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Court of Appeals
Division III
State of Washington
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No. 35555 -1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

TYE SHEATS,

Appellant,

vs.

CITY OF EAST WENATCHEE, DOUGLAS COUNTY,
CITY OF WENATCHEE, CHELAN COUNTY, and
THE WENATCHEE WORLD NEWSPAPER,

Respondents.

BRIEF OF RESPONDENT DOUGLAS COUNTY

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	COUNTER-STATEMENT OF ISSUES	3
III.	COUNTER-STATEMENT OF THE CASE	3
	Statement of Procedure	3
	Statement of Facts	6
IV.	ARGUMENT	9
	A. <i>Summary of Argument.</i>	9
	B. <i>Sheats' Admissions of Theft, Dishonesty and Untruthfulness Constitute Potential Impeachment Evidence that Must be Disclosed in Criminal Cases in Which He is a Witness</i>	10
	C. <i>Potential Impeachment Evidence Must Be Disclosed Even If It Is Privileged or Confidential.</i>	13
	D. <i>Potential Impeachment Evidence Must Be Disclosed Even If It Is Subject to a Right of Privacy</i>	15
	E. <i>The Redacted Polygraph Report Held as Potential Impeachment Evidence is a Public Record Subject to Dissemination</i>	18
V.	CONCLUSION	23
	APPENDIX – Redacted Polygraph Report	

TABLE OF AUTHORITIES

Cases

Federal Cases

- Brady v. Maryland*,
373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) . . . 10, 17, 22
- Giglio v. United States*,
405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) . . . 10, 17, 22
- Pennsylvania v. Ritchie*,
480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987) .11, 14, 17, 22
- United States v. Bagley*,
473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985) .10, 12, 22

Washington Cases

- Brouillet v. Cowles Publishing Co.*,
114 Wn.2d 788, 791 P.2d 526 (1990) 13, 21
- City of Lakewood v. Koenig*,
182 Wn.2d 87, 343 P.3d 335 (2014) 20
- Doe G v. Department of Corrections*,
__ Wn.2d __, 410 P.3d 1156 (February 22, 2018) 20
- Hearst Corp. v. Hoppe*,
90 Wn.2d 123, 580 P.2d 246 (1978) 14, 23
- Kitsap Cty. Prosecuting Attorney's Guild v. Kitsap Cty.*,
156 Wn.App. 110, 118, 231 P.3d 219 (2010). 20
- Martin v. Riverside Sch. Dist. No. 416*,
180 Wn.App. 28, 329 P.3d 911 (2014) 21
- O'Hartigan v. Department of Personnel*,
118 Wn.2d 111, 821 P.2d 44 (1991) 15, 16

<i>State v. Davila</i> , 184 Wn.2d 55, 357 P.3d 636 (2015)	11, 12, 17, 21
---	----------------

Other Cases

<i>Commonwealth v. Barroso</i> , 122 S.W.3d 554 (Ky. 2003)	14
---	----

<i>Kirby v. State</i> , 581 So.2d 1136 (Ala.Crim.App. 1990)	15
--	----

<i>People v. Stanaway</i> , 446 Mich. 643, 521 N.W.2d 557 (1994)	14
---	----

Statutes

RCW Chapter 42.56, Public Records Act	passim
RCW 42.56.010(3)	18
RCW 42.56.030	20
RCW 42.56.050	19, 20
RCW 42.56.070(1)	18, 19, 23
RCW 42.56.230(3)	19, 20, 22
RCW 42.56.250(1)	19, 20
RCW 42.56.250(2)	19, 20

Administrative Regulations

WAC 139-07-040(1)	13, 22, 23
-----------------------------	------------

Court Rules

CrR 4.7(a)	12
CrRLJ 4.7(a)	12

Rules of Professional Conduct

RPC 3.8(d)	12
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I. INTRODUCTION

This case involves issues pertaining to dissemination of a pre-employment polygraph report as potential impeachment evidence in criminal cases and dissemination in response to Public Records Act requests.

Tye Sheats is employed by the City of East Wenatchee as a police officer. Sheats applied for employment with the City of Wenatchee Police Department. Sheats participated in a polygraph examination as part of the application process.

The polygraph examiner provided a written report to the City of Wenatchee regarding Sheat's polygraph examination. The polygraph report contained several admissions made by Sheats involving acts of theft, untruthfulness and dishonesty.

