

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Sep 15, 2014, 3:11 pm  
BY RONALD R. CARPENTER  
CLERK

NO. 90129-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

---

RECEIVED BY E-MAIL

ANTHONY PREDISIK,

Petitioner

v.

SPOKANE SCHOOL DISTRICT NO. 81,

Respondent

---

BRIEF OF AMICUS SUBMITTED ON BEHALF OF THE  
WASHINGTON ASSOCIATION OF SHERIFFS & POLICE CHIEFS

---

Received *E*  
Washington State Supreme Court

SEP 26 2014

Ronald R. Carpenter  
Clerk

Ramsey Ramerman,  
Assistant City Attorney,  
City of Everett

WSBA # 30423  
2930 Wetmore Ave  
Everett, WA 98201  
(425) 257-7000

*Attorneys for Amicus, Washington  
Association of Sheriffs and Police  
Chiefs*

ORIGINAL

## TABLES OF CONTENTS

<b>I.</b>	<b>INTRODUCTION</b> .....	1
<b>II.</b>	<b>IDENTITY AND INTEREST OF AMICUS</b> .....	3
<b>A.</b>	<b>Interest of Amicus</b> .....	3
<b>B.</b>	<b>Applicant’s Familiarity with the Issues and the Scope of Argument to Be Presented by the Parties</b> .....	3
<b>C.</b>	<b>Specific Issue to Which Amicus Curiae Brief Will Be Directed.</b>	4
<b>D.</b>	<b>Why Additional Consideration Is Necessary</b> .....	4
<b>III.</b>	<b>STATEMENT OF THE CASE</b> .....	5
<b>IV.</b>	<b>ARGUMENT</b> .....	6
<b>A.</b>	<b>The Court Should Provide Clear Guidance to Public Agencies</b>	6
<b>B.</b>	<b>The Court Should Recognize that Privacy Interests Can Differ Based on Whether an Allegation Is Disclosed Before or After It Is Investigated</b> .....	7
1.	<b>In the Case of Completed Investigations, Employees May Have Limited Privacy Interests</b> .....	9
2.	<b>The Disclosure of Many Allegations Will Be Highly Offensive If the Disclosure Only Notes That the Allegation Is Being Investigated</b> .....	11
<b>C.</b>	<b>The Disclosure of Identifying Information During Active Investigations Can Harm the Public Interest</b> .....	15

## TABLE OF AUTHORITIES

### Cases

<i>Bainbridge Island Police Guild v. City of Puyallup</i> , 172 Wn.2d 398, 259 P.3d 190 (2011).....	<i>passim</i>
<i>Bellevue John Does v. Bellevue Sch. Dist.</i> , 164 Wn.2d 199, 189 P.3d 139 (2008).....	<i>passim</i>
<i>Bellevue John Does v. Bellevue Sch. Dist.</i> , 129 Wn. App. 832, 120 P.3d 616 (2005) .....	4-5
<i>Confederated Tribes v. Johnson</i> , 135 Wn.2d 734, 958 P.2d 260 (1998).....	5
<i>Corey v. Pierce County</i> , 154 Wn. App. 752, 225 P.3d 367 (2010) .....	12
<i>Cowles Publ'g v. State Patrol</i> , 109 Wn.2d 712, 748 P.2d 597 (1988).....	16, 17
<i>Cox v. Roskelley</i> , 359 F.3d 1105 (9th Cir. 2004) .....	13
<i>Dawson v. Daly</i> 120 Wn.2d 782, 845 P.2d 995 (1993).....	16
<i>Fisher v. State</i> , 125 Wn. App. 869, 106 P.3d 836 (2005) .....	14
<i>King v. Garfield County Public Hosp. Dist. No. 1</i> , -- F.Supp.2d --, 2014 WL 1744179 (E.D.Wash. 2014) .....	13
<i>Morgan v. City of Federal Way</i> , 166 Wn.2d 747, 213 P.3d 596 (2009).....	2, 6, 9
<i>Predisik v. Spokane School District No. 81</i> , 179 Wn. App. 513, 319 P.3d 801 (2014) .....	3
<i>Sargent v. Seattle Police Department</i> , 179 Wn.2d 376, 314 P.3d 1093 (2013).....	2, 4, 15
<i>West v. Port of Olympia</i> , -- Wn. App. --, 2014 WL 4212738 (Aug. 26, 2014).....	9-11

