FILED

MAR 27 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

NO. 311767

ANTHONY PREDISIK and CHRISTOPHER KATKE

Appellants

v.

SPOKANE SCHOOL DISTRICT NO. 81

Respondent

BRIEF OF APPELLANTS

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I. INTRODUCTION

Anthony Predisik is a counselor and Christopher Katke is a teacher in the Spokane School District (District). The District placed Mr. Predisik and Mr. Katke on administrative leave pending investigations into highly offensive unsubstantiated allegations of misconduct. The District is still investigating the allegations against Mr. Predisik and Mr. Katke, neither of whom the District has disciplined for any misconduct.

After the District placed Mr. Predisik and Mr. Katke on administrative leave, it received public records requests from The Spokesman-Review (The Spokesman) and KREM 2 Television (KREM 2). The Spokesman sought Mr. Predisik's administrative leave letter, and KREM 2 sought general information related to all District employees on administrative leave. The District informed Mr. Predisik and Mr. Katke that it intended to disclose documents in response to the requests that mentioned their names. Mr. Predisik and Mr. Katke filed lawsuits to enjoin disclosure.

The records the District intends to disclose concerning Mr. Predisik and Mr. Katke are exempt from disclosure under the "personal information" exemption in RCW 42.56.230(3) and under the "investigative records" exemption in RCW 42.56.240(1). The trial court properly determined that the requested records are "personal information"

for purposes of RCW 42.56.230(3). Because the District is conducting formal investigations into Mr. Predisik and Mr. Katke, the District is an "investigative agency" as that term is used in RCW 42.56.240(1).

Both exemptions claimed by the Appellants turn on whether disclosing the requested records would violate Mr. Predisik's and Mr. Katke's right to privacy. The trial court properly determined that Mr. Predisik and Mr. Katke had a right to privacy in their identities in connection with the unsubstantiated allegations of misconduct against them. Because their investigations are still pending and because Mr. Predisik and Mr. Katke have statutory and contractual rights to appeal any adverse decision by the District related to the allegations, disclosing the records in any form will violate the Appellants' rights to privacy.

II. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred by determining that Mr. Predisik's and Mr. Katke's respective rights to privacy were adequately preserved by redacting their names from the requested records.

2. The trial court erred in ruling that disclosure of the requested records, with or without Mr. Predisik's and Mr. Katke's names redacted, would not be highly offensive to a reasonable person.

3. To the extent that the trial court ruled that disclosure of a record cannot be highly offensive under RCW 42.56.050 unless the clear and express language in a record implicates sexual misconduct, the trial court erred.

4. The trial court erred in determining that all of the records the District intends to disclose do not imply sexual misconduct.

5. The trial court erred in ruling that the public has a legitimate concern in information related to the District's investigations into the allegations against Mr. Predisik and Mr. Katke.

6. The trial court erred in ruling that the requested records are not entirely exempt from disclosure under RCW 42.56.230(3).

7. The trial court erred by determining that the District is not an investigative agency, under RCW 42.56.240(1) when formally investigating allegations of misconduct against two of its teachers.

8. The trial court erred to the extent it determined that the requested records were not specific investigative records compiled or created by the District during the course of investigations focused upon Mr. Predisik and Mr. Katke.

9. The trial court erred in ruling that the requested records are not entirely exempt from disclosure under RCW 42.56.240(1).

Issues Pertaining to Assignments of Error

1. Do the Appellants have a right to privacy in their identities and in the requested records the District created as a result of the unsubstantiated allegations of misconduct against them?

2. Would a reasonable person be highly offended by the disclosure of records concerning highly offensive unsubstantiated allegations of misconduct against them when the District is still investigating the allegations of misconduct and has not determined whether any evidence supports them?

3. Does redacting the Appellants' names from requested records render disclosure any less offensive when the District has not completed its investigation into the allegations against the Appellants and the Appellants have statutory and contractual rights to appeal any adverse District decision?

4. Does the public have a legitimate concern in records concerning highly offensive unsubstantiated allegations of misconduct against the Appellants when the District is still investigating the allegations and the Appellants have statutory and contractual rights to appeal any adverse District decision?

5. Are the requested records "personal information" that is "maintained in files for employees" under RCW 42.56.230(3) when the records concern the Appellants and are in the District's possession?

6. Are the requested records "specific investigative records" and is the District an "investigative agency" when the District created and compiled the records during a specific investigation focusing with special intensity on a particular person?

7. Does redacting Mr. Predisik's name from his administrative leave letter protect his right to privacy or render disclosure any less highly offensive when the fact of disclosure alone would identify Mr. Predisik?

III. STATEMENT OF THE CASE

A. Facts related to Anthony Predisik.

Anthony Predisik has been a counselor at Shadle Park High School in the Spokane School District for over twenty-two years, without discipline. (CP 10-11). On November 18, 2011 the Spokane School District placed Mr. Predisik on administrative leave pending an investigation into allegations of misconduct that Mr. Predisik vehemently denies. (CP 12).

On March 23, 2012, Jody Lawrence-Turner, a reporter for The Spokesman, requested a copy of Mr. Predisik's administrative from the

District. (CP 47). The District informed Mr. Predisik it intended to disclose the letter in response to Ms. Lawrence-Turner's request. (CP 36). Accordingly, Mr. Predisik filed a lawsuit seeking to enjoin disclosure of the requested document. (CP 4-6, 36).

On May 8, 2012, the District informed Mr. Predisik that it received a records request from Ashley Korslien, a reporter for KREM 2, and informed Mr. Predisik that Ms. Korslien requested:

> Information on all district employees on paid administrative leave, how many people there are, who they are, what reason they are on leave, how long they have been on leave, if they are being paid and the disposition. For those currently on administrative leave, she is seeking the reason for the leave if it is related to alleged misconduct. She is not seeking the reason for the leave in any of the other administrative leave instances. She is requesting the aforementioned records from November 2011 until April 19, 2012.

(CP 281-82, 325). When the District told Mr. Predisik that documents that mention his name are within the purview of Ms. Korslien's request, he filed another lawsuit seeking to enjoin disclosure of the requested documents. (CP 152-57).

B. Facts related to Christopher Katke.

Christopher Katke is a certificated teacher at Glover Middle School, which is in the District. (CP 279). He has taught for approximately ten years, and has never been disciplined in his teaching

career. (CP 279-80). The District placed Mr. Katke on paid administrative leave on January 11, 2012, pending an investigation into allegations of misconduct that allegedly occurred when Mr. Katke was a teenager. (CP 280). Mr. Katke vehemently denies the allegations. (CP 280).

On May 8, 2012, the District informed Mr. Katke that Ms. Korslien, of KREM 2, had requested:

> Information on all district employees on paid administrative leave, how many people there are, who they are, what reason they are on leave, how long they have been on leave, if they are being paid and the disposition. For those currently on administrative leave, she is seeking the reason for the leave if it is related to alleged misconduct. She is not seeking the reason for the leave in any of the other administrative leave instances. She is requesting the aforementioned records from November 2011 until April 19, 2012.

(CP 281-82). The District informed Mr. Katke that Ms. Korslien's request included documents that mentioned Mr. Katke. (CP 282).

