NO. 96965-5

SUPREME COURT OF THE STATE OF WASHINGTON

JANE DOE,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE and DAKOTA LOOMIS,

Defendants.

STATE DEFENDANT'S RESPONSE TO PETITION FOR REVIEW

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The Respondent, Washington State Department of Fish and Wildlife, opposes Jane Doe's Petition for Review from the Court of Appeals decision of *Doe v. Washington State Department of Fish and Wildlife, and Dakota Loomis*, No. 49186-9-II (Oct. 16, 2018) (unpublished opinion), that affirmed the trial court. A copy of the Court of Appeals decision is attached.

II. INTRODUCTION

Appellant Jane Doe is a former employee of the Washington State Department of Fish and Wildlife (WDFW). Her name appears on numerous pages of WDFW's investigative records regarding a sexual harassment investigation involving co-workers Greg Schirato and Ann Larson. Roughly 30 other WDFW employee names also appear in the same investigative records. Following WDFW's receipt of a second public records request for the investigative records, Ms. Doe moved for an injunction to require the redaction of every reference to her name and association to other WDFW employees. After *in camera* review of the records, the trial court denied her sweeping request, finding that many references did not fall within a legitimate "privacy right" as defined in RCW 42.56.050. The trial court ruling is consistent with the language of the Public Records Act (PRA), Chapter 42.56 RCW, and with case law interpreting the PRA. This Court should affirm the trial court.

III. ISSUES

1. If a trial court enters an injunction pursuant to RCW 42.56.540, must that injunction bar the release of public records to any and all future unknown public record requests?

2. Did the trial court err in determining that Ms. Doe's identity need not be redacted everywhere it appeared in the requested records?

IV. COUNTER STATEMENT OF FACTS

A. Ms. Doe's Name Appears in Records Connected to the Schirato/Larson Sexual Harassment Investigation

In January 2015, WDFW received sexual harassment cross complaints from two of its agency executives, Mr. Schirato and Ms. Larson. Clerk's Papers (CP) at 357. Mr. Schirato and Ms. Larson each claimed to have been sexually harassed by the other. WDFW also learned that Mr. Schirato was under criminal investigation for burglary and rape charges against Ms. Larson and that she had obtained a restraining order against him. CP at 82, 84.

By February 20, 2015, WDFW had hired outside counsel, Marcella Fleming Reed, J.D., to investigate the sexual harassment allegations.[1]

[1] A complete and un-redacted copy of Ms. Reed's investigative report can be found in CP at 354-85. This report was sealed by order of the trial court. CP at 437.

CP at 82. Ultimately, Ms. Reed interviewed 30 witnesses during the course of her investigation.[2] CP at 359.

Although Mr. Schirato and Ms. Larson were the subjects of the investigation, the names of many other WDFW employees appeared in the investigative records, including that of Ms. Doe. CP at 357.

Ms. Reed's investigation revealed that Mr. Schirato and Ms. Larson engaged in a sexualized banter both in and out of the workplace. CP at 358. Mr. Schirato's sexualized talk also spread to other employees within WDFW. CP at 357. Although he claimed to have drawn a "bright line" between appropriate work discussions versus weekend sexual exploits (CP at 372), multiple WDFW employees provided testimony to the opposite. CP at 372, 373, 466.

B. WDFW Receives Requests for the Schirato/Larson Investigation

Upon completion of Ms. Reed's investigation, WDFW received a public records request for the investigative records; WDFW redacted exempt information from those records consistent with the PRA and released them to the requester. CP at 63, 176. Although notified of this request, Ms. Doe did not pursue an injunction to prevent release of the records. CP at 176. Thereafter, WDFW received another request (the

[2] During the investigation, Ms. Reed learned of other sexual harassment allegations against Mr. Schirato from other employees within WDFW. CP at 358.

Dakota Loomis request) for the Schirato/Larson investigative records. CP at 62. When notified of this subsequent request, Ms. Doe moved for an injunction to require redaction of the requested records to protect her "privacy interest." CP at 8-28.