The Douglas County Prosecuting Attorney's Office learned of the information in the polygraph report and, ultimately, obtained a copy of the report from the City of Wenatchee in response to a subpoena duces tecum. After reviewing the polygraph report, the Douglas County Prosecuting Attorney's Office provided redacted copies to the City of East Wenatchee and to criminal defense attorneys defending Douglas County cases in which Sheats was identified as a witness for the State.

The Wenatchee World newspaper made public record requests to the City of East Wenatchee and to Douglas County seeking a copy of the redacted polygraph report.

Sheats commenced an action in the Douglas County Superior Court attempting to block dissemination of the report in criminal cases and in response to Public Record Act requests. The written decision of the Superior Court approved the Prosecuting Attorney's redactions to the polygraph report, authorized disclosure of the redacted polygraph report in criminal cases as potential impeachment evidence, and authorized dissemination of the potential impeachment evidence as a public record. Sheats appeals from an adverse decision of the Superior Court.

The position of Douglas County is:

1. The redacted polygraph report containing Sheats' admissions of theft, dishonesty and untruthfulness constitutes potential impeachment evidence and disclosure of the evidence is required in criminal cases in which Sheats is identified as a prosecution witness; and
2. The redacted polygraph examination, held by the Prosecuting Attorney as potential impeachment evidence, is a

public record not exempt from dissemination under the Public Records Act.

II. COUNTER-STATEMENT OF ISSUES

1. Does a redacted pre-employment polygraph report containing a law enforcement officer's admissions of theft, dishonesty and untruthfulness constitute potential impeachment evidence subject to dissemination to criminal defense counsel in cases in which the officer is identified as a witness for the State?
2. Is a law enforcement officer's redacted pre-employment polygraph report, held by a prosecutor as potential impeachment evidence, a public record subject to dissemination under the Public Records Act?

III. COUNTER-STATEMENT OF THE CASE

Statement of Procedure

On July 26, 2017, Tye Sheats filed an ex parte motion in the Douglas County Superior Court seeking a temporary restraining order to enjoin the City of East Wenatchee, Douglas County, the City of Wenatchee, Chelan County and The Wenatchee World newspaper from "releasing and/or receiving any information from" the City of Wenatchee pre-employment polygraph of Sheats. CP 2.

The Superior Court issued a Temporary Order on Motion for Injunction that same day and enjoined the respondents from “disclosing or obtaining the requested report and/or information taken from the report.” CP 8. A hearing on the temporary restraining order was set for August 14, 2017. CP 8.

On July 28, 2017, Douglas County filed and served a Motion and Declaration for Dissolution of Temporary Order. CP 9. The grounds for Douglas County’s motion were based on Sheats’ failure to comply with CR 65(b):

1. Sheats obtained the Temporary Order without written or oral notice to Douglas County or the Douglas County Prosecuting Attorney of the date, time and place Sheats intended to obtain a temporary restraining order.
2. No specific facts are alleged supporting immediate and irreparable injury to Sheats.
3. Sheats did not certify in writing the efforts made to provide notice to the respondents of the date, time and place Sheats intended to obtain a temporary restraining order or the reasons why notice should not be required.
4. The Temporary Order was not endorsed with the date and hour of issuance.
5. The Temporary Order set a hearing on August 14, 2017, more than 14 days after its entry.

Further grounds for Douglas County’s motion were that Douglas County had not been served and that Sheats failed to post security

for respondents' costs and respondents' damages for being wrongfully enjoined or restrained, as required by CR 65(c).

On August 2, 2017, an Agreed Amended Temporary Order was entered. CP 48. The Agreed Amended Temporary Order allowed the City of East Wenatchee, the City of Wenatchee and Douglas County, in order to comply with prosecution constitutional and ethical duties, to disseminate redacted copies of the polygraph report to defense counsel in each criminal case in which Sheets was identified as a prosecution witness. CP 48-50.

The hearing on Sheats' Temporary Order and request for a permanent injunction was held in Superior Court on August 14, 2017. The Court issued a written decision on August 18, 2017, approving the Prosecuting Attorney's redactions to the polygraph report, authorizing disclosure of the redacted polygraph report in criminal cases as potential impeachment evidence, and authorizing dissemination of the potential impeachment evidence as a public record. CP 150.