On May 9, 2012, Jody Lawrence-Turner, of The Spokesman, requested from the Spokane School District "any documents related to the investigation [into the allegations against Christopher Katke], his resignation and/or any determination on the investigation." (Predisik CP

282). The District informed Mr. Katke of Ms. Lawrence-Turner's request on June 5, 2012.[1] (CP 282).

In response to KREM 2's and The Spokesman's requests and the Spokane School District's stated intent to disclose documents, Mr. Katke filed a lawsuit seeking to enjoin disclosure of the requested documents. (CP 162-66).

C. Facts related to the requested records.

The District has identified three documents that it intends to disclose in response to The Spokesman's and KREM 2's records requests. (CP 401; Exhibits 1-3). Exhibit 1 is an administrative leave letter concerning Mr. Predisik. (CP 401; Exhibit 1). Exhibits 2 and 3 are spreadsheets that the District created in response to KREM 2's request. (CP 401; Exhibits 2-3).

D. Procedural facts.

The trial court consolidated Mr. Predisik's and Mr. Katke's cases. (CP 277-78, 398-99). Mr. Predisik and Mr. Katke filed a motion for

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[1] Counsel for Mr. Katke informed the District's attorneys that Mr. Katke would seek an injunction if the District intended to disclose any documents in response to Ms. Lawrence-Turner's request. Accordingly, the District has not released records responsive to Ms. Lawrence-Turner's May 9, 2012 request. Although Cowles Publishing Company is not participating in this lawsuit, it has expressly refused to withdraw Ms. Lawrence-Turner's May 9, 2012 records request. The District has not produced any records responsive to Ms. Lawrence-Turner's request to counsel for Mr. Katke. (CP 289). The records responsive to Ms. Lawrence-Turner's May 9, 2012 request were not part of the record before the trial court in this matter. (*See* CP 400-01).

summary judgment seeking an order requiring the District to withhold the requested records from disclosure. (CP 292-338; 339-41; 388-397).

During the summary judgment hearing, the trial court reviewed the requested records *in camera*. (CP 400; Exhibits 1-3). The trial court denied Mr. Predisik and Mr. Katke's summary judgment motion and ordered the District to disclose the requested records with Mr. Predisik's and Mr. Katke's names redacted. (CP 402). In reaching its decision, the court ruled that Mr. Predisik and Mr. Katke had a right to privacy in their respective identities in connection with the allegations against them. (CP 401). The court also determined, however, that the public had a legitimate concern "in the procedural steps being taken by the School District in its investigations into the allegations against [them]." (CP 401). Accordingly, the court required the District to redact Mr. Predisik's and Mr. Katke's names from the documents to preserve their right to privacy. (CP 401-02). Mr. Predisik and Mr. Katke timely appealed. (CP 406).

The District has not disclosed the requested documents regarding Mr. Predisik or Mr. Katke. (CP 400-02). The District has been investigating the allegations against Mr. Predisik and Mr. Katke for approximately 16 and 14 months, respectively. (CP 12, 280). The District has not determined whether the allegations are meritorious, and has not imposed any discipline against either teacher. (CP 10-12, 279-84, 401).

IV. ARGUMENT

A. Standard of Review

This court reviews decisions under the Public Records Act (PRA) de novo. RCW 42.56.550(3); *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 208, 189 P.3d 139 (2008). This court also reviews statutory construction issues de novo. *Bellevue John Does*, 164 Wn.2d at 209.

RCW 42.56.540 authorizes this court to enjoin "the examination of any specific public record" if it finds "that such examination would clearly not be in the public interest and would substantially and irreparably damage any person. . . ." As the parties seeking to enjoin production, Mr. Predisik and Mr. Katke bear the burden to show that an exemption or statute prohibits production in whole or in part. *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 407-08, 259 P.3d 190 (2011).

B. Disclosing the requested records will violate Mr. Predisik's and Mr. Katke's respective rights to privacy.[2]

[2] Mr. Predisik and Mr. Katke claim that the requested records are exempt from disclosure under RCW 42.56.230(3) and RCW 42.56.240(1). Because both exemptions require the court to analyze whether disclosure would violate Mr. Predisik's and Mr. Katke's right to privacy, the Appellants address the right to privacy issues first. The other elements of their claimed exemptions are addressed below.

The District will violate Mr. Predisik's and Mr. Katke's right to privacy if it discloses the requested records because disclosure, even with their names redacted, would be highly offensive to a reasonable person and because the public does not have a legitimate interest in the requested records. Mr. Predisik and Mr. Katke seek to enjoin disclosure of the records under the exemptions contained in RCW 42.56.230(3) and RCW 42.56.240(1). RCW 42.56.230(3) exempts from disclosure "[p]ersonal information in files maintained for employees . . . of any public agency to the extent that disclosure would violate their right to privacy[.]" And RCW 42.56.240(1) exempts from public inspection and copying "specific investigative records compiled by investigative . . . agencies . . . the nondisclosure of which is essential to . . . protection of any person's right to privacy[.]"

Thus, Mr. Predisik's and Mr. Katke's claimed exemptions each turn on whether disclosure would violate their right to privacy. *See Bainbridge*, 172 Wn.2d at 426 (Madsen, J., concurring in part and dissenting in part) (when exemptions are claimed under RCW 42.56.230(3) and RCW 42.56.240(1), the exemptions turn on the right to privacy). In determining whether disclosure would violate a person's right to privacy, this court must first determine whether a right to privacy exists. *See Bellevue John Does*, 164 Wn.2d at 210.

1. Mr. Predisik and Mr. Katke have a right to privacy in their identities and the requested records because unsubstantiated allegations of misconduct are not actions Mr. Predisik and Mr. Katke took in the course of performing their public duties.

The trial court properly recognized that "[Mr. Predisik and Mr. Katke] have a right to privacy in their identity." (CP 401). They also have a right to privacy in the requested records because the records were created as a result of unsubstantiated allegations of misconduct, which are matters concerning their private lives. *See Bellevue John Does*, 164 Wn.2d at 216 ("[t]eachers have a right to privacy in their identities because the unsubstantiated or false allegations are mattes concerning the teachers' private lives and are not specific incidents of misconduct curing the course of employment.").

The PRA does not explicitly identify when a person who is the subject of a public records request has a right to privacy in his identity or in records concerning him. *See Bellevue John Does*, 164 Wn.2d at 212. The PRA merely sets forth the test for determining when the right to privacy is violated. RCW 42.56.050. In enacting RCW 42.56.050's precursor, former RCW 42.17.255 (1987), "the legislature stated that the term "privacy" "is intended to have the same meaning as the definition

given that word by the Supreme Court in '*Hearst v. Hoppe*.'"[3] *Bellevue John Does*, 164 Wn.2d at 212 (quoting Laws of 1987, ch. 403, § 1). In *Bellevue John Does*, the Supreme Court held that "[a] person has a right to privacy in 'matter[s] concerning the private life.'" *Bellevue John Does*, 164 Wn.2d at 212 (quoting *Hearst*, 90 Wn.2d at 135). In describing the nature of facts that could be considered matters concerning the private life, the *Bellevue John Does* quoted the Restatement (Second) of Torts:

> Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, 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. . . .

Bellevue John Does, 164 Wn.2d at 212-13 (quoting RESTATEMENT (SECOND) OF TORTS §652D (1977)).