**Statutes**

RCW 42.56.050 .....2, 7  
RCW 42.56.230(3).....7  
RCW 42.56.250(5).....12  
RCW 42.56.540 .....6

**Other**

Robert Walker, *The Right to Be Forgotten*,  
64 HASTINGS LAW JOURNAL 257 (2012) .....14

## I. INTRODUCTION

Timing can make a difference when it comes to the disclosure of information identifying a public employee who has been accused of misconduct. Consider how offensive the two following statements would be if you read them about yourself in the local paper:

- *After an investigation, the City has determined that allegations accusing Assistant City Attorney Ramsey Ramerman of committing theft by misusing public resources were unsubstantiated.*

Or

- *Assistant City Attorney Ramsey Ramerman has been put on paid administrative leave while the City investigates allegations that he committed theft by misusing public resources.*

While it would be true to say in both cases that the allegations are “unsubstantiated,” the disclosure in the second instance is significantly more offensive than the first. Once allegations are investigated, some of the “sting” has been taken out of it. Therefore, this Court has ruled that under the Public Records Act (PRA), when an agency has investigated and determined allegations of misconduct are unsubstantiated, employee identifying information can only be redacted if the allegations themselves

are so inherently offensive that an employee would be highly offended just because the allegation was made.<sup>1</sup>

This Court has not, however, ruled on the issue of whether the disclosure of identifying information would be highly offensive when the allegations are still under investigation.<sup>2</sup> Whether or not the Court affirms the Court of Appeal's ruling in this case, the Washington Association of Sheriffs and Police Chiefs (WASPC) urges the Court to recognize that an employee has a significantly stronger privacy interest during an active investigation than the employee might have after the investigation is complete. The case before the Court does not involve any disclosure regarding the nature of the allegations that are at issue, and the Court may rule that the fact that an employee has been accused of some unstated misconduct that is being investigated is not highly offensive. But in

---

<sup>1</sup> Compare *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 259 P.3d 190 (2011) (highly offensive to disclose identifying information for allegation of sexual assault found to be unsubstantiated); *Bellevue John Does v. Bellevue Sch. Dist.*, 164 Wn.2d 199, 189 P.3d 139 (2008) (highly offensive to disclose identifying information for allegation of sexual assault found to be unsubstantiated) with *Morgan v. City of Federal Way*, 166 Wn.2d 747, 213 P.3d 596 (2009) (not highly offensive to disclose allegation of rude and obnoxious conduct). In the first two situations, , the allegation remains highly offensive even after the finding that it was unsubstantiated.

The Court has ruled that the public never has a legitimate public interests in the identity of the employee when the allegation is unsubstantiated, even if the allegation was not properly investigated. *Bellevue John Does 2*, 164 Wn.2d at 221-22. Thus, to determine if a privacy interest exists, the only issue is whether disclosure of the allegation is highly offensive, or merely offensive or embarrassing. See RCW 42.56.050 (defining privacy under the PRA).

<sup>2</sup> The Court did consider disclosure during an active investigation in *Sargent v. Seattle Police Dep't*, 179 Wn.2d 376, 314 P.3d 1093 (2013), but only to determine whether disclosure would interfere with effective law enforcement.

making that ruling, WASPC urges the Court recognize that privacy interests can differ when allegations are disclosed during an investigation from when they are disclosed after the investigation. The issue of what allegations would be highly offensive if an employee's identifying information were disclosed can be resolved another day when those issues are properly presented.

## **II. IDENTITY AND INTEREST OF AMICUS**

### **A. Interest of Amicus**

The Washington Association of Sheriffs and Police Chiefs (WASPC) was founded in 1963 and consists of executive and top management personnel from law enforcement agencies statewide. WASPC's membership includes sheriffs, police chiefs, the Washington State Patrol, the Washington Department of Corrections, and representatives of a number of federal agencies. WASPC's function is to provide specific materials and services to all law enforcement agencies in the state, members and non-members alike.

