

62938-7

62938-7

NO. 62938-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

KING COUNTY SHERIFF'S OFFICE,

Plaintiff-Respondent,

v.

ALLAN PARMELEE,

Defendant-Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE PALMER ROBINSON

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Whether the trial court properly held that employee photographs, dates of birth, gender, race, height and weight and employee direct phone, cell, and pager numbers did not constitute public records under the PRA.

2. Even if the documents at issue were public records, whether the trial court properly enjoined their disclosure under the privacy and security exemptions of the PRA.

3. Whether the trial court properly denied defendant's motion to strike KCSO's complaint.

4. Whether the trial court properly denied defendant's motion for in camera review of the documents requested.

5. Whether the trial court properly denied defendant's request to consolidate this case with the case filed by the KCSO.

6. Whether the trial court properly denied defendant's discovery request.

7. Whether the trial court had the authority under RAP 7.2 to consider KCSO's second request for injunctive relief.

8. Whether defendant is collaterally estopped from challenging the trial court's second injunction.

9. Whether the trial court's second injunction, which was based on RCW 42.56.565, properly enjoined pending and future public record requests by defendant.

10. Whether personal information regarding undercover deputies is exempt from disclosure.

B. STATEMENT OF THE CASE

1. Procedural Facts

On July 2, 2008, the King County Sheriff's Office (hereinafter KCSO or plaintiff) filed a complaint for declaratory and injunctive relief on behalf of employees who were the subject of public disclosure requests filed by Alan Parmelee (hereinafter Parmelee or defendant).. The actual requests are contained in Appendix F. Parmelee is an inmate in the custody of the Washington State Department of Corrections in Shelton, Washington as a result of his convictions in 2004 on two counts of Arson in the First Degree, for which he received sentences of 288 months, to be served concurrently. CP 145-149.

On July 17, 2008, defendant filed his answer and affirmative defense. CP 13-19. He also filed several additional motions, including a motion for in camera review of the public records at issue, CP 30-36, a motion to consolidate the case filed by KCSO with the case filed by the King County Department of Adult and Juvenile Detention (hereinafter DAJD), CP 37-40, and a motion to strike redundant, immaterial[sic], impertinent and scandalous matter in KCSO's complaint, CP 20-29.

On July 21, 2008, KCSO filed a Motion for Declaratory Relief and Permanent Injunction Regarding Public Records Requests, in which it requested the court to issue an order permanently enjoining KCSO from

releasing records to defendant that contain the following personal employee information: employee photographs, dates of birth, gender, race, height and weight, and employees' direct phone, cell, and pager numbers.. CP 946-992.

On August 27, 2008, KCSO received defendant's Verified CR-13 Counter/Crossclaim Complaint and CR-19 Joinder Parties Countercomplaint for Libel/Slander; Constitutional Free Speech Retaliation; Abuse of Process; Free Speech Infringement, Inter Alia, including Public Records Act Violations. CP 1279-1278.

On October 27, 2008, King County Superior Court Judge Palmer Robinson heard arguments on KCSO's motion, in addition to the various motions filed by the defendant, and granted KCSO's requested injunctive relief. On December 30, 2008, the court entered its Findings of Fact and Conclusions of Law in support of its order, which enjoined the disclosure of the personal employee information and photographs that the defendant had requested. (*see* Appendix A). The court's order also denied defendant's Motion for In Camera Review (with one exception), defendant's Motion to Strike, defendant's Motion to Consolidate, and defendant's Counter/Crossclaim Complaint and Joinder Parties Countercomplaint. CP 1317-1326. Defendant appealed the court's order on January 28, 2009. CP 1330-1340.

In March, 2009, the Washington Legislature adopted statutory amendments to the Public Records Act that enjoin requests made by prisoners if the court finds that requests were made to harass or intimidate an agency or its employees or where requests may assist criminal activity, threaten the security of a correctional facility, its staff, inmates, or any other person. RCW 42.56.565.

As a result of this amendment, on June 10, 2009, Daniel T. Satterberg, the King County Prosecuting Attorney (hereinafter PAO), and King County filed a Motion for Injunction to enjoin any pending or future public record requests from Parmelee to King County for the remainder of his incarceration. On June 17, 2009, KCSO filed a motion to join in King County's motion. CP 1341. In response, Parmelee filed a Motion for Discovery and a Motion to Strike KCSO's joinder in King County's motion for injunctive relief which was denied by the court on June 19, 2009. CP 1347. The court also granted Parmelee two continuances for his response to the Motion for Injunction and KCSO's motion to join in that motion. CP . 1342-1346.

On August 24, 2009, after considering the briefing, affidavits, and exhibits filed by King County, Parmelee's responsive filings, and arguments of the parties, Judge Robinson granted KCSO's Motion to Join in King County's Motion for Injunction and enjoined all pending and

future public record requests to KCSO by Parmelee, or an entity owned or controlled in whole or part by him, for the remainder of defendant's incarceration. (*See* Appendix B). The Court also denied Parmelee's Motion for Discovery and Motion to Strike. CP 1378-1389.

On September 23, 2009, Parmelee filed a supplemental notice of appeal in which he sought review of the trial court's August 24, 2009 order. On October 5, 2009, Commissioner Neal accepted the supplemental notice, consolidated that appeal with Parmelee's appeal of the December 30, 2008 order, and directed that the perfection schedule for the consolidated appeal be reset.

Additional procedural facts are included in the argument sections below to which they pertain.

2. Substantive Facts

A. Parmelee's History of Abuse to Others

Parmelee has a long history of using the courts and the PRA to harass and intimidate public officials. Federal and state courts and state and local public agencies have spent extraordinary amounts of time and money responding to Parmelee's frivolous lawsuits, motions and public records requests. Due to this abuse, federal and state courts have acted to protect public officials, agencies and even the courts from Parmelee's antics. See Federal Court Bar Order CP 120-125.

i. Abuse of Law Enforcement

Putting aside the numerous frivolous and vexatious lawsuits Parmelee has filed against King County and its employees and officers, and putting aside the innumerable abusive public disclosure requests he has submitted to King County in the past, the issue before the court has its genesis in *State of Washington v. Allan W. Parmelee*, King County Superior Court Cause No. 02-1-07183-6. That case resulted in Parmelee's conviction on two counts of Arson in the First Degree and his resulting sentence of 288 months in prison. CP 145-149. As is Parmelee's pattern, his current PRA requests to KCSO are "payback" for its involvement in the Arson investigation and other related investigations of Parmelee. During Bellevue Police Department's 2002 investigation of one of Parmelee's Arson counts, Detective Carl Kleinknecht learned that Parmelee previously had harassed members of the King County Sheriff's Office. Specifically, when detectives were investigating Parmelee in 1998, they began receiving incessant, daily calls to their office-issued pagers and cell phones. These calls so completely impeded their ability to perform their official duties that they were forced to cancel their service and obtain new numbers for these devices. CP 959.¹ Parmelee's current

¹ The Clerk's Office apparently mis-numbered the Declaration of Vannocken as this reference refers to the 959 sequentially numbered page

requests to seek identifying information regarding undercover officers who assisted in the investigation is simply another harassing tactic which would jeopardize effective law enforcement.

There are other instances of abuse of the PRA and Parmelee's retributive conduct toward both private citizens and public employees that are contained in the Declaration of Victoria Vannocken. CP 75-945. In the interests of brevity all those specific instance will not be recounted herein. Additional substantive facts are contained in the argument sections below to which they pertain.

C. **ARGUMENT**

1. **Injunctive relief was properly granted in December of 2008.**

KCSO presented compelling and uncontroverted evidence that the defendant is an incarcerated felon with a well-documented history of using the Public Records Act in an abusive and threatening manner. Moreover, the evidence clearly established that the defendant's May and June, 2008 public records requests of KCSO were a continuation of that pattern of abuse, and designed to threaten, intimidate, and harass KCSO and its employees. Based on that evidence, the trial court's December 30, 2008

in her declaration. A copy of this document is attached as Appendix E so there is no confusion.

order properly enjoined the release of the private employee information that the defendant requested.

Defendant did not controvert this evidence below, nor did he assign error to any of the trial court's factual findings on appeal. Consequently, the court's Findings of Fact are verities on appeal, RAP 10.3(g), and support the December 30, 2008 order, which enjoined the release of the employee information that the defendant requested.

The PRA specifically grants courts the authority to enjoin the release of specific public records. RCW 42.56.540 provides:

The examination of any *specific public record* may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court in the county in which the movant resides or in which the record is maintained, finds that such examination would [1] clearly not be in the public interest and [2] would substantially and irreparably damage any person, or [3] would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice. [Emphasis supplied]

Injunctive relief is an extraordinary equitable remedy designed to prevent serious and irreparable harm. *Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 96 Wn.2d 785, 792-96, 638 P.2d1213 (1982). Necessity and irreparable harm are the essential elements of such an action. *Hollis v. Garwall, In.*, 88 Wn. App. 10, 16, 945 P.2d 717(1997). A party seeking injunctive relief can only satisfy that burden by demonstrating that (1) he

has a clear legal or equitable right, (2) he has a well-grounded fear of immediate invasion of that right, and (3) that the acts he is complaining of have or will result in actual and substantial injury. *Tyler Pipe*, 96 Wn.2d at 792..

Applying these standards to the instant case, the trial court's December 30, 2008 Findings of Fact and Conclusions of Law support the court's order for injunctive relief.

a. The requested documents are not public records

KCSO employees have a clear legal and equitable right to be safe and secure from dangerous felons like Parmelee who seek their personal information for nefarious purposes. No other remedy exists at law for these employees. This court need only review Parmelee's well-documented history of harassment and intimidation of public employees to conclude that the purpose of Parmelee's public records requests is to further these objectives. Parmelee has proven himself to be a threat to public safety, including while incarcerated.

Affected employees likewise have a well-grounded fear for their safety and security should Parmelee gain access to their personal information. In the past, Parmelee has focused his intimidation and harassment on attorneys who have opposed him in various civil and criminal matters, numerous corrections officers at KCCF, supervisors at

the Department of Corrections, and KCSO employees.

Finally, KCSO was entitled to injunctive relief because allowing Parmelee access to employees' personal information would result in actual and substantial injury. Employees' privacy rights would be violated if Parmelee were allowed to gain access to the requested records. Loss of this right would endanger their sense of safety and security. Every member of a free society has a right to feel safe and secure. This right is not forfeited, nor should it be compromised, when a person becomes a public employee.

"Public record" is defined in the PRA to mean "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency." RCW 42.56.010(2). Employees' photographs, dates of birth, gender, race, height and weight do not relate to the conduct of government or the performance of any governmental function. This information is of a purely personal nature and has no impact on an employee's job performance. Each of these items is discussed in greater detail below.

First, although KCSO concedes that the photographs are writings and are prepared, owned, used, or retained by an the KCSO, these photos do not relate to the conduct of government or the performance of any

governmental or proprietary function. For this reason, they are not "public records" under the PRA.

