62938-7

62938-7
original

COA # 62938-7-I

COURT OF APPEALS OF WASHINGTON
DIVISION ONE

KING COUNTY SHERIFF'S OFFICE

Appellee- Plaintiff

vs

ALLAN PARMELEE

Appellant- Defendant

REPLY BRIEF OF APPELLANT

Allan Parmelee
pro se Appellant
P.O. Box 900
Shelton WA 98584

TABLE OF CONTENTS

	Page
I - Identity of Replying Party	1
II Restatement of Substantive Facts	1
III Argument	2
1. The Sheriffs Issue No. 2 Presents No Legal Basis To Justify "Trash-Talking" Parmelee When RCW 42.56.080 And .550 Looks Only Forward For Statutory Exceptions, Not Suspected Skeletons In A Closet.	2.
2. The Sheriff's Issue No. 3 Incorrectly Promotes Secret Withholding Even From Judicial Review Of Public Records Claimed Exempt, Denying The Courts An Ability To Determine The True Nature Of The Records At Issue.	4
3. Denial of Discovery And Time To Prepare Denies Due Process At It's Most Elementary Core, Both Times, To Sheriffs Issue # 5.	5
4. The Sheriffs Failed To Respond To Parmelee's Issue No. 4 At All. . .	7
5. The Sheriff's Response Issue # 1, To Parmelee's Issue #5, Incorrectly Combined A Preliminary And Permanent Injunction, And Relied On Inapposite Standards For A PRA Injunction.	7
(a) The Sheriff's Claim Requested Public Records Are Not Public Records Should Have Nothing To Do With Who Is Requesting Them.	9
(b) The Sheriff's Reliance On RCW 42.56.250(8) Is Barred Because It Did Not Exist Then, And RCW 42.56.230 Is Misplaced Especially Without An In-Camera Review. . . .	11
(c) The Sheriff's Exaggerate Phone Number Requests, And Still Did Not Disclose Even The Ones Ordered Disclosed, Continuing The Violation Of The PRA.	13

TABLE OF CONTENTS

Page

6. The Sheriffs Violated So Many Rules Seeking And Obtaining Their Second Injunction, Litigation Ambush Was An Abuse Of Process. 15

7. The Sheriff's Selective Consolidation Opposition, Then Collateral Estoppel Arguments, Contradict Their Opposition To Parmelee's CR-42 Joinder Motions. 16

8. Again, The Sheriffs Issue 8, Fails To Correctly Recite The Facts, Address The Correct Law Applicable To The Facts, And Fails To Identify Any Real Evidence In Support Of The Second Injunction, Or That The Statute Is Valid. 17

(a) RCW 42.56.565 Is Not Just procedural, But Changes Wholesale Substantive Rights Under The PRA Without A Retroactivity Provision. 18

(b) The Sheriff's Argument RCW 42.56.565 Is Constitutional, Ignores Its Scope, Chilling Effect, Penalty For Any Speech, And Evidence It May Rely On. 20

(c) The Sheriff's Distort RCW 42.56.565's Equal Protection Flaws. . 22

(d) The Sheriff's Fail To Respond To Parmelee's Facial And As-Applied Challenge To RCW 42.56.565 Under The Correct Standard And They Avoid Responding To It's First Amendment Chilling Effects. . 23

(e) The Sheriff's Claim No Due Process Is Really Necessary. 23

9. The Sheriffs Failed To Respond To Parmelee's Issue #9. 23

10. The Sheriff's Estoppel Claims Were Waived In The Trial Court And Equitably Estopped From Raising It Here, They Fail To Establish A Sufficient Record To Rely On. 24

TABLE OF CONTENTS

Page

II. The Sheriff's Claims In Their Issue 9, Sheehan Was Never Ruled On. 25

IV. CONCLUSION 25

CERTIFICATE OF SERVICE 26

TABLE OF AUTHORITIES

State Cases Cited — Page

1000 Virginia Ltd Partners v. Vertees, 158 Wn.2d 566, 146 P.3d 423 (2006). 11, 20

Adams v. Dept. of L&I, 128 Wn.2d 224, 905 P.2d 1220 (1995) 7, 18

Ameriquest Mortgage v. State Atty. General, 148 Wn.App. 145, 199 P.3d 468 (2009). . 6, 7, 15, 23

Board of Regents v. City of Seattle, 108 Wn.2d 545, 741 P.2d 11 (1987) 17, 24

Davis v. Globe Mach., 102 Wn.2d 68, 684 P.2d 692 (1984) 25

Dawson v. Daly, 120 Wn.2d 782, 845 P.2d 995 (1993) 4

DeLong v. Parmelee, 157 Wn.App. 119, 236 P.3d 936 (2010) (Supreme Ct. #80998-4). . 9, 10, 11, 12

DOE v. Puget Sound Blood Center, 117 Wn.2d 772, 819 P.2d 370 (1991) 5, 6, 23

Firefighters Union v. Hollister, 48 Wn.App. 129, 737 P.2d 1302 (1987) , 11

Hearst v. Hoppe, 90 Wn.2d 123, 580 P.2d 246 (1978). 12

Hurlbert v. Gordon, 64 Wn.App. 386, 824 P.2d 1238 (1992) 8

In Re Detention of C.M., 149 Wn.App. 184, 202 P.3d 971 (2009) , 18

In Re Detention of Burns, 131 Wn.2d 104, 928 P.2d 1094 (1997) , 19

In Re Estate of List, 135 Wn.2d 518, 957 P.2d 755 (1998) 3, 23, 24

King County v. Sheehan, 114 Wn.App. 325, 57 P.3d 307 (2002) 7, 10, 11, 12, 20, 25

Kitsap County v. Kitsap County, 156 Wn.App. 110, 231 P.3d 219 (2010) 8, 11

Koenig v. City of Des Moines, 158 Wn.2d 173, 142 P.3d 162 (2006) 3, 10

Lindeman v. Kelso School Dist., 458 Wn.App. 526 (2005) rev'd, 162 Wn.2d 194 (2007). 10

McNeal v. Allen, 95 Wn.2d 265, 621 P.2d 1285 (1980). 3

Mechling v. City of Monroe, 152 Wn.App. 830, 222 P.3d 808 (2009) 8, 14

Northwest Gas v. Wash. Utilities, 141 Wn.App. 98, 168 P.3d 443 (2007) 14

O'Neill v. City of Shoreline, 145 Wn.App. 913, 187 P.3d 822 (2008), aff'd, in part 170 Wn.2d 138, 240 P.3d 1149 (2010) 4, 8, 9

Parmelee v. O'Neill, 145 Wn.App. 223, 186 P.3d 1094 (2008) rev'd in part, 168 Wn.2d 828, 229 P.3d 723 (2010) 12, 21, 22

