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**THE SUPREME COURT OF WASHINGTON**

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BAINBRIDGE ISLAND POLICE GUILD and STEVEN CAIN,

Respondents,

v.

CITY OF PUYALLUP, a municipal corporation, CITY OF MERCER  
ISLAND, a municipal corporation,

Respondents

and

KIM KOENIG, an individual, and LAWRENCE KOSS, an individual,  
and ALTHEA PAULSON, an individual

Appellants

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STATE OF WASHINGTON  
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**AMICUS CURIAE BRIEF OF ALLIED DAILY NEWSPAPERS  
OF WASHINGTON, WASHINGTON NEWSPAPER  
PUBLISHERS ASSOCIATION, THE SEATTLE TIMES,  
TACOMA NEWS TRIBUNE, TRI-CITY HERALD, AND  
CENTER FOR JUSTICE**

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## I. IDENTITY AND INTEREST OF AMICI

*Amicus curiae* are newspaper associations Allied Daily Newspapers of Washington (“ADNW”) and Washington Newspaper Publishers Association (“WNPA”), daily newspapers The Seattle Times, The Tacoma News-Tribune, and Tri-City Herald and advocacy group Center for Justice (collectively hereinafter “Amici”).

This case deals with the test for “privacy” in exemptions to the Public Records Act (“PRA”) and specifically whether the press and public will be denied all records of public employees investigated for on-the-job misconduct simply because the agency deems the allegations “unsubstantiated.” It will address whether the requestors will be denied records even when they ask for records without using a name based on the theory they can learn redacted names by virtue of outside or previously obtained information. This case forces this Court to take a hard look at several of its previous decisions—and the important principles this Court has espoused—in the context of a case where a requestor asked for the records of a known individual whose records were previously released without his objection and where the facts are now generally known. The rule the Guild and Officer Cain (collectively hereinafter “Cain”) ask this Court to adopt would deny the press and public records essential to government monitoring and government accountability. This Court’s

decision will directly impact the Amici, who are frequent users of the PRA to inform their readers and constituents. Amici have a legitimate interest in assuring the Court is adequately informed about the issues and impact its decision will have on all record requestors, not only the parties.

## **II. STATEMENT OF THE CASE**

Amici adopt the Statement of the Case sections provided by Koenig in her two Briefs of Appellants. While the records at issue here cannot currently be obtained from the government by Amici or any member of the public, at least two journalists obtained copies before the instant injunctions were issued—after notice to the officer and without any objection—and the press has written extensively about the records' contents. This Court should be allowed to see those records since the trial courts possessed them to perform in camera reviews, although it is not clear the lower courts made them part of the record or that they have been transmitted to this Court for review. Drawing from the descriptions of those records contained throughout the Clerk's Papers, Amici are in the unique position of seeing the type of information the public and press will be denied if Cain's requested test became the law in the future.

The records which would be denied illustrate that Kim Koenig, a female attorney and passenger in a vehicle during a traffic stop, was handcuffed by Officer Cain after she got out of the vehicle to advise her

husband as his attorney how to respond to questioning. CP121-26, 158, 162, 166, 215-16.<sup>1</sup> Cain led Koenig behind his vehicle where the other interviewed officers all acknowledged she was out of their view. CP 43. An interviewed female officer admitted she heard Koenig yelling from behind the vehicle and saying Cain was “dry humping” Koenig but that she did not intervene because she thought Koenig was drunk. CP 43-44. Another officer who had been Cain’s supervisor admitted Cain had a previous sustained complaint for having sex with a suspect (CP 44, see also CP 216-18, 243-43); the investigation mentioned another prior complaint against Cain—this one for filing a false report. CP167. Although a log showing the sustained complaint was located, and the agency acknowledged such a complaint should not lawfully have been destroyed at the time, the sustained complaint could not be located or produced. CP 42, 45, 167-68. Cain’s declaration never denies such a complaint existed; he only argued such complaint is not in the record. CP377, 385-86.