In *Bellevue John Does*, the court held that a teacher has a right to privacy related to unsubstantiated or false allegations of sexual misconduct against him because those allegations are matters concerning the teacher's private life, and are not specific incidents of misconduct during the course of his employment. *Bellevue John Does* 164 Wn.2d at 215-16. In that case, the Seattle Times filed a public disclosure request

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[3] *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978).

with the Bellevue, Seattle, and Federal Way school districts seeking "copies of all records relating to allegations of teacher sexual misconduct in the last 10 years." *Bellevue John Does*, 164 Wn.2d at 206. The school districts notified 55 current and former teachers that their records were responsive to the request. *Bellevue John Does*, 164 Wn.2d at 206. 37 of the teachers filed lawsuits to enjoin the school districts from disclosing their records. *Bellevue John Does*, 164 Wn.2d at 206. The trial court determined that the identities of 15 teachers were exempt from disclosure because the allegations of misconduct against them were unsubstantiated. *Bellevue John Does*, 164 Wn.2d at 206-07. The Seattle Times appealed, seeking identifying information of those 15 teachers. *Bellevue John Does*, 164 Wn.2d at 207. The court of appeals held that 12 of the 15 teachers' identifying information should be disclosed because it determined that if an allegation was unsubstantiated or did not warrant discipline, the teacher's identity must be disclosed. *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 129 Wn. App. 832, 838, 120 P.3d 616 (2005). Because it determined that the allegations against three of the teachers were "patently false", it affirmed nondisclosure of those three teachers' identities. *Bellevue John Does*, 129 Wn. App. at 854-55. The other 12 teachers appealed. *Bellevue John Does*, 164 Wn.2d at 207.

The Supreme Court reversed the court of appeals, holding that where a teacher is the subject of an unsubstantiated allegation of misconduct, "teachers have a right to privacy in their identities because the unsubstantiated or false allegations are matters concerning the teachers' private lives and are not specific incidents of misconduct during the course of employment." *Bellevue John Does*, 164 Wn.2d at 215-16. Specifically, the court held that a teacher has a right to privacy in unsubstantiated allegations of misconduct because "[a]n unsubstantiated or false accusation of sexual misconduct is not an action taken by an employee in the course of performing public duties. . . ." *Bellevue John Does*, 164 Wn.2d at 215. With respect to allegations of sexual misconduct with students, the court noted that:

> The fact of the allegation, not the underlying conduct, does not bear on the teacher's performance or activities as a public servant. The mere fact of the allegation of sexual misconduct toward a minor may hold the teacher up to hatred and ridicule in the community, without any evidence that such misconduct ever occurred. The fact that a teacher is accused of sexual misconduct is a "matter concerning the private life" within the *Hearst* definition of the scope of the right to privacy.

Bellevue John Does, 164 Wn.2d at 215 (citing *Hearst*, 90 Wn.2d at 135). The court also held that teachers who were subjects of unsubstantiated allegations of sexual misconduct had a right to privacy in letters of direction in their personnel files. *Bellevue John Does*, 164 Wn.2d at 223.

In *Bainbridge*, the court held that, "under the precedent established in *Bellevue John Does*, [a police officer] has a right to privacy in his identity in connection with . . . unsubstantiated allegation of sexual misconduct." *Bainbridge*, 172 Wn.2d at 398. In that case, several people sought production from Bainbridge Island of the written reports resulting from a criminal investigation and an internal investigation into allegations that a police officer sexually assaulted a motorist that he stopped during the course of his duties. *Bainbridge*, 172 Wn.2d at 404-05. Bainbridge Island asked the Puyallup Police Department to conduct a criminal investigation and the Mercer Island Police Department to conduct an internal investigation into the officer's conduct. *Bainbridge*, 172 Wn.2d at 404. Both investigating police departments created investigative reports, both of which determined that the allegations against the officer were unsubstantiated. *Bainbridge*, 172 Wn.2d at 404. In holding that the officer had a right to privacy in his identity, the court reiterated its holding in *Bellevue John Does*, that a public employee has a right to privacy in information related to unsubstantiated allegations of sexual misconduct because "[a]n unsubstantiated or false accusation of sexual misconduct is not an action taken by an employee in the course of performing public duties. . . ." *Bainbridge*, 172 Wn.2d at 413, n. 10 (quoting *Bellevue John Does*, 164 Wn.2d at 215).

The allegations of misconduct against Mr. Predisik and Mr. Katke are unsubstantiated and are equally as offensive as the allegations in *Bellevue John Does* and *Bainbridge*. Like the allegations of sexual misconduct against the teachers in *Bellevue John Does* and the police officer in *Bainbridge*, the unsubstantiated allegations against Mr. Predisik and Mr. Katke are not "action[s] taken by an employee in the course of performing public duties. *Bellevue John Does*, 164 Wn.2d at 215; *see Bainbridge*, 172 Wn.2d at 413, n. 10. Moreover, the allegations against Mr. Katke, which he denies occurred, are alleged to have occurred when he was a teenager and cannot be characterized as "specific incidents of misconduct during the course of employment." (CP 280).

Mr. Predisik and Mr. Katke have a right to privacy in their identities and in the requested records, which the District created as a result of unsubstantiated allegations of misconduct.

2. Disclosing the requested records constitutes a violation of Mr. Predisik's and Mr. Katke's right to privacy under RCW 42.56.050.

Under the PRA, a person's right to privacy is violated "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. A reasonable person would be highly offended by the disclosure of information related to and arising from the unsubstantiated allegations of misconduct against Mr. Predisik and Mr. Katke. (*See* CP 10-12; 279-84). Moreover, the public has Mr. Predisik and Mr. Katke have statutory and contractual rights to appeal an adverse District decision regarding the allegations. *See Morgan v. City of Federal Way*, 166 Wn.2d 747, 756, 213 P.3d 596 (2009) ("Unsubstantiated allegations are exempt from disclosure.").

a. Disclosing records that the District created as a result of allegations of unsubstantiated allegations of misconduct would be highly offensive to a reasonable person.

Any reasonable person would be highly offended to have the information that the District intends to disclose about Mr. Predisik and Mr. Katke disclosed to the public about them. Offensiveness is implicit in the nature of the allegation. *See Bellevue John Does*, 164 Wn.2d at 415. The nature of the allegations against Mr. Predisik and Mr. Katke are such that any reasonable person would be highly offended if their identities and records concerning the allegations were disclosed. (CP 10-12, 179-84).

In *Bellevue John Does*, the court held that "[i]t is undisputed that disclosure of the identity of a teacher accused of sexual misconduct is

highly offensive to a reasonable person." *Bellevue John Does*, 164 Wn.2d at 216 (citing *Dawson v. Daly*, 120 Wn.2d 782, 797, 845 P.2d 995 (1993), (holding disclosure of performance evaluations that do not discuss specific instances of misconduct are presumed to be highly offensive) *abrogated in part on other grounds by Progressive Animal Welfare Society (PAWS) v. Univ. of Wash.*, 125 Wn.2d 243, 257-58, 884 P.2d 592 (1994); and *City of Tacoma v. Tacoma News, Inc.*, 65 Wn. App. 140, 145, 827 P.2d 1094 (1992) (noting that it is undisputed that disclosure of unsubstantiated allegations of child abuse is highly offensive to a reasonable person).