Police Guild v. Liquor Control Bd., 112 Wn.2d 30, 769 P.2d 283 (1989) , 10

Progressive Animal Welfare Soc'y v. University of Washington, 125 Wn.2d 243, 884 P.2d 592 (1995) 4, 5, 12

TABLE OF AUTHORITIES

State Cases Cited	Page
Rental Housing v. City of Des Moines, 165 Wn.2d 525, 193 P.3d 393 (2009)	4
Robinson v. McHugh, 158 Wash. 157, 29 P. 330 (1930)	20
Sanders v. State, 169 Wn.2d 827, 240 P.3d 120 (2010)	4, 14, 15
Seattle-First Nat'l Bank v. Marshall, 16 Wn. App. 503, 557 P.2d 352 (1976)	16
Seattle v. Ivan, 71 Wn. App. 145, 856 P.2d 1116 (1993)	21
Seattle Times v. Serko, Wn.2d , P.3d (2010), 2010 WL 4652409 (Wash. 11/18/2010)	4, 9
Shaffer v. State, 83 Wn.2d 618, 521 P.2d 236 (1974)	24
Soter v. Cowles Publig, 162 Wn.2d 716, 174 P.3d 60 (2007)	12, 14
State v. Kilburn, 151 Wn.2d 36, 84 P.3d 1215 (2005)	8
State v. Scott, 110 Wn.2d 682, 757 P.2d 492 (1988)	24
State v. Wilbert, 51 Wn. App. 827, 755 P.2d 842 (1988)	7
Tacoma Public Library v. Woessner, 90 Wn. App. 205, 951 P.2d 357 (1998)	13
Thompson v. Dept. of Licensing, 138 Wn.2d 783, 9 P.3d 601 (1999)	23
Zink v. City of Mesa, 140 Wn. App. 328, 166 P.3d 738 (2007)	20

Federal Cases Cited	Page
DOE v. Reed, 561 U.S. , 130 S.Ct. 2811, 177 L.Ed.2d 493 (2010)	8, 12, 22
Landgraf v. USI Films, 511 U.S. 244, 114 S.Ct. 1483 (1994)	19
Landmark Communications v. Virginia, 435 U.S. 829, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978)	19
Los Angeles Police v. United Reporting, 528 U.S. 32, 120 S.Ct. 469, 145 L.Ed.2d 451 (1999)	8, 19, 22
NARA v. Favish, 541 U.S. 157, 124 S.Ct. 1570 (2004)	13, 19
Nixon v. Warner Communications, 435 U.S. 589, 98 S.Ct. 1306 (1978)	19
Police Dept v. Mosley, 408 U.S. 92, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972)	19
Prison Legal News v. Lehman, 397 F.3d 692 (9th Cir. 2005	12
Turner v. Safley, 482 U.S. 78, 107 S.Ct. 2254 (1987)	21
United States v. Proctor & Gamble, 356 U.S. 677, 78 S.Ct. 983 (1958)	5, 23
Washington Legal Fund v. U.S. Sent. Commin, 17 F.3d 1446 (D.C. Cir. 1994)	19

State Statutes Cited	Pages
RCW 4.24.680-.690	8, 20
RCW 9A.76.180	8, 20
RCW 10.14.020	8, 20
RCW 42.56...	Passim

TABLE OF AUTHORITIES

Court Rules Cited	Pages
Superior Court Civil Rule (CR) 11	3
CR-12(f)	3, 9
CR-26(b)	7
CR-42	16
CR-54	18
CR-56(f)	7
CR-60(b)	16
CR-65	23
King County Local Superior Court Civil Rule (KCLR) 7(b)	6, 15, 16
Evidence Rules (ER) 401	3, 7
ER-402	7, 8
ER-403	3, 7
ER-404	2, 7
Rules of Appellate Procedure (RAP) 7.2	16
RAP 9.1	1, 24
RAP 10.3	3, 18, 24
RAP 18.7	8
RAP 18.9	8

Constitutional Provisions Cited	Pages
United States Constitution, Amend- One	8, 20, 21, 23
United States Constitution, Amend - Five	5, 23
United States Constitution, Amend- Fourteen	22
Washington State Constitution, Article I, § 3	23
Washington State Constitution, Article I, § 10 & 32	5
Washington State Constitution, Article I, § 12	22

Washington Administrative Code Cited (WAC)	Page
WAC 44-14-03001	9

Other References Cited	Pages
WWW.GOOGLE.COM	13
WWW.MYSPACE.COM	13
WWW.SECSTATE.GOV	13
WWW.SOUNDPOLITICS.COM/VOTERLOOKUP/	13
WWW.TWITTER.COM	13
WSBA's Public Records Act Deskbook....	13.

* * * * * *

I - IDENTITY OF REPLYING PARTY:

Allan Parmelee replies in accordance with this Court's Nov. 22, 2010 ruling. Seperately herewith, he asks the Commissioner to rule on Parmelee's accompanying seperate motion To strike Attachments to King Countys Brief and related unsupported arguments and referances therein, not in the record - RAP 9.1.

II RESTATEMENT OF SUBSTANTIATIVE FACTS:

The Sheriff's claim Parmelee has a "long history of using the courts and the PRA to [presumably unlawfully] harass and intimidate public officials..." (Resp. Brf, pg. 5). They cite to no such related "frivilous lawsuits" in any State court, and Parmelee is not the plaintiff in these cases, but the victim defendant of the county's colusion and harassment of Parmelee. They fail to cite to any anti-harassment actions they could file, if true, under RCW 10.14.020. They can't identify any cases they prevailed in for unlawful intimidation of a public servant under RCW 9A.76.180. They also fail to identify any actions against Parmelee's claims he may put information he obtains on the internet under RCW 4.24.680-690. They can't cite to any other criminal cases for any unlawful "threats" against any person, such as criminal charges could be based. Instead, we have lots of King County's baseless and false "trash-talk" against Parmelee. CP-1309-1316, CP-1416-1653, CP-1654-1656, CP-1362-1373, CP-1002-1240, CP-1298-1308.

King County mentions "numerous frivilous and vexatious lawsuits Parmelee has filed against King County... and putting aside the innumerable abusive public disclosure requests..." (Resp. Brf, pg. 6) yet they cannot cite to a single case or identify any specific

Public Records Act ("PRA") request. They claim it began with Parmelee's arson case, yet no evidence exists to support any such connection. The Sheriff's claims are merely conclusory and lack "real facts." ER-404. They claim Parmelee's journalistic activities are "pay back" for the Sheriff's involvement in Parmelee's arson conviction. However, King County Sheriffs weren't involved in the case. (e.g. See unpublished decision of Parmelee's co-defendant's appeal in State v. Parmelee (Stone), #02-1-07184-4, COA# , and Madison v. Madison, COA# 57155-9-I & COA# 54064-5-I). And, no connection to Parmelee was ever made to any phone calls, incessant or otherwise (Resp. Brf., pg. 6).