A trial judge reviewed the records in camera during this case. He acknowledged that only law enforcement witnesses were interviewed during the investigation and that Koenig and her husband were not questioned. CP13. The judge held the investigation did not establish

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<sup>1</sup> Amici identify the Clerk’s Papers for the Puyallup action as CP and for the Mercer Island action as “C/P”.

Koenig's allegations were "false" only that the conclusion was they were "not substantiated." CP15. It is against this backdrop this Court examines Cain's request to block all release of these and similar investigations in the future.

### III. ARGUMENT AND AUTHORITY

Cain argues that his privacy will be violated if the records are disclosed and that redaction of his name may allow a requestor to connect the dots and discover his identity so no records of the investigation may be released. Cain further argues that it is irrelevant to the privacy analysis whether the allegations and his identity are already known. Cain's arguments are erroneous and must be rejected for several reasons.

The exemption upon which Cain relies for his privacy argument is the investigative agency exemption, RCW 42.56.240(1).<sup>2</sup> See CP 57-64; C/P 51-61. Cain is not arguing it is essential to effective law enforcement to shield these records (nor would such a claim succeed). Rather, Cain is arguing it is "essential" to protect his "right to privacy" (as defined by

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<sup>2</sup> The Pierce County trial court in the action against Puyallup apparently believed that the exemption at issue was RCW 42.56.230(2), the exemption discussed in **Bellevue John Does v. Bellevue School District #405**, 164 Wn.2d 199, 189 P.3d 139 (2008). See CP 257. However, the language of the two exemptions are different—one requiring exemption of only "personal information" "to the extent" disclosure would violate the right to privacy and the other exempting information only when it is "essential" to protect the right to privacy. The privacy definition for both is the same, drawn from RCW 42.56.050 and the Restatement 2nd of Torts §652D. Amici here do not address whether the records at issue are exempt under the non-conviction data statute under RCW 10.97.080 as that matter is being addressed by Amici WCOG. Amici here agree with WCOG that the records here are not covered by RCW 10.97.080.

RCW 42.56.050) that the records not be further disclosed.<sup>3</sup> Cain must show that (1) disclosure of these records would be both highly offensive to a reasonable person, (2) the records are of no legitimate concern to the public, and (3) nondisclosure is “essential” to protect Cain’s right to privacy. Cain cannot show and has not shown any of these elements. A court may not balance the interest of the individuals against those of the public; to enjoin release a litigant must satisfy all prongs of the test. **See Brouillet v. Cowles Publ’g**, 114 Wn.2d 788, 791 P.2d 526 (1990) (addressing the exemption now found at RCW 42.56.230(2)).

**A. The Facts Here are No Longer “Private” if They Ever Were So it is Not “Essential” to Prevent Further Disclosures.**

The definition of the right to privacy in the PRA was taken by this Court from the Restatement 2nd of Torts §652D, the tort of publication of private facts. This Court adopted §652D as its privacy definition in **Hearst v. Hoppe** and repeated the comment from the Restatement that “illustrates what nature of facts are protected by this right to privacy.” 90 Wn.2d 123, 132,135-36, 580 P.2d 246 (1978). The information encompassed within the right are the “intimate details” of a person’s life, “[s]exual relations, ... family quarrels, many unpleasant or disgraceful or humiliating illnesses,

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<sup>3</sup> There is no general privacy exemption within the PRA. **See Progressive Animal Welfare Soc’y. v. University of Washington**, 125 Wn.2d 243, 258-59, 884 P.2d 592 (1994) (“**PAWS II**”); **see also** WAC 44-14-06002(2); 1988 Op. Att’y Gen. 12 at 3 (“The Legislature clearly repudiated the notion that agencies could withhold records based solely on general concerns about privacy.”).

most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget." Id. at 135-36 (quoting §652D cmt. b). As correctly noted by the dissent in Bellevue John Does v. Bellevue School District, 164 Wn.2d 199, 189 P.3d 139 (2008), this definition of privacy had not been applied by this Court previously to exempt allegations of on the job misconduct prior to the Bellevue John Does decision. For reasons elaborated below, this Court's earlier and subsequent rulings related to privacy cannot be reconciled with the majority's holding in Bellevue John Does, but in any event that holding does not justify exemption of the records here, or support the arguments proposed by Cain for full withholding of even redacted records of all investigations where allegations are deemed unsubstantiated.