### **B. Applicant's Familiarity with the Issues and the Scope of Argument to Be Presented by the Parties**

The applicant has reviewed the Court of Appeals opinion<sup>3</sup> along with the pleadings filed before that court and the Supreme Court.

---

<sup>3</sup> *Predisik v. Spokane School District No. 81*, 179 Wn. App. 513, 319 P.3d 801 (2014).

**C. Specific Issue to Which Amicus Curiae Brief Will Be Directed**

This brief will address the issue of the scope of an employee's privacy interest when allegations of misconduct are under investigation.

**D. Why Additional Consideration Is Necessary**

In this case, there is no party advocating for a workable standard that both recognizes the limited scope of privacy under the PRA and that there is still a privacy interest that needs to be protected in some circumstances for active investigations. The petitioner employees are advocating for privacy but because they are arguing for withholding the records at issue in their entirety, they are arguing for a result that the Court effectively rejected in *Sargent v. Seattle Police Department*<sup>4</sup> and *Bainbridge Island Police Guild v. City of Puyallup*<sup>5</sup>. Their argument does not try to address the more nuanced position WASPC is putting forward in this brief.

The School District has already determined it would err on the side of disclosure and has therefore not endeavored to provide arguments regarding non-disclosure.<sup>6</sup> And of course the requestors are not advocating for any privacy protections.

---

<sup>4</sup> *Sargent*, 179 Wn.2d 376

<sup>5</sup> *Bainbridge*, 172 Wn.2d 398

<sup>6</sup> This is not to say an agency must remain neutral in third-party PRA actions. To avoid liability for attorney fees under the PRA, an agency must comply with its deadlines and agree to release the records – once it has complied with these obligations, it cannot be

The risk arises that if the Court rejects the petitioners' arguments, the Court's ruling could be interpreted as rejecting the distinction between privacy interests when an investigation is completed and when it is still active. The arguments in this brief are meant to highlight this difference so that it is not inadvertently overlooked.

### III. STATEMENT OF THE CASE

The facts are adequately addressed by the Court of Appeals. The key facts relevant to this brief are as follows:

The three records at issue indicate that two school district employees are on administrative leave pending investigations of unspecified misconduct. Br. of Respondent at 11. The records at issue only use a broad and vague descriptor to describe the nature of the allegations. Br. of Respondent at 11. The records themselves do not describe the specific allegations. Br. of Respondent at 13.

---

held responsible to pay a requestors' attorney fees if the third party prevents actual disclosure by obtaining a RCW 42.56.540 injunction. *Bellevue John Does v. Bellevue School Dist. No. 405*, 129 Wn. App. 832, 864-65, 120 P.3d 616 (2005) (*Bellevue John Does I*) (quoting *Confederated Tribes v. Johnson*, 135 Wn.2d 734, 958 P.2d 260 (1998)), *aff'd in part on other grounds, Bellevue John Does 2*, 164 Wn.2d 199. Agencies are encouraged to err on the side of disclosure, but they are not required to advocate in favor of disclosure in third party lawsuits to avoid liability. *Bellevue John Does 1*, 129 Wn. App. at 864-65 (holding that school districts that had made their intent to disclose clear were not liable for attorney fees after an injunction was lifted even though they advocated in favor of the third party position). In many close cases, the agency may have think disclosure is not in the public interest, but at the same time may opt not to put the taxdollars at risk based on an ambiguous law. Given the state of the law on misconduct records and the consequences for PRA violations, the School District's decision in this case to err on the side to disclosure and to maintain a more neutral stance is quite understandable.

The School District determined that the records should be released without redactions, but before disclosing the records it provided third party notice to the employees. The employees filed a lawsuit under RCW 42.56.540 to block disclosure of the records in their entirety.

The trial court ruled that the records should be released, but that the School District should redact the names of the accused employees. The employees appealed and the Court of Appeals affirmed. This Court granted the employee's petition for review.