King County Sheriffs also conclude Parmelee sought names of Sheriff's involved in investigating him, simply to harass and jeopardize law enforcement. (Id, pg 7). Again, nothing supports these absurd and defamatory claims by the Sheriffs.

Finally, the Sheriff's claim other instances of "PRA... retributive conduct..." exists towards private and public citizens. (Id). They claim, or infer, a relationship to PRA requests when none exists. The Sheriffs close their facts, claiming their "argument" should be treated as "facts." Id. Anyone can argue the moon is made of cheese, but it doesn't make it so. Parmelee is merely a flea to King County's elephant trying to crush him.

III - ARGUMENT:

1. The Sheriff's Issue No. 2 Presents No Legal Basis To Justify Trashtalking Parmelee When RCW 42.56.080 And SSU Looks Only Forward For Statutory Exemptions, Not Suspected Skeletons In A Closet.

Parmelee contends that relating to his issue # 1, *Fn.1 and the Sheriffs response #2, a complaint may be a short plain statement, it is also not a free-for-all protected soap box to trash-talk someone to harass them out of defending their legal claims. That is the purpose of CR-12(f) and CR-11, to provide a remedy. McNeal v. Allen, 95 Wn. 2d 265, 267-68, 621 P. 2d 1285 (1980).

Just like in McNeal where the statute governing medical malpractice claims not pleading an amount certain, RCW 42.56.080 and .550(1)-(3) prohibit an agency from any focus of a records requestor to base their injunction action, especially with "trash-talk". Koenig v. City of Des Moines, 158 Wn. 2d 173, 183, 142 P.3d 162 (2006) (a court cannot look beyond the four corners of public records and specific exemptions, to determine if exempt). Impertinent and scandalous interpretations of alleged "accounts of [Parmelee's] own behavior and actions and his resulting legal status" defies the plain language of RCW 42.56.030, .080. and .550. (Resp. pg. 23).

King County Sheriffs claim they did not use "profane or abusive language." (Resp. Pg. 24). Parmelee disagrees. Their attack is meritless and was not pertinent in a PRA case, whatever imagined slights they claim Parmelee is guilty of.

The trial court erred by refusing to grant Parmelee's motion to strike and for sanctions, CP-20-29, CP-998-1001. The Sheriffs fail to explain how the trash-talk was both relevant under ER-401-403, and cite no authority for their proposition and response as required by RAP 10.3. In Re Estate of List, 135 Wn. 2d 518, 531-32, 957 P. 2d 755 (1998) (strict adherence to briefing substance required). They also fail to explain how trash-talk was admissible under RCW 42.56.080 and .550. Vitriolic attacks undermine the dignity and credibility of a court.

*Fn.1 King County Sheriffs has not briefed the issues in the same order as Parmelee presented them in his opening brief. He replies here, in the same order as the opening brief.

2. The Sheriff's Issue No. 3 Incorrectly Promotes Secret Withholding Even from Judicial Review of Public Records Claimed Exempt, Denying The Court An Ability To Determine The True Nature Of the Records At Issue.

The Sheriff's response #3, to Parmelee's issue #2 incorrectly assumes that the requested records were properly described by the agency, and the substance in each record if it were properly exempt in full or part. It cannot be disputed that the trial courts ruling metadata is not a public record, CP-1327-1329, O'Neill v. City of Shoreline, 170 Wn.2d 138, 240 P.3d 1149 (2010), and the trial court was wrong in concluding metadata was not a public record subject to disclosure despite its in-camera review on the metadata only.

The courts are not to defer to an agency on if and how law applies to the facts. Dawson v. Daly, 120 Wn.2d 792, 794, 845 P.2d 995 (1993) rev'd in part on other grounds, Progressive Animal Welfare Soc'y v. University of Washington, ("PAWS-II"), 125 Wn.2d 243, 270-71, 884 P.2d 592 (1995). A court cannot accept secret withholding by an agency, especially one in this situation where their credibility is non-existent. Sanders v. State, 169 Wn.2d 827, , 240 P.3d 120 (2010) (court reviewed ALL records at issue in-camera, even on review by the Supreme Court). Just like the Sanders case, in Seattle Times v. Serko, Wn.2d , P.3d , 2010 WL 4652409 (Wash. 11/18/2010) and in Rental Housing v. City of Des Moines, 165 Wn.2d 525, 193 P.3d 393 (2009) the Supreme Court emphasized the use of in-camera review under RCW 42.56.550(3) and how it enabled the court to determine if exemptions applied in full

or part, or if some records could be redacted, in part and disclosed in part. RCW 42.56.210.

The Sheriff's argument that simply the "nature of the request" be sufficient, without considering the real substance of the records requested, puts blinders on the court. (Resp. Brf, pg. 25). It assumes a court will rule in a vacuum, without understanding the real facts involved in the substance of the records requested. It was an abuse of discretion to deny Parmelee's in-camera review motions twice. CP-1325, ¶3, CP-1348-1351, CP-1355-1373, CP-1378. Anything less permits secret withholding criticized in PACES, 125 Wn.2d at 270-71.

3. Denial Of Discovery And Time To Prepare Denies Due Process At Its Most Elementary Core, Both Times, To Sheriffs Issue #5.

The Sheriffs response #5, to Parmelee's issue #3 incorrectly fails to consider the chronology of the timing, and the piled on load of all four King County PRA cases at the same time against Parmelee. They also fail to consider that discovery and time to prepare are elementary elements of due process. DOE v. Puget Sound Blood Center, 117 Wn.2d 772, 782, 819 P.2d 370 (1991) (discovery is an integral part of due process). Washington Constitution, Art. I, § 10 & 32. The right of access-to-the-courts is implicated whenever a party seeks discovery. Id at 782. The rules of discovery are tools intended to "make a trial less a game of blind man's bluff and more a fair contest with basic issues and facts disclosed to the fullest practicable extent." United States v. Proctor & Gamble Co., 356 U.S. 677, 682, 78 S.Ct. 983, 2 L.Ed.2d 1077 (1958).

Several gapping holes exist in the Sheriff's argument. Parmelee was

served and filed an answer within 20-days on July 17, 2008. CP-1319. He also filed a motion to strike and for in-camera review on the same date, CP-20-29, CP-30-36, and a motion to consolidate cases, CP-37-40. The Sheriffs responded with a motion for an injunction Less than a week later, on July 21, 2008. CP-75-92. Until the court ruled on Parnelee's initial motions, it should have done earlier than December 30, 2008, CP-1317-1326, Parnelee had no way to know which direction to go with discovery and its scope, such as, did he need to probe the Sheriff's trash-talk Parnelee contended was both irrelevant and inadmissible, the court later disagreed.