The second element noted above reflects that the purpose of the PRA is to "enable our citizens to retain sovereignty over our government and to demand full access to information relating to our government's activities." *Lindeman v. Kelso Sch. Dist.* 458, 127 Wn. App. 526, 535, 111 P.3d 1235 (2005) (*Lindeman I*), *rev'd on other grounds*, 162 Wn.2d 196, 172 P.3d 329 (2007). *As Lindeman I* explains, the PRA "was not intended to make it easier for the public to obtain personal information about individuals who have become subject to governmental action due to personal factors...Such personal information generally has no bearing on how our government operates." *Id.* at 535-36.

The analysis in *Oliver v. Harborview Med. Ctr.* 94 Wn. 2d 559, 618 P.2d 76 (1980), and *Lindeman v. Kelso Sch. Dist. No. 458*, 162 Wn.2d 196, 172 P.3d 329 (2007) (*Lindeman II*), demonstrate that such photos are not "public records".

The *Oliver* Court held that the "information relating to the conduct of government" element is not satisfied simply because government "prepares, owns, uses, or retains" a particular "writing". *Oliver*, 94 Wn.2d at 565.. Otherwise, all "sritings" "prepared, owned, used, or retained" by govenment would be public records and the second element of the

definition would be meaningless. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 260, 884 P.2d 592 (1994)(statutes should not be read to render any portion superfluous).

The Court also recognized that a writing that comprises entirely personal or private information is not "information relating to the conduct of government or the performance of any governmental or proprietary function" and so is not a "public record" under the PRA. *Oliver*, 94 Wn.2d at 566. In contrast, the *Oliver* Court's determination that the record before it was a "public record" turned on fact that the record contained not only personal data, but "also . . . information of a more public nature...[matters] which are carried out or relate to the performance of a governmental or proprietary function." *Id.*

In *Lindeman II*, *supra*, the Court defined "personal information" for purposes of the student record exemption in RCW 42.56.020(1), as "[i]nformation peculiar or proper to private concerns" and rejected "not public or general" as the definition of "personal information." *Lindeman II*, 162 Wn.2d 202, 206.

Employee photos are personal information, as the only information in the photo--the employee's image--is "information peculiar or proper to private concerns." *Id.* Consistent with the analytical framework of *Oliver*, because the photo reveals no information concerning action which "are

carried out or relate to the performance of a governmental or proprietary function," *Oliver*, 94 Wn.2d at 566, the photos are not "public records" under RCW 42.56.010(2).

Second, a record of an employee's date of birth is not public. During the application process, individuals are required to provide KCSO with their date of birth for the purposes of conducting the background investigation. CP 45. Hence, during the application process, date of birth is crucial to KCSO's investigation of applicant eligibility, but it has no bearing on how KCSO conducts this investigation or the investigation's adequacy or fairness, which are examples relating to the conduct of government. The public can scrutinize and evaluate KCSO's conduct in screening and hiring job applicants without being provided dates of birth. For example, the public could look at the testing procedures used and the criteria employed for evaluating applicants.

After being hired, employees provide their dates of birth for the purposes of receiving benefits such as healthcare, insurance and retirement. *Id.* The conduct of government in this regard, for example evaluating whether tax dollars are being used efficiently for employee healthcare, could be easily examined without disclosure of employees' dates of birth.

Similarly, providing Parmelee with race and gender, personally

identifiable to each KCSO employee, would provide him a means to identify them in public or otherwise track them down; it would not provide a means for legitimate overview of a government entity.

If Parmelee is concerned whether there is racial or gender discrimination in hiring at KCSO, he could request hiring statistics and application standards on these subjects. This he has not done, and he evinces absolutely no interest in these legitimate public concerns. Parmelee's obvious and unparalleled desire to harass and intimidate these public employees should not be assisted under the guise of the PRA.

Finally, Parmelee would be hard-pressed to explain or justify how an employee's height and weight relate to the conduct of government, because it does not. This information is not "of a more public nature" because it does not relate to the performance of a governmental or proprietary function. Compare *Oliver*, 94 Wn.2d at 566.

b. The requested personal information is exempt from disclosure under RWC 42.56.250(8) and RCW 42.56.230.

If the Court disagrees with the above analysis that the documents containing this information do not constitute public records, their release should be barred under RCW 42.56.250(8) and the privacy exemption

codified in RCW 42.56.230. KCSO employees also have constitutional², common law³, and statutory privacy rights⁴.

First, RCW 42.56.250 was amended in the last legislative session and subsection 8 of the statute now specifically exempts "photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies." For the reasons discussed in section 8(a) below, this amendment of the PRA, like the 2009 amendment of RCW 42.56.565, should be applied retroactively as an additional basis to affirm the trial court's order in this case.

In addition, the PRA exempts from disclosure "Personal information in any files maintained for employees...of any public agency to the extent that disclosure would violate their right to privacy." RCW 42.56.230(2). The right to privacy is further defined in RCW 42.56.050 as

² As citizens of the State of Washington, county employees have a constitutional right to privacy under Art 1, Sec. 7 of the Constitution of the State of Washington: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

³ In *Reid v. Pierce County*, 136 Wn.2d 195, 206, 961 P.2d 333 (1998), the Washington Supreme Court unequivocally held that "the common law right of privacy exists in this state." The common law right most directly affected in this case is explained in Restatement (2d) Torts § 652 C as: "One who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of privacy."

⁴ RCW 63.60.010 grants citizens property rights in the use of their likeness. KCSO would violate this statute by publicly releasing the photo of its employees without their consent. Other Washington regulations also recognize an individual's privacy right in a photo. For example, WAC 308-10-050 provides that photos and other personal information maintained by the Department of Licensing are private and not subject to disclosure. Even booking photos are not public records and may only be released under specific limited circumstances. RCW 70.48.100; *Cowles Publishing v. Spokane Police Dept.*, 139 Wn.2d 472, 987 P.2d 620 (1999). It would be an absurd result if the PRA were interpreted to afford less protection to KCSO employees than that granted to felons, like

follows:

A person's "right to privacy"...is invaded or violated only if disclosure of information about the person: (1) would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

A purported public concern is not legitimate where the agency proves that "the public interest in efficient government could be harmed significantly more than the public would be served by disclosure." *Dawson v. Daly*, 120 Wn.2d 782, 845 P.2d 995 (1993). Under the law applicable at the time of Parmelee's 2008 requests, KCSO could not consider his status as an inmate in determining whether information was subject to disclosure. However, in deciding whether an injunction was necessary to protect the privacy and security of public employees, the trial court could properly consider Parmelee's history of threats and intimidation against KCSO employees and others. This analytical distinction was recognized in a recent Court of Appeals' decision. In *Delong v. Pamelee*,⁵, __ Wn. App.__, 236 P.3d 936 (2010), the court reasoned:

Although, in general, an agency cannot consider the requestor's intent when determining whether public records are subject to

Parmelee, whose booking photos are exempt from public disclosure.

⁵ While KCSO agrees and relies upon Division II's analysis regarding the propriety of a trial court's consideration of a requestor's intended use of the information requested when determining the need for injunctive relief under the PRA, KCSO does not concur with other portions of the *Delong* decision. Specifically, for the reasons set forth above, KCSO urges this Court to hold that the personal indentifying documents sought by the defendant here do not constitute public records.

disclosure under the PRA, when the requestor announces an explicit and volunteered threat, to ignore such an intent leads to absurd consequences unintended by the PRA. . . .To hold otherwise would eviscerate the fundamental and equitable purpose of an injunction. See *Agronic Corp. of Am. v. deBough*, 21 Wn.App. 459, 464, 585 P.2d 821 (1978) (the purpose of an injunction is not to punish a wrongdoer for past actions but to protect a party from present or future wrongful acts) (citing *Lewis Pac. Dairymen's Ass'n v. Turner*, 50 Wn.2d 762, 314 P.2d 625 (1957))).

Regarding the first part of the test enumerated in RCW 42.56.050, "highly offensive to a reasonable person," the declarations and exhibits submitted in support of KCSO's motion for injunctive relief more than satisfy this criterion. That evidence, which details Parmelee's threats, propensity for violence, harassment, and intimidation, overwhelming establishes that disclosure of any personal information under such circumstances would be highly offensive to any reasonable person.

But the inquiry cannot end there. Disclosing this personal information to Parmelee would also significantly harm the public's interest in efficient government. *Dawson* makes it clear that this interest is a relevant inquiry when deciding whether disclosure is of legitimate concern to the public. *Dawson*, 120 Wn.2d at 782. Employees of KCSO must be free to do their jobs without constantly looking over their shoulder or calling home to make sure their loved ones are safe. They need to feel completely secure in parking their vehicles in their driveways at night

without fearing that they will awaken to find their vehicles in flames.

Public safety will be jeopardized if deputies are too fearful or anxiety-ridden to do their jobs, and this should not be required of them. At a time when it is increasingly difficult to recruit and maintain qualified Sheriff's deputies, knowing that their personal information will be provided to a dangerous felon like Parmelee, and that their personal safety will be more at risk than it is by virtue of the job itself, could be the deciding factor for people weighing a job in law enforcement versus one in the private sector. If KCSO cannot protect its employees from this type of abuse, the hiring and retention of the best people to do this demanding, dangerous, and critically-important work will be undermined, which in turn, will put the safety and security of current employees and the public at risk.

Moreover, identity theft has exploded as a profitable and prevalent crime. Concerns about identity theft are justifiably heightened when personal information is handed over to a notorious criminal like Parmelee, especially given his past threats to post employees' photos and information on the Internet. CP 497-498,.

Detective Mike Klokow, a veteran law enforcement officer in the King County Sheriff's Office who has extensive knowledge of and experience with investigating identity theft, explained that when a criminal

is armed with an individual's name and date of birth, a wealth of other information, including the victim's social security number, can then easily be obtained using the Internet:

Once a person has the victim's name and date of birth, he/she can effectively "become" that person. The only missing piece of information that is necessary to begin to accumulate credit, bank accounts, etc. in the victim's name is the victim's social security number.

There are multiple providers on the internet that will provide a victim's social security number and other pertinent information for a nominal fee. The only requirement to obtain this information is the victim's name and date of birth. For example, a victim's social security number can be obtained from the website "www.Personsearch.us" for a fee of \$39.99 with only a name and date of birth by "licensed private detectives." This is not the same type of search as a free people search that one frequently sees online.

Once a person has the victim's name, date of birth and social security number, the victim's identity can be completely assumed.

CP. 42.

As a result, even if Parmelee merely wants the requested information to harass public employees, CP 494-495, which alone is objectionable, by having employees' personal information the employees could be subjected to additional criminal actions either by Parmelee or by whomever he shared the information with.

In addition, Parmelee sought employees' height and weight. Given his history, it is obvious why he sought this highly personal information--

to make it easy to identify a person. When law enforcement officers are given a suspect's description, key descriptors include the suspect's height and weight. This same information could be employed by private detectives hired by Parmelee to track down public employees in order to harass and intimidate them, which Parmelee has done in the past. CP 497-498.

Under these circumstances, the disclosure of employees' photographs, dates of birth, race and gender, and height and weight are both highly offensive to a reasonable person and not of legitimate concern to the public. The Court should affirm the trial court's order enjoining KCSO from providing these records to Parmelee because disclosure would violate the privacy rights of KCSO employees.