Restatement §652D and the tort of publication of private facts when taken by this Court and later the Legislature as the PRA's privacy definition brought with it decades of Restatement comments and decisions interpreting that tort and its parameters. Comment c to §652D states **"There is no liability when the defendant merely gives further publicity to information about the plaintiff which is already public."** (emphasis added). This comment was part of the Restatement when this Court adopted it as its definition in 1978 in Hearst and had been cited three years earlier in the U.S. Supreme Court case of Cox Broadcasting

**Corp. v. Cohn**, 420 U.S. 469, 95 S. Ct. 1029, 43 L.Ed.2d 328 (1975). In **Cox**, the Court held that the First Amendment prohibited any civil liability to a newspaper for publishing information from court records, stating:

Thus even the prevailing law of invasion of privacy generally recognizes that the interests of privacy fade when the information involved already appears on the public record. The conclusion is compelling when viewed in terms of the First and Fourteenth Amendments and in light of the public interest in a vigorous press.

420 U.S. at 494-95. In 1978, the same year as **Hearst**, the U.S. Supreme Court ruled again, this time in **Landmark Communications, Inc. v. Virginia**, 435 U.S. 829, 840, 98 S. Ct. 1535, 56 L.Ed.2d 1 (1978), stating “a civil action against a television station for breach of privacy could not be maintained consistently with the First Amendment when the station had broadcast only information which was already in the public domain.”

The same trend has continued since these holdings with courts throughout the country ruling that privacy has not been invaded when the information publicized is already in the public domain or known. For example, the Iowa Supreme Court held that a newspaper’s republishing of facts that had been published years prior could not be an invasion of privacy in **Howard v. Des Moines Register & Tribune Co.**, 283 N.W.2d 289 (Iowa 1979). In 1983, the Louisiana Supreme Court found no invasion of privacy against when a newspaper republished a 25-year-old article

concerning the details of local criminal convictions for which the plaintiffs were subsequently pardoned. **Roshto v. Hebert**, 439 So.2d 428 (La., 1983). **See also Brewer v. Hustler Magazine, Inc.**, 749 F.2d 527, 529-30 (9th Cir. 1984) (denying invasion of privacy claim for republication without permission of image created by graphic designer depicting designer shooting himself through the head when image was printed on designer's business card and postcard for commercial sale); and **Showing Animals Respect and Kindness v. U.S. Dep't. of Interior**, \_\_ F.Supp.2d \_\_, 2010 WL 3191801, \* 7-8 (D.D.C., August 12, 2010) (rejecting privacy-based exemption to FOIA request for release of videos of suspects in Lacey Act investigation finding the "cat is out of the bag" and fact of suspects' association with criminal matter had already been publicized and video had been previously disclosed).

Thus, as the Restatement stated when this Court adopted it as its privacy definition for the PRA, and as courts have since held, there is generally no "invasion of privacy" from further disclosure of information that has already been made public.<sup>4</sup> The records here were disclosed at

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<sup>4</sup> Freedom of Information cases applying a much broader privacy definition which barred disclosure of a Rap sheet and re-release of a photo of a suicide victim do not challenge this general principal. **See Favish v. Office of Independent Counsel**, 217 F.3d 1168 (9th Cir. 2000) (refusing to allow access pursuant to FOIA to photograph of suicide victim that had been previously published in Time magazine, though a partial dissent argues that the previously published photo should be released); **United States DOJ. v. Reporters Committee for Freedom of The Press**, 489 U.S. 749, 762, 109 S.Ct. 1468,

least twice to journalists and details of the records' contents and Koenig's allegations were published online and in print and remain available to readers to this day.<sup>5</sup> CP 116-19, 166-204, 245-52.