Sheats filed his Notice of Appeal, *pro se*, on September 14, 2017. CP 170. The Superior Court has not entered Findings of Fact, Conclusions of Law and/or a Judgment in this case.

Statement of Facts

On June 2, 2017, Danielle R. Marchant, Assistant City Attorney for the City of Wenatchee, wrote to the Douglas County Prosecuting Attorney's office advising of the existence of potential impeachment evidence relating to EWPD Officer Tye Sheats. CP 15. Officer Sheats, appellant in this action, was an investigating law enforcement officer in several criminal cases pending in the Douglas County Superior Court. CP 11.

The potential impeachment evidence consisted of admissions made by Sheats during a 2016 City of Wenatchee pre-employment polygraph conducted by Sally VanBeek of Everett Polygraph Services, LLC, as contained in her polygraph report. CP 11-12, 16. As outlined in a potential impeachment evidence disclosure letter sent by Ms. Marchant to a Wenatchee Municipal Court criminal defense attorney, Sheats admitted at least 13 incidents when he engaged in thefts, dishonesty and untruthfulness occurring between 2000 and 2016. CP 12, 16-17. On June 14, 2017, the Douglas County Prosecuting Attorney's office made a public records request to the City of Wenatchee for the polygraph report containing the potential impeachment disclosure information. CP 18-19. The City denied the request, asserting categorical Public Records Act

exemptions under RCW 42.56.050, RCW 42.56.230(3), RCW 42.56.240(1), RCW 42.56.250 and WAC 139-07-040. CP 12, 20-23.

Sheats was identified as a State's witness in the case of *State v. Gensinger*, Superior Court No. 16-1-00236-0. CP 12. On June 29, 2017, the State filed a motion in *State v. Gensinger* for the Court's issuance of a subpoena duces tecum directing the City of Wenatchee to provide a copy of the polygraph. CP 12-13. Both Sheats and the City Attorney's Office for the City of Wenatchee were notified in writing of the State's Motion and a motion hearing set for July 10, 2017. CP 13. Sheats did not respond to the State's motion or appear at the hearing on July 10. CP 13. The City of Wenatchee took no position regarding the State's motion and did not attend the hearing. CP 13. The Court issued the requested subpoena duces tecum, which was then served on the City of Wenatchee. CP 13.

On July 11, 2017, the City of Wenatchee provided the Douglas County Prosecuting Attorney's Office with an *unredacted* copy of the polygraph report in response to the subpoena duces tecum. CP 13. A *redacted* copy of the report was then provided by the Prosecuting Attorney's Office to the East Wenatchee City Attorney and Police Department. CP 13. The Prosecuting Attorney's Office advised the City Attorney and Police Department that Sheats' *redacted* polygraph

examination report was being held as potential impeachment evidence that would be disclosed to defense counsel in criminal cases in which Sheats was identified as a witness for the State.

On July 13, 2017, the Douglas County Prosecuting Attorney's office disseminated a *redacted* copy of the polygraph report to each defense attorney having Douglas County Superior Court criminal cases in which Sheats was identified as a State's witness. CP 13, 41.

On or about July 17, 2017, the City of East Wenatchee received a public records request from The Wenatchee World newspaper seeking a copy of the polygraph report. CP 3-4. The City Attorney advised Sheats that a redacted copy of the polygraph report would be released under the Public Records Act unless Sheats obtained an injunction before July 27, 2017. CP 3-4. Sheats commenced this action in the Douglas County Superior Court on July 26, 2017. CP 2.

On July 27, 2017, Douglas County received a public records request from The Wenatchee World seeking a copy of the polygraph report. CP 42.

IV. ARGUMENT

A. Summary of Argument

The polygraph report containing Sheats' admissions of theft, dishonesty and untruthfulness constitutes potential impeachment evidence. Prosecuting authorities, whether county prosecuting attorneys or city attorneys, have constitutional and ethical duties to disclose potential impeachment evidence in criminal cases in which Sheats is identified as a prosecution witness. This disclosure is required, even if such evidence or information may be privileged or confidential, or touches upon Sheat's right of privacy.

The polygraph report, held by a prosecuting authority as potential impeachment evidence, is a public record subject to dissemination under the Public Records Act. Exemptions for employee information and employment application materials do not apply. Exemptions based, in part, on Sheats' right of privacy also do not apply, as there is a legitimate concern and interest of the public with respect to Sheats' admissions of theft, dishonesty and untruthfulness contained in the report.

