

**FILED**  
**Court of Appeals**  
**Division II**  
**State of Washington**  
**8/22/2019 2:28 PM**

**No. 52845-2-II**  
Cowlitz County Superior Court No.'s 18-2-01064-08;  
18-2-01065-08; 18-2-01066-08

**THE COURT OF APPEALS, DIVISION II**  
**OF THE STATE OF WASHINGTON**

---

**JOHN DOES (Number 1 through 44),**

**Appellants,**

**vs.**

**COWLITZ COUNTY SHERIFF'S OFFICE,**

**Respondent,**

**CURTIS HART,**

**Requestor.**

---

**BRIEF OF RESPONDENT**

---

**RYAN JURVAKAINEN**  
**Prosecuting Attorney**  
**DANA E. GIGLER/WSBA #38193**  
**Civil Deputy Prosecuting Attorney**  
**Representing Respondent**

**HALL OF JUSTICE**  
**312 SW FIRST**  
**KELSO, WA 98626**  
**(360) 577-3080**

**TABLE OF CONTENTS**

	<b>PAGE</b>
<b>I. IDENTITY OF RESPONDENT.....</b>	<b>1</b>
<b>II. ISSUE PRESENTED FOR REVIEW.....</b>	<b>1</b>
<b>III. STATEMENT OF THE CASE.....</b>	<b>1</b>
<b>IV. ARGUMENT.....</b>	<b>2</b>
<b>A. Level One Sex Offender Records are not exempt from disclosure under the public records act .....</b>	<b>2</b>
<b>1. Level one sex offender records are not “investigative records” exempt from disclosure .....</b>	<b>4</b>
<b>2. Release of level one sex offender records does not violate John Does’ right to privacy.....</b>	<b>5</b>
<b>B. Agencies may not inquire into a public records requestor’s intent .....</b>	<b>8</b>
<b>V. CONCLUSION .....</b>	<b>9</b>

## TABLE OF AUTHORITIES

Page

### Cases

<i>Bellevue John Does 1-11 v. Bellevue School District #405</i> (2005) 129 Wash.App. 832, 120 P.3d 616, review granted in part 158 Wash.2d 1024, 149 P.3d 376, reversed in part 164 Wash.2d 199, 189 P.3d 139 ..	7
<i>Brouillet v. Cowles Pub.</i> , 114 Wn.2d 788, 793 (1990).....	4
<i>Yacobellis v. City of Bellingham</i> , 64 Wash.App. at 303, 825 P.2d 324 (1992).....	8
<i>Dawson v. Daly</i> , 120 Wn.2d 782, 792-93, 845 P.2d 995 (1993).....	5
<i>Doe ex rel. Roe v. Washington State Patrol</i> , 185 Wash. 2d 363, 372, 374 P.3d 63, 67 (2016).....	2, 4
<i>Koenig v. Thurston County</i> (2010) 155 Wash.App. 398, 229 P.3d 910, amended on reconsideration, review granted 170 Wash.2d 1020, 245 P.3d 774, affirmed in part, reversed in part reconsideration denied, as amended 175 Wash.2d 837, 287 P.3d 523 .....	8
<i>Koenig v. Thurston County</i> , 175 Wash.2d 837, 287 P.3d 523, (2012) .....	6
<i>Laborers Int'l Union of North America, Local No. 374 v. City of Aberdeen</i> , 31 Wn.App. 445, 448, 642 P.2d 418 (1982) .....	5
<i>Newman v. King County</i> , 133 Wash.2d 565, 947 P.2d 712 (1997) .....	5
<i>Sargent v. Seattle Police Department</i> , 179 Wash.2d 376, 314 P.3d 1093 (2013).....	5
<i>Spokane Police Guild v. Liquor Control Bd.</i> , 112 Wash.2d 30, 38, 769 P.2d 283 (1989).....	6

**Statutes**

RCW 4.24.550 ..... 3

RCW 4.24.550(3)(a) ..... 3

RCW 42.56 ..... 1, 2, 9

RCW 42.56.070(1)..... 3

RCW 42.56.240(1)..... 4

RCW 42.56.520(2)..... 1

RCW 9A.44.130..... 1

**Other Authorities**

1988 Att’y Gen. Op. No. 12..... 9

**I. IDENTITY OF RESPONDENT**

The Cowlitz County Sheriff's Office ("CCSO") is a public agency subject to the Washington State Public Records Act. RCW 42.56. It is the custodial agency that maintains level one sex offender records for sex offenders registered in Cowlitz County pursuant to RCW 9A.44.130.