Finally, settled case law establishes that Parmelee's other requests are exempt from disclosure. Parmelee specifically requested employee identification numbers but such information is exempt from disclosure under the PRA. In *Tacoma Public Library v. Woessner*, 90 Wn.App 205, 951 P.2d 357 (1998) the Court of Appeals held that release of employee identification numbers would be "highly offensive" and was not of legitimate public concern, and hence disclosure of this information would violate employees' right to privacy. *Tacoma Public Library*, 90 Wn. App. at 222-23. Therefore, KCSO was properly enjoined from providing

Parmelee this information.

c. Parmelee's request for direct phone, pager, and cell phone numbers is exempt under RCW 42.56.420.

The trial court properly enjoined disclosure of information in response to the following request from the defendant:

In electronic format, a copy of a means and to disclose [sic] the means of communications with employees at your agency, to include direct phone numbers, pager numbers, cell phone numbers and similar numbers assigned to specific persons employed at your government agency.

The requested information is exempt from disclosure under RCW 42.56.420.

In pertinent part, the PRA provides as follows:

The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans.

Under subsection (1) of this exemption to the PRA, "records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct

of government," KCSO is exempt from disclosing direct phone numbers, pager numbers or cell phone numbers which are assigned to particular KCSO staff.

Recently, the Court of Appeals had the opportunity to address this exemption in a case of first impression. *Northwest Gas Ass'n v. Washington Utilities and Transp.*, 141 Wn. App. 98, 168 P.3d 443 (2007). In that case, the Court reversed the trial court and held that the pipeline companies were likely to prevail on their claim that detailed map and attribute-level pipeline data was exempt from disclosure in response to newspapers' Public Records Act request. *Northwest Gas*, 141 Wn. App. at 120) ("[T]he Pipelines have established a likelihood that they will be able to prove at trial that keeping this shapefile data out of the hands of potential pranksters and terrorists is also critical to providing for the public safety...").

Here, the contact numbers included in the public records request could impede KCSO response to events such as bomb threats and explosions, equipment and power failures, evacuation, and incident command structure. Should a critical incident occur at the same time unknown individuals choose to make incessant calls to these numbers or otherwise render them inoperable, *see* CP 959, Appendix E. KCSO's ability to respond to these emergencies would be severely compromised,

at the risk of danger to KCSO staff and the public. This behavior already has been demonstrated; commissioned police officers have been forced to cancel service and acquire new equipment. *Id.*

This Court should reaffirm that these records are exempt from disclosure, and KCSO was properly enjoined from providing them to Parmelee.

2. **The trial court did not abuse its discretion in denying defendant's motion to strike KCSO's Complaint.**

Defendant asserts that under CR 12(f), the KCSO's complaint should have been stricken as "inmaterial [sic], impertinent and scandalous matter and not relevant to the issues properly before the court." This assertion is meritless.

Under CR 8, a complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief, along with a demand for judgment for the relief to which he deems himself entitled. CR 8(a). KCSO's complaint complied with the applicable civil rule and plainly alleged the facts the court should consider to support the relief requested. The facts that defendant contends are "impertinent" or "scandalous" constitute accounts of his own behavior and actions and his resulting legal status as an incarcerated felon. The facts contained in

KCSO's complaint were a simple recitation of defendant's actions that served as the basis for KCSO's requested relief.

KCSO did not utilize profane or abusive language in its complaint. *Cf., In re Parmelee*, 115 Wn. App. 273, 63 P.3d 800 (2003); *Brin v. Stutzman*, 89 Wn.App. 809, 819, 951 P.2d 291 (1998). Nor did the facts alleged in KCSO's complaint constitute a "meritless attack" on the defendant. Instead, the Complaint contained all the elements required by the court rules; i.e., parties, jurisdiction and venue, factual allegations, causes of action, and prayer for relief.

The facts alleged in the complaint listed events that were pertinent to the action, including defendant's arrest, his trial and convictions for Arson, his incarceration in DAJD's facility, his treatment of DAJD staff, his litigation history with other public agencies, the public records request at issue in this case, and the resultant harm to KCSO if the requested records were disclosed to defendant. Consequently, CR 12(f) did not require the trial court to strike any part of KCSO's complaint.

In addition, the facts asserted in the complaint were neither immaterial nor redundant. The length and breadth of the complaint was purely a function of the plethora of critical information relevant to plaintiff's claims and the relief requested. Defendant also confuses "relevance" with "admissibility"; the trial court properly recognized that

any issue regarding the admissibility of evidence offered to prove the facts alleged was a matter for trial and not the basis for a motion to strike.

3. **The trial court did not abuse its discretion in denying defendant's motion for in camera review.**

The trial court properly refused--with the exception of the metadata on one of the employee photographs--to review the requested personal employee information in camera to determine if such information was subject to public disclosure. Whether in camera review is necessary is generally left to the discretion of the trial court. *Overlake Fund v. City of Bellevue*, 60 Wn. App. 787, 796-7, 810 P.2d 507 (1991). In camera review is only necessary where the court cannot evaluate the nature of the documents requested or the applicability of asserted exemptions. *Id*; see also, *Harris v. Pierce County*, 84 Wn. App. 222, 235, 928 P.2d 1111(1996).

Here, the trial court did not abuse its discretion in declining to review the personal employee information that defendant requested. The court understand the nature of the request and the parties pleadings clearly described the bases for their positions regarding whether the documents were public records or otherwise exempt from disclosure. Consequently, the trial court's refusal to view the requested documents in camera was an appropriate exercise of judicial economy

4. **The trial court did not abuse its discretion in denying defendant's motion to consolidate.**

Defendant moved to consolidate the cases filed by DAJD and KCSO. CP 37-40. Defendant's claim of error regarding the court's denial of his motion is meritless.

CR 42(a) provides that a court may consolidate actions involving a common question of law or fact pending before the court, but the trial court has broad discretion "to control the disposition of the causes on its docket." *Hendrix v. Raybestos-Manhantan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985). Moreover, CR 42(a) is a permissive rule and does not set forth any situations where consolidation is required. *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006, 1013 (5th Cir 1977); *see also Young v. City of Augusta*, 59 F.3d 1160, 1169 (11th Cir 1995) ("We have found no cases *** in which a court's refusal to order consolidation had been overturned.") A trial court's decision regarding consolidation will not be overturned absent a showing of manifest abuse of discretion. *W.R. Grace & Co. v. State, Dept. of Revenue*, 137 Wn.2d 580, 590, 973 P.2d 1011 (1999).

In this case, the trial court did not abuse its discretion by denying consolidation. While DAJD and KCSO were relying on some of the same facts, each was seeking the extraordinary remedy of injunctive relief. Therefore, DAJD and KCSO were each required to prove necessity and irreparable harm as to their respective employees, and the resulting order needed to be tailored to those individualized findings.

In addition, consolidation was not required by CR-12(g) or CR 16 (a). Similarly, CR 19 was not violated; the defendant was the named defendant in all of the cases filed by King County and he actively participated in each case. As a result, he suffered no prejudice as a result of the court's order denying consolidation.

5. The trial court did not abuse its discretion in denying defendant's discovery request.

Defendant maintains that his due process rights were violated by the trial court's denial of his discovery request and time to oppose KCSO's motions for injunction. Both contentions are meritless.

First, defendant had every opportunity to respond to KCSO's motion for injunctive relief. In fact, he filed several pleadings during the three-month period before the court heard argument on KCSO's motion. Nevertheless, none of defendant's pleadings included any declarations to controvert the declarations and exhibits filed in support of KCSO's

motion. Moreover, in a letter from the trial court to defendant, dated December 30, 2009, it is clear that the court considered defendant's motion to reconsider its October ruling and gave the defendant multiple opportunities to respond to the proposed Findings of Fact and Conclusions of Law.

Similarly, KCSO received defendant's discovery requests shortly before the trial court was scheduled to hear arguments on KCSO's Motion for Declaratory Judgment and Permanent Injunction. The trial court granted KCSO's motion on October 27, 2008, which rendered defendant's discovery requests moot under CR 26. Having granted plaintiff's requested relief, there was nothing further at stake in the action, other than the in camera review of one photograph. Therefore, the trial court properly quashed defendant's untimely and irrelevant discovery requests.

6. **The trial court had the authority to grant KCSO's second request for injunctive relief.**

First, defendant contends that KCSO's motion to join in the PAO's Motion for Injunction did not comply with the rules pertaining to civil motions. This claim is specious. Defendant received the requisite notice of KCSO's motion and it was evident that KCSO was relying on the facts and law set forth in the PAO Motion, which KCSO had incorporated by reference in its motion.

Second, defendant's assertion that the trial court violated RAP 7.2 by granting KCSO's second motion for injunctive relief is meritless. RAP 7.2 governs the authority of a trial court to act after review is accepted by the appellate court. Under RAP 7.2(e), the trial court had the authority to consider KCSO's motion to join in the Motion for Injunction filed by the King County PAO and to grant the second injunction.

RAP 7.2 (e) specifically gives the trial court the authority to consider post judgment motions and the court is only required to seek permission prior to the entry of post judgment orders where an order would change a decision that has already been accepted for review.

Here, the trial court had the authority to grant KCSO's second request for injunctive relief, without prior appellate court approval, because the resulting order did not change the first injunction order that was on appeal. The second injunction was based on the March, 2009 amendment of the PRA and only enjoined KCSO from responding to defendant's pending and future public record requests; it did not change the court's prior December, 2008 that addressed the pre-amendment requests.

Moreover, the defendant did not object when the Court of Appeals consolidated his appeal of the first injunction with his appeal of the second injunction as it was to his advantage. That consolidation avoided the

pending dismissal of the first appeal for lack of prosecution and resulted in a new perfection schedule, which ultimately afforded the defendant an additional 8 months to file his opening brief.

7. **Defendant is collaterally estopped from challenging the second injunction, which was issued pursuant to RCW 42.56.565.**

This court should not review defendant's challenge to the trial court's second injunction because the issues raised in this appeal have been litigated and finally determined in the proceeding that was initiated by King County and the PAO.

After the enactment of RCW 42.56.565, King County and the PAO filed its Motion for Injunction, which DAJD and KCSO joined, to enjoin defendant's pending and future public record requests. King County, the PAO, KCSO, DAJD, and the defendant submitted pleadings, declarations, exhibits, and arguments in support of their respective positions. After considering those pleadings, the proffered evidence, and the oral arguments of the parties, the trial court entered its Findings of Fact and Conclusions of Law of August 24, 2009, and ordered the injunctive relief sought by the County and the above-named departments.

Defendant, however, did not perfect the appeal of the order granting injunctive relief to King County and the PAO and the final mandate was issued in that case on May 21, 2010. (*see* Appendix C).

Rather, defendant only appealed the August 24, 2009 injunctive orders entered for DAJD and KCSO. Therefore, defendant is collaterally estopped from re-litigating the propriety of the second injunction or the findings of fact and conclusions of law.

Collateral estoppel applies if: (1) the issues decided in the prior adjudication were identical to those presented in the action in question; (2) the prior adjudication ended in a final judgment on the merits; (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) application of the doctrine would not work on injustice on the party against whom the doctrine is to be applied. *Reninger v. Dep't of Corrections*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998). All four elements are clearly met in this case.