B. *Sheats' Admissions of Theft, Dishonesty and Untruthfulness Constitute Potential Impeachment Evidence that Must Be Disclosed in Criminal Cases in Which He is a Witness*

The Prosecuting Attorney's office obtained and is holding Sheats' polygraph report as potential impeachment evidence, commonly referred to as *Brady* material. A prosecutor has a constitutional duty to disclose both exculpatory evidence and impeachment evidence favorable to a criminal defendant. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (Prosecutor's failure to disclose evidence favorable to an accused violates due process where the evidence is material to guilt or punishment, irrespective of the good faith or bad faith of the prosecutor); *Giglio v. United States*, 405 U.S. 150, 155, 92 S.Ct. 763, 31L.Ed.2d 104 (1972) (Prosecutor's failure to disclose promise of non-prosecution made by assistant prosecutor in exchange for witness' testimony held to violate due process, even though prosecutor had been assured by assistant no promises were made); *United States v. Bagley*, 473 U.S. 667, 678-684, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985) (Failure to disclose evidence that could have been used effectively to impeach a government witness violates due process and requires reversal if there is a reasonable probability the result of the proceeding would have been different);

Pennsylvania v. Ritchie, 480 U.S. 39, 57-58, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987) (Trial court's denial of defense motion seeking information in confidential child protective services file requires new trial if disclosure of information would have probably changed the outcome of the trial).

The Washington Supreme Court recently reviewed the State's obligation under *Brady* and its progeny in *State v. Davila*, 184 Wn.2d 55, 357 P.3d 636 (2015), a case in which a forensic scientist who tested DNA had been fired for incompetence and the information was not disclosed to the defense.

In order to establish a *Brady* violation, a defendant must establish three things: (1) "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching," (2) "that evidence must have been suppressed by the State, either willfully or inadvertently," and (3) the evidence must be material. *Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999).

State v. Davila, 184 Wn.2d at 69.

As noted above, "favorable" evidence under *Brady* includes impeachment evidence as well as exculpatory evidence. (Citation omitted)

Id. at 70.

Under *Brady*, the prosecution has a duty to seek out exculpatory and impeaching evidence held by other government actors. Thus, the prosecution "suppresses" evidence, for purposes of *Brady*, even if that evidence is

held by others acting on the government's behalf, e.g., police investigators. (Citations omitted)

Id., at 71.

Evidence is material under *Brady* "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." To satisfy this standard, a defendant need not demonstrate by a preponderance that he would have been acquitted had the suppressed evidence been disclosed. Instead, he or she must show only that "the government's evidentiary suppression 'undermines confidence in the outcome of the trial.' " (Citations omitted)

Id., at 73.

In addition to these constitutional due process obligations, a prosecutor has disclosure duties under rules CrR 4.7(a) and CrRLJ 4.7(a), and RPC 3.8(d).

Clearly, a witness' prior admissions of acts of theft, dishonesty and untruthfulness is evidence that has the potential to be used effectively to impeach the witness' credibility. When that witness is a law enforcement officer, the potential impeachment evidence must be disclosed. *United States v. Bagley, supra*; *State v. Davila, supra*.

C. Potential Impeachment Evidence Must Be Disclosed Even If It Is Privileged or Confidential

Sheats has asserted that the content of the polygraph report is confidential under WAC 139-07-040 and, therefore, is not subject to disclosure as potential impeachment evidence. WAC 139-07-040(1)(d) provides:

(1) Standards for polygraph and other truth verification assessments.

* * *

(d) Preemployment tests and assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement. The truth verification assessment questions should be simple, direct, and easily understood by the applicant. **Test information and results should be considered confidential** within the screening process to be used exclusively by the county, city, or state law enforcement agency to assist with the selection of their applicant.

(Emphasis added)

The phrase "should be considered confidential" in WAC 139-07-040(1)(d) does not mandate confidentiality nor does the language prohibit disclosure. An agency does not have the authority to confer or promise confidentiality of information, or to or define the scope of an exemption under the Public Records Act. *Brouillet v. Cowles Publishing Co.*, 114 Wn.2d 788, 791 P.2d 526 (1990)

(Superintendent of Public Instruction administrative regulation

guaranteed confidentiality of details of teaching certificate revocations held to exceed authority of the agency); *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 137, 580 P.2d 246 (1978) (County assessor lacked authority to define assessment records as exempt under the Public Records Act).