#### IV. ARGUMENT

##### A. The Court Should Provide Clear Guidance to Public Agencies

There is no good faith defense when an agency wrongfully withholds records in response to a PRA request. Therefore, when the law is unclear regarding whether records are exempt, agencies will often take a course of action similar to that taken by the School District – err on the side of disclosure but provide third-party notice. *See, e.g., Bainbridge*, 172 Wn.2d 398 (union sued to block disclosure); *Morgan*, 166 Wn.2d 747, (municipal judge sued to block disclosure); *Bellevue John Does 2*, 164 Wn.2d 199 (teachers sued to block disclosure).

As argued below, WASPC urges the Court to recognize that when determining the privacy interest of employees accused of misconduct, the timing of the disclosure can make a difference. In recognizing this

distinction, however, WASPC urges the Court to follow its practice in past decisions such as *Bellevue John Does 2*, and adopt clear guidance. For example, in that case, the Court rejected the Court of Appeals' ruling that distinguished between unsubstantiated and patently false allegations. *Bellevue John Does 2*, 164 Wn.2d at 218. The lead opinion in *Bainbridge* similarly rejected a test that would have required agencies to monitor media coverage to see if an employee had any privacy right left. *Bainbridge*, 172 Wn.2d at 414. The Court should continue its efforts to provide clear guidance in its ruling in this case, without adopting complicated tests or balancing factors. Any test should be based on objective facts known to the agency rather than subjective opinions or information that might or might not be available from other sources.

**B. The Court Should Recognize that Privacy Interests Can Differ Based on Whether an Allegation Is Disclosed Before or After It Is Investigated**

Under RCW 42.56.230(3), information and records related to allegations of misconduct against public employees can be withheld if disclosure would violate the employee's right to privacy. An employee's right to privacy will only be violated when the public does not have a legitimate interest in the record and disclosure would be highly offensive to a reasonable person. RCW 42.56.050.

In *Bellevue John Does 2*, the Court held that the public does not have a legitimate interest in the identity of an employee who has been accused of misconduct unless the allegation is substantiated. This remains true even if the agency has not adequately investigated the allegation because the mere fact of an allegation is not “indicative of [an] increased likelihood of misconduct.” *Bellevue John Does 2*, 164 Wn.2d at 221. Thus, whether an employee has a privacy right that justifies redacting the employee’s identifying information will turn on whether disclosure of the allegation will be highly offensive.

Almost every appellate case that has considered whether information regarding allegations of misconduct must be disclosed in response to a PRA request have involved disclosures of the allegation after the agency has investigated and made a determination regarding whether the allegation is substantiated or not. The Court should not consider those cases as controlling when determining the privacy interest of employees who have been accused of misconduct that is still under investigation at the time of the request. Rather, the Court should recognize that even if an employee might not be highly offended if it was disclosed that an agency had investigated an allegation of misconduct and determined that the allegation was unsubstantiated, the employee could be highly offended if

the agency disclosed that it was currently investigating that same allegation made against the employee. Timing can make the difference.

**1. In the Case of Completed Investigations, Employees May Have Limited Privacy Interests**

In *West v. Port of Olympia*, -- Wn. App. --, 2014 WL 4212738 (Aug. 26, 2014), the court held that an employee did not have a right to privacy in his identifying information after an agency has completed its investigation into an allegation of misconduct. Of course for substantiated allegations, disclosure is required. But even for allegations that have been deemed “unsubstantiated,” the *West* Court held that any privacy interest would only arise for certain egregious allegation of misconduct.

Thus, in *Bellevue John Does 2* and *Bainbridge*, the Court recognized that the allegations at issue – sexual assaults – were highly offensive to a reasonable person. Accordingly, the Court ruled that if the allegations were unsubstantiated, the accused employee’s identifying information could be redacted. *Bellevue John Does 2*, 164 Wn.2d at 222; *Bainbridge*, 172 Wn.2d at 417-18. In contrast, in *Morgan*, Court held that allegations accusing a judge of engaging in obnoxious, inappropriate

behavior were not highly offensive, and thus disclosure did not implicate the judge's privacy interest. *Morgan*, 166 Wn.2d 756.<sup>7</sup>

Based on these three cases, the *West* Court ruled that only certain allegations of misconduct are offensive enough to be "highly offensive" and thus justify withholding identifying information based on privacy after the allegations have been investigated and deemed unsubstantiated. *West*, at \*4-\*5, ¶¶17-21. The Court went on to conclude that disclosure of the unsubstantiated<sup>8</sup> (and vigorously denied) allegation of theft was not "highly offensive." *West*, at \*5 ¶23.