Furthermore, the trial court failed to notify Parnelee that it was consolidating a preliminary injunction under CR-65, with a trial on the merits into one hearing. In Ameriquest Mortgage Co. vs Attorney General, 148 Wn. App. 145, 199 P.3d 468 (2009) the court held that such consolidated hearings both conflict with the standards of proof applicable to injunction proceedings, and cannot be combined into one hearing as was done here. A trial on the merits should have allowed Parnelee time for discovery on the merits, DOE, 117 Wn.2d at 782.

The second injunction hearing was held Two days after Parnelee received notice, denied an opportunity to respond, where a preliminary injunction was entered, on June 19, 2009. CP-1343-1351. No certificate of service exists in the record and no Note-for motion required by KCLR-7(b)(5)(A) exists in the record, failing to give Parnelee sufficient notice under CR-5 and KCLR-7(b)(4)(minimum, 6-court days). Even the one-page motion, CP-1341, failed to give "notice" as required by KCLR-7(b)(5)(B). It doesn't even identify which case it seeks to join; the case number, or the parties.

Parmelee's objections under CR-56(f) and his pleadings sufficiently described why time and discovery was needed. CP-1002-1240, CP-1309-1316, 1348-1351, CP-1355-1373, CP-1654-1656 The timing alone should have been sufficient, especially considering the fact intensive results both times. CP-1317-1326, CP-1378-1389. The Sheriffs offer no authority whatsoever for their objections. It was a violation of Parmelee's due process rights all around. The Sheriffs claim Parmelee's discovery efforts were "irrelevant" fails to reconcile with their "trash-talk" they presented was relevant. CR-26(b), ER-401-404. Their contentions are incredible.

4. The Sheriffs Failed To Respond To Parmelee's Issue No. 4 At All.

The Sheriffs failed to respond at all to Parmelee's issue #4 where he claimed the trial court erred by dismissing his counter-claim. Therefore, it should be deemed as a concession. Adams v. Dept of L&I, 128 Wn. 2d 224, 229, 905 P.2d 1220 (1995) (abrogating State v. Wilburn, 51 Wn. App. 827, 829-30, 755 P.2d 842 (1988)).

5. The Sheriffs Response Issue #1, To Parmelee's Issue #5, Incorrectly Combined A Preliminary And Permanent Injunction, And Relied On Incorrect Standards For A PRA Injunction.

The Sheriffs response issue #1 to Parmelee's issue #5, incorrectly combines a preliminary injunction with a permanent injunction contrary to prior holdings such as Ameriquest Mortgage v. Attorney General, 148 Wn. App. 145, 199 P.3d 468 (2009), and relied on incorrect standards under the PRA. Their silence on cases like King County v. Sheehan,

114 Wn. App. 325, 57 P.3d 307, (2002) (names, dates of birth, gender, are disclosable); Kitsap County v. Kitsap County, 156 Wn. App. 110, 231 P.3d 219 (2010) (employee's town of residence is disclosable public record); Mechling v. City of Monroe, 152 Wn. App. 830, 222 P.3d 808 (2009) (work email addresses are disclosable public records); DOE v. Reed, 561 U.S. —, 130 S. Ct. 2811, 177 L.Ed.2d 493 (2010) (names and addresses of private citizens on Washington ballot initiatives are disclosable public records); O'Neill v. City of Shoreline, 170 Wn.2d 138, 240 P.3d 1149 (2010) (metadata is disclosable public record) speaks more towards the Sheriff's lack of candidness and honesty in this case. More examples exist.

For example, the Sheriff's conclusory claims of "abusive and threatening manner" which Parmelee uses the PRA. (Resp. brief. pg. 7). They fail to explain or cite any authority to define these conclusions, especially under a first Amendment context such as analyzed in State v. Kilburn, 151 Wn.2d 36, 84 P.3d 1215 (2005). Without a "true threats" analysis, and a nexis to PRA requests also absent, the Sheriff's conclusory trash-talk should be stricken and sanctions imposed. RAP 18.7 & RAP 18.9. Hurlbert v. Gordon, 64 Wn. App. 386, 824 P.2d 1238, (1992) (sanctions for egregious inaccuracies in brief). They claim, any PRA requests were designed as a pattern of abuse, designed to [be true] threat[s], [unlawfully] intimidate and [unlawfully] harass the Sheriff's and its employees, yet they can't back this up with "real facts": ER-402. No civil charges under RCW 10.14.020, or if truely threats and intimidation, criminal charges filed. RCW 9A.76.180; State v. Kilburn, 151 Wn.2d at 43-44. Or a civil action under RCW 4.24.680-690? The reasons are clear - real facts don't exist and the PRA is an easier forum to harass Parmelee for his first amendment protected activities criticized in Los Angeles Police Dept. v. United Reporting Publishing Corp., 528 U.S. 32, 43,

120 S.Ct. 469, 145 L.Ed.2d 451 (1999).

The Sheriffs also claim Parmelee did not dispute their evidence, nor assign error to any of the trial court's factual findings on appeal. (Resp. Brf, pg. 8). This also is incorrect. In Parmelee's opening brief, pages 23, 25, 37-43 objected to the factual findings. In any event, they are irrelevant and should be stricken per RCW 42.56.080 as irrelevant under CR-12(f). (See opening Brf. Issue #1). Relating to the Second injunction, they were again disputed. CP-1298-1308, 1309-1316, 1348-1351, 1355-1373, 1654-1656, 1406-1653. Review is de novo anyway. RCW 42.56.550(3).

(a) The Sheriff's Claim Requested Public Records Are not Public Records Has Nothing To Do With Who Is Requesting Them.

The Sheriff's claim that the requested records are not public records because of who is requesting them is contrary to RCW 42.56.010(2) and RCW 42.56.080. Such approaches have been consistently rejected. Seattle Times v. Serko, Wn.2d , P.3d , 2010 WL 4652409 (Wash. 11/18/2010). It was even rejected in DeLong v. Parmelee, 157 Wn. App. 119, 236 P.3d 936 (2010) (review sought, Supreme Ct. # 80998-4). However, if Parmelee is truly a "threat to public safety, including while incarcerated" (Resp. Brf, pg. 9) as alleged, a public disclosure injunction is not the tool, unless the "threat" is only imaginary and unreasonably alleged.