Confidentiality and/or privilege are not grounds preventing disclosure of favorable evidence to the defense. In *Pennsylvania v. Ritchie*, 480 U.S. at 57-58, the Supreme Court held a criminal defendant has a due process right to obtain favorable evidence contained in confidential records held by the state, specifically records held by the state's child protective services agency.

State courts have ruled similarly. In *Commonwealth v. Barroso*, 122 S.W.3d 554 (Ky. 2003), Kentucky's Supreme Court held a criminal defendant was entitled to obtain *in camera* review of a witness' privileged and confidential psychiatric records to determine if the records contained potential impeachment disclosure evidence. In *People v. Stanaway*, 446 Mich. 643, 521 N.W.2d 557 (1994), the Michigan Supreme Court held the confidentiality of witnesses' social worker, juvenile diversion and rape-shield records must yield to a criminal defendant's due process right to a fair trial when the records are likely to contain favorable information necessary to the defense.

In *Kirby v. State*, 581 So.2d 1136 (Ala.Crim.App. 1990), the court remanded the criminal case and held that failure of the prosecutor to provide exculpatory information contained in a witness' privileged psychiatric records, if known to the prosecutor, would entitle the defendant to a new trial.

If, for the purposes of this argument, the administrative regulation confers confidentiality on pre-employment polygraph reports, the regulation does not apply. Douglas County does not hold the report as a prospective or current employer. The Douglas County Prosecuting Attorney's Office obtained a copy of Sheats' polygraph in response to a subpoena duces tecum issued by the Superior Court in a felony criminal prosecution, after providing Sheats an opportunity to oppose issuance of the subpoena.

*D. Potential Impeachment Evidence Must Be
Disclosed Even If It Is Subject to a Right of Privacy*

Sheats asserts that disclosure of the redacted polygraph report violates his right to privacy. The Supreme Court has held that the constitutional right to privacy, as pertains to the nondisclosure of intimate person information, is not a fundamental right. *O'Hartigan v. Department of Personnel*, 118 Wn.2d 111, 821 P.2d 44 (1991)
(Governmental interest in ensuring law enforcement officers are of

the highest moral and ethical character outweighed the Washington State Patrol applicant's right to privacy asserted to avoid polygraph examination).

The interest in confidentiality, or nondisclosure of personal information, has not been recognized by this court as a fundamental right requiring utmost protection. In *Peninsula Counseling Ctr. v. Rahm*, 105 Wash.2d 929, 936–37, 719 P.2d 926 (1986), we held that under both the Washington and federal constitutions, the State had a legitimate interest in disclosure of patient records for the purpose of complying with a federal statutory requirement for the availability of federal funds. In so holding, we followed the rational basis analysis: disclosure of intimate information to governmental agencies is permissible if it is carefully tailored to meet a valid governmental interest, and provided the disclosure is no greater than is reasonably necessary.

O'Hartigan v. Dep't of Pers., 118 Wn.2d at 117.

The right to nondisclosure of personal matters is a valued right meriting constitutional protection. However, the right is not absolute. Where the State has a legitimate governmental interest, some intrusion upon that right may be justified. We have recognized that the State Patrol has a legitimate interest in ensuring that prospective law enforcement employees are of the highest moral and ethical character possible. We hold this interest is sufficient to justify the polygraph's intrusion upon O'Hartigan's right to privacy, subject to guidelines.

Id., 118 Wn.2d at 124.

There is a legitimate governmental interest in the honesty and truthfulness of law enforcement officers, the reliability of law enforcement officer testimony, and the gathering, compiling and disclosing of potential impeachment evidence regarding law

enforcement witnesses. *Brady v. Maryland, supra; Giglio v. United States, supra; Pennsylvania v. Ritchie, supra; State v. Davila, supra.*

This clearly established governmental interest overrides Sheats's right to privacy with respect to disclosure of the redacted polygraph examination report in criminal cases where Sheats is a witness for the prosecution.

Contrary to Sheats' assertions, his admissions regarding thefts, dishonesty and untruthfulness are potentially admissible as impeachment evidence and are subject to disclosure by the prosecution. All other information in the polygraph report not constituting Sheats' admissions has been redacted from the copy of the report disseminated by the Prosecuting Attorney's Office to criminal defense counsel. It is the criminal defense counsel's decision in each case whether the potential impeachment evidence will be used during cross-examination of Sheats. The trial judge will determine what impeachment evidence, if any, is admissible, on a case-by-case basis.