The conclusion that some accusations are highly offensive and others are not, when reviewed after an investigation is completed, might be justified in part by the inclusion of a finding of "unsubstantiated." When an agency has already investigated a claim and deemed it unsubstantiated, it sends the message that at the very least, the evidence of

---

<sup>7</sup> Although the Court went on to find the allegations were not unsubstantiated, it is important to note that the Court made its ruling that the allegations were not highly offensive before addressing the substantiated question. *Morgan*, 166 Wn.2d at 756.

<sup>8</sup> Although the Court in *Bellevue John Does* stated that the offensive nature the allegations of sexual assault by teachers against students did not vary depending on whether it was substantiated or unsubstantiated, see *Bellevue John Does 2*, 164 Wn.2d at 216 n.18, this should not be interpreted as a ruling that the offensiveness can never vary from the time of the allegation to after the allegation is investigated and found to be unsubstantiated. Rather, the Court's statement is better explained as recognizing that it is so highly offensive to accuse a teacher of raping a student that the allegation remains highly offensive even after it is determined to be "unsubstantiated." As the court in *West* recognized, this is not true for all allegations.

misconduct was inconclusive and many will likely interpret unsubstantiated to mean innocent.

The Court's holding in *Bellevue John Does 2* does not reject the consideration of the timing of the release. There, the Court held that it was highly offensive to accuse a teacher of raping a child whether the accusation was substantiated or unsubstantiated. *Bellevue John Does 2*, 164 Wn.2d at 216 & n.16. *West* then stands for the proposition that time can matter, so that disclosure was not highly offensive when the agency had already investigated and deemed the allegation unsubstantiated, blunted the offensiveness of the allegations. *West*, at \*5 ¶21.

**2. The Disclosure of Many Allegations Will Be Highly Offensive if the Disclosure Only Notes That the Allegation Is Being Investigated**

The Court rulings discussed above all involve disclosures after completed investigations. In this situation, “unsubstantiated” means the claim has been investigated and there was not sufficient evidence to find that the allegation was true. This is similar to a finding of not guilty and will often be equated with a finding of innocence.

When a claim is still under investigation, it is also “unsubstantiated,” but here unsubstantiated means something very

different.<sup>9</sup> Rather than equate “unsubstantiated” with innocence, the public is more likely to equate the fact that an investigation is being conducted as suggesting guilt, particularly if the employee has been put on leave. Why else would the employee be put on leave? Thus, the Court should not look to the post-investigation cases to determine whether disclosure would be highly offensive.

The difference between disclosing an allegation that has been determined to be unsubstantiated versus disclosing that an allegation is under investigation is easily illustrated by contrasting the *West* case with *Corey v. Pierce County*, 154 Wn. App. 752, 225 P.3d 367 (2010), which also involved an employee accused of theft. Although *Corey* involved a tort claim for a privacy violation, not a PRA dispute, it resulted in a jury finding that the disclosure that a deputy prosecutor was under investigation for the theft of funds was highly offensive.<sup>10</sup>

Other allegation, in addition to theft, that might be offensive if disclosure occurred prior to the completion of the investigation include allegations of sexual harassment or racial discrimination, or allegations of dishonesty, such as an accusation that a police officer lied in a police

---

<sup>9</sup> If a claim was unsubstantiated because the employee resigned before any finding was made, the public’s interest would be the same as if a substantiated finding was made.

<sup>10</sup> The allegations in *Corey* had already been investigated and determined to be unsubstantiated at the time the partial information was released, which thus served as the basis of tort liability.

report.<sup>11</sup> Such allegations carry a strong stigma and can undermine public trust in the accused employee. Thus, assuming it would not be highly offensive to disclose that the agency had investigated an allegation of harassment and found it was unsubstantiated, it would be highly offensive to disclose the employee was under investigation for harassment.