A public record is defined at RCW 42.56.010(2). It consists of anything informative, regardless of its form or characteristics. A public record relates to a governmental or proprietary function, retained or used by an agency. Seattle Times v. Serko, ¶ 18; O'Neill v. City of Shoreline, 170 Wn.2d at ___, ¶ 14-15. Practically anything is a public record. WAC 44-14-03001. A person's job position cannot be considered

to determine if higher levels of protection should be awarded some government officials, not uniformally awarded others not subject to the same PRA requests. Police Guild v. Liquor Control Bd., 112 Wn.2d 30, 39, 769 P.2d 283 (1989)(occupation of person, such as police, is irrelevant); King County v. Sheehan, 114 Wn. App. 325, 340, 57 P.3d 307 (2002)(no doubt the threats and inherent dangers police face are real and inherent in the occupation they chose). The Sheriff's argument fails. (Resp. Brf, pg. 9 & 10)

The court in Koenig v. City of Des Moines, 158 Wn.2d at 183-187 has already ruled that video tape of students on a school bus was a public record, subject to disclosure. Court video is subject to disclosure of whomever appears in an area under video monitoring. Wash. Const., Art. I, §10. Pictures of public employees are likewise subject to disclosure according to DeLong v. Parmelee, 157 Wn. App. at 146, 154-158. Parmelee does not seek the officials actual I.D. card, nor anything except the picture, in electronic format, with its metadata intact. It helps identify government officials; match a name to a face who performs government duties, and helps avoid misidentification, secrecy and John-Doe complaints.

The Sheriff's contention relying on Lindeman v. Kelso School Dist, 127 Wn. App. 526, 535, 111 P.3d 1235 (2005), rev'd in, 162 Wn.2d 196, 172 P.3d 329 (2007) that information cannot facilitate making it easier to identify government employees due to personal attributes or factors, is error. This was rejected in Koenig, 158 Wn.2d at 183-187, as it was in King County v. Sheehan, 114 Wn. App. at 342-48, rejecting the "linkage" argument.

The Sheriff's argument that dates of birth are not public records subject to disclosure (Resp. Brf., pg. 13) was rejected in King County v. Sheehan, 114 Wn. App. at 317-18, as well as medical disability and retirement records. Seattle

Firefighters Union v. Hollister, 48 Wn. App. 129, 137-38, 737 P. 2d 1302 (1987). Furthermore, since the town-of-residence of persons in public records is disclosable, it would be unreasonable to claim dates of birth to evaluate retirement and new-hiring demands as well as insurance costs, does not relate to government. Kitsap County v. Kitsap County, 156 Wn. App. 110, 231 P. 3d 219 (2010).

Similarly, race and gender were disclosable in the above cases. Sheehan, 114 Wn. App. at 347-49. It assists in evaluating potential medical insurance costs, pregnancy and child-care leave costs, as well as examining racial and gender discrimination statistics.

The Sheriffs claim Pamelee could simply ask for hiring statistics and application standards is contradictory. (Resp. Brf., pg. 14). This case blocks ALL requests of any kind, they claim are abusive, harassing, threatening and intimidating, no matter what is asked for.

The Sheriff's claim height and weight are not for disclosure. Id. Tall people are prone to chronic back problems - medical insurance costs to the government. As is weight, known to increase heart attack rates and limits a persons job functionability with bad backs and/or overweight. How are these statistics blending with job assignments and ability to perform them, compared to a person fit-for-the-job? The Sheriffs present no authority for their propositions.

(b). The Sheriffs Reliance On RCW 42.56.250(8) Is Barred Because It Didn't Exist Then, And RCW 42.56.230 Is Misplaced Especially Without An In-Camera Review.

The Sheriffs cannot rely on RCW 42.56.250(8) because it did not exist at the time and was not made retroactive to PRA requests submitted prior to its enactment. 1000 Virginia Ltd. Partnerships v. Vertees, 158 Wn. 2d 566, 146 P. 3d 423 (2006). That is why in DeLong v.

Parmelee, 157 Wn. App. 119, 236 P.3d 936 (2010), RCW 42.56.250(8) could not have been applied. It would be absurd to contend that privacy rights are decided, not on what might be requested, but by who is asking for it as the Sheriffs propose. RCW 42.56.030.

In any event, RCW 42.56.250(8) excludes itself from applying to the news media, with certain conditions on who the news media is, creating a first amendment and equal protection problem. Several courts have recognized Parmelee's journalistic activities and books. (e.g. Parmelee v. O'Neel, 145 Wn. App. 223, 229, 186 P.3d 1094 (2008) rev'd, in part, 168 Wn.2d 515, 229 P.3d 723 (2010); DeLong v. Parmelee, 157 Wn. App. at 132; Prison Legal News v. Lehman, 397 F.3d 692 (9th Cir. 2005)). That first amendment and equal protection issue should be subject to additional supplemental briefing if this court is inclined to apply it, since it was not relied upon by the trial court.

The United States Supreme Court recently rejected a similar spin on PRA privacy rights as the Sheriffs make here, in DOE v. Reed, 561 U.S. —, 130 S.Ct. 2811, 177 L.Ed.2d 493 (2010). Privacy is defined in Hearst v. Hoppe, 90 Wn.2d 123, 135-139, 580 P.2d 246 (1978) and has been reaffirmed even by the legislature in notes to RCW 42.56.050, citing laws, 1987, Ch. 403.

While the Sheriffs seek to adopt the parts of DeLong v. Parmelee they like, and ask the court to reject the parts not favorable to them, they forget that the parts they rely on are inconsistent with both RCW 42.56.080 and PAWS-II, 125 Wn.2d at 257-261, and Soter v. Cowles Publg, 162 Wn.2d 716, 755, n.18, 174 P.3d 60 (2007). Because the PRA closely parallels the federal Freedom of Information act with regards to focusing on exemptions as opposed to the requestor, Sheehan, 114 Wn. App at 343-44, permits comparisons of RCW 42.56.080 to

certain federal cases such as NARA v. Favish, 541 U.S. 157, 172, 124 S.Ct. 1570, (2004)("As a general rule, if information is subject to disclosure, it belongs to all.").

However, the Sheriff's inflamatory and sensationalized arguments fail for several reasons space here limits.*Fn.2 While privacy in the age of Myspace, Google, Facebook, Twitter and the internet, even the Washington Secretary of State will sell a complete registered voters list on CD, including their full name, gender, date-of-birth, and home address. (See for example, WWW.SECSTATE.WA.GOV/, also see WWW.SOUNDPOLITICS.COM/VOTERLOOKUP/) All it takes is a part of a name or other information to begin a search to easily obtain the very information the Sheriffs claim would violate privacy if disclosed here, but not there.

The Sheriffs contention that their employee identification numbers are exempt under Tacoma Public Library v. Woessner, 90 Wn. App. 205, 951 P.2d 357 (1998). Here, Sheriffs put their employee identification numbers on traffic tickets, investigation reports, and a limitless myriad of other documents disclosed to the public frequently and voluntarily. It is stamped and displayed on their badges. In this context, they are routinely disclosed and do not meet the criteria of RCW42.56.050.

The Sheriffs evidence is insufficient to stand in this case, as is their arguments.

(c) The Sheriffs Exaggerate Phone Number Requests, And Still Did Not Disclose Even The Ones Ordered Disclosable, Continuing The Violation Of The PRA.