The redacted polygraph report may be disclosed and disseminated as potential impeachment evidence. The Superior Court did not err.

E. The Redacted Polygraph Report Held as Potential Impeachment Evidence is a Public Record Subject to Dissemination

Douglas County is not asserting that Sheats' polygraph report, whether redacted or unredacted, is subject to dissemination under the Public Records Act when held as employee information or employment application materials. Douglas County did not challenge the Public Records Act exemption log of the City of Wenatchee claiming a categorical exemption with respect to Sheats' polygraph report.

The redacted polygraph report is held by the Prosecuting Attorney as potential impeachment evidence. The report is a public record.

"Public record" includes 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 regardless of physical form or characteristics.

RCW 42.56.010(3).

Sheats asserts that the redacted polygraph report held by the Prosecuting Attorney is exempt from disclosure under the Public Records Act. The Public Records Act provides at 42.56.070(1):

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, **unless the record falls within the specific exemptions of subsection (6) of this section, this**

chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(Emphasis added)

Sheats bases his action for an injunction on the following

Public Records Act exemptions:

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, 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.** The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

RCW 42.56.050 (Emphasis added)

The following personal information is exempt from public inspection and copying under this chapter:

* * *

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency **to the extent that disclosure would violate their right to privacy**

RCW 42.56.230(3) (Emphasis added)

The following **employment and licensing information** is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data **used to administer a license, employment, or academic examination;**

(2) **All applications for public employment, including the names of applicants, resumes, and other related materials submitted** with respect to an applicant

RCW 42.56.250(2) (Emphasis added)

RCW 42.56.230(3) and RCW 42.56.250(1) and (2) are not applicable to the redacted polygraph report held by the Douglas County Prosecuting Attorney as potential impeachment disclosure evidence. The redacted polygraph report is not held as Douglas County employee information or as part of an application for Douglas County employment. Public Records Act exemptions are to be “narrowly construed.” RCW 42.56.030. Disclosure is limited only by “precise, specific and limited exemptions” or other statutes prohibiting disclosure of specific information or records. *Doe G v. Department of Corrections*, __ Wn.2d __, 410 P.3d 1156, 1166 (February 22, 2018) (Sexual psychopathy reports held by the Department of Corrections are forensic examinations, do not contain health care information, and are not exempt under the Public Records Act); *City of Lakewood v. Koenig*, 182 Wn.2d 87, 94, 343 P.3d 335 (2014) (The Public Records Act does not contain general exemptions to protect

individual privacy and specific exemptions must be identified with particularity); *Kitsap Cty. Prosecuting Attorney's Guild v. Kitsap Cty.*, 156 Wn.App. 110, 118, 231 P.3d 219 (2010) (Employees' cities and towns of residence are not exempt under RCW 42.56.250 as a "residence address" and are subject to disclosure); RCW 42.56.030; RCW 42.56.070(1).

Further, as to RCW 42.56.230(3), "personal information" is only exempt to the extent it would violate a right to privacy. In order to violate a right to privacy the information must be "not of legitimate concern to the public." RCW 42.56.050(1). The right to privacy must be balanced against the legitimate concern of the public with respect to the information contained in requested records. In *Martin v. Riverside Sch. Dist. No. 416*, 180 Wn.App. 28, 33, 329 P.3d 911, 913 (2014), Martin sought to enjoin dissemination of employment records pertaining to investigation of his sexual misconduct. The Court of Appeals upheld the dissemination and discussed balancing the right to privacy against the legitimate concern of the public:

Mr. Martin contends that the records are exempt from disclosure pursuant to the personal information exemption, RCW 42.56.230(3), and the investigative records exemption in RCW 42.56.240(1), in the PRA. In both of these exemptions, Mr. Martin must establish that he has a right to

privacy in the records and that disclosure of the records would violate his right to privacy.