As to the Loomis request, Ms. Doe requested that WDFW redact "every reference to [Doe's] identity, whether by name or by relationship or association" from the requested records. CP at 111. She also suggested some of the identified documents could be destroyed. CP at 174. WDFW refused to destroy records in violation of RCW 42.56.100. CP at 174, 182. WDFW also declined to make the sweeping redactions Ms. Doe proposed—not because of any desire to retaliate against or embarrass Ms. Doe,[3] but because WDFW understood the PRA to require release of the information Ms. Doe sought to have redacted. CP at 223. If WDFW improperly withheld or redacted that information, it could be subject to penalties under RCW 42.56.550(4) for the wrongful withholding of information. CP at 35.

[3] In the trial court, Ms. Doe argued that an email from WDFW's counsel demonstrates WDFW's animus towards her. CP at 223. Her argument is misplaced. WDFW's counsel was merely pointing out that WDFW was forced into dealing with a public record regardless of whether every allegation was true. Moreover, when that email was written, Ms. Doe had conceded that some, but not all, of the allegations mentioned about her in the report were false. CP at 10. True allegations could not have been withheld under RCW 42.56.050.

C. Ms. Doe Files Complaint Prevent Release of the Schirato/Larson Investigation

On December 2, 2015, Ms. Doe filed a Complaint for Declaratory and Injunctive Relief (Complaint) in Thurston County Superior Court to prevent release of the Schirato/Larson investigative records to Mr. Loomis. CP at 5-7. That same day, this court issued a Temporary Restraining Order (TRO) in favor of Ms. Doe. CP at 44.

On December 11, 2015, the Thurston County Superior Court heard argument on Ms. Doe's Complaint for injunctive relief. That court concluded Ms. Doe had failed to meet her burden for a permanent injunction, but nonetheless issued a preliminary injunction for six weeks. CP at 79.

D. The Trial Court Ultimately Reviewed the Disputed Schirato/Larson Investigative Records *In Camera*

By April 2016, the parties had appeared in the trial court five different times in response to Ms. Doe's efforts to obtain a permanent injunction. Verbatim Report of Proceedings (VRP) 3:12, April 29, 2016. In each of the prior court appearances, Ms. Doe submitted only small samplings of documents she wanted to be redacted. CP at 80, 169. Finally, the court determined it was unable to rule on the merits of Ms. Doe's injunction without seeing all the proposed redactions and ordered that all disputed records be provided for *in camera* review. CP at 262–63. The

documents provided included: (1) a clean copy of Ms. Reed's investigative report with no redactions (CP at 354–85); (2) WDFW's proposed redactions to the investigative report, a copy of Mr. Schirato's pre-disciplinary letter, and a copy of Mr. Schirato's disciplinary letter (CP at 387–433)[4]; and (3) 141 pages from various documents created by Ms. Reed's investigation that contained Ms. Doe's proposed redactions (CP at 438–579).[5] These three sets of records were placed under seal due to Ms. Doe's appeal of the permanent injunction. CP at 349-52.

E. The Trial Court Did Not Grant All the Redactions Ms. Doe Proposed and Remained Silent as to Whether the Injunction Applied to All Future Requesters

At the sixth hearing, on April 29, 2016, the trial court ruled on the merits of the case. After reviewing the subject 141 pages *in camera*, the court ruled that not all of Ms. Doe's suggested redactions were permitted under RCW 42.56. VRP 9:21–10:7, April 29, 2016. In total, the trial court rejected 189 proposed redactions that appeared on 78 pages because they did not implicate a privacy interest. *Compare* CP 321–30 to 438–579. In addition, the court specifically said that the order it would sign, "will be

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[4] WDFW's redactions are identified by a space in the text with a bracketed redaction code. For example, *see* CP at 407 and the first line on that page. You will see "[4a]". That code refers to a specific statutory exemption and the basis for applying that exemption, as set out in a key provided to the requester with the redacted documents.

[5] Ms. Doe's redactions are identified by hand-written boxes around the typed text. For example, *see* CP at 439, second full paragraph, third line into that paragraph. You will see "your wife" in a hand-written box.

silent on the scope of the injunction in that it is not going to expressly say that it applies to future requests, but that it's not going to expressly say that it doesn't apply to future requests." VRP 13:7–10, April 29, 2016.

On May 13, 2016, the trial court entered its permanent injunction order. CP at 321-30. Ms. Doe did not move to stay the release of the records pending her appeal of the order. As a result, WDFW provided Mr. Loomis the documents he requested with the redactions approved by the trial court.