First, the identical issues defendant raises on appeal regarding the second injunction were finally decided by the trial court. Specifically, the court determined that RCW 42.56.565 enjoined the defendant's pending and future public record requests until the expiration of his incarceration; the court's order was based on its findings that the requests were made to intimidation, threaten and harass a public agency or its employees and fulfilling the request would like threaten the safety of individuals and may assist criminal activity.

Second, the final mandate was issued in the PAO action against the defendant on May 21, 2010. Third, the defendant was a party to the PAO's action for injunctive relief. Fourth, application of the doctrine would not be unjust because the defendant had a full and fair opportunity to litigate the issues before Judge Robinson. *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 795-99, 982 P.2d 601 (1999)(the injustice component of the doctrine is concerned with procedural, not substantive, irregularity).

The purpose of collateral estoppel is to "prevent relitigation of already determined causes, curtail multiplicity of actions, prevent harassment in the courts, inconvenience to the litigants, and judicial economy." *State v. Dupard*, 93 Wn.2d 268, 272, 609 P.2d 961 (1980). In short, the doctrine is intended to prevent the type of abuse of the judicial system in which the defendant has engaged for the past decade.

8. Injunctive relief was properly granted in August of 2009.

If this court decides to review the propriety of the second injunction, it should affirm the court's August 24, 2009 order, which was predicated on the 2009 amendment of the PRA. RCW 42.56.565 became effective on March 30, 2009 and allows a court to grant injunctive relief if it finds, by a preponderance of the evidence, that:

- (i) the request was made to harass or intimidate the agency or its employees;
- (ii) fulfilling the request would likely threaten the security of correctional facilities;
- (iii) fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members or any other person; or
- (iv) fulfilling the request may assist criminal activity.

RCW 42.56.565(1)(c).

The 2009 PRA amendment also directs that, in deciding whether to enjoin a request, the court may consider all relevant factors including:

- (a) Other requests by the requestor;
- (b) The type of record or records sought;
- (c) Statements offered by the requestor concerning the purpose for the request;
- (d) Whether disclosure of the requested records would likely harm any person or vital government interest;
- (e) Whether the request seeks a significant and burdensome number of documents;
- (f) The impact of disclosure on correctional facility security and order, the safety of correctional facility staff, inmates, or others; and
- (g) The deterrence of criminal activity.

RCW 42.56.565(2).

Based on this amendment of the PRA and the evidence KCSO submitted, which chronicled defendant's history of abusive use of the PRA to threaten, harass and intimidate public employees, the trial court ordered that all pending and future public record requests to KCSO by defendant, or any entity owned or controlled in whole or part by him, are enjoined for the remainder of defendant's incarceration. For the sake of brevity, KCSO will not reiterate the evidence, which is summarized above in the statement of

facts, that overwhelmingly supports the court's Findings of Fact and Conclusions of Law. None of the defendant's pleadings controvert the evidence supplied by KCSO in support of its motions.

a. RCW may be applied to requests defendant submitted before the enactment of the new law.

To the extent that the defendant contends the Court could not apply RCW 42.56.565 to the requests he made before the law went into effect, his argument fails for several reasons. First, the relief KCSO sought under the new statute was not retroactive. “When the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive.” *Landgraf v. USI Film Products*, 511 U.S. 244, 273, 114 S. Ct. 1483 (1994). As the Supreme Court observed, “relief by injunction operate *in futuro*.” *Id.* at 274 (italics in original). Here, KCSO sought prospective relief – an injunction barring Parmelee from inspecting or copying records responsive to his pending requests, and barring him from making future requests. Thus, the order granting the injunction constituted a prospective, not retroactive, application of RCW 42.56.565. *Id.* at 269 (“A

statute does not operate ‘retrospectively’ merely because it is applied in a case arising from conduct antedating the statute’s enactment.”).

Second, for sake of argument, even if the relief KCSO sought was deemed to be retroactive, the court was authorized to grant it. Generally, new laws operate prospectively, but when contrary legislative intent is expressed or implied, a court is obligated to give effect to that intent. *In re Estate of Burns*, 131 Wn.2d 104, 110, 928 P.2d 1094 (1997). The legislative history of SSB 5130, attached hereto as Appendix D, shows that the Legislature intended the relief provided under RCW 42.56.565 to apply to any request demonstrated to have been submitted for purposes of harassment and/or intimidation, including those submitted before enactment. The public testimony presented in support of the SSB 5130 focused on inmates who were currently abusing the system, including “one offender” who made 830 requests, some for “personnel files and personal information for the sole purpose of harassing those employees he comes across in the corrections system.” Senate Bill Report, SB 5130 at 2. The testimony also included the suggestion to add an emergency clause “to stop this abuse as soon as possible.” *Id.* at 3. The Legislature plainly agreed, adopting an emergency clause in the law as passed, and evidencing its intent to stop the abuse that had occurred. Indeed, the Legislature would not have declared an emergency

to protect public employees and agencies from abusive inmate requests, and then simultaneously permit hundred of such requests to stand.

Finally, even if the legislative history did not clearly reveal the intent to apply the new law to abusive inmate requests pending at the time the law went into effect, applying the law in that manner is permissible because the law is remedial in nature. *100 Virginia Ltd. Partnership v. Vertecs Corp.*, 158 Wn.2d 566, 586-87, 146 P.3d 423 (2006). “A statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right.” *Id.* at 586. Notwithstanding defendant's arguments to the contrary, he does not have now, nor has he ever had, a vested right to use the PRA for purposes of harassment and intimidation. *See id.* (noting that abolition of a statutory cause of action does not impair any vested right).

RCW 42.56.565 provides a remedy for public employees and agencies targeted with abusive inmate PRA requests such as those at issue in this case; it does not impact any vested right. *See In re F.D. Processing*, 119 Wn.2d 452, 462-63, 832 P.2d 1303 (1992) (quoting *Gillis v. King County*, 42 Wn.2d 373, 377, 255 P.2d 546 (1953) (“A vested right involves ‘more than...a mere explanation;’ the right must have become ‘a title, legal or equitable, to the present or future enjoyment of property.’”)) Defendant’s arguments to the contrary lack merit.

b. RCW 42.56.565 is constitutional and defendant's arguments to the contrary lack merit.

Defendant makes a variety of vague claims that challenge the constitutionality of RCW 42.56.565. His arguments appear to be: (1) RCW 42.56.565 is void because the statute does not define “harass” or “intimidate” and thereby chills First Amendment rights of inmate requestors; (2) RCW 42.56.565 violates equal protection because it treats inmate requestors differently than non-inmate requestors; and (3) RCW 42.56.565 violates due process because it allows “speculation and blind accusations to constitute proof by a preponderance of evidence.” Defendant’s burden in challenging the constitutionality of the new statute is substantial, and he cannot meet that burden. *E.g. Bellevue v. State*, 92 Wn.2d 717, 719, 600 P.2d 1268 (1979) (“A statute is presume constitutional; one who challenges it must demonstrate its invalidity beyond a reasonable doubt.”). Furthermore, because of the Mandate issued in King County and King County Prosecuting Attorneys case, Parmelee's challenge to the constitutionality of the statute is barred by Res Judicata. *Pederson v. Potter*, 103 Wn.App 62, 67, 11 P.3d 833 (2000) (Res Judicata prohibits the relitigation of claims and issues that were litigated, or could have been litigated, in a prior action).

i. The statute is not unconstitutionally vague, and it does not impermissibly chill First Amendment rights.

A vagueness challenge is rooted in principles of due process. “Under the due process clause, a statute is unconstitutionally vague if (1) it does not define the criminal offense with sufficient definiteness that ordinary persons can understand what conduct is proscribed, or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement.” *State v. Sullivan*, 143 Wn.2d 162, 181-82, 19 P.3d 1012, 1033 (2001). In determining whether statutory language allows for an unconstitutional degree of arbitrary enforcement, the reviewing court must give the language a “sensible, meaningful, and practical interpretation.” *City of Spokane v. Douglass*, 115 Wn.2d 171, 181, 795 P.2d 693 (1990). It should be noted that due process “does not demand impossible standards of specificity or absolute agreement” because some measure of vagueness is inherent in the use of our language. *Id.* at 179.

As a threshold matter, defendant has not established that the due process vagueness doctrine even applies in this context; i.e., to an amendment to the Public Records Act. Courts apply this doctrine to criminal and other statutes that implicate constitutionally-protected rights. *See, e.g., Sullivan*, 143 Wn.2d 162 (criminal charge of barratry); *State v. Mays*, 116 Wn. App. 864, 68 P.3d 1114 (2003) (involuntary commitment for alcoholism

treatment); *Haley v. Medical Disciplinary Bd.*, 117 Wn.2d 720, 818 P.2d 1062 (1991) (medical disciplinary sanctions). Defendant does not have a constitutionally protected right to request records under the PRA, let alone to use the PRA for purposes of harassment and intimidation. *See Giarratano v. Johnson*, 521 F.3d 298, 305-06 (4th Cir. 2008) (exclusion of inmates from Virginia's Freedom of Information Act does not offend the First Amendment or Due Process Clause of the Fourteenth Amendment).

Even if the Court were to analyze RCW 42.56.565 under the vagueness doctrine, it is clear the statute would survive due process scrutiny. A challenged statute is facially vague if its terms “are so loose and obscure that they cannot be clearly applied in any context.” *Sullivan*, 143 Wn.2d at 183. “In judicial interpretation of statutes, the first rule is ‘the court should assume the legislature means exactly what it says. Plain words do not require construction’” *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995) (quoting *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 329, 815 P.2d 781 (1991)). The terms "harassment," "threats," "would likely," and "may assist," which are contained in RCW 42.56.565(1)(c), are commonly understood terms; they are not “so loose and obscure that they cannot be clearly applied in any context.” Similarly, the terms contained in subsection (2) of the statute are not vague. Rather, subsection (2) provides a non-exclusive list of factors for the court to consider in deciding whether to enjoin a request, and

it clarifies the conduct that the statute was enacted to deter, i.e., conduct that constitutes a true threat.

Moreover, true threats are not protected by the First Amendment, *See State v. J.M.*, 144 Wn.2d 472, 477, 28 P.3d 720 (2001); *United States v. Orozco-Santillan*, 903 F.2d 1262, 1265-66 (9th Cir 1990). As this Court explained in *In re Parmelee*, 115 Wn.App. 273, 288, 63 P.3d 800 (2003):

A 'true threat' is a statement made in a context or under such circumstances in which a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon, or to take the life of another. It is only relevant that the speaker intentionally and knowingly communicated the threat, not that he intended or was able to carry out the threat. Moreover, the fact that a threat is subtle does not make it less of a threat.
(Citation omitted).

The injunctive relief set forth in RCW 42.56.565 requires the court to determine if a true threat exists. The legislative intent of this statute, and its application to the same set of circumstances presented in this case, were acknowledged by the Washington Supreme Court in *Burt v. Washington State Department of Corrections*, 168 Wn. 2d 828, 231 P.3d 191(2010):

We note that the legislature has enacted legislation that will greatly curtail abusive prisoner requests for public records. RCW 42.56.565 (effective Mar. 20, 2009). If Parmelee's motivation for seeking public records is an intent to harass penitentiary staff members, this case presents a model example of the types of public records requests that this new legislation will allow courts to enjoin.

Id. at 837, n. 9.