Generally, the right to privacy applies “only to the intimate details of one's personal and private life.” *Spokane Police Guild*, 112 Wash.2d at 38, 769 P.2d 283. Under the PRA, 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.” RCW 42.56.050. It is not enough that the disclosure of personal information may cause embarrassment to the public official or others. RCW 42.56.550(3). Even if the disclosure of the information would be offensive to the employee, it shall be disclosed if there is a legitimate or reasonable public interest in the disclosure. *Tiberino v. Spokane County*, 103 Wash.App. 680, 689, 13 P.3d 1104 (2000).

There is a legitimate governmental interest in the honesty and truthfulness of law enforcement officers, the reliability of officers' testimony, and the gathering, compiling and disclosing of potential impeachment evidence regarding law enforcement witnesses. *Brady v. Maryland, supra; Giglio v. United States, supra; United States v. Bagley, supra; Pennsylvania v. Ritchie, supra; State v. Davila, supra.* There is a corresponding legitimate public concern that law enforcement officers are honest and truthful, that trials are conducted fairly, and that prosecutors fully disclose evidence under their constitutional and ethical duties. Dissemination of the redacted polygraph report is not exempt under RCW 42.56.230(3).

In addition to these specific Public Records Act exemptions, Sheats asserts Washington Administrative Code, WAC 139-07-040(1), relating to law enforcement officer pre-employment screening, as discussed *supra*. The redacted polygraph report is not held by the Douglas County Prosecuting Attorney's Office as an employer or as part of an application for employment. WAC 139-07-040(1) is not an "other statute" which exempts or prohibits disclosure of specific information or records under RCW 42.56.070(1). The administrative regulation cannot create or define the scope of an exemption under the Public Records Act. *Brouillet v. Cowles Publishing Co., supra*; *Hearst Corp. v. Hoppe, supra*.

The redacted polygraph report, held as potential impeachment evidence, is subject to dissemination under the Public Records Act. The Superior Court did not err.

V. CONCLUSION

The redacted polygraph examination report containing Sheats' admissions of theft, dishonesty and untruthfulness is potential impeachment evidence subject to disclosure under constitutional and ethical duties to criminal defendants. Disclosure is required in case in which Sheats is identified as a witness for the State, even if such

information may be privileged or confidential or subject to Sheats' right of privacy.

The redacted polygraph report, held by a prosecuting authority as potential impeachment evidence, is subject to dissemination under the Public Records Act. There is a legitimate concern and interest of the public with respect to Sheat's admissions of theft, dishonesty and untruthfulness as contained in the polygraph report, and to know that trials are conducted fairly by prosecutors by complying with their constitutional and ethical duties of disclosure. No Public Records Act exemption applies.

Respectfully submitted this 14th day of March, 2018.



Steven M. Clem, WSBA #7466
Prosecuting Attorney
For Respondent Douglas County

APPENDIX

Redacted Polygraph Report
Everett Polygraph Services, LLC
May 13, 2016



Everett Polygraph Services, LLC

May 13, 2016

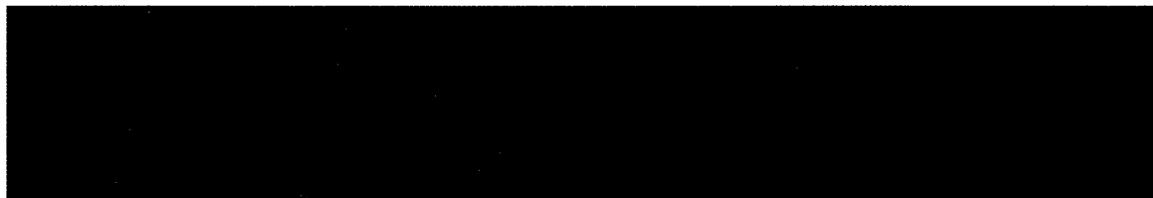
Captain Doug Jones
Wenatchee Police Department
P.O. Box 519
Wenatchee, WA 98807

Candidate: Tye R.C. Sheats

On the above date, Mr. Sheats voluntarily submitted to a pre-employment screening examination.



During the pre-test interview, the most relevant information obtained from Mr. Sheats relates to the following;



Employment



[REDACTED]

2016 he falsified his traffic stop statistics at his current employer. Mr. Sheats reports that this was not intentional on his part. He states that he was required to make three contacts per hour and was making three tally marks on the report sheet, but then making a diagonal tally mark over the three marks. He states that the person he was turning the report sheet into, interpreted the diagonal mark as a fourth contact.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Driving

[REDACTED]

[REDACTED]

[REDACTED]

2009 he filed a false or misleading auto insurance claim. Mr. Sheats reports that he had his car stolen and reported it to the police and his insurance. He states that he paid \$1,600 for the vehicle, but reported to the insurance company that he paid \$4,000 for it. He states that he insurance learned from another source that he only paid \$1,600 for it and denied his claim outright.