And in *Bainbridge*, the court held that revealing a police officer's identity in connection with an unsubstantiated allegation of sexual misconduct is highly offensive to a reasonable person. *Bainbridge*, 172 Wn.2d at 415.

Like the disclosures in *Bellevue John Does* and *Bainbridge*, disclosing information and documents concerning the unsubstantiated allegations against Mr. Predisik and Mr. Katke would be highly offensive to a reasonable person due to the allegations' offensive nature.

b. Redacting Mr. Predisik's and Mr. Katke's names from the requested documents does not render disclosure any less highly offensive to a reasonable person.

Redacting Mr. Predisik's and Mr. Katke's names from the requested records does not render disclosure any less highly offensive because disclosing the information during the pendency of the District's investigation, before the District determines whether adverse action is warranted, and before Mr. Predisik and Mr. Katke can obtain a neutral review of any District decision, is highly offensive to a reasonable person.

Disclosing the documents, even with Mr. Predisik's and Mr. Katke's names redacted, is highly offensive to a reasonable person because the District is still investigating whether the allegations have any merit. (CP 401). In *Bellevue John Does*, the court held that disclosure of a teacher's identity in a letter of direction in the teacher's personnel file would be highly offensive if the letter of direction "does not identify substantiated misconduct and the teacher is not disciplined or subjected to any restriction." *Bellevue John Does*, 164 Wn.2d at 224. The court held, however, that "[i]f a teacher's identity is redacted, disclosure of the redacted letter of direction is not highly offensive." *Bellevue John Does*, 164 Wn.2d at 224 (noting that the teacher petitioners failed to establish how disclosing a letter of direction is highly offensive if all identifying information is redacted).

In *Bainbridge*, the court held that disclosing the name of a police officer who was the subject of unsubstantiated allegations of misconduct

violated his right to privacy, but that disclosing two investigation reports concerning the allegations conducted by separate police departments did not violate his right to privacy is the officer's name and identifying information were redacted. *Bainbridge*, 172 Wn.2d at 417-18.

Bellevue John Does and *Bainbridge* are distinguishable because the agencies in those cases received the records requests at issue in those cases in a much different procedural posture than the District, Mr. Predisik, and Mr. Katke were in when the District received the records requests at issue. Although the *Bellevue John Does* court did not expressly identify the procedural posture of the investigations in its decision, implicit in its holding, and in that of the trial court and court of appeals, is that the respective school districts had completed all the investigations into the allegations of misconduct concerning the teachers in that case. *See Bellevue John Does*, 164 Wn.2d at 206-07.

> The trial court ordered the school districts to disclose the identities of teachers whose alleged misconduct was substantiated, resulted in some form of discipline, or if the school district's investigation was inadequate. After considering documentary evidence as to each plaintiff, the trial court concluded that the identities of 15 of the original plaintiffs were exempt from disclosure, while the identities of the 22 remaining teachers were disclosable . . . Three of the teachers whose names were ordered to be disclosed appealed [].
>
> . . .
>
> The Court of Appeals affirmed in part and reversed in part, holding, "[w]hen an allegation against a teacher is plainly

> false, as shown by an adequate investigation, that teacher's name is not a matter of legitimate public concern." However, the Court of Appeals determined that if an allegation is unsubstantiated or determined not to warrant discipline, the identity of the accused must be disclosed. Accordingly, the Court of Appeals affirmed nondisclosure as to Seattle John Doe 1, Seattle John Doe 7, and Federal Way John Doe 1 (finding these allegations to be patently false), but reversed the order of nondisclosure with respect to the other prevailing John Does.

Bellevue John Does, 164 Wn.2d at 206-07 (citations and footnotes omitted). The courts presumably could not have assessed the propriety of the school districts' respective investigations unless they were complete.

In *Bainbridge*, the Puyallup Police Department's investigation into the allegations against the police officer determined that there was "not sufficient evidence to establish that there was any inappropriate behavior by this police officer[,]" and the Mercer Island Police Department's investigation "yielded similar results, recommending that [the officer] be 'EXONERATED.'" *Bainbridge*, 172 Wn.2d at 404. The Kitsap County Prosecutor decided not to pursue charges against the officer as a result of the Puyallup report. *Bainbridge*, 172 Wn.2d at 404. And nothing in the opinion suggests that the Bainbridge Island Police Department disciplined the officer for his conduct.

The disclosure of any records–redacted or not–created as a result of the unsubstantiated allegations of misconduct against Mr. Predisik and

Mr. Katke before the District concludes its investigation is more highly offensive than in *Bellevue John Does* and *Bainbridge* because of the timing of the disclosure. Unlike *Bellevue John Does* and *Bainbridge*, where the courts ordered redacted documents released after investigations were complete, redaction of Mr. Predisik's and Mr. Katke's names does not make the disclosure any less "highly offensive" because their investigations are pending. *See Cowles Publishing Co. v. State Patrol*, 109 Wn.2d 712, 725, 748 P.2d 597 (1988) ("Release of files dealing with pending investigations, or with complaints which were later dismissed would constitute a more intrusive invasion of privacy than would the release of files relating only to completed investigations which resulted in some sanction against the officers involved."). Any reasonable person would be highly offended if records created as a result of unsubstantiated allegations of misconduct against them were disclosed before the District completed its investigation into the allegations.

Moreover, a reasonable person would find it highly offensive to have partial information about unsubstantiated allegations of misconduct against them released without the opportunity to respond to, explain, or comment on the unsubstantiated allegations. The District has instructed both Mr. Predisik and Mr. Katke not to discuss the allegations or investigations. (*See* CP 280; Exhibit 1). Even if Mr. Predisik's and Mr.

Katke's identifying information were redacted, a requestor could determine their identities based on the content and wording of the request. Disclosing the requested records during the investigation's pendency would be highly offensive because Mr. Predisik and Mr. Katke could not comment on the records or the subject matter therein without violating the District's directive not to discuss their respective allegations and investigation. Also, releasing the records before the District's investigation is complete increases the potential for public opinion and community influence–as opposed to the District determining whether the employee's conduct constitutes just cause for discipline–to guide the District's decision as to what discipline, if any, to impose. (*See* CP 320).[4]

If the District ultimately determines that the allegations are unsubstantiated or baseless, disclosure before the District completes its investigation is much more highly offensive than disclosure after the District renders its decision. If upon completion of its investigation the District finds that the allegations of misconduct were unsubstantiated, then like the teachers in *Bellevue John Does* and the officer in *Bainbridge*, Mr. Predisik and Mr. Katke could shield themselves from any negative

[4] Article IV, section 22.A of the Spokane Education Association's collective bargaining agreement (CBA) with the District states that "The District has the right to discipline, suspend, or dismiss for just cause . . . The District may bypass the steps of progressive discipline because of the severity of the employee conduct that constituted just cause for discipline." (CP 320).

reaction to the disclosure by responding that the District's investigation found the allegations unsubstantiated or baseless.