In this case, the trial court's specific findings, based on the evidence presented by the parties, support its conclusion that the defendant's requests to KCSO were made to harass or intimidate agency employees and that fulfilling the requests would threaten employee safety or may assist criminal activity. Defendant certainly could foresee that when he threatened KCSO employees and simultaneously requested their personal identifying information under the PRA, his conduct would be found to constitute harassment or intimidation. Therefore, RCW 42.56.565 is not vague, on its face or as applied, and the injunctive relief issued here did not chill the exercise of any protected First Amendment speech.

ii. The statute does not violate equal protection.

Defendant's equal protection argument also lacks merit. The Equal Protection Clause requires that all persons similarly situated be treated alike. *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920); *Plyler v. Doe*, 457 U.S. 202, 216 (1982); *Mayner v. Callahan*, 873 F.12d 1300, 1301 (9th Cir. 1989). A necessary element for a violation of equal protection is that the person be "similarly situation" to others receiving different treatment. If the complainant is not similarly situated, there is no violation of equal protection. *Powell v. Ducharme*, 998 F.2d 710, 716 (9th Cir. 1993).

Even if a person is similarly situation, an equal protection claim "must be rejected unless the [state's] action is patently arbitrary and bears no

relationship to a legitimate governmental interest.” *Vermouth v. Corrothers*, 827 F.2d 599, 602 (9th Cir. 1987). To survive an equal protection challenge, the State need not elect the best means for advancing its goals. *Id* at 603. As long as the State’s action bears some rational relationship to a legitimate governmental interest, a court cannot “sit as a superlegislature; and dictate another [course of action] it believes to be wiser or more equitable.” *Id.* at 604 (quoting *City of New Orleans v. Dues*, 427 U.S. 297, 303 (1976) (per curiam)).

The Court will apply a strict scrutiny analysis only if an allegedly discriminatory classification disadvantages a suspect class or burden the exercise of a fundamental right. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985). An intermediate level of scrutiny is generally applied only to classifications based on gender. *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982). Equal protection claims concerning confined offenders are generally reviewed under the rational basis test. *McQueary v. Blodgett*, 924 F.2d 829, 834 (9th Cir. 1989).

Defendant’s equal protection argument fails for two reasons. First, he is not similarly situated with un-incarcerated records requestors. As the U.S. Supreme Court noted, “[i]mprisonment carries with it the circumscription or loss of many significant rights.” *Hudson v. Palmer*, 468 U.S. 517, 525, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984). At common law and under article VI

section 3 of the Washington Constitution, incarcerated felons lose their civil rights, including the right to vote. *In the Matter of Walgren*, 104 Wn.2d 557, 569, 708 P.2d 380 (1985) (“At common law, a person convicted of a felony was considered to be ‘civilly dead.’”); Washington Constitution, Art. VI, § 3 (felons excluded from the franchise absent restoration of their rights).

Although prisoners retain certain constitutional protections, “[l]awful imprisonment necessarily makes unavailable many rights and privileges of ordinary citizen, a retraction justified by the considerations underlying our penal system.” *Wolff v. McDonnell*, 418 U.S. 539, 555-56, 94 S. Ct. 2963 (1974) (internal quotation marks omitted). Those rights and privileges unavailable to inmates include not only the right to vote, but also free access to public records available under the PRA. *Livingston v. Cedeno*, 164 Wn. 2d 46, 54, 186 P.3d 1055 (2008) (“The public records act does not limit the Department’s discretion in prohibiting entry of public records that it reasonably deems inappropriate in a prison setting.”). Lacking these fundamental rights and privileges enjoyed by law abiding citizens, it does not follow that inmate requestors are similarly situated to non-inmate requestors for purposes of equal protection analysis. Consequently, defendant’s equal protection challenge to RCW 42.56.565 fails at the threshold level.

Second, even ignoring the stark dissimilarities between inmates and ordinary citizens, the distinction RCW 42.56.565 draws between the two

classes of requestors plainly satisfies rational basis scrutiny. *See Giarrantano*, 521 F.3d 298, 304-05 (Virginia's FOIA inmate exclusion did not offend equal protection because it furthered the state's interest in conserving state resources and preventing frivolous requests); *Proctor v. White Lake Township Police Dept.*, 248 Mich.App. 457, 639 N.W.2d 332 (2002) (Legislature's FOIA exclusion singling out incarcerated prisoners rationally relates to the Legislature's legitimate interest in conserving the scarce governmental resources squandered responding to frivolous FOIA requests by incarcerated prisoners).

Here, the Legislature has not excluded inmates from the PRA altogether, as in Virginia and Michigan, but rather has authorized courts to enjoin those inmates who are proven to have abused the PRA. Plainly, this restrained approach to the problem of inmate abuse of the PRA bears a rational relationship to the State's legitimate interest in preserving resources and preventing abusive requests. Defendant's equal protection arguments are unfounded.

iii. The statute does not violate due process.

Defendant's other argument concerning the constitutionality of RCW 42.56.565 is difficult to understand, but he is apparently contending that the summary proceeding in the statute violates due process because it denies him adequate time to prepare and the opportunity to conduct discovery.

In any event, regardless of the nature of defendant's due process challenge to RCW 42.56.565, he cannot prevail. Due process protects against the deprivation of life, liberty, or property. *In re Cashaw*, 123 Wn.2d 138, 143, 866 P.2d 8 (1994). "The threshold question in any due process challenge is whether the challenger has been deprived of a protected interest in life, liberty or property." *Id.* Liberty interests may arise from either the due process clause or state laws. *Id.* at 144. "A liberty interest may arise from the Constitution, from guarantees implicit in the word liberty, or from an expectation or interest created by state laws or policies." *In re Pers. Restraint of Bush*, 164 Wn.2d 697, 702, 193 P.3d 103 (2008).

As noted above, defendant does not have a constitutionally recognized right to request records pursuant to the PRA. *See Giarratano*, 521 F.3d at 305-06 (exclusion of inmates from Virginia FOIA does not offend the First Amendment or Due Process). As the Fourth Circuit explained in *Giarratano*:

The question of whether *Giarratano's* rights were violated with respect to his access-to-the-courts claim under the First Amendment and the Due Process Clause of the Fourteenth Amendment has been answered by the Supreme Court. In *Lewis v. Casey*, 518 U.S. 343, 355, 116 S. Ct. 2174, 135 L. Ed. 606 (1996), the Court cited the specific tools required to provide access to courts: "those that the inmates need in order to attach their sentences, directly or collaterally, and in order to challenge the conditions of their confinement." Further, "[i]mpairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Id.* In fact, the Supreme Court specifically disclaimed the notion that the right of access to the courts requires "that the State must

enable the prisoner to discover grievances, and to litigate effectively once in court.” *Id.* at 354, 116 S. Ct. 2174. Rather, the right of access affords only “the capability of bringing contemplated challenges to sentences or conditions of confinement.” *Id.* at 356, 116 S. Ct. 2174.

Id.

Moreover, to the extent defendant claims the PRA itself gives rise to a state-created liberty interest in access to public records, his argument fails for at least three reasons. First, if neither the First Amendment nor the Due Process Clause guarantee inmates access to public records under state public disclosure laws as a mean to advance their grievances and access the courts, it follows there could be no state created “liberty” interest associated with the PRA. Second, even if the PRA did, at one time, give rise to a state-created liberty interest, which KCSO disputes, the Legislature abrogated any such interest when it enacted RCW 42.56.565. Finally, if it were determined that a state liberty interest had been created, the summary proceeding mandated in RCW 42.56.565 satisfies any procedural due process requirements that would flow from such a finding.

9. **Personal Information Regarding Undercover Deputies is Exempt From Disclosure**

RCW 42.56.240 exempts "specific intelligence information and specific investigative records...compiled by law enforcement...the nondisclosure of which is essential to effective law enforcement." Keeping identifying information of deputies who work undercover

operations confidential is essential to KCSO's ability to infiltrate criminal activity in situations where a uniformed officer would not be able to gain intelligence information necessary to investigate such activity. This information could be particularly valuable to incarcerated felons, like Parmelee.

Likewise, RCW 5.60.060(5) provides:

"A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure."

This statute is known as the "informer's privilege" and it is heavily relied on by KCSO when it receives public records requests that seek records that would reveal the identity of a confidential informant.

Six deputies currently assigned to the Shoreline Police Department are involved in undercover operations. CP 45-46. Disclosure of any of their identifying information, including their names, would jeopardize their ability to conduct ongoing and future investigations. *Id.* Most importantly, disclosure of their identifying information could threaten their individual safety and/or the safety and security of the confidential informants who work with those deputies. *Id.* The safety and security of undercover deputies and their informants mandate that the deputies' identifying information not be disclosed.

D. CONCLUSION

The trial court should be affirmed.

DATED this 22nd day of October, 2010.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

JOHN W. COBB, WSBA #14304
Senior Deputy Prosecuting Attorney
Attorneys for the Respondent

APPENDIX
A-1

RECEIVED
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 DANIEL T. SATTERBERG
 PROSECUTING ATTORNEY
 CIVIL DIVISION

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KING COUNTY SHERIFF'S OFFICE,)	
)	No. 08-2-22251-9 SEA
)	
Plaintiff,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
vs.)	
)	
ALLAN PARMELEE,)	CLERK'S ACTION REQUIRED
)	
Defendant)	
)	

This matter came on before the Court on Plaintiff's Motion or Declaratory Judgment and Permanent Injunction Regarding Public Records Requests ("Plaintiff's Motion"). The Court hereby grants Plaintiff's Motion. In so doing, the Court considered Plaintiff's Motion, Defendant's responses and multiple pleadings related thereto, oral argument of the parties, and the following evidence:

A. Declaration of Victoria VanNocken and the following exhibits thereto:

1. King County Prosecuting Attorney's Motion for Permanent Injunction and the attached Declaration of Kris Bundy, King County Superior Court Cause No. 07-2-39332-3SEA, and the following Exhibits thereto:

1. Federal Court Orders re: Bar Order in *Allan Parmelee v. Douglas LeRoy and Timothy McTighe*, U.S. Western District Court of Washington No. C01-1467R;
2. U.S. Party Case Index;
3. Petition, Declarations and Exhibits (bates ## 1-511) in *The Washington State Department of Corrections v. Allan W. Parmelee*, Thurston County Superior Court No. 07-2-01222-0;

4. Final Order in *Burt v. DOC*, Walla Walla County Superior Court No. 05-2-00075-0 and opinion of Division III of the Washington Court of Appeals, -- Wn. App. --, 170 P.3d 608 (2007);
5. Permanent Injunction in *Abbot v. DOC*, Walla Walla County Superior Court No. 06-2-01016-8;
6. Permanent Injunction in *DOC v. Parmelee*, Thurston County Superior Court No. 06-2-01406-2;
7. Permanent Injunction in *DeLong v. Parmelee*, Clallam County Superior Court No. 06-2-00637-5.
8. Permanent Injunction in *DeLong v. DOC*, Clallam County Superior Court No. 06-2-00878-5;
9. Opinion in *State v. Parmelee*, 108 Wn. App. 702, 32 P.3d 1029 (2001);
10. Application for Garnishment, Answer to Writ of Garnishment, and Certification of Mailing and Service entered in *State v. Parmelee*, King County Superior Court No. 02-C-07183-6SEA;
11. Parmelee Letters to Petitioners Stamped as Received by Petitioners on October 10, 2007; October 23, 2007 (5); November 7, 2007 (4); and November 16, 2007;
12. Petitioners' Responses to Parmelee's Letters Dated December 3, 2007 and December 17, 2007; and
13. Findings of Fact and Conclusions of Law and Final Order, and the Memorandum Opinion, filed in King County Superior Court Cause No. 07-2-39332-3SEA regarding King County and King County Prosecuting Attorney's motion for permanent injunction.