An invasion of "privacy" carries with it the presumption that the information remains private in the first place. The Court can deem the already public and available nature of the information here as (1) showing that disclosure is not highly offensive because the information is already public, or (2) connected to it being a matter of legitimate public concern. The Court can revisit its earlier, and Amici contend erroneous, conclusion that investigations of allegations of on the job misconduct of public employees is the type of information covered at all by Restatement §652D. Or the Court can simply find that further disclosure injunctions are not "essential" to protect Cain's privacy since the facts have already been

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103 L.Ed.2d 774 (1989) (rejecting the notion that separate previous disclosures of much of the information contained in Rap sheet barred denial of access to compilation in Rap sheet).

<sup>5</sup> See, for example, *Kitsap Sun* articles at <http://www.kitsapsun.com/news/2008/may/10/puyallup-report-finds-no-crime-by-bainbridge-in/> (discussing allegations, Cain's history, PRA obtaining of documents); <http://www.kitsapsun.com/news/2008/feb/09/bainbridge-lawyer-files-claim-against-police/> (discussing Kim Koenig's allegations and lawsuit against police department, investigative report); <http://www.kitsapsun.com/news/2008/mar/06/bi-police-guild-sues-to-keep-investigations-into/> (discussing allegations and Paulson's obtaining of the records); *Bainbridge Island Review* story at <http://www.pnwlocalnews.com/kitsap/bir/news/17110731.html> (discussing allegations, naming Cain); and Althea Paulson's Blog at <http://bainbridgenotes.wordpress.com/2008/03/11/bi-blue-line-protect-and-serve-or-shred-and-forget/> (very detailed discussion of the exact records at issue in this appeal); <http://bainbridgenotes.wordpress.com/2008/02/11/mob-feeds-on-lawyer-local-msm-averts-its-gaze/> (discussing Kitsap Sun's and Bainbridge Island Review's coverage of the story).

publicized and are still available online and in print. The journalists and members of the public who obtained the records prior to any injunctions are free under the First Amendment to publish and discuss their contents, and no court may lawfully restrain this right or order the records given back or taken down, and the press and public at large cannot be censored and told what they can and cannot discuss. Thus, no matter what prong or aspect of the privacy test the Court ties the issue to here, the Court must hold that Cain's "privacy" is not violated here by further release of the records and so the injunctions should be overturned and the order to the Appellants to return the records should be vacated.

**B. Disclosure is Not Highly Offensive to Reasonable People.**

Cain is accused of pressing a suspect against his car with his body, choking her, and putting her in jail. Cain only disputes where his body touched Koenig – he says he "hip checked" Koenig holding her against his car to restrain her – and presumably he alleges he did not choke her.

In **Morgan v. City of Federal Way**, this Court rejected an attempt by a judge to keep secret an investigation of a hostile workplace investigation of him finding the allegations there to be "nowhere near as offensive as allegations of sexual misconduct with a minor and do not rise to the level of "highly offensive." 166 Wn.2d 747, 756, 213 P.3d 596 (2009). The Court described the allegations in **Morgan** as "including

angry outbursts, inappropriate gender-based and sexual comments, and demeaning colleagues and employees.” Id. The allegations at issue here, while potentially more serious than in Morgan, relate to conduct between an adult male and an adult female and is not as egregious as the conduct alleged in Bellevue Johns Does, which dealt with allegations of sexual misconduct between adult teachers and their minor students.

Cain disputes the truth of certain of the allegations and argues that release of “false” allegations are highly offensive. However the trial judge who reviewed the records in camera found the allegations were not “false” only that they could not be substantiated (CP15) and even Cain does not dispute many facts in the records. He admits some of the events occurred, and merely disputes the characterization of the acts by Koenig, and presumably accepts the truth of the statements made by his colleagues during the investigation and what the investigator claims was done and not done during the investigation.