V. REASONS THIS COURT SHOULD DENY REVIEW

Ms. Doe argues that her Petition for Review should be accepted because her case allegedly involves issues of a substantial public interest.[6] RAP 13.4(b)(4). Given the fact-specific character of this case, neither issue warrants discretionary review and therefore her petition should be denied.

A. The Trial Court's Decision to Remain Silent as to Whether Its May 13, 2016, Injunction Applied to All Future Requesters is Not a Matter of Substantial Public Interest

The trial court declined to make an express ruling that the May 13, 2016, injunction would apply to all future public records requesters. Instead, the court merely stated in its oral ruling that it would

[6] Ms. Doe also seems to suggest that her case may be reviewable under an exception to the "mootness doctrine." *See Sorenson v. Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). She states rules of law but does not apply them to any facts. Indeed, to fully assess any mootness argument, the record would have to be supplemented with Ms. Doe's testimony on behalf of Mr. Schirato at his criminal trial.

remain silent as to whether the injunction applied to future requesters or not. VRP 13:6–10, April 29, 2016. The trial court's statement is consistent with RCW 42.56.540. Ms. Doe cites no authority for her premise that an injunction under RCW 42.56.540 applies to any and all future requests for documents. To the contrary, published decisions uniformly address the application of RCW 42.56.540 only as to whether to enjoin the release of specific records or information in response to a specific *existing* public record request. *See, e.g., Robbins, Geller, Rudman & Dowd, LLP v. State*, 179 Wn. App. 711, 719, 328 P.3d 905, 910 (2014) ("*If an agency intends to produce records to a requester under the PRA*, a person who is named in the record or to whom the record specifically pertains, may seek a judicial determination that the records are exempt from production. RCW 42.56.540[.]" (emphasis added)); *King County Dep't of Adult & Juvenile Det. v. Parmelee,* 162 Wn. App. 337, 350, 254 P.3d 927 (2011) ("[P]ersons named *in a request for records* or to whom the *requested record* specifically pertains, may move to enjoin the release of the *requested records* under RCW 42.56.540[.]" (emphasis added)), *review denied,* 175 Wn.2d 1006, 285 P.3d 885 (2012), *cert. denied,* U.S. 133 S. Ct. 1732, 185 L. Ed. 2d 793 (2013).

In other words, before RCW 42.56.540 is implicated, there must be a pending request for identifiable public records. The applicability of

potential exemptions and any asserted privacy interest must be assessed in the context of that request. Only at that point can the court effectively evaluate what information is highly offensive and not of public concern. The Court of Appeals correctly understood this point when it said, "what is highly offensive may change over time and what is of legitimate interest to the public may change depending on the circumstances." *Doe v. WDFW,* No. 49186-9-II (Oct. 16, 2018) (unpublished opinion) at 7.

It was not error for the trial court to refrain from imposing a permanent injunction that prohibits any future unredacted release of the records at issue. The scope of an injunction under RCW 42.56.540 is within the trial court's sound discretion, as long the court properly considers the criteria in that statute. Ms. Doe's disagreement with the trial court as to the scope of the injunction entered here does not raise an issue of substantial public interest.

Here, Ms. Doe appears to understand the need to have an active public record request as a requisite for judicial review, since counsel for Ms. Doe pressured Mr. Loomis into refusing to amend his PRA request, doing so in direct contravention of the trial court's direction.[7] In fact, the trial court observed this very fact when it said to Ms. Doe's counsel, "I'm

[7] In the trial court, Ms. Doe through counsel, instructed Mr. Loomis to not amend his PRA request because that action would moot the current proceeding. CP at 129, 215.

troubled that it seems that the plaintiff is trying to keep the case alive after the court indicated that it appeared that it was moot." VRP 11:21–23, Jan. 15, 2016. But for Ms. Doe's counsel's insistence that Mr. Loomis not amend his request, Ms. Doe's claim would have been moot in January 2016.

B. The Trial Court's Decision to Leave Some References to Ms. Doe in the Record Does Not Raise an Issue of Substantial Public Interest

The trial court correctly refused to accept Ms. Doe's argument that her identity must be redacted every place it appears in WDFW's investigative records. The Court of Appeals agreed that "not every reference in the responsive records to Doe's identity—by name, relationship, or association—concerns intimate matters of Doe's private life, such as sexual relations or details of her life in the home." *Doe v. WDFW*, No. 49186-9-II (October 16, 2018) (unpublished opinion) at 7. In fact, much of the information Ms. Doe seeks to redact is innocuous at the least or embarrassing at the most. CP at 445, 448, 451, 554, 557, 573, 575.