2. *Amicus curiae* brief filed by the office of the Washington Attorney

General in the Washington Court of Appeals, Division II, case captioned *Allan Parmelee v. Laura Mathieu, et al.*, No. 35469-1-II;

I. FINDINGS OF FACT

1. The public disclosure requests at issue in this case are for the following records of

KCSO employees:

A. In electronic format, first, middle and last name (including hyphenated, changed or married, divorced and maiden names if existing); date of birth; gender; race; date of hire; current employment job title (job position); annual pay and pay rate; height and weight; employment identification number; any employed related special training.

B. In electronic format, frontal face photographic type image records of each and every current employee at your agency, of the most recent version if

1 older versions exist, such as used on photographic identification cards or
2 other alternative is not precisely existing provide the best quality
3 electronic format images in existence and without conversion to any other
4 format, that may strip non-exempt metadata from the recording.

5 C. Any and all records such as personnel files; performance evaluations;
6 work compensations records; training; CLE, education and specialty
7 training records; professional association affiliation membership records
8 (e.g. WSBA); work performance reviews, statistical and actuarial records;
9 complaints from any source for any reason in any format (e.g. internal
10 investigations, citizen emails or letters, administrative grievances); and
11 records such as these related to undercover officer #1.

12 D. Any and all records such as personnel files; performance evaluations;
13 work compensations records; training; CLE, education and specialty
14 training records; professional association affiliation membership records
15 (e.g. WSBA); work performance reviews, statistical and actuarial records;
16 complaints from any source for any reason in any format (e.g. internal
17 investigations, citizen emails or letters, administrative grievances); and
18 records such as these related to undercover officer #2.

19 E. Any and all records such as personnel files; performance evaluations;
20 work compensations records; training; CLE, education and specialty
21 training records; professional association affiliation membership records
22 (e.g. WSBA); work performance reviews, statistical and actuarial records;
23 complaints from any source for any reason in any format (e.g. internal
investigations, citizen emails or letters, administrative grievances); and
records such as these related to undercover officer #3.

F. Any and all records such as personnel files; performance evaluations;
work compensations records; training; CLE, education and specialty
training records; professional association affiliation membership records
(e.g. WSBA); work performance reviews, statistical and actuarial records;
complaints from any source for any reason in any format (e.g. internal
investigations, citizen emails or letters, administrative grievances); and
records such as these related to undercover officer #4.

G. Any and all records such as personnel files; performance evaluations;
work compensations records; training; CLE, education and specialty
training records; professional association affiliation membership records
(e.g. WSBA); work performance reviews, statistical and actuarial records;
complaints from any source for any reason in any format (e.g. internal
investigations, citizen emails or letters, administrative grievances); and
records such as these related to undercover officer #5.

1 H. Any and all records such as personnel files; performance evaluations;
2 work compensations records; training; CLE, education and specialty
3 training records; professional association affiliation membership records
4 (e.g. WSBA); work performance reviews, statistical and actuarial records;
5 complaints from any source for any reason in any format (e.g. internal
6 investigations, citizen emails or letters, administrative grievances); and
7 records such as these related to undercover officer #6.

8 I. Any and all records such as personnel files; performance evaluations;
9 work compensations records; training; CLE, education and specialty
10 training records; professional association affiliation membership records
11 (e.g. WSBA); work performance reviews, statistical and actuarial records;
12 complaints from any source for any reason in any format (e.g. internal
13 investigations, citizen emails or letters, administrative grievances); and
14 records such as these related to undercover officer #7, supervisor.

15 J. In electronic format, a copy of a means and to disclose [sic] the means of
16 communications with employees at your agency, to include direct phone
17 numbers, pager numbers, cell phone numbers and similar numbers
18 assigned to specific persons employed at your government agency.

19 K. In electronic original format, a copy of your agency's employee name and
20 work related email address list of employee's and means to contact your
21 agency's employees, including by text messaging and email means.

22 L. Employment evaluation and termination records of any person(s)
23 employed past or present at your government agency whom [sic] was
terminated, disciplined in any way, or asked to resign for unprofessional,
improper, criminal, ethical [sic] or other reasons even if it did not result in
the termination of employment, since, January 1, 1997 through the
present.

2. KCSO employees have a good faith concern about the requested information
being disclosed, both generally and to defendant.
3. KCSO employees do not give up their rights to privacy, safety and security by
virtue of their status as public employees.
4. The fact that information may be available through other sources, including the
Internet, does not require that that information be deemed "public" or that
governmental records containing such information be deemed "public records."

- 1 5. Choosing a profession as a public employee does not alone make photographs of
2 such people public records.
- 3 6. Public policy clearly dictates that employee photographs are not public records.
- 4 7. There already are indications of such clear public policy with regard to the non-
5 public nature of public employees' photographs. An example is the fact that the
6 Washington Department of Licensing does not disclose the photographs it
7 produces and retains and that doing so has been criminalized.
- 8 8. Data and photographs retained by government entities for transit passes also are
9 exempt from disclosure.
- 10 9. Employees of plaintiff would be highly offended by the disclosure of their
11 photographs or of records containing their date of birth, gender, race, height and
12 weight, and disclosing records containing such photographs or information would
13 be of no legitimate concern to the public.
- 14 10. The Public Records Act does not require the disclosure of records which would
15 allow or enhance the "ability to identify" governmental employees.
- 16 11. Disclosure of KCSO employees' direct phone numbers, pager numbers or cellular
17 phone numbers would significantly disrupt the conduct of government, would
18 threaten public safety and would cause a substantial likelihood of threatening the
19 security of KCSO's facilities' as well as individuals' safety.
- 20 12. The purposes of the Public Records Act do not include financial or commercial
21 gain to requestors by virtue of the collection of anticipated and hoped-for fines
22 and penalties.
- 23

1 13. The Court has heard and considered defendant's Verified CR-13
2 Counter/Crossclaim Complaint and CR-19 Joinder Parties Countercomplaint for
3 Libel/Slander; Constitutional Free Speech Retaliation; Abuse of Process; Free
4 Speech Infringement, Inter Alia, Including Public Records Act Violations [sic].
5 RCW 42.56.540 does not provide for the relief requested therein.

6 14. Defendant has withdrawn his request for employee identification numbers and
7 instead may submit a new request for badge numbers instead.

8 15. Plaintiff filed and prosecuted this case in a timely manner.

9 16. Plaintiff brought this action in good faith and with due respect for the law, in an
10 effort to protect its employees and the safe and secure administration of its
11 correctional facilities.

12 II. CONCLUSIONS OF LAW

13 1. This Court has the authority to consider Plaintiff's Motion for Declaratory
14 Judgment and Permanent Injunction Regarding Public Records Requests pursuant to CR 65 and
15 RCW Chapters 7.40 and 7.24 and RCW 42.56.540.

16 2. RCW 42.56.540 provides that examination of public records may be enjoined if
17 such examination would not be in the public interest and would substantially damage any person
18 or vital government function.

19 3. The Public Records Act is a strongly-worded mandate for broad disclosure of
20 public records.

21 4. Public records are those which relate to the conduct and performance of a
22 governmental function.

1 5. It is assumed that free and open examination of public records is in the public
2 interest, even though such examination may cause inconvenience or embarrassment to public
3 officials or others.

4 6. RCW 42.56.540 does not confer substantive authority on the Court, but rather sets
5 a procedure for seeking relief as may otherwise be found in the statute.

6 7. The language of the Public Records Act and its legislative history and the
7 resulting case law lead to the conclusion that all of the records listed in Plaintiff's Motion are not
8 public records and, additionally, are exempt from disclosure.

9 8. Plaintiff's employees' date of birth, gender, race, height, weight and photographs
10 are not public records.

11 9. Exemption of records or portions of records based on privacy is governed by
12 RCW 42.56.050 which states:

13 A person's "right to privacy," "right of privacy," or "personal privacy," as these
14 terms are used in this chapter, is invaded or violated only if disclosure of
15 information about the person: (1) Would be highly offensive to a reasonable
16 person, and (2) is not of legitimate concern to the public. The provisions of this
17 chapter dealing with the right to privacy in certain public records do not create
18 any right to privacy beyond those rights that are specified in this chapter as
19 express exemptions from the public's right to inspect, examine, or copy public
20 records.

18 10. KCSO employees' direct phone numbers, pager numbers and cellular phone
19 numbers not public records, as they do not relate to the conduct of government or performance of
20 a governmental function.

21 11. Only the "front desk" phone number(s) of plaintiff are public and hence subject to
22 disclosure, such as those found in a phone book.

1 12. The Public Records Act exempts “Personal information in files maintained for
2 employees, appointees, or elected officials of any public agency to the extent that disclosure
3 would violate their right to privacy.” (RCW 42.56.230(2)).

4 13. Employees’ photographs, date of birth, gender, race, height and weight are
5 “personal information maintained for employees, appointees or elected officials” of a public
6 agency.

7 14. The Public Records Act exempts “Personal information in files maintained for
8 employees, appointees, or elected officials of any public agency to the extent that disclosure
9 would violate their right to privacy.” (RCW 42.56.230(2)).

10 15. Even if plaintiff's employees' date of birth, gender, race, height, weight or
11 photographs [or the photographs' metadata], or any of them, were public records, each would be
12 exempt from disclosure under RCW 42.56.230.

13 16. Even if direct phone numbers, pager numbers or cellular phone numbers were
14 public records, each would be exempt from disclosure under RCW 42.56.420.

15 17. Nondisclosure of information identifying KCSO employees as working in an
16 undercover capacity is essential to effective law enforcement and is therefore exempt under
17 RCW 42.56.240.

18 18. Records in KCSO's employee files relating to substantiated allegations of
19 misconduct are not exempt from disclosure.

20 19. Though none of the policies meant to be served by the Public Records Act are
21 served by release of the requested documents to Parmelee, the Court does not have the authority
22 to consider the identity of the requester in issuing its order.
23

1
2 **ORDER**

3 IT IS HEREBY ORDERED:

4 1. Plaintiff's blanket motion for injunction based solely on defendant's status as an
5 incarcerated felon is denied.

6 2. Plaintiff is permanently enjoined from producing for disclosure, to defendant or to
7 any person plaintiff believes to be an agent of, in privity with, or otherwise acting on defendant's
8 behalf, the records which are not public: photographs, height, weight, direct phone number,
9 pager number and cellular phone number of its employees.

10 3. Plaintiff is permanently enjoined from producing for disclosure, to defendant or to
11 any person plaintiff believes to be an agent of, in privity with, or otherwise acting on defendant's
12 behalf, KCSO records which would identify those employees who are working in an undercover
13 capacity.