**II. ISSUE PRESENTED FOR REVIEW**

Level One Sex Offender records are not exempt from disclosure under the public records act.

**III. STATEMENT OF THE CASE**

Curtis Hart submitted a public records request to the Cowlitz County Sheriff's Office seeking records containing specific identifying details relating to all Level One sex offenders registered in Cowlitz County. CP 4. Pursuant to RCW 42.56.520(2), CCSO notified thirds persons ("John Does") affected by the release that the records had been requested, no exemptions apply to their release, and the records would be released on a date certain absent issuance of an injunction by a court of competent jurisdiction. John Does sought injunctive relief from the Cowlitz County Superior Court preventing the release of their records citing rights to privacy

and safety concerns. CP 1. Requestor Curtis Hart responded asserting his right to receive the requested records and denying the concerns cited by John Does. CP 110 -115. CCSO appeared and specifically noted that it did not assert any exemptions precluding the release of the records, but affirmed its right to provide third party notice under RCW 42.56 and acknowledged that John Does may pursue injunctive relief before the court. CP 73.

The Cowlitz County Superior Court found that requestor Curtis Hart will make irresponsible and immature use of the records, but that they are not exempt from disclosure under the act. The court denied John Does motion for injunctive relief, ordered the records released, but stayed the order pending review from this court. CP 73-74.

#### **IV. ARGUMENT**

##### **A. Level One Sex Offender Records are not exempt from disclosure under the public records act**

The Washington State Supreme Court has directly addressed the issue of whether level one sex offender records are exempt from disclosure under the Public Records Act or any other statutes and held that such records are indeed subject to disclosure. *Doe ex rel. Roe v. Washington State Patrol*, 185 Wash. 2d 363, 372, 374 P.3d 63, 67 (2016). In *Doe*, a requestor sought similar information related to sex offenders including sex offender registration forms from Washington State Patrol and the Washington

Association of Police Chiefs and Sheriffs. *Id.* at 368. The agencies were prepared to release the records and notified the level one offenders of the intended release. The offenders, John Does, sought to enjoin disclosure of the records. *Id.* Finding no specific exemptions for the records within the Public Records Act itself, the Supreme Court looked to RCW 4.24.550 to determine whether it is an “other statute” that precludes release. *Id.* at 371-74. The Court ultimately held that the records must be disclosed because no statutory exemptions apply.

“The PRA, and our case law surrounding it, demands that an “other statute” exemption be explicit. Where the legislature has not made a PRA exemption in an “other statute” explicit, we will not. Because of the presumption of \*385 disclosure under the PRA, the lack of any prohibitory language - save for a *mandate against confidentiality* - or explicit exemption in RCW 4.24.550 and this state's precedent in “other statute” cases, we hold that RCW 4.24.550, specifically RCW 4.24.550(3)(a), is not an “other statute” under RCW 42.56.070(1) and that level I sex offender registration information is subject to disclosure under a PRA request.” *Id.* at 384–85.

The facts in the case at hand are nearly identical. A requestor has sought level one sex offender records from the Cowlitz County Sheriff's Office (“CCSO”). CCSO has prepared the records and is prepared to release the records but for the existing court order enjoining release. While John Does may have individual and case specific reasons that they may seek

injunctive relief, no specific exemptions within the public records act preclude the release of level on sex offender records.