Even if the District ultimately determines that the allegations are substantiated and finds probable cause to impose discipline upon Mr. Predisik and Mr. Katke, disclosing the records–with or without Mr. Predisik's and Mr. Katke's names redacted–would still be highly offensive to a reasonable person. Mr. Predisik and Mr. Katke have statutory and contractual rights to appeal the District's decision, which is non-binding until Mr. Predisik's and Mr. Katke's appeal rights are waived or exhausted. (CP 320-23); *See* RCW 28A.405.300; .310. If Mr. Predisik and Mr. Katke receive a notice of discipline or a notice of probable cause for nonrenewal and termination under chapter 28A.405 RCW, they will have the option to file a grievance under the CBA or request an appeal under RCW 28A.405.300 and .310. [5] (*See* CP 320-23). Both review options could result in a neutral, third party determining that the District had insufficient cause to issue the discipline or notice of probable cause. *See* RCW 28A.405.310; CP 320-23.

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[5] The "statutory procedure" set forth in RCW 28A.405.300 and .310 provides an aggrieved employee with a hearing, before a neutral third party, in which the District bears the burden of establishing sufficient cause or causes for the action the District took. *See generally* RCW 28A.405.300; RCW 28A.405.310. "If the final decision is in favor of the employee, the employee shall be restored to his or her employment position. . . ." RCW 28A.405.310(7)(c).

Although the *Bellevue John Does* court did not specifically address whether disclosure would be less highly offensive if the redacted records were disclosed during the pendency of an appeal, implicit in the court's decision is the fact that teachers did not need to appeal the District's decision because the District determined that the allegations against them were unsubstantiated. *See Bellevue John Does*, 164 Wn.2d at 206-07. The court of appeals determined that the school districts' investigations showed that three of the teachers in *Bellevue John Does* were the subject of plainly false allegations, as shown by an adequate investigation, and that, with respect to 12 of the teachers, the school districts determined that an allegation was unsubstantiated or that the allegation did not warrant discipline. *Bellevue John Does*, 164 Wn.2d at 207 (citing *Bellevue John Does*, 129 Wn. App. 832). If a school district determined that the allegations were plainly false, unsubstantiated, or did not warrant discipline, the respective teachers would presumably have no need to appeal that determination.

Like *Bellevue John Does*, nothing in *Bainbridge* suggests that the police officer appealed the Puyallup and Mercer Island Police Departments' determinations, or that he even had a right to appeal. *See Bainbridge*, 172 Wn.2d at 404.

Bellevue John Does and *Bainbridge* do not support the proposition that redaction makes disclosure any less offensive where a teacher has yet to exhaust his contractually or statutorily guaranteed appeal rights. Disclosure is thus highly offensive because a neutral third party could determine that the discipline was unjustified, which would allow Mr. Predisik and Mr. Katke to respond to the release of any records by pointing to the neutral third party's decision exonerating them.

A reasonable person would find it highly offensive for any records related to allegations of misconduct against them to be disclosed, regardless of whether their names were redacted, before waiving their appeal rights or before having a neutral third party rule on the propriety of the District's decision.

c. The public does not have a legitimate interest in the disclosure of Mr. Predisik's or Mr. Katke's identity or in the requested records.

The public does not have a legitimate concern in Mr. Predisik's or Mr. Katke's identity, or in the records the District created and complied in connection with unsubstantiated allegations of misconduct against them. *See* RCW 42.56.050 (A person's right to privacy is 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."). "'[L]egitimate'" means "'reasonable.'" *Bellevue John Does*, 164 Wn.2d at 217 (quoting *Dawson*, 120 Wn.2d at 798).

Because the allegations against Mr. Predisik and Mr. Katke are unsubstantiated and because the District's investigation is ongoing, Mr. Predisik's and Mr. Katke's identities are not a matter of legitimate public concern. "When an allegation is unsubstantiated, the teacher's identity is not a matter of legitimate public concern." *Bellevue John Does*, 164 Wn.2d at 221. "In essence, disclosure of the identities of teachers who are the subject of unsubstantiated allegations 'serves no interest other than gossip and sensation.'" *Bellevue John Does*, 164 Wn.2d at 221 (quoting *Bellevue John Does*, 129 Wn. App. at 854).

The District has not made any determination as to the validity of the allegations against Mr. Predisik and Mr. Katke. (CP 401). The only interest potentially served by disclosure of the requested records at this stage in the District's investigation is "gossip and sensation". *See Bellevue John Does*, 164 Wn.2d at 221.

Washington courts have held that the public has no legitimate interest in documents in personnel files that are similar to the requested records. In *Dawson*, the court held that the public has no legitimate interest in a prosecutor's performance evaluation. *Dawson*, 120 Wn.2d at

798. In *Bellevue John Does*, the court acknowledged that there is no legitimate public interest in letters of direction in a teacher's file. *See Bellevue John Does*, 164 Wn.2d at 221. The *Bellevue John Does* court ultimately ordered disclosure of *redacted* letters of direction because "disclosure of redacted letters of direction do not violate the teachers' right to privacy because it is not highly offensive." *Bellevue John Does*, 164 Wn.2d at 226 (emphasis added). Accordingly, while the *Bellevue John Does* court admitted that the public had no legitimate interest in the letters of direction or the teachers' identities, it determined that redaction made the disclosure "not highly offensive." *Bellevue John Does*, 164 Wn.2d at 226. As discussed above, however, where the District's investigation is still pending, disclosure of any documents related to the allegations of unsubstantiated misconduct against Mr. Predisik and Mr. Katke, even if redacted, is highly offensive.

If the District determines that the allegations against Mr. Predisik and Mr. Katke were substantiated, there is still no legitimate public interest in the disclosure of any records–redacted or unredacted–because the District's determination that it has probable cause to impose discipline is not final and binding. As discussed above, in the event the District determines it has probable cause to discipline or discharge Mr. Predisik and Mr. Katke, they have a statutory and contractual right to have a

neutral third party determine the propriety of the District's decision. *See* RCW 28A.405.300; .310; (CP 321-23). The neutral third party may determine that no discipline was warranted. In that case, a greater justification for nondisclosure, or for a greater amount of redaction, would exist than if the neutral third party ruled that the District had sufficient cause to discipline or terminate Mr. Predisik or Mr. Katke. *See Cowles*, 109 Wn.2d at 725 (releasing files that were later dismissed is a more intrusive invasion of privacy than releasing files relating only to completed investigations resulting in some sanction). Also, Mr. Predisik and Mr. Katke could point to the neutral third party decision in response to any negative reaction to the disclosure.

The District will likely argue that the public has a legitimate interest in the District's investigation, but any purported legitimate public interest in the District's investigation into the unsubstantiated allegations of misconduct against Mr. Predisik and Mr. Katke does not justify disclosure when the District has not concluded its investigation. In *Bainbridge*, the court held that while the public lacked any legitimate interest in the identity of a police officer who was the subject of unsubstantiated allegations, the public had a legitimate interest in how the police department responds to and investigates an allegation of sexual misconduct against an officer. *Bainbridge*, 172 Wn.2d at 416.

The purported legitimate public interest that justified disclosure of the redacted reports in *Bainbridge* is not present where the agency's investigation is pending and where the person who is the subject of the records request has not exhausted his appeal rights. The investigations in *Bainbridge* were complete when the Bainbridge Island Police Department received the public records requests. *See Bainbridge*, 172 Wn.2d at 404. And unlike *Bainbridge*, if the District determines it has probable cause to discipline Mr. Predisik and Mr. Katke, the decision is not final and binding and Mr. Predisik and Mr. Katke may appeal that determination to a neutral third party. *See* RCW 28A.405.300; .310; (CP 321-23). *Bainbridge* is distinguishable on its facts.