Despite the foregoing, Ms. Doe asserts that the trial court erred in applying RCW 42.56.050 too narrowly because she believes the court analyzed her right to privacy on a per-page basis rather than the record as a whole. She cites a statement in *Predisik* that, "agencies 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 v. Spokane Sch. Dist. No. 81, 182 Wn.2d 896, 346 P.3d 737 (2015). There are two problems with Ms. Doe's assertion that the trial court erred in determining what if any privacy interest existed. First, *Predisik* was addressing the argument that additional redactions of identifying information should be made to prevent a requester from using independent information to "connect the dots" and identify a person whose identity was redacted in the requested public record. *Predisik*, 182 Wn.2d at 902. Here, there is no indication in the record that the trial court made any redaction that would be improper under *Predisik.* Second, Ms. Doe fails to recognize that *Predisik* also said, "[w]e do not read *Bellevue John Does* to create a sweeping rule that exempts an employee's identity from disclosure any time it is mentioned in a record with some tangential relation to misconduct allegations." *Predisik* 182 Wn.2d at 907, (citing *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 189 P.3d 139 (2008)). Ms. Doe's broad sweeping request to remove her name in every place it appeared in the record is clearly inconsistent with the rule set out in *Bellevue John Does 1-11* as understood by *Predisik.*

Ms. Doe's argument on appeal that each redaction must be evaluated in the context of the entire record in which it appears was not argued in the trial court and is inconsistent with her argument in that court. In the trial court, Ms. Doe consistently argued that the validity of *all* her proposed

redactions could be determined by reviewing isolated examples of proposed redactions which were devoid of context and randomly selected from pages in the record. CP at 30–31. She submitted bits and pieces of the Schirato/Larson investigative report, Mr. Schirato's pre-disciplinary letter, Mr. Schirato's discipline letter, Mr. Schirato's response, and fragments of numerous other records. *Compare* CP at 438–579. The trial court rejected that approach and required Ms. Doe to submit more than just random examples of her proposed redactions. CP at 262–63.

The argument Ms. Doe now raises was not made in the trial court. Generally, an appellate court will not consider any claim of error that was not raised in the trial court. RAP 2.5(a). *See Doe v. Puget Sound Blood Ctr*, 117 Wn.2d 772, 780, 819 P.2d 370, 374 (1991) (appellate court will not consider a theory as ground for reversal unless it was first presented to the trial court). The reason for this rule is to afford the trial court an opportunity to correct any error, thereby avoiding unnecessary appeals and retrials. *Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351, 358 (1983) (rejecting appellant's attempt to argue for a different standard in a medical malpractice case on appeal than appellant argued in the trial court). That same rationale required Ms. Doe to inform the trial court of the rule of law she wanted that court to apply. *Id.*

Based upon the documents Ms. Doe submitted, the trial court carefully reviewed each of the 141 pages and determined not all of her proposed redactions implicated a privacy interest. That approach and that result is consistent with this Court's articulation of the privacy rule:

> We do not read *Bellevue John Does*[8] to create a sweeping rule that exempts an employee's identity from disclosure any time it is mentioned in a record with some tangential relation to misconduct allegations. A rule that broad would justify withholding, or at least redacting, nearly every record created during the course of the District's investigation. Even *Bellevue John Does* recognizes the PRA entitles the public to "documents concerning the nature of the allegations and reports related to the investigation and its outcome." *Id.* at 221, 189 P.3d 139.

Predisik, 182 Wn.2d 896, at 907.