Weapons

[REDACTED]

[REDACTED]

Mr. Sheats reports that he has unlawfully poached deer and turkey with a firearm on three occasions. He states that the last time was in 2008. He states that this was done in Ellensburg and Clallam County.

[REDACTED]

Vandalism

2005 or 2006 he punched the side of car belonging to an unknown person. Mr. Sheats reports that he was intoxicated and doesn't recall what he was angry about. He states that this occurred in Ellensburg. He states that he left a dent in the car and estimates the value of that damage at a few hundred dollars.

1997 he and some of his friends lit some grass in a large field on fire in Port Angeles. Mr. Sheats reports that after lighting the fire, they ran from the field. He states that the fire caused no damage. However, he states that a man with an excavator was nearby and put dirt on the fire to put it out. He states that the man found them later on a weekend at a schoolyard and confronted them about starting that fire.

Theft

2000 to 2005 he shoplifted from stores on approximately twenty occasions. Mr. Sheats reports that he stole baseball cards, nuts and bolts and switched price tags on merchandise to a lower price. He estimates the total value of the thefts at \$800 to \$1,000.

2001 he stole a pair of sunglasses from a friend. Mr. Sheats estimates the value at \$70.

2003 or 2004 he burglarized an unlocked vehicle in Port Angeles and stole a radar detector. Mr. Sheats estimates the value of the theft at \$50 to \$100.

2004 he burglarized another vehicle that was parked in a field. Mr. Sheats reports that he stole interior parts he estimates the value of \$20.

2004 he stole a rear bumper off a vehicle he describes as "destroyed and left in the mountains" in the upper Sequim area. Mr. Sheats estimates the value of the theft at \$100.

2007 he stole nuts and bolts from his employer. Mr. Sheats estimates the value of the thefts at \$20 to \$30.

2010 he stole "defective" socks from his employer and used his employer's tool repair kits for the sockets without permission. Mr. Sheats estimates the value of the thefts at \$20.

2013 he has used what he describes as "excess" handgrips from his employer with his personal AR rifle.

[REDACTED]

[REDACTED]

[REDACTED]

Fraud and Deceit

2008 to 2013 he altered vehicle titles sales prices. Mr. Sheats reports that he bought and sold used cars and altered the titles to reflect lower purchase prices to avoid paying higher sales tax. He states that he purchased four or five cars per year.

2009 or 2010 he fraudulently received free television cable services for his mother's residence. Mr. Sheats reports that he had a friend who worked for a cable company in Port Angeles whom he traded free cable for his personal fitness training services. He states that he benefited from this as he was living with his mother at the time.

[REDACTED]

[REDACTED]

Lateral Entry Candidates

[REDACTED]

[REDACTED]

Mr. Sheats reports that he received a thank you card and monetary gift card from a citizen after he completed their investigation. He states that he has also received coffee gift cards from the traffic safety coordinator.

He reports that he has ran his own vehicles in ACCESS for the purpose of obtaining the makes, models and other information to order the right parts and repair catalogues for them. When asked why he didn't get that information from the titles, he replied that he wasn't at home at the time.

2011 he kept for his own personal use a pair of gloves that he found on duty, while investigating a possible vehicle prowl crime.

2012 he kept for his own personal use a multi-tool that he removed while on duty, from a driver on a traffic stop. Mr. Sheats reports that he forgot to return the item to the driver. He states that he only used it while on duty.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



If you have any questions or need further assistance or information, please contact me by telephone/voicemail at (425) 367-1210, or email at s_vanbeek@msn.com.

Respectfully,

Sally VanBeek

Polygraph Examiner

DECLARATION OF SERVICE BY MAIL

I declare, under penalty of perjury under the laws of Washington, that I served a copy of the foregoing Brief of Respondent Douglas County on each of the persons set forth below, by depositing the same in separate pre-addressed envelopes, postage prepaid, with the U.S. Postal Service at Waterville, Washington, on this 4th day of March, 2018.

Signed this same day at Waterville, Washington.



Sandra Gabriel

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