14 3. The Court denies defendant's Motion for In Camera Review of Records at Issue
15 with one exception: The Court will review *in camera* the metadata for one employee
16 identification photograph to determine whether there is any information contained therein which
17 is subject to public disclosure.

18 4. The Court denies defendant's motion to strike plaintiff's Reply and defendant's
19 Motion to Strike Redundant, Immaterial [sic], Impertinent and Scandalous Matter under CR
20 12(f), as that information is relevant to plaintiff's motion under RCW 42.56.540 and to its
21 argument regarding defendant's status as an incarcerated felon.

22 5. The Court denies defendant's Verified CR-13 Counter/Crossclaim Complaint and
23 CR-19 Joinder Parties Countercomplaint for Libel/Slander; Constitutional Free Speech

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Retaliation; Abuse of Process; Free Speech Infringement, Inter Alia, Including Public Records Act Violations [sic], as RCW 42.56.540 does not provide for the relief requested therein and defendant has provided no other pertinent authority authorizing same.

6. The Court denies the defendant's motion to consolidate this case with King County Superior Court Cause No. 08 2 22252 7.

DATED this 30 day of December, 2008.



HONORABLE PALMER ROBINSON

APPENDIX
B-1

FILED
KING COUNTY WASHINGTON

The Honorable Palmer Robinson

AUG 25 2009

CLERK OF COURT
KING COUNTY
WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 KING COUNTY AND)
KING COUNTY PROSECUTING ATTORNEY)
8 DANIEL T. SATTERBERG,) No. 07-2-39332-3SEA
9)
Petitioner,)
10 vs.) FINDINGS OF FACT AND
CONCLUSIONS OF LAW
11 ALLAN W. PARMELEE,)
12 Respondent.)

14 This matter came on before the Court on Plaintiffs' Motion for Injunction. The Court
15 hereby grants Plaintiffs' Motion. In doing so, the Court considered Plaintiff's Motion,
16 Defendant's response, Plaintiffs' Reply and accompanying attachments, oral argument of the
17 parties, and the following evidence:

- 18 1. The Declaration of Kristofer Bundy with attached exhibits;
- 19 2. The Declaration of Marilyn Brenneman;
- 20 3. The Declaration of Denise Vaughan;
- 21 4. The Declaration of Dan Satterberg;
- 22 5. The Declaration of Mark Larson with attached exhibits;
- 23 6. The Declaration of Bernie Dennehy with attached exhibits;

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

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- 1 7. The Declaration of Richard Seale;
- 2 8. The Eighth Declaration of Kristofer Bundy with attached exhibits; and
- 3 9. The Second Declaration of Janine Joly with attached exhibits.

4 I. FINDINGS OF FACT

5 Based on the evidence submitted and the argument of the parties, the Court makes the
6 following FINDINGS OF FACT:

7 1. Parmelee is a person serving a criminal sentence in state and local correctional
8 facilities as a result of convictions on two counts of Arson in the First Degree.

9 2. Parmelee's arson convictions were the result of him causing the firebombing of
10 two cars, one belonging to an attorney who represented his ex-wife and the other belonging to an
11 attorney who represented his roommate's girlfriend.

12 3. While incarcerated, Parmelee has made more than 1,000 public disclosure
13 requests under the Public Records Act ("PRA") to the state and local agencies that have had an
14 official role in his convictions, incarceration, and other judicial proceedings.

15 4. Parmelee's public disclosure requests at issue in this motion were made to harass
16 and intimidate county agencies and employees as evidenced by the following:

17 a. Parmelee's requests are focused on the employees, officials, and agencies
18 that have had an official role in his convictions, incarceration, and other judicial proceedings;

19 b. Parmelee has threatened to use employee photographs and personnel
20 information to publicly label public employees and officials as "sexual predators";

21 c. Parmelee has threatened to publicly post photographs and what he
22 described as "a wide variety of other personal information" regarding public employees and
23 officials;

1 d. Parmelee has threatened to issue what he described as "press releases"
2 maligning and slandering the public employees and officials who are the subjects of his requests;

3 e. Parmelee has threatened to have public officials' neighborhoods picketed;

4 f. Parmelee has attempted to get images of public employees and officials
5 arriving at and leaving their workplace through his requests for copies of security videotapes;

6 g. County employees feel harassed and intimidated by Parmelee's public
7 disclosure requests;

8 h. County employees are fearful of Parmelee and his stated relationships with
9 other criminals and are concerned they could be subject to retaliation, stalking, or another violent
10 action by Parmelee or any other criminal to whom he might release employee records;

11 i. Parmelee has submitted continuous streams of requests to public agencies,
12 forcing agencies to spend thousands of hours collecting tens of thousands of records for which
13 Parmelee may never submit payment;

14 j. Parmelee's requests to Plaintiffs for 303 personnel files would require the
15 County to spend an extraordinary amount of time reviewing and redacting records that Parmelee
16 is unlikely to ever pay for or review;

17 k. Parmelee inundates agencies with requests hoping that his requests will
18 lead to a PRA violation for which he can benefit financially; and

19 l. Parmelee is aware of the concern his requests cause public employees and
20 officials.

21 5. Fulfilling Parmelee's requests at issue in this motion would likely threaten the
22 safety of public employees, officials, and their families as evidenced by the following:
23

1 a. Parmelee has made numerous threats to the safety of the public employees
2 and officials who have been involved with his various cases and incarcerations and who have
3 been the subjects of his PRA requests;

4 b. Parmelee threatened two assistant attorneys general;

5 c. Parmelee told one County employee he would "watch his home and get
6 him";

7 d. About a County employee, Parmelee stated, "it's people like him that get
8 beat up when their backup isn't present";

9 e. Parmelee has stated that "people owe him" and if he needed something
10 done, "he knew people who could get it done";

11 f. Public employees and officials will be at risk for serious harm if Parmelee
12 is given employee photographs, personnel information, and security videos; and

13 g. If Parmelee is given employee photographs, personnel information, and
14 security videos, he will be able to distribute them to any person he wants, including other felons.

15 6. Fulfilling Parmelee's requests at issue in this motion may assist in criminal
16 activity as evidenced by the following:

17 a. Parmelee has been convicted of felony stalking, three violations of a
18 protection or no contact order, and two counts of arson;

19 b. Parmelee distributed his ex-wife's personal information to other inmates
20 and was convicted of manipulating other inmates to send her explicit and intimidating letters;

21 c. Parmelee asked his former landlady to find someone to kill his ex-wife;

22 d. Parmelee has stated his intent to substantially harm public employees and
23 officials;

1 e. Parmelee has stated his intent to slander public employees and officials by
2 publicly labeling them as "sex offenders"; and

3 f. Parmelee has threatened to post personal information regarding public
4 employees and officials on the Internet and to send his "local felons" and "others eager to assist
5 [him]" to their homes.

6 7. The public disclosure requests at issue in this case are for the following King
7 County records:

- 8 a. All records relating to 303 different King County Prosecuting Attorney's
9 Office employees, including personnel files; performance evaluations;
10 work compensation records; training, CLE, education, and specialty
11 training, or qualification records; WSBA qualification records; work
12 performance statistical and actuarial records; complaints from any source
13 for any reason of the person; and related records.
- 14 b. Photographs of all King County Prosecuting Attorney's Office employees
15 and four judicial officers.
- 16 c. Security videos of the Third and Fourth Avenue entrances to the King
17 County Courthouse.
- 18 d. The gender, race, date of birth, employee identification number, job
19 classification, and date of hire for all King County Prosecuting Attorney's
20 Office employees.
- 21 e. The cell phone numbers and pager numbers of the King County
22 Prosecutor's Office, listing and revealing to whom they are assigned.
- 23 f. Where it did not result in formal discipline or termination, all
employment evaluation and termination records of any person employed
by the King County Prosecuting Attorney's Office who was terminated or
asked to resign for misconduct, criminal behavior, ethics violations, or
other conduct determined justification for formal or informal discipline
and/or removal from their jobs within the past five years.
- g. Security videotape of persons entering and departing the Superior Court
building through any main entrance or exit other than the Third and
Fourth Avenue entrances.

- 1 h. Training and qualification records, compensation records including but
2 not limited to general correspondence, Judicial Commission on
3 Misconduct, and Washington Bar Association records relating to the
4 following Judges and Commissioners for King County: (a) Judge Julie
5 Spector (b) Commissioner Kimberly Prochnau (c) Commissioner
6 Velategui (d) Judge Greg Canova.

7 II. CONCLUSIONS OF LAW

8 1. The Court has the authority to consider Plaintiffs' Motion for Injunction pursuant
9 to RCW 42.56.620.

10 2. Plaintiffs are "agencies" as defined by chapter 42.56 RCW.

11 3. RCW 42.56.620 provides that inspection or copying of any nonexempt public
12 record by persons serving criminal sentences in a state or local correctional facility may be
13 enjoined if the court finds by a preponderance of the evidence that the request was made to
14 harass or intimidate the agency or its employees.

15 4. RCW 42.56.620 provides that inspection or copying of any nonexempt public
16 record by persons serving criminal sentences in a state or local correctional facility may be
17 enjoined if the court finds by a preponderance of the evidence that fulfilling the request would
18 likely threaten the safety of any person.

19 5. RCW 42.56.620 provides that inspection or copying of any nonexempt public
20 record by persons serving criminal sentences in a state or local correctional facility may be
21 enjoined if the court finds by a preponderance of the evidence that fulfilling the request may
22 assist criminal activity.

23 6. RCW 42.56.620 authorizes a court to enjoin, for a period of time the court deems
reasonable, future requests by a requestor or any entity owned or controlled in whole or in part
by a requestor.

1 7. It has been shown by a preponderance of the evidence that the requests at issue in
2 this motion were made to harass and intimidate the agencies to which the requests were
3 submitted and the public employees who are the subjects of the requests.

4 8. It has been shown by a preponderance of the evidence that fulfilling the requests
5 at issue in this motion would likely threaten the safety of public employees, officials, and their
6 families.

7 9. It has been shown by a preponderance of the evidence that fulfilling the requests
8 at issue in this motion may assist in criminal activity.

9 10. None of the policies meant to be served by the PRA are served by release of the
10 requested documents to Parmelee.

11 11. It has been shown by a preponderance of the evidence that future requests by
12 Parmelee or any entity owned or controlled by him to any King County agency, division,
13 department, or employee should be enjoined in order to protect public agencies, employees, and
14 officials from intimidation and harassment.

15 12. It has been shown by a preponderance of the evidence that future requests by
16 Parmelee to any King County agency, division, department, or employee or any entity owned or
17 controlled by him should be enjoined in order to protect public agencies, employees, and
18 officials from threats to their safety.

19 13. It has been shown by a preponderance of the evidence that future requests by
20 Parmelee or any entity owned or controlled by him to any King County agency, division,
21 department, or employee should be enjoined in order to prevent the use of records requested by
22 Parmelee in criminal activity.