To the extent that the court determines the public has a legitimate concern in monitoring the District's investigation into the allegations of misconduct against Mr. Predisik and Mr. Katke, the public's interest in monitoring the investigation does not require the District to disclose Mr. Predisik's and Mr. Katke's identity, the specific details of the alleged misconduct, or the specific facts discovered in the District's investigation. Any legitimate public concern is in the nature of the investigation, not the specific details of the investigation. *See Bainbridge*, 172 Wn.2d at 417. And "the identity of the accused . . . is unnecessary, and plays little role in the public's oversight of the investigation." *Bellevue John Does*, 164

Wn.2d at 220. The public can adequately inform itself of the District's investigation without the District disclosing specific details of its investigation into Mr. Predisik and Mr. Katke.

The public does not have any legitimate interest in Mr. Predisik's or Mr. Katke's identity or conduct, or in the District's investigation until and unless a neutral third party makes a final determination as to whether the District had sufficient cause to discipline them. Permitting disclosure before Mr. Predisik and Mr. Katke have the opportunity for a neutral third party to decide the propriety of the District's decision fails to adequately protect their right to privacy.

C. RCW 42.56.230(3) exempts the requested records from disclosure because they are personal information the District maintains in a file for Mr. Predisik and Mr. Katke, and disclosing them would violate their right to privacy.

The trial court properly determined that the requested records are Mr. Predisik's and Mr. Katke's "personal information". (CP 401). RCW 42.56.230(3) exempts from disclosure "[p]ersonal information in files maintained for employees . . . of any public agency to the extent that

disclosure would violate their right to privacy[.]"[6] There is no dispute that the District maintains the requested records in files for Mr. Predisik and Mr. Katke. *See* RCW 42.56.230(3).

Although the PRA does not define "personal information", Washington courts define "personal information", for purposes of RCW 42.56.230, as "information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general. . . ." *Bellevue John Does*, 164 Wn.2d at 211 (citing statutes from other jurisdictions that define "personal information" similarly); *see DeLong v. Parmelee,* 157 Wn. App. 119, 156, 236 P.3d 936 (2010). ("The term '[p]ersonal information' means information 'of or relating to a particular person.'") (quoting *Lindeman v. Kelso Sch. Dist. No. 458*, 127 Wn. App. 526, 535-36, 111 P.3d 1235 (2005), *rev'd on other grounds*, 162 Wn.2d 196, 172 P.3d 329 (2007)).

Mr. Predisik's and Mr. Katke's identity constitute "personal information" under RCW 42.56.230(3). A teacher's identity is "personal information" because the teacher's identity relates to a particular person. *Bellevue John Does*, 164 Wn.2d at 211 ("The teachers' identities are clearly "personal information" because they relate to particular people.").

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[6] The analysis as to why disclosure will violate Mr. Predisik's and Mr. Katke's right to privacy was set forth in section B, above.

Because Mr. Predisik's and Mr. Katke's identity relate to them, their identities are "personal information" under RCW 42.56.230(3).

The requested records that the District intends to disclose are "personal information" under RCW 42.56.230(3). *See Bellevue John Does*, 164 Wn.2d at 211 (defining "personal information" as "information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general."). Because the requested records contain information relating to or affecting Mr. Predisik and Mr. Katke, and that information is not public or general, the requested records are "personal information" under RCW 42.56.230(3).

Because Mr. Predisik's and Mr. Katke's identity and the requested records are "personal information" under RCW 42.56.230(3), and because, as described above, disclosure of the personal information would violate Mr. Predisik's and Mr. Katke's right to privacy, the court should order the District to withhold the requested records. *See* RCW 42.56.050; RCW 42.56.230(3).

D. RCW 42.56.240(1) exempts the requested records from disclosure because they are specific investigative records, the District is an "investigative agency" when conducting formal investigations into its

employees, and nondisclosure is essential to protect Mr. Predisik's and Mr. Katke's right to privacy.

RCW 42.56.240(1) exempts from public inspection and copying "specific investigative records compiled by investigative . . . agencies . . . the nondisclosure of which is essential to . . . protection of any person's right to privacy[.]"[7] The records the District intends to disclose are specific investigative records and the District is an "investigative agency", under RCW 42.56.240(1).

1. The requested records are specific investigative records under RCW 42.56.240(1).

The trial court determined that the District "is still in the process of its respective investigations as to [Mr. Predisik and Mr. Katke]." (CP 401). The records that the District intends to disclose are "specific investigative records", under RCW 42.56.240(1), that the District created in relation to its investigation into Mr. Predisik and Mr. Katke. "Records are 'specific investigative records' if they were 'compiled as a result of a specific investigation focusing with special intensity upon a particular party.'" *Dawson*, 120 Wn.2d at 792-93 (quoting *Laborers Int'l Union, Local 374 v. Aberdeen*, 31 Wn. App. 445, 448, 642 P.2d 418 (1982)). The

[7] The analysis as to why disclosure will violate Mr. Predisik's and Mr. Katke's right to privacy was set forth in section B, above.

investigation involved must be designed to shed light on some allegation of malfeasance. *Dawson*, 120 Wn.2d at 793 (quoting *Columbian Publ'g Co. v. City of Vancouver*, 36 Wn. App. 25,31, 671 P.2d 280 (1983).

The District issued Mr. Predisik and Mr. Katke administrative leave letters informing them that the District placed them on leave to conduct investigations into the respective allegations of misconduct against them. (CP 12, 281-82) The District had to have conducted some investigation into the allegations of misconduct against Mr. Predisik and Mr. Katke before formally placing them on administrative leave. The District unquestionably was investigating Mr. Predisik when it created the administrative leave letter, which the District gave to him over four months after it placed him on administrative leave. (CP 12; Exhibit 1). Exhibits 2 and 3 also would not have been created but for the fact that the District is engaged in a specific investigations focusing with special intensity upon Mr. Predisik and Mr. Katke. *See Dawson*, 120 Wn.2d at 792-93. Accordingly, the records are "specific investigative records" under the PDA. *Dawson*, 120 Wn.2d at 792-93

2. The District is an "investigative agency", for purposes of RCW 42.56.240(1), when it conducts a formal investigation into its employee's alleged misconduct.

The District is an "investigative agency", for purposes of the exemption in RCW 42.56.240(1), when it conducts formal investigations into Mr. Predisik's and Mr. Katke's alleged misconduct. For purposes of the PRA, the term "'[a]gency' includes all state agencies and all local agencies." RCW 42.56.010(1). "'Local agency' includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency." RCW 42.56.010(1). The District is a "local agency" and, therefore, an "agency" under the PRA. RCW 42.56.010(1).

The PRA does not define the term "investigative agency". When conducting an investigation into a particular employee, a school district is an "investigative agency" within that term's plain meaning. "Investigate" means "to observe or study closely: inquire into systematically. . . ." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1189 (2002). The District placed Mr. Predisik and Mr. Katke on administrative leave specifically to investigate the allegations against them. (CP 12, 280, 401). As Mr. Predisik and Mr. Katke have been on administrative leave for approximately 16 and 14 months, respectively, the District is presumably continuing to systematically inquire into Mr. Predisik's and Mr. Katke's alleged misconduct (CP 10-12, 279-84, 346, 401) The District is an

investigative agency when it conducts formal investigations into allegations against its teachers.