As this Court held in Morgan, “Contrary to Judge Morgan’s assertions, the incidents are not unsubstantiated simply because he disputes them. The Stephson Report evaluates each person’s credibility and concludes that **many** of the allegations are **likely** true, unlike in Does, where the allegations were found to be unsubstantiated.” 166 Wn.2d at 756 (emphasis added). Therefore, this Court in Morgan did not find all

allegations had to be true or even viewed as true to allow release. Thus, in Morgan it was not highly offensive to release the records though some of the records likely contained allegations which were not found to be true.

The records here have already been released to at least two journalists, and at least once after notice to Cain and without objection. CP38, 102, 108-110. The contents of the records and the allegations have been publicized repeatedly throughout the small community where Cain works and the alleged victim lives, including in numerous online postings and in the community's newspapers—stories and postings that to this day can be found and read by the public. See fn. 4.

Further, the conduct at issue here is not, as Cain has argued, his personal private affairs. It is instead an allegation of misconduct alleged to have been committed on a public street while on duty while enforcing his official governmental power. As this Court has previously held

Instances of misconduct of a police officer while on the job are not private, intimate details of the officer's life ... They are matters with which the public has a right to concern itself....

Cowles Pub'g Co. v. State Patrol, 109 Wn.2d 712, 726-27, 784 P.2d 597 (1988). Recognizing that records -of investigations of even false or unsubstantiated allegations were still related to government conduct, the Bellevue John Does majority stated, "The absence of misconduct, however, is not necessarily the absence of conduct." 164 Wn.2d at 209

n.11. To withhold records in their entirety presumes all facts within them would be highly offensive to a reasonable person if disclosed. Cain cannot make and has not made this showing.

**C. The Records are a Matter of Legitimate Public Concern.**

In Morgan this Court refused to exempt the hostile workplace investigation stating “Judge Morgan also fails to demonstrate how his behavior in the workplace is not of legitimate concern to the public and the voters.” 166 Wn.2d at 756. Again, the Court did not find every allegation in the investigation of Morgan to be true. The report concludes “many” were “likely true.” Id. So a distinction based on Morgan dealing with “actual” conduct in the workplace whereas here Cain contends there is merely “alleged” or “allegedly false” conduct cannot resolve the issue. In Morgan this Court is on record stating that not every allegation was true and yet it still ordered release finding release was not highly offensive and thus issues of the judge’s behavior in the workplace—with both true and untrue allegations—was a matter of legitimate public concern.

Here, like State Patrol and like Morgan, the allegations surround on-the-job, on-duty acts of an individual with tremendous power over the public. Here none of the facts have been shown to be false (CP15). Like Judge Morgan, Cain disputes some of the allegations, but, like in Morgan, this does not make them untrue. And much of the investigation here and

the facts discussed deal with the actual events which Cain does not dispute occurred that night, at work, on a public street, during a traffic stop. It is the reason for the touching, whether he held Koenig against his patrol car with his hip or the front of his body, and whether he choked her when he put her in the patrol car is all that is disputed.

Like in **Morgan**, the public has a legitimate public concern in details of an investigation of a public employee's actions on the job even where all of the allegations are not true. **See also Amren v. City of Kalama**, 131 Wn.2d 25, 29, 34, 929 P.2d (1997) (ordering release of report of complaints against police chief that mayor concluded were unfounded and false; report had no conclusions or recommendations); **Columbian Pub'g Co. v. City of Vancouver**, 36 Wn. App. 25, 27, 29-30, 671 P.2d 280 (1983) (ordering release of complaints by police officers against chief when no conclusions had been reached and the investigation may not even have begun); **see also Ames v. City of Fircrest**, 71 Wn. App. 284, 286-87, 857 P.2d 1083 (1993) (holding records of police department and officers not exempt though investigation uncovered no criminal intent and no charges were ever filed); **Antell v. Attorney General**, 752 N.E.2d 823 (Mass. App. Ct. 2001) (ordering disclosure of records misconduct investigation of police chief with only names of voluntary witnesses redacted even where investigation found no evidence of wrongdoing).