- 1
- 2 e. The cell phone numbers and pager numbers of the King County Prosecutor's Office, listing and revealing to whom they are assigned.
- 3 f. Where it did not result in formal discipline or termination, all employment evaluation and termination records of any person employed by the King County Prosecuting Attorney's Office who was terminated or asked to resign for misconduct, criminal behavior, ethics violations, or other conduct determined justification for formal or informal discipline and/or removal from their jobs within the past five years.
- 4
- 5
- 6
- 7 g. Security videotape of persons entering and departing the Superior Court building through any main entrance or exit other than the Third and Fourth Avenue entrances.
- 8
- 9 h. Training and qualification records, compensation records including but not limited to general correspondence, Judicial Commission on Misconduct, and Washington Bar Association records relating to the following Judges and Commissioners for King County: (a) Judge Julie Spector (b) Commissioner Kimberly Prochnau (c) Commissioner Velategui (d) Judge Greg Canova.
- 10
- 11

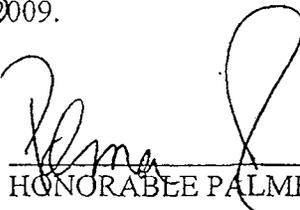
12 2. All future PRA requests by Parmelee or anyone acting on his behalf or an entity owned or controlled in whole or in part by him to any agency, department, division, or employee of King County are enjoined for the remainder of Parmelee's incarceration.

13

14

15 3. This case is dismissed.

16 DATED this 24 day of ~~June~~^{August}, 2009.

17 
18 HONORABLE PALMER ROBINSON

19

20

21

22

23

APPENDIX
C-1

THE SUPREME COURT OF WASHINGTON

FILED
2010 JUN -9 PM 3:39

KING COUNTY and KING COUNTY
PROSECUTING ATTORNEY DANIEL T.
SATTERBERG,

Respondents,

v.

ALLAN W. PARMELEE,

Appellant.

MANDATE

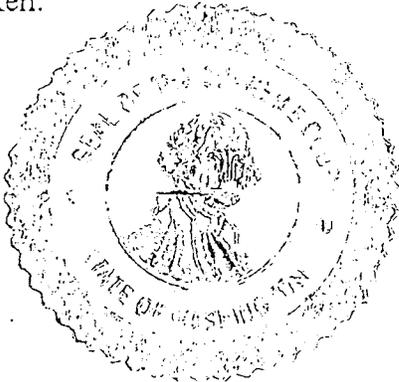
NO. 83669-8

King County Superior Court
No. 07-2-39332-3 SEA

FILED
KING COUNTY, WASHINGTON
MAY 24 2010
SUPERIOR COURT CLERK

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington
in and for King County.

This is to certify that the Supreme Court Clerk of the State of Washington entered a ruling dismissing the appeal in the above entitled cause on April 14, 2010, and the matter is now final. Accordingly, this cause is mandated to the superior court from which this appeal was taken.



I have affixed the seal of the Supreme Court of the State of Washington and filed this Mandate this 21st day of May, 2010.

[Handwritten Signature]

Ronald R. Carpenter
Clerk of the Supreme Court
State of Washington

cc: Hon. Barbara Miner, Clerk
King County Superior Court
Allan Parmelee
Daniel Todd Satterberg
Kristofer John Bundy
Reporter of Decisions

FILED
KING COUNTY
10 MAY 21 PM 12:00
BY RONALD R. CARPENTER
CLERK

APPENDIX
D-1

SENATE BILL REPORT

SB 5130

As Reported by Senate Committee On:
Human Services & Corrections, February 10, 2009

Title: An act relating to access to public records by persons serving criminal sentences in correctional facilities.

Brief Description: Regarding prisoner access to public records.

Sponsors: Senators Carrell, Hargrove, Swecker, Hatfield, Holmquist, Brandland, Sheldon, Tom, King, Hobbs, McCaslin, Stevens and Marr; by request of Attorney General.

Brief History:

Committee Activity: Human Services & Corrections: 1/29/09, 2/10/09 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5130 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell and Kauffman.

Staff: Shani Bauer (786-7468)

Background: Upon request, an agency must make its public records available for public inspection and copying unless the records fall within a specific statutory exemption. Within five business days of receiving a request, the agency must provide the record, acknowledge receipt of the request and provide a reasonable time estimate of the time required to respond, or deny the request. A person who has been denied access, may petition the court to determine whether the agency was correct in its denial. If the court determines that the agency was not correct, the person requesting the record must be awarded all costs, including reasonable attorney fees, incurred in bringing the court action. The court may also award the petitioner a penalty award of not less than \$5 and not more than \$100 for each day the petitioner was denied the right to inspect or copy the public records requested.

The court may enjoin the examination of a specific public record if, upon motion by the agency or agency representative, the court finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person or a vital government function.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill (Recommended Substitute): The court may enjoin the examination of any nonexempt public record requested by a person serving a criminal sentence if, upon motion by the agency or agency representative, the court finds:

- The request was made to harass or intimidate the agency, its employees, or any person; or
- Disclosure of the record would likely threaten the security of correctional facilities, the safety and security of staff or other persons, or the deterrence of criminal activity.

Factors to be considered by the court in making its determination are prescribed. Upon a showing by a preponderance of the evidence, the court may enjoin all or part of the request, as well as future requests, by the same requestor or an entity owned in whole or in part by the same requestor. An agency is not liable for penalties during the time period for which a court injunction is in effect even if that order is later appealed and overturned.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Instead of "undermining a legitimate penological interest," a person may enjoin an inmate from requesting public records if the request(s) threatens the security of a correctional facility. In order to obtain an injunction, the moving party must meet its statutory burden by a preponderance of the evidence. The ability to enjoin requests by a third party is removed. The court may, however, enjoin future requests by an entity owned or controlled in whole or in part by the inmate. An emergency clause is added.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill: PRO: Inmate requests for public records have increased exponentially in the last few years. Out of a total of 11,133 requests last year, 74 percent of those were from inmates. Not all inmate requests are abusive. There are legitimate reasons that inmates need access to records that pertain to their conviction and incarceration. However, there is a small group of offenders who are abusing the system. One offender has submitted a total of 830 requests. The Attorney General's office has spent over 4,000 hours responding to those requests at a substantial cost to the agency. This particular inmate has requested numerous personnel files and personal information for the sole purpose of harassing those employees he comes across in the corrections system. Some are using the system for financial gain and make outrageous public records requests in order to sue the department for not providing records. Last year, 87 lawsuits were filed against the state for the failure to provide public records. Sixty-eight of these were filed by inmates. This bill does not categorically prevent inmates from making a public records request but is narrowly tailored to allow the Department of Corrections (DOC) to address those few who are abusing the system.

The Attorney General's office has worked with the Allied Daily Newspapers for adjustments to language. An emergency clause would also be a good idea to stop this abuse as soon as possible. This is a top priority for corrections employees. Employees of 25 years have quit because they cannot handle the requests for information regarding their background, children, and home life.

CON: Ideally this legislation should focus on the contents of the request and not the identity of the individual. Third parties also should not be enjoined unless there is some showing that they are involved. HB 1316 is an alternative solution to this and should be explored.

OTHER: There needs to be some way to ensure that a victim of custodial misconduct can expose the abuse without being labeled a harasser.

Persons Testifying: PRO: Tim Lang, Hunter Goodman, Attorney General's Office; Mike Rynerd, Teamsters; Scott Blonien, Denise Vaughn. DOC: Rowland Thompson, Allied Daily Newspapers.

CON: Melissa Lee, Columbia Legal Services, Institutions Project.

OTHER: Martha Woods, Stop The Bullies.

APPENDIX
E-1

APPENDIX
F-1

A. In electronic format, first, middle and last name (including hyphenated, changed or married, divorced and maiden names if existing); date of birth; gender; race; date of hire; current employment job title (job position); annual pay and pay rate; height and weight; employment identification number; any employed related special training.

B. In electronic format, frontal face photographic type image records of each and every current employee at your agency, of the most recent version if older versions exist, such as used on photographic identification cards or other alternative is not precisely existing provide the best quality electronic format images in existence and without conversion to any other format, that may strip non-exempt metadata from the recording.

C. Any and all records such as personnel files; performance evaluations; work compensations records; training, CLE, education and specialty training records; professional association affiliation membership records (e.g. WSBA); work performance reviews, statistical and actuarial records; complaints from any source for any reason in any format (e.g. internal investigations, citizen emails or letters, administrative grievances); and records such as these related to **undercover officer #1**.

D. Any and all records such as personnel files; performance evaluations; work compensations records; training, CLE, education and specialty training records; professional association affiliation membership records (e.g. WSBA); work performance reviews, statistical and actuarial records; complaints from any source for any reason in any format (e.g. internal investigations, citizen emails or letters, administrative grievances); and records such as these related to **undercover officer #2**.

E. Any and all records such as personnel files; performance evaluations; work compensations records; training, CLE, education and specialty training records; professional association affiliation membership records (e.g. WSBA); work performance reviews, statistical and actuarial records; complaints from any source for any reason in any format (e.g. internal investigations, citizen emails or letters, administrative grievances); and records such as these related to **undercover officer #3**.

F. Any and all records such as personnel files; performance evaluations; work compensations records; training, CLE, education and specialty training records; professional association affiliation membership records (e.g. WSBA); work performance reviews, statistical and actuarial records; complaints from any source for any reason in any format (e.g. internal investigations, citizen emails or letters, administrative grievances); and records such as these related to **undercover officer #4**.

G. Any and all records such as personnel files; performance evaluations; work compensations records; training, CLE, education and specialty

training records; professional association affiliation membership records (e.g. WSBA); work performance reviews, statistical and actuarial records; complaints from any source for any reason in any format (e.g. internal investigations, citizen emails or letters, administrative grievances); and records such as these related to **undercover officer #5**.

H. Any and all records such as personnel files; performance evaluations; work compensations records; training, CLE, education and specialty training records; professional association affiliation membership records (e.g. WSBA); work performance reviews, statistical and actuarial records; complaints from any source for any reason in any format (e.g. internal investigations, citizen emails or letters, administrative grievances); and records such as these related to **undercover officer #6**.

I. Any and all records such as personnel files; performance evaluations; work compensations records; training, CLE, education and specialty training records; professional association affiliation membership records (e.g. WSBA); work performance reviews, statistical and actuarial records; complaints from any source for any reason in any format (e.g. internal investigations, citizen emails or letters, administrative grievances); and records such as these related to **undercover officer #7, supervisor**.

J. In electronic format, a copy of a means and to disclose [sic] the means of communications with employees at your agency, to include direct phone numbers, pager numbers, cell phone numbers and similar numbers assigned to specific persons employed at your government agency.

K. In electronic original format, a copy of your agency's employee name and work related email address list of employee's email addresses presently employed by your agency [sic]. ... [T]he email address and means to contact your agency's employees, including by text messaging and email means.

L. Employment evaluation and termination records of any person(s) employed past or present at your government agency whom [sic] was terminated, disciplined in any way, or asked to resign for unprofessional, improper, criminal, ethical [sic] or other reasons even if it did not result in the termination of employment, since January 1, 1997 through the present.

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of October, 2010, I sent, by U.S. Certified Mail, a copy of **Respondent's Brief** to the following Pro-Se Appellant:

**Allan Parmelee, #793782
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520**

Deborah Harris-Groves
Deborah Harris-Groves

FILED
COURT OF APPEALS, DIV. #1
SUPERIOR COURT OF WASHINGTON
2010 OCT 22 PM 4:40