The investigative records exemption is not limited to law enforcement or criminal investigations. The legislature specifically used the terms "investigative, law enforcement and penology agencies". RCW 42.56.240(1) (emphasis added). Courts must give meaning to every word in a statute and presume the legislature did not use any superfluous words. *In re Recall of Pearsall-Stipek*, 141 Wn.2d 756, 767, 10 P.3d 1034 (2000).

In *Columbian*, the court held that "the kind of investigation that the exemption requires" is "one designed to ferret out criminal activity or to shed light on some other allegation of malfeasance." *Columbian*, 36 Wn. App. at 31 (emphasis added). The court held that the exemption did not apply case because the city manager there was reviewing 13 statements from police officers in the police chief's job performance following a union vote of "no confidence". *Columbian*, 36 Wn. App. at 30-31.

In *Ashley v. Washington State Public Disclosure Commission*, 16 Wn. App. 830, 834, 560 P.2d 1156 (1977), the court held that the Public Disclosure Commission ("Commission") was an "investigative agency" for purposes of the former Public Disclosure Act, by virtue of its statutory duties. Former RCW 42.17.360 (1973), which set forth the Commission's duties, included the duty to "investigate whether properly completed

statements and reports have been field within the times required by this chapter by examining its duties[,]" and to "investigate and report apparent violations of this chapter to the appropriate law enforcement authorities." Former RCW 42.17.360(2) and .360(3) (1973). The court also noted that that the Commission had compiled an "investigative file" pertaining to the petitioner's allegations in that case. *Ashley*, 16 Wn. App. at 835. Although the *Ashley* court focused on the statutory duties of the agency in that case, a record may fall within the PRA's "investigative record" exemption if the record was compiled as a result of a specific investigation focusing with special intensity upon a particular party, regardless of whether the investigation is statutorily mandated. *See, Prison Legal News, Inc. v. Dep't of Corrections*, 154 Wn.2d 628, 637, n.7, 115 P.3d 316 (2005); *Dawson*, 120 Wn.2d at 792-93.

Like the Commission in *Ashley*, the District has compiled documents in investigative files pertaining to the unsubstantiated allegations of misconduct against Mr. Predisik and Mr. Katke. *Ashley*, 16 Wn. App. at 835; (Exhibits 1-3). And similar to the statutory duties governing the agency in *Ashley*, the District has an obligation to investigate allegations of misconduct against its teachers. For example, RCW 28A.400.317(1) requires school employees to report suspected physical or sexual abuse of a student by another employee to a school

administrator, who must conduct an investigation to determine whether reasonable cause supports the allegation. "The school administrator shall cause a report to be made to the proper law enforcement agency if he or she has reasonable cause to believe that the misconduct or abuse has occurred. . . ." RCW 28A.400.317(1). "During the process of making a reasonable cause determination, the school administrator shall contact all parties involved in the complaint." RCW 28A.400.317(1).

In addition to statutory investigation requirements, the District acts as an "investigative agency" under policies and procedures adopted by the District's School Board. *See Ashley*, 16 Wn. App. at 834; (CP 313-14). The District has adopted District Procedure 5116, which contains investigative requirements and obligations similar to those set forth in RCW 28A.400.317(1). (CP 314). And District Policy 5116 implies that the District has an obligation to investigate allegations of misconduct against its teachers before disciplining them. District Policy 5116 states that "[d]iscipline shall be reasonably appropriate to the circumstances and may include suspension or discharge, but shall be in accordance with any applicable collective bargaining agreement." (CP 313).

The District is also an "investigative agency" by virtue of its obligations under the CBA to conduct investigations into allegations of misconduct before imposing discipline. *See Ashley*, 16 Wn. App. at 834.

The CBA states that the District has an obligation to investigate alleged employee misconduct. (CP 320). Article IV, section 22.C provides, in relevant part:

> After a supervisor concludes that actions of an employee may be cause for discipline, he/she shall notify the employee of the nature of the concern which has come to his/her attention and allow the employee an opportunity to meet with the supervisor and respond . . . If, after the investigation is complete the District chooses to discipline the employee, the District may hand deliver the letter of discipline to the employee without calling a special meeting.

(CP 320). Further implying an obligation to investigate before imposing discipline, the CBA, at Article IV, section 22.A, states that "[t]he District has the right to discipline, suspend, or dismiss for just cause." (CP 320).

That fact that the District is an "investigative agency" when conducting formal investigations into allegations of employee misconduct is evident from the fact that the District routinely conducts formal investigations into its teachers. "For the 2011-2012 school year, the District hired an employee whose job duties specifically included conducting investigations into allegations of wrongdoing made against District employees." (CP 361). In her uncontroverted declaration,

Rebecca Powell,[8] a UniServ Representative in the Washington Education Association's Spokane office, Rebecca Powell, states that:

> [I]n every case [she has] been involved in where the District places an employee on administrative leave to conduct an investigation into allegations against an employee, the school district systematically inquires into the allegations against the employee by interviewing witnesses, interviewing the employee, reviewing an employee's personnel file, the District's file on the employee, and/or reviewing other documents related to the allegations against the employee.

(CP 361). Attached to Ms. Powell's uncontroverted declaration are: (1) copies of emails the District has sent to employees informing them that the District has begun an investigation into allegations of wrongdoing against the employee;[9] (2) administrative leave letters that the District provided to various District employees that the District placed on administrative leave pending the District's investigation into allegations of misconduct;[10] and (3) copies of disciplinary decisions delivered to District employees following the District's investigation into allegations against them.[11] The District routinely conducts the types of investigations that it is currently conducting regarding Mr. Predisik and Mr. Katke; investigations

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[8] Ms. Powell is a union representative who represents Spokane School District employees who are members of the Washington Education Association. (CP 359).
[9] CP 367-71.
[10] CP 373-78.
[11] CP 380-87.

designed to shed light upon particular allegation of malfeasance against its employees. (*See* CP 56, 59, 359-87); *See Columbian*, 36 Wn. App. at 31.

The District's job descriptions and position availability notices for District administrators further show that the District is an "investigative agency" under RCW 42.56.240(1). Spokane Public School Board Procedure No. 5114 mandates that "each staff member shall receive a job description that identifies the essential function of the job upon which the staff member will be evaluated." (CP 54). As of April 5, 2012, the Spokane Public Schools' website contained a summary job description for the "Assistant Superintendent, Human Resources" position that included "conducts investigations and employee discipline leading to termination." (CP 56). The formal job posting that the District had on its website for the vacant position of Assistant Superintendent, Human Resources, included as a requisite qualification "Demonstrated successful experience with employee disciplinary investigations. . . ." (CP 59). And the online summary job description for Tennille Jeffries-Simmons, the "Interim Executive Director for Human Resources" and the person who wrote Mr. Predisik's administrative leave letter, states that she "conducts investigations and employee discipline up to termination." (CP 56).

The District is an "investigative agency" for purposes of RCW 42.56.240(1), when it investigates the allegations against Mr. Predisik and

Mr. Katke. The requested records are specific investigative records, and, as discussed in section B above, nondisclosure of the requested records is essential to Mr. Predisik's and Mr. Katke's right to privacy. Accordingly, the requested records are exempt from public disclosure under RCW 42.56.240(1).