**1. Level one sex offender records are not “investigative records” exempt from disclosure**

John Does assert that their records are exempt under RCW 42.56.540. Although the Court in *Doe* found that no exemptions apply, it did not specifically address whether the records are exempt as investigative records. *Id.* at 372. The Public Records Act requires the disclosure of all public records unless specifically exempt. As such, exemptions are construed narrowly. *Brouillet v. Cowles Pub.*, 114 Wn.2d 788, 793 (1990).

RCW 42.56.240(1) exempts disclosure of “intelligence information” and “specific investigative records” compiled by investigative, law enforcement, penology agencies, if the information is “essential to effective law enforcement” or needed to protect a person’s privacy rights. “Specific . . . investigative records” are the result of an investigation focusing on a particular person, *Laborers Int’l Union of North America, Local No. 374 v. City of Aberdeen*, 31 Wn.App. 445, 448, 642 P.2d 418 (1982), or an investigation to ferret out criminal activity or to shed light on specific misconduct. *Dawson v. Daly*, 120 Wn.2d 782, 792-93, 845 P.2d 995 (1993). This exemption generally applies to production of records related to ongoing criminal investigations because premature disclosure

could jeopardize the investigation. *Newman v. King County*, 133 Wash.2d 565, 947 P.2d 712 (1997). However, once the investigation is completed, available records must be produced unless another exemption applies. *Sargent v. Seattle Police Department*, 179 Wash.2d 376, 314 P.3d 1093 (2013). Specifically, after a criminal case is referred to a prosecutor for a charging decision, the investigation is considered complete and the records of the investigation are no longer categorically exempt even if the matter is later referred back for additional investigation. *Id.*

Instead, if the investigation is complete, the records cannot be withheld unless the law enforcement agency can establish that nondisclosure of the particular record is essential to effective law enforcement, or disclosure would violate a person's right to privacy or another exemption applies. *Id.* Here, not only have the investigations been completed, but the John Does' sex offenses have been fully adjudicated. Accordingly, there is no facial argument that level one sex offender registration records are investigative records.

**2. Release of level one sex offender records does not violate John Does' right to privacy**

Even if the Court finds that the records are investigative in nature, non-disclosure of the records is not necessary to protect John Does' privacy.

To be subject to the privacy exemption, the records must be (1) investigative in nature; (2) compiled by an investigative, law enforcement, or penology agency; **and** (3) essential to law enforcement or protection of privacy. (Emphasis added.) *Koenig v. Thurston County*, 175 Wash.2d 837, 287 P.3d 523, (2012).

The Public Records Act specifically states that “a person's "right to privacy," "right of privacy," "privacy," or "personal privacy," for purposes of the Act, “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.” Speaking generally about the right of privacy, the Washington Supreme Court has stated the right of privacy applies “only to the intimate details of one's personal and private life”, in contrast to actions taking place in public that were observed by 40 other people. *Dawson v. Daly* at 796, citing *Spokane Police Guild v. Liquor Control Bd.*, 112 Wash.2d 30, 38, 769 P.2d 283 (1989).

Washington Courts have addressed the question of privacy protection and found that the release of records of unsubstantiated allegations of sexual misconduct would be highly offensive. *Bellevue John Does 1-11 v. Bellevue School District #405* (2005) 129 Wash.App. 832, 120 P.3d 616, review granted in part 158 Wash.2d 1024, 149 P.3d 376, reversed

in part 164 Wash.2d 199, 189 P.3d 139. Conversely, the court further found that release of a police record of a drunk driving arrest including a strip search, even though the arrest did not lead to conviction is not protected by the privacy exemption. *Id.* Here, release of level on sex offender records is not highly offense particularly where the offenses are substantiated through court adjudication and are also already a matter of public record within the Superior Courts.