The offensiveness of identifying an employee who is under investigation for misconduct is magnified by today's technology, particularly the internet. If a story related to misconduct is picked up by the media, the employee's name can be associated with the allegations in the story for decades or longer.<sup>12</sup> If this occurs at a time when the accusation is still being investigated, the story regarding the accusation is likely to garner more attention subsequent stories noting that the claims were unsubstantiated. This will result in the initial story having a larger internet footprint, so that they will be the stories that come out higher on the result list for future internet searches. Because not all searchers will find the later stories showing the claim was unsubstantiated, the premature identification can have long-term negative implications.

---

<sup>11</sup> Ironically, if the alleged misconduct was harassment or discrimination of a fellow employee, the entire investigative file would be exempt during the active investigation. *See* RCW 42.56.250(5).

<sup>12</sup> *See, e.g.*, "Students protest for Nuxalk tribe in Canadian land dispute," *The Daily Oct.* 17, 1995, (available at <http://dailyuw.com/archive/1995/10/17/imported/students-protest-nuxalktribe-canadian-land-dispute>) (last visited Sept. 13, 2014).

In fact, because of the risk of harm to employees from premature disclosure, the federal courts have ruled in at least one situation, premature disclosure can implicate an employee's right to Due Process. A public agency in Washington can violate an employee's rights to Due Process by delivering a termination letter that identifies certain types of stigmatizing misconduct without first providing the name-clearing hearing. Because the letter would be subject to disclosure under the PRA, and name-clearing hearing could result in a finding that the allegations are unsubstantiated, the premature disclosure can cause significant harm to the employee.<sup>13</sup> Implicit in this analysis is that the disclosure of information showing the claims were unsubstantiated is less harmful than the premature disclosure before the name clearing hearing is held.

Of course, the records at issue in this case do not identify any stigmatizing misconduct because the documents do not describe the nature of the allegations at all. Thus, it may be that the Court determines the mere fact that an employee has been accused of misconduct and put on

---

<sup>13</sup> See *Cox v. Roskelley*, 359 F.3d 1105, 1110 (9th Cir. 2004) (because termination letter was subject to disclosure under PRA, agency violated employee's due process right by including letter in personnel file without first providing a name clearing hearing); *King v. Garfield County Public Hosp. Dist. No. 1*, -- F.Supp.2d --, 2014 WL 1744179 \*10 (E.D.Wash. 2014) (placing the stigmatizing information in the employee's personnel file, "in the face of a state statute mandating release upon request, constitute[s] publication sufficient to trigger [the employee's] liberty interest under the Fourteenth Amendment.") (quoting *Cox*).

administrative leave is not without more highly offensive.<sup>14</sup> If that is what the Court rules, however, WASPC urges the Court recognize that in cases where the allegations are described, disclosure of identifying information during the investigation can be highly offensive, even if the later disclosure that the allegations were found to be unsubstantiated would not be highly offensive.

**C. The Disclosure of Identifying Information During Active Investigations Can Harm the Public Interest**

While the Court has already recognized that the public does not have any legitimate interest in identifying information of public employees accused of misconduct when those accusations of unsubstantiated, regardless of how well the claims were investigated, the release of this information during an investigation can actually cause significant harm to the public interest in at least two ways.<sup>15</sup>

First, the disclosure of the names of accused employees can unnecessarily undermine public confidence based on accusations that may

---

<sup>14</sup> *Cf. Fisher v. State*, 125 Wn. App. 869, 879-880, 106 P.3d 836 (2005) (no invasion of privacy when list of persons prescribed a particular drug was released, where only the plaintiff's name without any other details was released, which was not highly offensive)

<sup>15</sup> Because of the limited information in the records at issue, this case does not require the Court to consider when the disclosure of other information will harm the public interest and potentially be exempt. The Court should therefore be clear that its opinion does not address whether other redactions for privacy, witness safety and effective law enforcement would apply. *See, e.g., Sargent*, 179 Wn.2d 376 (noting exemptions for specific records and information may be appropriate for effective law enforcement).

prove to be unfounded.<sup>16</sup> If the news of the accusation is widely publicized but the subsequent finding of no misconduct is not, a segment of the public will continue to have less trust in the agency for no good reason. As the saying goes, “trust is the coin of the realm” for government. So if the purpose of government is to serve the public interest, the decrease in trust will harm the public interest by making government less efficient in those efforts.