E. Redacting Mr. Predisik's name from the administrative leave letter does not protect his right to privacy and does not render the disclosure any less offensive.

This court cannot adequately protect Mr. Predisik's right to privacy by ordering disclosure of the requested administrative leave letter with his name and identifying information redacted. Disclosing the administrative leave letter with his name and identifying information redacted is no less highly offensive than full disclosure. "The [PRA] seeks to provide people with full access to public records while remaining mindful of the right of individuals to privacy and of the desirability of the efficient administration of government." *Bellevue John Does*, 164 Wn.2d at 224-25 (quotations omitted). The court cannot protect Mr. Predisik's right to privacy if it orders disclosure with Mr. Predisik's name and identifying information redacted.

In *Bellevue John Does*, the court held that there is no legitimate public concern in information identifying teachers within letters of direction, but that disclosing the letters with the teachers' names and identifying information redacted did not violate the teachers' rights to privacy because disclosing the redacted records was not highly offensive. *Bellevue John Does*, 164 Wn.2d at 226-27. In that case, the Seattle Times requested, from the Seattle, Bellevue, and Federal Way school districts, "all records relating to allegations of teacher sexual misconduct in the last 10 years". *Bellevue John Does*, 164 Wn.2d at 206. The request implicated 55 current and former teachers, 37 of whom filed suit. *Bellevue John Does*, 164 Wn.2d at 206. When a large number of people are the subject of records disclosed in response to a broad public records request, redaction may provide adequate protection for those people's right to privacy because the requestor has no way of identifying the person merely from the fact of disclosure. But where the records request is for "the administrative leave letter given to Anthony Predisik, a Shadle park High School Counselor", redaction is useless to protect his right to privacy. (CP 36, 47).

In *Bainbridge*, the court held that the public lacked a legitimate interest in the name of the police officer who was the subject of unsubstantiated allegations of sexual misconduct, but that the public had a

legitimate interest in how the police department responded to and investigated the allegations. *Bainbridge*, 172 Wn.2d at 416. Accordingly, the court ordered disclosure of the investigative reports with the officer's name redacted. *Bainbridge*, 172 Wn.2d at 416. The court acknowledged that ordering the police officer's name redacted did not protect his identity, but held that since there was a legitimate public interest in the nature of the investigations, disclosure of the investigative reports with the officer's name redacted did not violate his right to privacy. *Bainbridge*, 172 Wn.2d at 416.

The *Bainbridge* court reached its decision relying, in part, on *Koenig v. City of Des Moines*, 158 Wn.2d 173, 142 P.3d 162 (2006), *Bainbridge*, 172 Wn.2d at 416. In *Koenig*, the requestor sought from the City of Des Moines all records concerning his daughter, the victim of sexual molestation, whom he identified by name and case number in his records request. *Koenig*, 158 Wn.2d at 178. The City refused to disclose the records, claiming an exemption under Former RCW 42.17.31901 (1992), which provided that:

> Information revealing the identity of child victims of sexual assault who are under age eighteen is confidential and not subject to public disclosure. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.

Koenig, 158 Wn.2d at 181 (quoting former RCW 42.17.31901 (1992)). The court held that, "[b]y its plain language, [the statute] excludes from disclosure only the information falling within one of the enumerated categories, and not entire records." *Koenig*, 158 Wn.2d at 182.

But RCW 42.56.230(3) and RCW 42.56.240(1), and the exemptions claimed in *Bellevue John Doe* and *Bainbridge*, do not expressly limit or define the specific information that is exempt from disclosure, unlike like the statute in *Koenig*. The court can determine that nondisclosure of an entire record is necessary to protect Mr. Predisik's right to privacy because the court can exempt any information that falls under the claimed exemptions "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; *See* RCW 42.56.230(3); RCW 42.56.240(1). The exemptions Mr. Predisik claims apply to *all* information that would violate his right to privacy if disclosed. As described above, disclosing the administrative leave letter would be highly offensive to a reasonable person and the public has no legitimate concern in the record. Because the exemptions Mr. Predisik claims do not restrict the scope of information exempted like the statute in *Koenig*, the rationale in *Koenig* and *Bainbridge* do not apply.

Bellevue John Does and *Bainbridge* are distinguishable on their facts. First, the *Bellevue John Does* court did not address whether redaction adequately protects the subject of a records request when the request seeks records related to a specific individual. *Bellevue John Does*, 164 Wn.2d at 206. Second, the investigations in *Bellevue John Does* and *Bainbridge* were complete by the time the agencies received the records requests. The District's investigation into Mr. Predisik's conduct is ongoing. The public does not have the same legitimate concern in investigations into unsubstantiated allegations of misconduct in a pending investigation. *See Cowles*, 109 Wn.2d at 725 ("Release of files dealing with pending investigations, or with complaints which were later dismissed would constitute a more intrusive invasion of privacy than would the release of files relating only to completed investigations which resulted in some sanction against the officers involved.")

The purpose of redaction is to protect a person's right to privacy. *See* RCW 42.56.070(1); *see, e.g., Bellevue John Does*, 164 Wn.2d at 226-27. Reading RCW 42.56.050 to permit redaction of a person's name to ensure that disclosure would not be "highly offensive to a reasonable person" leads to an absurd result when a records request identifies records regarding a specific person. Courts construe statutes so as to avoid

strained or absurd results. *City of Auburn v. Gauntt*, 174 Wn.2d 321, 330, 274 P.3d 1033 (2012).

Redacting Mr. Predisik's name and identifying information completely fails to protect his right to privacy because anyone who reviewed the administrative leave letter would know that Mr. Predisik's name and identifying information are what were redacted.

V. CONCLUSION

Based on the foregoing, Anthony Predisik and Christopher Katke respectfully request this court to affirm the trial court's determination that they have a right to privacy in their identities in connection with unsubstantiated allegations of misconduct and that the requested records are personal information under RCW 42.56.230(3). Mr. Predisik and Mr. Katke respectfully request this court to reverse the trial court and hold that the records, in their entirety, are exempt from disclosure under RCW 42.56.230(3) and RCW 42.56.240(1).

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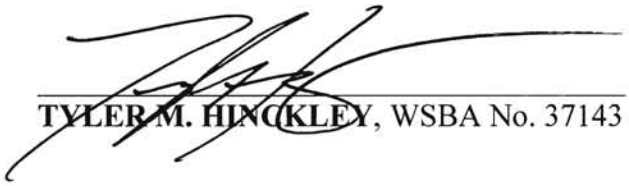
Respectfully submitted this 26th day of March, 2013.

MONTOYA HINCKLEY PLLC
Attorneys for Appellants Anthony Predisik and Christopher Katke



TYLER M. HINCKLEY, WSBA No. 37143

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the state of Washington that on the date stated below I served a copy of this document in the manner indicated:

Paul Clay Stevens Clay Manix, P.S. Attorneys for Riverside School District and Spokane School District 421 W. Riverside Ave #1575 Spokane, WA 99201	□ First Class U.S. Mail □ Email □ Hand Delivery ☑ FedEx Next Day
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DATED at Yakima, Washington, this 26th day of March, 2013.

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