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S. Ct. No. 967164
COA NO. 35555-1-III

SUPREME COURT
OF THE STATE OF WASHINGTON

Tye Sheats,

Petitioner

v.

City of East Wenatchee, Douglas County, City of Wenatchee,
Chelan County, Wenatchee World Newspaper,

Respondents

ANSWER OF RESPONDENT CITY OF EAST WENATCHEE

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A. Introduction

This Court should deny Sheats’s Petition for Review because the decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.¹

This Court has determined that instances of misconduct in the course of the job performance of a public official or employee subject to the Public Records Act (“PRA”) are not matters of personal privacy.² Under the PRA, “a law enforcement officer's actions while performing his public duties or improper off duty actions in public which bear upon his ability to perform his public office do not fall within the activities to be protected.”³

Likewise, release of a report confirming many allegations of a judge's inappropriate behavior did not invade the judge's privacy, because the allegations were substantiated and of substantial interest to the public.⁴

Following this line of reasoning and citing this Court’s recent holding in *Lyft, Inc. v. City of Seattle*,⁵ the Court of Appeals correctly held, “[F]inding [that] an exemption applies under the PRA does not ipso facto

¹ See RAP 13.4(a)(1)

² *Cowles Publ'g Co. v. State Patrol*, 109 Wn.2d 712, 726, 748 P.2d 597 (1988)

³ *Id.* at 727

⁴ *Morgan v. City of Federal Way*, 166 Wn.2d 747, 756-57, 213 P.3d 596 (2009)

⁵ 190 Wn.2d 769, 786, 418 P.3d 102 (2018)

support issuing an injunction.”⁶ Sheats’s petition for review does not dispute this dispositive holding. Because this dispositive holding in this case is unchallenged by Sheats, this Court should decline his invitation to review the decision of the Court of Appeals.

B. Assignments of Error.

East Wenatchee acknowledges Sheats’s assignment of error, but believes the issue pertaining to his assignment of error is more appropriately formulated as follows: Did the Court of Appeals correctly decide that Sheats failed to satisfy his burden of proof?

C. Statement of the Case.

Sheats, an East Wenatchee police officer, applied for employment with the Wenatchee Police Department.⁷ Because of that application, he took a polygraph examination.⁸ According to the report issued on the polygraph examination, Sheats disclosed at least 13 incidents, occurring between 2000 and 2016, of theft, dishonesty, and untruthfulness.⁹

The Douglas County Prosecutor’s Office provided the East

⁶ Published Opinion, p. 17.

⁷ CP 3, ¶4

⁸ CP 3, ¶4

⁹ CP 12, 1. 1-7

Wenatchee City Attorney with a redacted copy of the report (“redacted report”).¹⁰

A reporter for the Wenatchee World made a public disclosure request to East Wenatchee. The request asked for: “All disciplinary records, citizen complaints and ethics complaints pertaining to East Wenatchee Officer Tye Sheats.”¹¹

On August 9, 2017, Sheats asked Douglas County Superior Court for a permanent restraining order based upon the Public Records Act, *Brady v. Maryland*, and a right to privacy.¹²

Nowhere in Sheats’s written pleadings does he allege that examination of the redacted report would cause him substantial and irreparable damage.¹³

The Superior Court heard oral argument on August 14, 2017.¹⁴ During oral argument, Sheats’s attorney did not argue that examination of the redacted report would cause Sheats substantial and irreparable damage.¹⁵

Ultimately, the Superior Court decided that the material contained

¹⁰ CP 13, ¶ 10

¹¹ CP 4, ¶ 7

¹² CP 55

¹³ CP 27, CP 53-68, and CP 66-67

¹⁴ CP 49, l. 17

¹⁵ Transcript of Proceedings, p. 16-28, and p. 50-52

in the redacted report is required to be disclosed to defense counsel to comply with *Brady*.¹⁶ The Superior Court also decided that the redacted report is required to be disclosed under the Public Records Act (“PRA”).¹⁷