The Sheriffs fail to explain or provide any evidence both opposing Painolee's evidence about why he sought the records on telecomunication

*Fn.2 See detailed PRA privacy analysis space here limits, in WSBA's Public Records Act Deskbook: Washington's Public Disclosure And Open Meetings Laws (2006) (herein, "PRA Deskbook"), Chapters 11 & 13.

wastes and abuses for personal gain by public employees, and fails to apply the language of RCW 42.56.420 without unreasonably twisting and distorting it. CP-1002-1240, CP-1416-1653, CP-1654-1656, CP-1362-1373. They also fail to explain why they still have not even disclosed their main "front-desk" numbers ordered disclosed by the trial court, CP-1323, ¶ 11, and the trial courts refusal to award Parnelee PRA penalties for not disclosing the main numbers such as found in a phonebook in rejecting Parnelee's counter-claim. CP-1002-1240, CP-1264-1278, CP-1325-26, ¶ 5. Regardless, reversal is still required. Soter v. Cowles Publg, 162 Wn.2d at 749-50, 756 (court can't refuse to award PRA penalties)

The Sheriffs evidence is insufficient. They also fail to apply RCW 42.56.420 as a whole, favoring disclosure. Sanders v. State, 169 Wn.2d 827, pgs. 5-6, 240 P.3d 120 (2010). They also failed to identify real, as opposed to conclusory argument, necessary to establish each and every factor of .420, such as "commonly used and disclosed" information cannot also be "specific and unique vulnerability assessments or specific and unique response and deployment plans." RCW 42.56.420(1)(a).

Sheriffs give out their direct dial numbers, pagers, text messaging [and email addresses must be disclosed, Mechling v. City of Monroe, 152 Wn.App. 830, 220 P.3d 508 (2009)], on personal business cards, personal official stationery, email response headers - footers, in police and investigation reports, to opposing lawyers and their investigators, their family, and friends. Had discovery been allowed, Parnelee would have proven this.

The Sheriffs stretch Northwest Gas Ass'n v. Wash. Util & Transp., 141 Wn.App. 98, 168 P.3d 443 (2007). First, in Northwest Gas, 141 Wn.App at 114, the court overturned the same thing the Sheriffs did here - jump strait to a permanent injunction trial on the merits, without passing a preliminary injunction. CP-946-992, CP-1317-1326, CP-1341, CP-1378-1389. This same

Leap was rejected again in Ameriquest Mortgage v. Attorney General, 148 Wn. App. at ¶14-17. Secondly, because the same information Parmelee sought is not "regularly guarded from disclosure and consistently kept secret. Selectively sharing the same information with friends or strangers nor distributed agency wide such as in "agency internal phone books" precludes the application of RCW 42.56.420.

In any event, both discovery and in-camera review per RCW 42.56.550(3) was necessary to properly decide if .420 applies. Sanders v. State, 169 Wn.2d at ___.

6. The Sheriff's Violated So Many Rules Seeking And Obtaining Their Second Injunction, Litigation Ambush Was An Abuse Of Process.

The Sheriffs issue #6 in response to Parmelee's issue #6 fails so many rules seeking and obtaining their second injunction resulting in a litigation ambush and an abuse of process. They cite no authority for their opposition.

The sheriffs motion was filed on June 12, 2009, but not served on Parmelee until Two days before the court hearing where a preliminary injunction was entered. CP-1341, 1342, 1343-46, 1347 and CP-1348-1351.

The one page motion, CP-1341, fails to indicate what case it seeks to join. It fails to identify any case number, parties or even who the other plaintiff and defendants are. It also contradicts Parmelee's motion to consolidate the cases months earlier on July 7, 2008. CP-37-40. (Also see Appeal issue #7 and the Sheriffs Response Issue #4).

The motion failed to include a required Note-for-Motion form required by KCLR-7(b)(5). In other words, the motion [sic] was

never noted and should never have been heard.

The one page motion, CP-1341, failed to comply with the content requirements of KCLR 7(b)(5)(B).

The Sheriffs do not dispute any of these issues. They do not deny that they specifically included language in their second injunction stating "This case is dismissed." CP-1382, ¶5. If the case is "dismissed" as they included in their order, no injunction can exist. CR-54, Seattle-First Nat'l Bank v Marshall, 16 Wn. App. 503, 559 P.2d 352 (1976). Their opposition is puzzling since they dismissed their own case.

In any event, because it might be construed the second injunction did not dismiss the case, or it did, it still affected Parmelee's pending appeal issues. RAP 7.2. For example, Parmelee's counter-claim. CP-1264-1278. And his motion to compel and for penalties. CP-1002-1240. Without leave of this court per RAP 7.2, and a valid CR-60(b) motion before the trial court, the second injunction, CP-1378-1389 should never have occurred. CP-1348-1351, CP-1355-1361, 1362-1373, CP-1654-1656. Because the second injunction affects even a reversal of the first injunction, absent a complete reversal, leave of this court was required per RAP 7.2 invalidating the second injunction.

7. <u>The Sheriff's Selective Consolidation Opposition, Then Collateral Estoppel Arguments Contradict Their Opposition To Parmelee's CR-42 Joinder Motion.</u>

The Sheriffs response No. 4, to Parmelee's issue #7, contradicts itself and their other oppositions, while seeking only "selective joinder" on only some issues CR-42 doesn't provide for.

First, the Sheriffs opposed Parmelee's motion to join or consolidate all the related cases. CP-37-40. The Sheriff's opposed, claiming their

general issues were different than the other cases. CP-72-74. The trial court denied Parmelee's motion. CP-1326, ¶6. Six months later, the Sheriffs seek to join another unspecified case in a one-page motion. CP-1341. Without any indication which case sought to be joined, the trial court finds one, again without identifying which case, such as by case number. Selective joinder is being allowed - when it favors anyone opposing Parmelee. CP-1378-1389.

Second, the Sheriffs oppose Parmelee's joinder in this appeal, yet claim Parmelee is collaterally estopped from appealing, in their issue 7 (Resp. Brf, pgs. 30-32). The Sheriffs should be equitably estopped from these forever flip-flopping arguments. Bd of Regents v. City of Seattle, 108 Wn.2d. 545, 551, 741 P.2d 11 (1987) (3-part test of equitable estoppel).

Third, if the Sheriffs argument that Parmelee is collaterally estopped from appealing, demonstrates injury for the trial courts denial of his motion to consolidate. It also demonstrates that the Sheriffs arguments against consolidation and the uniqueness of relief and remedies (Resp. Brf pg. 27) fail to explain why each used each others pleadings and templates, yet arguing Parmelee cannot appeal based on collateral estoppel is either ridiculous or absurd - or both. (Also see herein, Issue 10, pgs. 24-25).