When the Appellate Court reviewed the redactions rejected by the trial court, it found that many of Ms. Doe's proposed redactions ". . . merely disclose details about everyday life. These references do not connect Doe to alleged sexual conduct, concern intimate matters of her private life, or reveal unique facts about Doe." *Doe v. WDFW*, No. 49186-9-II (Oct. 16, 2018) (unpublished opinion) at 5, 6. Accordingly, the trial court did not abuse its discretion by refusing to redact Ms. Doe's name every time it is

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[8] In *Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405*, 164 Wn.2d 199, 189 P.3d 139 (2008), the Court addressed public disclosure of records containing allegations of sexual misconduct by a public school teacher. The Court held that a teacher's identity should be released under the PRA only when alleged sexual misconduct has been substantiated or when that teacher's conduct results in some form of discipline, even if only a reprimand. *Id.* at 227*Id.* at 227.

mentioned in a record, no matter how tangential its relation to misconduct allegations. The trial court's ruling is wholly consistent with *Predisik*.

VI. CONCLUSION

For all the foregoing reasons, this Court should deny the Petition for Review.

RESPECTFULLY SUBMITTED this 22nd day of April, 2019.

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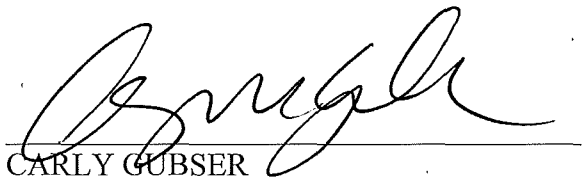
I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 23rd day of April, 2019, at Olympia, WA.



CARLY GUBSER

Filed
Washington State
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Division Two

October 16, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JANE DOE Appellant, v. WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE, and DAKOTA LOOMIS, Respondents.	No. 49186-9-II UNPUBLISHED OPINION

LEE, J. — Jane Doe appeals the superior court's permanent injunction order entered as a part of her suit to enjoin the Washington State Department of Fish and Wildlife (the Department) from disclosing investigative records in response to a Public Records Act (PRA) request without first redacting all references to her identity. Doe argues that the superior court erred when it (1) failed to order the redaction of all references to her identity in the investigative records, (2) failed to apply the permanent injunction to all future PRA requests, and (3) denied her request for attorney fees. We affirm.

FACTS

In early 2015, the Department conducted an investigation into cross-allegations of sexual harassment between two employees at the Department.

The Department later received a PRA request for all "e-mails, memos, personnel files, notes, reports, or other disclosable documents pertaining to human resources investigations filed against, or filed by, or prominently including" the two investigated employees. Clerk's Papers (CP) at 65. The Department identified records responsive to the request, including the interviews,

notes, report, letters, and other documents related to the investigation. These documents contained, in addition to other information, allegations regarding Doe's sexual conduct.

The Department informed Doe of the PRA request and that she was identified in the responsive records. The Department provided her with a copy of the records with redactions identified by the Department. Doe objected to the release of the records without redacting all information that identified her by name, relationship, or association. Doe provided the Department with proposed redactions, but the Department declined to make Doe's proposed redactions.

Doe filed suit for a preliminary and permanent injunction enjoining the Department from disclosing the responsive records without her proposed redactions. The Department opposed the injunction arguing that no privacy interest would be violated if the records were released with the redactions that it had already made. The superior court granted a preliminary injunction.

The superior court ordered an in camera review of the responsive records. Doe submitted her proposed redactions for the superior court's in camera review. Doe requested that the superior court enter a permanent injunction that prohibited the Department from disclosing any responsive records without first redacting every reference to Doe by name, relationship, or association. Doe argued that "[h]er name and relationship, in the context of these records, connect[ed] [her] to the conduct of those subjects and to unsubstantiated allegations of private sexual conduct with no connection to her public employment." CP at 289.

After conducting an in camera review, the superior court entered a permanent injunction. The superior court accepted some of Doe's proposed redactions and rejected others. The superior court found that the unredacted references to Doe did not connect her to alleged sexual conduct, and, therefore, did not implicate her right to privacy.

The superior court's written order stated that the Department was "permanently enjoined from disclosing any records corresponding to the 141 pages identified herein without first making the redactions described herein . . . ." CP at 330. However, the superior court refused to expressly apply the permanent injunction to future cases, instead leaving it to the parties to determine the effect of the permanent injunction in future cases.

Doe also requested attorney fees, arguing that the Department's defense was frivolous. The superior court found that the Department's defense was not frivolous because there were legal and factual bases for the defenses advanced. The superior court denied Doe's request for attorney fees.

Doe appeals the superior court's permanent injunction order.

ANALYSIS

A. REDACTION OF RECORDS

Doe argues that the superior court erred when it failed to order the redaction of all references to Doe's identity in the investigative records. We disagree.