Likewise, the Court of Appeals decided that “Officer Sheats’s redacted polygraph report discloses numerous instances of theft and dishonesty.”¹⁸

Ultimately, the Court of Appeals held, “Because the public has an interest in knowing whether a particular officer is law abiding, the public has an interest in viewing Sheats’s redacted report.”¹⁹

D. Standard of Review.

“Where the record consists only of affidavits, memoranda of law, and other documentary evidence, an appellate court stands in the same position as the trial court in reviewing agency action challenged under the PRA.”²⁰ An appellate court reviews an order on an injunction under the PRA de novo.²¹

As part of this de novo review, this Court should keep in mind that

¹⁶ CP 151

¹⁷ CP 151

¹⁸ Published Opinion, p. 4.

¹⁹ Published Opinion, p. 1

²⁰ *Robbins, Geller, Rudman & Dowd, LLP v. Office of the Attorney Gen.*, 179 Wn. App. 711, 719-20, 328 P.3d 905 (2014)

²¹ *Robbins*, 179 Wn. App. at 720

RCW 42.56.030 expressly requires that the PRA be “liberally construed and its exemptions narrowly construed . . . to assure that the public interest will be fully protected.” When evaluating a PRA claim, a court must “take into account the policy of [the PRA] 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.”²²

E. Argument.

This Court should deny Sheats’s petition for review because he failed to meet his PRA-injunction burden of proof.

RCW 42.56.540 allows an individual to seek an injunction to prevent the disclosure of public records under the PRA. RCW 42.56.540 states, “The examination of any specific public record may be enjoined if . . . the superior court . . . **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 government functions.”²³

According to this Court, a court conducts a two-part inquiry when an injunction is sought under the Public Records Act: (1) “determine

²² RCW 42.56.550(3)

²³ Emphasis added

whether the records are exempt,” and (2) “determine whether the PRA injunction standard is met.”²⁴

Courts have used this two-part review standard in other cases:

- *Spokane Police Guild v. Liquor Control Bd.*²⁵ (If a record is exempted, then the judicial inquiry commences).
- *Soter v. Cowles Publ'g Co.*²⁶ (“We therefore clarify that to impose the injunction contemplated by RCW 42.56.540, the trial court must find that a specific exemption applies and that disclosure would not be in the public interest *and* would substantially and irreparably damage a person or a vital government interest.”)
- *Morgan v. City of Federal Way*²⁷ (“If one of the PRA's exemptions applies, a court can enjoin the release of a public record only if disclosure "would clearly not be in the public interest and would substantially and irreparably damage any person, or . . . vital governmental functions.”)
- *Belo Mgmt. Servs., Inc. v. Click! Network*²⁸ (“If a PRA exemption applies, a court can enjoin the release of a public

²⁴ *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 790, 418 P.3d 102 (2018)

²⁵ 112 Wn.2d at 36, 769 P.2d 283

²⁶ 162 Wn.2d 716, 757, 174 P.3d 60 (2007)(emphasis in the original)

²⁷ 166 Wn.2d 747, 756-57, 213 P.3d 596 (2009)

²⁸ 184 Wn. App. 649, 661, 343 P.3d 370 (2014)

record if disclosure would clearly not be in the public interest and would substantially and irreparably damage any person, or ... vital governmental functions.)

Because the decision of the Court of Appeals applied and reinforced this two-part review standard, it did not err.

The decision does not present this Court with a matter of first impression. The decision does not require the automatic dissemination of an exempt record. The decision simply requires a party seeking an injunction to meet his entire burden of proof under the PRA-injunction standard. Sheats simply failed to meet the second part of his burden.

By failing to prove disclosure was not in the public interest and by failing submit any evidence of irreparable damage, he failed to carry his burden of proof. Because he failed to carry his burden of proof, the Court of Appeals correctly decided that he was not entitled to an injunction.

F. Conclusion.

East Wenatchee respectfully requests that this Court deny Sheats's petition for review.

Respectfully submitted, February 25, 2019.

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CITY OF EAST WENATCHEE

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