8. Again, The Sheriffs Issue 8, Fails To Correctly Recite The Facts, Address The Correct Law Applicable To The Facts, And Fails To Identify Any Evidence In Support Of The Second Injunction, Or That The Statute Is Valid.

The Sheriffs fail to correct, explain or justify application

of RCW 42.56.565, when the order they presented cites to "RCW 42.56.620" (P-1385, 1386, ¶§1-6. Their order therefore cannot rely on .565, when they cited and relied on .620. This is fatal to the Sheriffs case and their arguments. CR-54;

Even if not, the Sheriffs fail to apply the correct law to the issues and distort the result. They falsely claim Parmelee failed to controvert their allegations. (Resp. Brf, pg. 34). He did at empirum, but the trial court both ignored those declarations and oppositions, (CP-1002-1240, CP-1264-1278, CP-1309-1316, CP-1298-1308, CP-1355-1373, CP-1654-1656, CP-1416-1653) and failed to apply the correct standards while denying Parmelee all discovery to obtain evidence to show the Sheriffs claims were nothing but paper tigers.

The Sheriffs failure to address or respond to Parmelee's contention on inadmissability and insufficiency of evidence (opening brief, pgs. 36-43) should be treated here as a concession or admission. RAP 10.3(b); Adams v. Dept of Labor & Indust, 128 Wn.2d 224, 229, 905 P.2d 1220 (1995).

(a) RCW 42.56.565 Is Not Just Procedural, But Changes Wholesale Substantive Rights Under The PRA Without A Retroactivity Provision.

Parmelee contends and sought Supreme Court review of DeLong v. Parmelee, supra because parts of it are simply wrong, such as "if learning about, exchanging ideas about government, and obtaining information about government such as established by State public records laws, do create a state created substantive right. A "substantive right" is defined as "prescribing 'norms for societal conduct'." In Re Detention of C.M., 149 Wn. App. 184, , 202 P.3d 971 (2009). The right to receive ideas and information, while Washington State lacks Grand Juries and most agency oversight committees, the function of records requestors critical of

government and who seek the truth to expose it. Los Angeles Police Dept. v. United Reporting, 528 U.S. 32, 43, 120 S.Ct. 469, 145 L.Ed.2d 451 (1999). In Nixon v. Warner Communications, 435 U.S. 589, 597, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978) the courts have "recognized a general right to inspect and copy public records and documents, including judicial records and documents." Disclosure of public records is also recognized under common law. Washington Legal Found. v. U.S. Sentencing Comm'n, 17 F.3d 1446, 1451-52 (D.C.Cir. 1994). In Landmark Communications v. Virginia, 435 U.S. 829, 839, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978) the Supreme Court held that the First Amendment protects "discussion of governmental affairs." In Police Dept. v. Mosley, 408 U.S. 92, 96, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) the court criticized just what we have here stating "[W]e have frequently condemned ... discrimination among different users of the same medium of expression." In National Archives v. FAVISH, 541 U.S. at 172, the court held "As a general rule, if the information is subject to disclosure, it belongs to all." Because RCW 42.56.565(2) & (3) may prohibit records disclosure "not limited to" topics ("types") of records sought; statements a person made recently or even years ago, a purpose or related use activity; and based on associations with others to deny records, affects substantive rights predating the statute's enactment.

The Sheriffs ask this court to read more into the statute than exists to construe it retroactive. A statute that creates new penalties or restrictions for conduct occurring before the statute became effective requires the statute be construed only prospectively. In Re Estate of Burns, 131 Wn.2d 104, 114, 928 P.2d 1094 (1997), citing Landgraf v. USI Films, 511 U.S. 244, 114 S.Ct. 1483 (1994). Regardless of how a statute is characterized, it must be presumed to run prospectively only. Id.;

1000 Virginia Ltd'd Partnerships v. Vertees, 158 Wn. 2d 566, 584, 146 P.3d 423 (2006). The Sheriffs misconstrue these cases. The legislature did not say it ran retroactively. Here, because RCW 42.56.565 imposes penalties for prior speech and association, it cannot be said to not limit constitutional rights, and therefore is neither procedural or remedial only. Id. An accrued cause of action is a vested right such as when it springs from contract or principles of common law. Id. citing Robinson v. McHugh, 158 Wash. 157, 163, 29 P. 330 (1930)

The Sheriffs argue that a vested right is [unlawful] harassment and intimidation is a smoke screen. If truly as claimed, the State has vast other tools available to curd criminal conduct. In Zink v. City of Mesa, the City claimed the Zinks' 150 PRA requests and threats to sue were unlawful harassment under RCW 10.14.020. The court of appeals reversed, indicating that since issuing PRA requests was "lawful" it could not also be called harassment. Id. 140 Wn. App. 328, 343-44, 166 P.3d 738 (2007). This court also touched on this issue in King County v. Sheehan, 114 Wn. App. at 340-43, rejecting King County's similar attack on Mr. Sheehan. The Sheriff's puffery should be rejected, and the statute declared non-retroactive.

(b) The Sheriffs Argument RCW 42.56.565 Is Constitutional Ignores Its Scope, Chilling Effect, Penalty For Any Speech, And Evidence It May Rely Upon.

As discussed again in the previous section (pgs. 18-19) the Sheriffs response (Resp. Brf. pgs. 37-46) that RCW 42.56.565 is constitutional ignores its scope, chilling effect on free speech, and penalty for any speech as well as the unlimited evidence and definitions it may rely upon. None of their is on point nor does it consider First Amendment factors.

Because RCW 42.56.565 (2) permits a court to craft a new standard

of admissable facts to rely on, the term "but not limited to" includes a person's race, religion, political affiliation and prior speech. It includes associations with others. (...525(3)). It permits an arbitrary quantity ("other requests) and topics, subject matter and "types" of records sought, as well as any reformative and corrective "impact" on the agency disclosure promotes. e.g. Parmelee v. O'Neel, 145 Wn. App. 223, 235, 186 P.3d 1094 (2008) rev'd in part, 168 Wn.2d 828, 229 P.3d 723 (2010).

Even the terms "may" in the statute throws open the door for "speculation" and guessing constitute evidence, on subjective terms. It makes any trial on the merits a free-for-all for trash-talk with no way to oppose it.

Furthermore, any restriction on a prisoner must meet a four part test in Turner v. Safley, 482 U.S. 78, 89-90, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987). RCW 42.56.565 seeks to make this legitimacy test meaningless. Since discovery was disallowed, Parmelee was unable to probe the four Turner factors and the record as it is, is insufficient to support the result.