Next, release of the records is certainly of legitimate concern to the public. Again, Washington Courts have directly addressed whether the privacy exemption applies to certain types of sex offender records. In *Koenig*, the Court of Appeals held that nondisclosure of information about sex offenders in Special Sex Offender Sentencing Alternative (SSOSA) evaluation form was not essential to protecting sex offender's right to privacy, such that it would have exempted pursuant to investigative records compiled by law enforcement exemption in Public Records Act *Koenig v. Thurston County* (2010) 155 Wash.App. 398, 229 P.3d 910, amended on reconsideration, review granted 170 Wash.2d 1020, 245 P.3d 774, affirmed in part, reversed in part reconsideration denied, as amended 175 Wash.2d 837, 287 P.3d 523. The Court additionally found that public had legitimate interest in obtaining information about sex offender in order to understand

sentencing decision and to guard against particular offender's risks to community. Id. The same reasoning applies here where the public has an interest in guarding against any risks presented by offenders in their community.

John Does have failed to establish that their level on sex offender records are investigative in nature or that their nondisclosure is essential to the protection of their privacy. Accordingly, the investigative records exception to the public records act does not apply and the records are subject to disclosure.

**B. Agencies may not inquire into a public records requestor's intent**

A person making a public records request is not required to give a reason for the request, unless the request is for lists of individuals. *Dawson v. Daly* at 798. ; *Yacobellis v. City of Bellingham*, 64 Wash.App. at 303, 825 P.2d 324 (1992). An agency must fulfill requests and may not inquire into the purpose of the request unless the request is for "lists of individuals" is "for commercial purposes." RCW 42.56.070(9). See also 1988 Att'y Gen. Op. No. 12 (access to list of individuals may be conditioned upon non-commercial use). Here, the requestor did not seek a list of individuals. Therefore, CCSO may not consider the purpose of the request.

Appellant John Does seek injunctive relief from the court on the basis that this particular requestor poses a factually specific and particularized risk of harm or threatened harm based on past conduct and widely publicized threats against them as a class. While CCSO, as a public agency under the public records act is not permitted to inquire into the purpose of the requestor, it takes no position on the Court's inquiry into the intent of the requestor or determination of whether this requestor poses a threat to these John Does

**V. CONCLUSION**

Level One Sex Offender records are subject to disclosure under the public records act. There are no applicable exemptions that prohibit their disclosure. CCSO takes no position as to whether John Does have established a sufficient basis.

Respectfully submitted this 22 day of August, 2019.

Ryan P. Jurvakainen  
Prosecuting Attorney  
Cowlitz County, Washington

  
\_\_\_\_\_  
DANA GIGLER, WSBA #38193  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I, Julie Dalton, certify that opposing counsel was served Brief of Respondent electronically via the Division II portal:

[emarchbanks@navigatelawgroup.com](mailto:emarchbanks@navigatelawgroup.com)

[jeffreyk@nwjustice.org](mailto:jeffreyk@nwjustice.org)

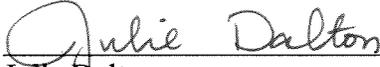
[lisaw@nwjustice.org](mailto:lisaw@nwjustice.org)

[jbaldwin@walstead.com](mailto:jbaldwin@walstead.com)

[curtishart@lpwa.org](mailto:curtishart@lpwa.org)

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on August 22, 2019.

  
\_\_\_\_\_  
Julie Dalton

# COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

August 22, 2019 - 2:28 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52845-2  
**Appellate Court Case Title:** John Doe 1-15, Appellant v. Cowlitz County Sheriff's Office, Respondent  
**Superior Court Case Number:** 18-2-01064-1

### The following documents have been uploaded:

- 528452\_Briefs\_20190822142645D2138384\_1381.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was John Does vs Cowlitz Co Sheriffs Ofc COA 52845-2-II Brief of Respondent.pdf*

### A copy of the uploaded files will be sent to:

- curtishart@lpwa.org
- emarchbanks@navigatelawgroup.com
- jbdwain@walstead.com
- jeffreyk@nwjustice.org
- lisaw@nwjustice.org
- sherrills@nwjustice.org

### Comments:

---

Sender Name: Julie Dalton - Email: dalton.julie@co.cowlitz.wa.us

**Filing on Behalf of:** Dana Gigler - Email: Giglerd@co.cowlitz.wa.us (Alternate Email: appeals@co.cowlitz.wa.us)

**Note: The Filing Id is 20190822142645D2138384**