Even prior to Morgan, this Court had previously rejected the idea that privacy mandated secrecy until allegations were proven true. For example, in Cowles Pub'g Co. v. Spokane Police Dep't, 139 Wn.2d 472, 987 P.2d 620 (1999), as amended on denial of reconsideration (2000), the Court rejected a claim that privacy rights mandated withholding a police report of the investigation of a prosecutor prior to the decision to charge or not charge stating “Rarely would criminal allegations so devastate the reputation of the suspect that nondisclosure would be necessary to protect against the effect of false accusation.” Id. at 479. The Court further noted that “**the fact that allegations have not yet been proven is not persuasive of the need for blanket protection for purposes of a defendant’s privacy.**” Id. (emphasis added); see also Tacoma News, Inc. v. Tacoma-Pierce County Health Dep't, 55 Wn. App. 515, 517, 521 & n.3, 778 P.2d 1066 (1989) (rejecting privacy exemption and ordering production of investigative records of complaints against ambulance company though no citation ever issued); Hudgens v. City of Renton, 49 Wn. App. 842, 843, 846, 746 P.2d 320 (1987) (holding no privacy exemption to examination of records regarding arrest and strip search of DWI defendant found not guilty at trial); Santillo v. Reedel, 430 Pa.Super. 290, 634 A.2d 264, 266 (1993) (finding no invasion of privacy

in confirmation of complaint of sexual abuse of minor regardless of “[w]hether or not the substance of the complaint was true”).

The Restatement from which this Court and the Legislature created the PRA’s privacy definition recognized the public’s legitimate interest in allegations whether or not they are true.

There are individuals who have not sought publicity or consented to it, but through their own conduct **or otherwise** have become legitimate subject of public interest. They have, in other words, become “news.” Those who commit crime **or are accused of it** may not only not seek publicity but may make every possible effort to avoid it, but they are nonetheless persons of public interest, concerning whom the public is entitled to be informed. ... [P]ublishers are permitted to satisfy the curiosity of the public as to its heroes, villains and victims, and those who are closely associated with them.

Comment f, Restatement 2nd of Torts §652D. Like the concept of previously publicized information, the concept of legitimate public concern in investigations of allegation—before proven true and even if not true— was a part of the definition when adopted in Washington, and but for one decision the principle has been followed by this Court.

In the one divergent decision, **Bellevue John Does**, a case whose holding must be interpreted in light of what this Court has since held and did in **Morgan**, this Court recognized that even if names of the accused are exempt because the allegations are deemed unsubstantiated, the details of an investigation and redacted investigative records must be released.

The public can continue to access documents concerning the nature of the allegations and reports related to the investigation and its outcome, all of which will allow citizens to oversee the effectiveness of the school districts' responses. ... Under our holding, the public can access documents related to the allegations and investigations (subject to redactions), thus maintaining the citizens' ability to inform themselves about school district operations.

**Bellevue John Does**, 164 Wn.2d at 221, 222.

This Court has ordered records of an investigation of a child sexual assault be made public even when the requestor knew the victim and asked for the records using her name. **Koenig v. Des Moines**, 158 Wn.2d 173, 184-84, 142 P.3d 162 (2006) (Court cannot “look beyond the four corners of the records at issue to determine whether they were properly withheld”). It recognized the public has legitimate public concern in learning “the way the school systems responds [to sexual misconduct allegations against teachers] in order to address the problem” and that disclosure can enable the public to pressure the school systems to investigate complaints and reduce false rumors. **Brouillet**, 114 Wn.2d at 798, 791.<sup>6</sup>

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<sup>6</sup> In **Brouillet**, this Court ordered disclosure of the records of investigations of sexual misconduct allegations against teachers as well as the accuseds' names despite the fact that nearly all of the teachers had voluntarily given up their licenses and stopped teaching, the state had assured the teachers of confidentiality, and the state never conducted a hearing for those teachers to determine whether the allegations warranted revocation of their teaching licenses. 114 Wn.2d at 792.

