, the department or the authority may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services or the authority under RCW *71.05.280(3) and **71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW *71.05.280(3) or **71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

(i) One thousand dollars; or

(ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170. [2022 c 268 § 43. Prior: 2021 c 264 § 17; 2021 c 263 § 6; 2020 c 256 § 402; prior: 2019 c 381 § 19; 2019 c 325 § 5020; 2019 c 317 § 2; 2018 c 201 § 8002; 2017 3rd sp.s. c 6 § 816; prior: 2017 c 325 § 2; (2017 c 325 § 1 expired April 1, 2018); 2017 c 298 § 6; (2017 c 298 § 5 expired April 1, 2018); 2016 sp.s. c 29 § 417; prior: 2014 c 225 § 71; 2014 c 220 § 9; 2013 c 200 § 7.]

Reviser's note: *(1) RCW 71.05.280 was amended by 2013 c 289 § 4, substantially modifying the provisions of subsection (3).

**(2) RCW 71.05.320 was amended by 2013 c 289 § 5, substantially modifying the provisions of subsection (4)(c).

Effective dates—2022 c 268: See note following RCW 7.105.010.

Application—2021 c 263: See note following RCW 10.77.150.

Short title—2019 c 381: See note following RCW 71.34.500.

Effective date—2019 c 325: See note following RCW 71.24.011.

Findings—Intent—Effective date—2018 c 201: See notes following RCW 41.05.018.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Expiration date—2017 c 325 § 1: "Section 1 of this act expires April 1, 2018." [2017 c 325 § 3.]

Effective date—2017 c 325 § 2: "Section 2 of this act takes effect April 1, 2018." [2017 c 325 § 4.]

Expiration date—2017 c 298 § 5: "Section 5 of this act expires April 1, 2018." [2017 c 298 § 8.]

Effective date—2017 c 298 § 6: "Section 6 of this act takes effect April 1, 2018." [2017 c 298 § 7.]

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2014 c 225: See note following RCW 71.24.016.

Effective date—2014 c 220: See note following RCW 70.02.290.

Effective date—2013 c 200: See note following RCW 70.02.010.

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Appellate Court Case Title:	Ryan Taylor, Appellant v. Staci Patton, et al, Respondents
Superior Court Case Number:	21-2-00847-0

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