1. Legal Principles

Although the Department argues that we should review the superior court's permanent injunction for an abuse of discretion, we review a decision to grant or deny an injunction under the PRA de novo. *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 791, 418 P.3d 102 (2018). Whether to grant injunctive relief requires a two-step inquiry:

> First, the court must determine whether the records are exempt under the PRA or an "other statute" that provides an exemption in the individual case. Second, it must determine whether the PRA injunction standard is met.

Lyft, 190 Wn.2d at 790. " '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.' " *Lyft*, 190 Wn.2d at 791(alteration in original) (internal quotation marks omitted) (quoting *Morgan v. City of Federal Way*, 166 Wn.2d 747, 756-57, 213 P.3d 596 (2009)).

The PRA requires agencies to "make available for public inspection and copying all public records," unless the record falls within a specific exemption of the PRA or other statute. RCW 42.56.070(1); *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 431, 327 P.3d 600 (2013). The exemptions are narrowly construed. *Resident Action Council*, 177 Wn.2d at 431. "If a portion of a public record is exempt, that portion should be redacted and the remainder disclosed." *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 209, 189 P.3d 139 (2008). The party seeking to prevent disclosure has the burden to prove an exemption applies. *Robbins, Geller, Rudman & Dowd, LLP v. Att'y Gen.*, 179 Wn. App. 711, 719, 328 P.3d 905 (2014).

The PRA includes an exemption 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). In order to qualify for this exemption, the information must (1) contain personal information, (2) the person must have a privacy interest in that information, and (3) disclosure of that personal information must violate their right to privacy. *Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d 896, 903-904, 346 P.3d 737 (2015).

A person's identity is considered personal information because it relates to a particular person. *Predisik,* 182 Wn.2d at 904. And a person has a privacy interest when information that reveals unique facts about those named is linked to an identifiable person. *Tiberino v. Spokane County*, 103 Wn. App. 680, 689, 13 P.3d 1104 (2000). A person also has a privacy interest in

intimate matters concerning his or her private life, such as sexual relations and details of the person's life in the home. *Bellevue John Does*, 164 Wn.2d at 212-14.

A person's right to privacy is violated 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. "[W]hether disclosure of particular information would be highly offensive to a reasonable person must be determined on a case by case basis." *West v. Port of Olympia*, 183 Wn. App. 306, 315, 333 P.3d 488 (2014). Disclosure of information containing intimate details of a person's personal and private life would be highly offensive to a reasonable person. *See Tiberino*, 103 Wn. App. 689-90. The public has no legitimate concern in such information when the information is unrelated to governmental operation. *See Tiberino*, 103 Wn. App. 689-90.[1]

2. Privacy Interest

The parties do not dispute that the responsive records' references to Doe by name, relationship, or association are personal information within public records. However, they dispute whether every reference implicates Doe's privacy interest and is subject to redaction.

Here, not every reference in the responsive records to Doe's identity—by name, relationship, or association—concerns intimate matters of Doe's private life, such as sexual

[1] Doe argues that the superior court erred by failing to review each redaction in the context of the record. However, contrary to Doe's argument, the superior court stated, "ultimately my conclusions are where Miss Doe's name and/or relationship is found on records where it is connected to those sorts of activities, *given the context of the records* and all of the background I've already provided, I'm finding that her right of privacy is properly invoked to protect those records." Verbatim Report of Proceedings (Apr. 29, 2016) at 31 (emphasis added). Therefore, the record does not support Doe's claim.

relations or details of her life in the home. Our review of the proposed redactions the superior court rejected shows that many of the references to Doe's identity do not concern her private life and merely disclose details about everyday life. These references do not connect Doe to alleged sexual conduct, concern intimate matters of her private life, or reveal unique facts about Doe. Therefore, these references do not implicate Doe's right to privacy and the superior court did not err in refusing to include them in the injunction.

Other references do not reveal information about Doe's private life but about others' lives. Such references also do not connect Doe to alleged sexual conduct or reveal unique facts about Doe. As a result, these references also do not implicate Doe's privacy interest.

Doe claims that a person reviewing the records could connect her to the sexual conduct through references to her identity that are not directly connected to the sexual conduct. This argument is unpersuasive.