The public has a legitimate concern in learning about allegations of misconduct and viewing the paper trail of what an agency did or did not do to determine the truth of an allegation. This interest cannot be served if this Court accepts the rule proposed by Cain. The public will never be able to monitor whether agencies are adequately investigating public employee misconduct allegations if they cannot access the records and see what was done. Courts throughout the country have consistently acknowledged this legitimate public interest in observing the investigative process. Even when courts found a legitimate privacy interest for those involved, they have ordered names redacted but still required disclosure of the records to serve the public's interest in review of agencies' actions. See, e.g. Piper v. DOJ, 374 F.Supp.2d 73, 80 (D.D.C. 2005) (recognizing public interest served in overseeing investigation though privacy interests justified redaction of names of individuals under FOIA:

Plaintiff argues that there is a public interest in simply knowing that the DOJ handles its investigations properly. But this interest is served whether or not the names and identifying information of third parties are redacted. For example, the public does not need to know the names of people the FBI should not have investigated or investigated less to know that the FBI wasted its time or unwisely spent resources. *See SafeCard*, 926 F.2d at 1205 (“[T]he type of information sought is simply not very probative of an agency's behavior or performance”))

**See also United States Dep't of Justice, et al. v. Reporters Committee for Freedom of The Press et al.**, 489 U.S. 749, 773, 109 S.Ct. 1468, 103 L.Ed.2d 774 (1989) (discussing **Department of the Air Force v. Rose** (1976), and noting that while deletions of names from disciplinary hearing summaries “were unquestionably appropriate, the disciplinary summaries were appropriately the subject of FOIA requests because they “obviously contained information that would explain how the disciplinary procedures actually functioned) (citation omitted); **Wood v. F.B.I.**, 312 F.Supp.2d 328, 349 (D. Conn., 2004) (holding that FBI agents’ names could be withheld from FOIA disclosure but recognized that “the public interest in knowing how the government has carried out its duties has been served by the FBI's release of its records, which has allowed Wood to assess the comprehensiveness and accuracy of the investigation. On the record before the Court, however, there is no further public interest to be served by releasing the names of the officials involved in the investigation.”), *rev'd in part by* **Wood v. F.B.I.**, 432 F.3d 78 (2nd Cir., 2005).<sup>7</sup>

The linkage and connect-the-dots argument presented by Cain has been previously rejected by this Court in **Koenig v. Des Moines** when it

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<sup>7</sup> **Piper** and the other federal cases cited in this section were Freedom of Information Act cases and were applying a privacy exemption that allows for balancing of the private interests against the public’s interests and disclosure of information based on what it teaches one about government, a narrower definition than in the PRA and a balancing specifically forbidden in the PRA pursuant to **Brouillet**,

ordered an investigation of a child sexual assault released to a requestor who had asked for the records by the victim's name with redaction of her name. And, it was rejected by the Division One Court of Appeals in **Sheehan v. King County**, 114 Wn.2d 325, 5 P.3d 307 (2002), when that court refused to withhold the names of police officers from a requestor though the requestor was shown to find employee addresses via other records and post maps to the officers' homes on his website. As in **Koenig** the standard for when one gets records and does not cannot depend on what you know or could learn or only the village idiot would be entitled to receive records. Here, the answer under **Bellevue John Does** is at most to redact the name of Cain and release the record no matter how they are requested. Under **Morgan** and this Court's previous precedent the answer should be to disclose the records unredacted because release is not an invasion of privacy and nondisclosure is not essential to protect privacy.

#### IV. CONCLUSION

For the above reasons, the Court should vacate the injunctions and order release of the records at issue.

Respectfully submitted this 15th day of October, 2010.

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on October 15, 2010, I delivered a copy of the foregoing Amicus Brief via email pursuant to agreement, with back up copies sent via U.S. Mail, to:

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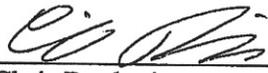
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