Second, the premature disclosure of accused employees may cause employees to be less willing to raise concerns about possible misconduct. Employees may not want to subject fellow employees to harsh public scrutiny if they only suspect but are not sure misconduct has occurred. *See generally Dawson v. Daly*, 120 Wn.2d 782, 845 P.2d 995 (1993) (noting supervisors would be less candid in employee evaluations if they were subject to disclosure), *abrogated in part by Soter v. Cowles Publ’g*, 162 Wn.2d 716, 174 P.3d 60 (2007). Moreover, the premature disclosure before any investigation is completed will be more likely to thrust the accuser into the spotlight, which many will wish to avoid. *See generally Cowles Publ’g v. State Patrol*, 109 Wn.2d 712, 719, 748 P.2d 597 (1988) (noting how disclosure can discourage employees from reporting fellow

---

<sup>16</sup> While the mere publication of accusations can also hurt public confidence, without a name, the mistrust cannot stick to an agency in the same manner.

employees' misconduct). In contrast, if a claim has already been investigated, the evidence gathered during that investigation will serve as the focal point rather than the accuser.

When these harms are weighted against the cost of at most a temporary delay in the disclosure of an employee's identity, it is clear that the premature disclosure is not only highly offensive to the accused employee but is also detrimental to the public good.

## V. CONCLUSION

“The basic purpose of the [PRA] is to provide a mechanism by which the public can be assured that its public officials are honest and impartial in the conduct of their public offices.” *Cowles Publ'g*, 109 Wn.2d at 719. The public therefore has a strong interest in ensuring accusations against public employees are fully investigated. But that interest can be satisfied without identifying the accused employee. And until that investigation is complete, it would be highly offensive to identify an employee accused of certain types of misconduct. This is true, even if it would not be highly offensive to later disclose that same accusations were made, investigated and determined to be unsubstantiated. The Court should recognize this distinction whether the Court affirms or reverses the Court of Appeals in this case.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of September, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ramsey Ramerman". The signature is written in a cursive style with a large initial "R".

---

Ramsey Ramerman, WSBA # 30423  
Attorneys for Amicus Washington  
Association of Sheriffs and Police Chiefs

**CERTIFICATE OF SERVICE**

I, Ramsey Ramerman, certify under penalty of perjury that true and correct copies of the above attached document were delivered as follows, with the parties' agreement to accept email service:

Paul Clay Stevens Clay, P.S. Attorneys for Riverside School District & Spokane School Dist. 421 W. Riverside Ave #1575 Spokane, WA 99201 via E-mail <a href="mailto:PClay@stevensclay.org">PClay@stevensclay.org</a>	Philip Buri Buri Funston Mumford PLLC Attorneys for Riverside School District & Spokane School District 1601 F St Bellingham, WA 98225-3011 via Email <a href="mailto:Philip@burifunston.com">Philip@burifunston.com</a>
Tyler M. Hinckley Montoya Hinckley, PLLC Attorneys for Appellants Anthony Predisik & Christopher Katke 4702 A Tieton Drive Yakima, W A 98908 via email: <a href="mailto:tyler@montoyalegal.com">tyler@montoyalegal.com</a>	William John Crittenden Attorney at Law Attorney for Amicus Washington Coalition for Open Government 300 East Pine Street Seattle, Washington 98122 via email <a href="mailto:wjcrittenden@comcast.net">wjcrittenden@comcast.net</a>
Margaret Pak Enslow Martin PLLC Attorney for Amicus ACLU 701 Fifth Ave., Suite 4200 Seattle, Washington 98104 via email: <a href="mailto:margaret@enslowmartin.com">margaret@enslowmartin.com</a>	Sarah Dunne Douglas B. Klunder ACLU of WA Foundation 901 Fifth Ave., #630 Seattle, WA 98164 via email: <a href="mailto:dunne@aclu-wa.org">dunne@aclu-wa.org</a> <a href="mailto:klunder@aclu-wa.org">klunder@aclu-wa.org</a>

Executed at Everett, Washington, this 15<sup>th</sup> day of September, 2014.



\_\_\_\_\_  
Ramsey Ramerman