The analogy here is more comparable to the intimidation-threats statute declared unconstitutional on First Amendment and overbreadth grounds in Seattle v. Ivan, 71 Wn. App. 145, 150-158, 856 P.2d 1116 (1993). Like here, the terms "harass, intimidate and threaten" as used in RCW 42.56.565 do not limit themselves at all to proscribed speech or conduct, such as fighting words, immediate breaches of the peace or provocative speech or actions likely to produce a clear and present danger of a serious substantive evil. Id, at 150-51. Instead, the statute permits all speech be used such as reasons for records, topics of records requested, and even contrary to RCW 42.56.550(3), annoying

and inconvenient requests. It fails constitutional muster because it deters and chills all activity and speech, to avoid the broad brush stroke of .565 from being applied. As a result, under Evan and Parmelee v. O'Neel, supra, the statute is unconstitutional. Contrary to the Sheriffs claims, .565 does not define, limit itself nor apply itself to only "true threats." If it could be so limited, Parmelee wouldn't make the argument. In comparison, the Sheriffs fail to identify a single "true threat" from Parmelee applicable here. CP-1378-1389. This illustrates the statutes overreaching violations.

(c) The Sheriffs Distort .565's Equal Protection Flaws.

The Sheriffs distort RCW 42.56.565's equal protection flaws. (Resp. Brf, pgs. 41-44). They claim Parmelee compares prisoners to non-prisoners as the test. That's not Parmelee's comparison and their authority on the distinction is irrelevant here. Washington, Art-1, §12.

RCW 42.56.565 (2) and (3)(b) permits an agency to arbitrarily select both prisoners, and non-prisoners they claim are "associated with a prisoner" in any way, or who has requested one quantity but another prisoner requested a different quantity of records, or of different topics, but still prisoners or the prisoners family, associates or business acquaintances. Such discrimination requires an "exacting scrutiny standard." John Doe v. Reed, 561 U.S.—, 130 S.Ct. 2811, 177 L.Ed-2d 493 (2010) (exacting scrutiny applied to Wash PRA laws).

The Sheriff's various Red Herrings fail to conduct a proper analysis of those affected under .565 and those similarly situated, not affected. In Los Angeles Police v. United Reporting, 528 U.S. 32 at 43 (1999) the court recognized equal protection claims on selective public records disclosure remained open on remand, criticizing denying

public records to those deemed "unpopular" with state agencies or others. The same situation is attempted here, the Justices were critical of in Los Angeles Police, Id that cannot stand constitutional muster (see dissent in LAPolice).

(d) The Sheriffs Fail To Respond To Parnelee's Facial And As-Applied Challenge To RCW 42.56.565 Under The Correct Standard And They Avoid Responding To Its First Amendment Chilling Effects.

The Sheriffs failed to address Parnelee's unconstitutionality issues befor the trial court, CP-1355-1373, CP-1654-1656, CP-1374-1377. The trial court never addressed it. CP-1378-1389. And they don't address it here in their Response. The silence should be treated as a concession. RAP 10.3(b); In Re Estate of Lint, 135 Wn.2d at 531-32.

(e) The Sheriffs Claim No Due Process Is Really Necessary.

The Sheriffs claim essentially that no due process is necessary under RCW 42.56.565. If so, then why the process they used in court? Wash. Const., Art I, §3; U.S. Const, Amendment Five.

If a process become an empty promise of a chance under the Courts rules and burdens under CR-65, Ameriquest Mortgage Co., 148 Wn. App at 148-58, and due process. Thompson v. Dept of Licensing, 138 Wn.2d 783, 795-99, 9 P.3d 601 (1999). The Sheriffs propose the burdens under CR-65 don't exist, and a trial on the merits even by affidavit is a game of blind man's bluff without discovery. DOE v. Puget Sound Blood Ctr, 117 Wn.2d at 782; United States v. Proctor & Gamble, 356 U.S. at 682. If the shoe were on the other foot, the Sheriffs would be singing an entirely opposite tune.

9. The Sheriffs Failed To Respond To Parnelee's Issue No. 9.

Again, the Sheriffs have failed to respond to Parmelee's issue #9 as required by RAP 10.3(b). It should therefore be conceded relating to reversal, penalties and fees.

10. <u>The Sheriffs Estoppel Claims were Waived In The Trial Court And Equitably Estopped from Raising It Here, They fail To Establish A Sufficient Record To Rely on.</u>

The Sheriffs present a new issue in their response, #7 (pgs. 30-32) Claiming collateral estoppel without citing to any record as required by RAP 9.1 and RAP 10.3. They opposed Parmelee's motion to consolidate in the trial court, CP-37-40, CP-72-74, and here on appeal. (Parmelee's Opening Brief Issue #7, Sheriffs Response #4). In both courts, the Sheriffs claim their issues are dissimilar. They fail to show sufficient facts to show what issues were litigated in the other cases, and the court should not consider them here. <u>In Re Estate of List</u>, 135 Wn.2d at 531-32; <u>State v. McFarland</u>, 122 Wn.2d 322, 338, n.5, 899 P.2d 1251 (1995)(court won't consider matters not in the record).

The Sheriffs contention is similarly barred by invited error, failure to object in the trial court, and their opposite position to Parmelee's effort to consolidate the cases in the trial court. <u>Shaffer v. State</u>, 83 Wn.2d 618, 623, 521 P.2d 736 (1974); <u>Bd of Regents v. Seattle</u>, 108 Wn.2d at 551 (elements of equitable estoppel).

The Sheriffs cannot now raise collateral estoppel - this was their lawsuit against Parmelee, not his against them. Their failure to raise this issue in the trial court bars its consideration here. <u>State v. Scott</u>, 110 Wn.2d 682, 685, 757 P.2d 492 (1988)(RAP 2.5(a)), issues not raised

in the trial court cannot be raised on appeal); The Sheriffs cannot benifit from invited errors. Davis v. Globe Mach., 102 Wn.2d 68, 77, 684 P.2d 692 (1984)

II. The Sheriffs Claim In Their Issue 9, Sheehan Was Never Ruled Upon.

The Sheriffs raise a separate argument part of Pernelle's Issue #5, where they Claim RCW 42.56.240 exempts disclosure of Sheriffs names and King County v. Sheehan, 114 Wn.App. 325, 57 P.3d 307 (2002) doesn't exist. Because Pernelle only asked for staffrosters with job titles, not investigation specific records, Sheehan has already disposed of the Sheriffs baseless arguments.

IV- CONCLUSION:

For these reasons and the record, Mr. Pernelle respectfully asks that this court grant his appeal on all issues and reverse the trial court.

Respectfully submitted on 01/07/11.

Allen Pernelle
WCC-793782
P.O Box 900
Shelton WA 98584

CERTIFICATE OF SERVICE

I, hereby certify that in accordance with RAP 18.5 and DOC practice and policy, a copy of this pleading was served on the court and all required parties via U.S. Mail on or before the date below.

Signed at Shelton WA on or before 01/17/11. Allen Pamelo