Although a requester may potentially figure out the identity of a person, that does not negate the public's interest in a document. *See Koenig v. City of Des Moines*, 158 Wn.2d 173, 187, 142 P.3d 162 (2006) ("The fact a requester may potentially connect the details of a crime to a specific victim by referencing sources other than the requested documents does not render the public's interest in information regarding the operation of the criminal justice system illegitimate or unreasonable."); *see also Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 414, 259 P.3d 190 (2011) ("An agency should look to the contents of the document and not the knowledge of third parties when deciding if the subject of a report has a right to privacy in their identity."); *SEIU Healthcare 775NW v. Dep't of Soc. & Health Servcs.*, 193 Wn. App. 377, 410-11, 377 P.3d 214 (2016) (holding that information is not exempt because its disclosure could lead

to the discovery of exempt information). The emphasis is on the content of the records. Although a person may be able to figure out Doe's identity from references to her in the records that do not implicate her privacy interest, that does not mean that such references must be redacted as the contents of those records do not implicate Doe's privacy interest. Thus, the superior court did not err when it did not require these references be redacted.

B. PERMANENT INJUNCTION

Doe asks us to hold that the superior court erred when it failed to apply the permanent injunction to all future public records requests. We decline to do so.

Courts must ensure they are "rendering a final judgment on an actual dispute between opposing parties with a genuine stake in the resolution." *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). If the court is not doing so, we step " 'into the prohibited area of advisory opinions.' " *To-Ro Trade Shows*, 144 Wn.2d at 416 (quoting *Diversified Indus. Devereaux. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)).

Here, determining whether the permanent injunction applies to every conceivable future request for the identified records would render final judgment on a dispute, which does not yet exist, between parties who have not been identified. *Ames v. Pierce County*, 194 Wn. App. 93, 114-15, 374 P.3d 228 (2016). Moreover, what is highly offensive may change over time and what is of legitimate interest to the public may change depending on the circumstances. *See* RCW 42.56.050. Accordingly, we decline Doe's request to deliver a prohibited advisory opinion in this case.

C. ATTORNEY FEES

Doe argues that the superior court abused its discretion when it denied Doe's request for attorney fees. Doe also requests attorney fees on appeal arguing that the Department's defense was frivolous. We disagree, and we decline to award Doe attorney fees on appeal.

We review a superior court's decision on attorney fees for an abuse of discretion. *In re Recall of Piper*, 184 Wn.2d 780, 786, 364 P.3d 113 (2015). Under RCW 4.84.185, the superior court may award reasonable expenses, including attorney fees, to the prevailing party in any civil action if the action or defense to such action was frivolous. "An appeal is frivolous if 'no debatable issues are presented upon which reasonable minds might differ, *i.e.*, it is devoid of merit that no reasonable possibility of reversal exists.' " *Hartford Ins. Co. v. Ohio Cas. Ins. Co.*, 145 Wn. App. 765, 780, 189 P.3d 195 (2008) (internal quotation marks omitted) (quoting *Olson v. City of Bellevue*, 93 Wn. App. 154, 165, 968 P. 2d 894, *review denied*, 137 Wn.2d 1034 (1998)). The action or defense, in its entirety, must be frivolous and advanced without reasonable cause before an award of attorney fees may be made. *Biggs v. Vail*, 119 Wn.2d 129, 133, 830 P.2d 350 (1992).

Here, the superior court had no basis to award attorney fees to Doe under RCW 4.84.185 because the Department's defense was not entirely frivolous and advanced without reasonable cause. Doe had requested that every reference to her by name, relationship, or association should be redacted before the responsive records were disclosed. But the Department argued, and the superior court properly agreed, that not every reference connected her to alleged sexual conduct. Thus, the Department's defense was not entirely frivolous. Therefore, the superior court did not abuse its discretion by denying Doe's request for attorney fees under RCW 4.84.185.

And, under RAP 18.1, we will only award a party attorney fees on appeal "[i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses . . . ." But because the Department's defense was not frivolous, either at the superior court or on appeal, Doe is not entitled to attorney fees under the applicable law, RCW 4.84.185. Accordingly, we deny Doe's request for attorney fees on appeal.

We affirm.

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.

Lee, J.

We concur:

Maxa, C.J.

Melnick, J.

WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL

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