

No. 90129-5

THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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ANTHONY PREDISIK and CHRISTOPHER KATKE,

*Petitioners,*

v.

SPOKANE SCHOOL DISTRICT NO. 81,

*Respondent.*

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BRIEF OF AMICUS CURIAE  
WASHINGTON COALITION FOR OPEN GOVERNMENT

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TABLE OF CONTENTS

I. IDENTITY AND INTEREST OF AMICUS.....1

II. STATEMENT OF THE CASE.....2

III. ARGUMENT.....2

    A. This case should be remanded to the trial court for reconsideration in light of CR 19 and *Burt v. Dep't of Corrections* because the requester is not a party and the public interest is not represented in this case.....2

    B. Disclosure of the records would not violate the petitioners' right to privacy.....8

    C. The School District's administrative letter and payroll spreadsheets are not "investigative records.".....19

IV. CONCLUSION.....20

## TABLE OF AUTHORITIES

### CASES

<i>Bainbridge Is. Police Guild v. City of Puyallup</i> , 172 Wn.2d 398, 259 P.3d 190 (2011).....	5, 11, 13, 14
<i>Bellevue John Does 1-11 v. Bellevue School Dist.</i> , 164 Wn.2d 199, 189 P.3d 139 (2008).....	11, 13, 15
<i>Brouillet v. Cowles Publ'g Co.</i> , 114 Wn.2d 788, 791 P.2d 526 (1990).....	13, 16, 19, 20
<i>Burt v. Dep't of Corrections</i> , 168 Wn.2d 828, 231 P.3d 191 (2010).....	2-8, 20
<i>City of Everett v. Van Dyke</i> , 18 Wn. App. 704, 571 P.2d 952 (1977) .....	4-5
<i>Columbian Pub. Co. v. City of Vancouver</i> , 36 Wn. App. 25, 671 P.2d 280 (1983).....	18
<i>Cowles Publ'g Co. v. City of Spokane</i> , 69 Wn. App. 678, 849 P.2d 1271 (1993).....	18
<i>Cowles Pub. Co. v. Spokane Police Dept.</i> , 139 Wn.2d 472, 987 P.2d 620 (1999).....	20
<i>Cowles Publ'g Co. v. State Patrol</i> , 109 Wn.2d 712, 748 P.2d 597 (1988).....	17
<i>Dawson v. Daly</i> , 120 Wn.2d 782, 845 P.2d 995 .....	16, 18
<i>Hearst v. Hoppe</i> , 90 Wn.2d 123, 580 P.2d 246 (1978).....	3, 4, 10, 11, 20
<i>In re Det. of Williams</i> , 147 Wn.2d 476, 491, 55 P.3d 597 (2002).....	19
<i>Koenig v. Des Moines</i> , 158 Wn.2d 173, 142 P.3d 162 (2006).....	13-14
<i>Koenig v. Thurston County</i> , 175 Wn.2d 837, 287 P.3d 523 (2012).....	18

<i>Laborers Int'l Union of N. Am. v. City of Aberdeen</i> , 31 Wn. App. 445, 642 P.2d 418 (1982) .....	18
<i>Morgan v. Federal Way</i> , 166 Wn.2d 747, 213 P.3d 596 (2009) .....	11-13
<i>Progressive Animal Welfare Society v. UW (PAWS II)</i> , 125 Wn.2d 243, 884 P.2d 592 (1994).....	10
<i>Resident Action Council v. Seattle Housing Authority</i> , __ Wn.2d __, 327 P.3d 600 (2014).....	13, 17
<i>Seattle Times Co. v. Serko</i> , 170 Wn.2d 581, 243 P.3d 919 (2010).....	9, 20
<i>Soter v. Cowles Publ'g Co.</i> , 162 Wn.2d 716, 174 P.3d 60 (2007). .....	7
<i>Spokane Police Guild v. Wash. State Liquor Control Bd.</i> , 112 Wn.2d 30, 769 P.2d 283 (1989).....	10, 20
<i>State v. Gonzalez</i> , 110 Wn.2d 738, 757 P.2d 925 (1988). .....	6
<i>West v. Port of Olympia</i> , __ Wn. App. __, 2014 WL 4212738 (Div. 2 Aug. 26, 2014).....	11

**STATUTES**

Chap. 42.56 RCW .....	<i>passim</i>
RCW 42.56.030 .....	16
RCW 42.56.050 .....	10, 13-14, 16, 17
RCW 42.56.070 .....	9, 12
RCW 42.56.080 .....	8, 15
RCW 42.56.210(1).....	12
RCW 42.56.210(3).....	9
RCW 42.56.230(2).....	9

RCW 42.56.240(1)..... 8, 9, 10, 17-18, 19  
RCW 42.56.540 ..... 4-5, 6  
RCW 42.56.550(3).....16

**COURT RULES**

CR 19 ..... 2-8, 20

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

WCOG is an independent, nonpartisan organization dedicated to promoting the public's right to know in matters of public interest and in the conduct of the public's business. WCOG's mission is to foster open government processes, supervised by an informed citizenry, which is the cornerstone of democracy. WCOG's interest in this case stems from the public's strong interest in timely access to accurate information concerning the conduct of government and in maintaining government accountability to the people of the state of Washington. WCOG and its members believe that state and local agencies exercise their authority by consent of the governed, and therefore have a duty to conduct their activities in a transparent manner. Access to public records under the Public Records Act, Chapter 42.56 RCW ("PRA"), is an essential tool of transparency that should be protected and encouraged. WCOG is the state's freedom of information association, Washington citizens' representative organization on the National Freedom of Information Coalition, and a champion of the public's right of access in its educational programs and in court. WCOG has a legitimate interest in assuring that the Court is properly briefed on important issues involving the PRA.

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

WCOG relies on the facts set forth in the parties' briefs.

### III. ARGUMENT

- A. **This case should be remanded to the trial court for reconsideration in light of CR 19 and *Burt*, because the requester is not a party and the public interest is not represented in this case.**

Under CR 19(a) and *Burt v. Dep't of Corrections*, 168 Wn.2d 828, 836-837, 231 P.3d 191 (2010), the requester is a necessary party in an action to enjoin disclosure of public records. Because the requester is normally a party to a PRA case, WCOG normally appears as amicus in support of the requester. After this Court granted review on July 9, 2014, WCOG reviewed the Court of Appeals' decision in anticipation of filing an amicus brief in this Court. However, WCOG discovered that, contrary to *Burt*, the media entities that actually requested the two records at issue are not parties to this case. *See Ans. to Pet. for Rev.* at 2. The only parties are persons seeking to prevent the disclosure of public records (petitioners Predisik and Katke) and the agency whose records have been requested (the school district). *Id.* at 1-2. As a result, WCOG finds itself in the unusual position of having no PRA requester with which to align itself.

Under CR 19(a) and *Burt*, the requester is a necessary party in an action to enjoin the disclosure of public records. The requester is the only party who represents the public interest in disclosure: "The stated purpose of the PRA is to protect the public's interest in being able to obtain public

records. Without an advocate for the release of the requested records, this purpose can be frustrated.” 168 Wn.2d at 835. The agency at which a PRA request is aimed is *not* a reliable advocate for transparency. *Hearst v. Hoppe*, 90 Wn.2d 123, 131, 580 P.2d 246 (1978). Furthermore, regardless of the position taken by the agency, the requester has an interest in the subject matter and must be joined if feasible under CR 19(a). *Burt*, 168 Wn.2d at 835. Where the requester has not been joined, an injunction must be vacated and the case remanded to the trial court. *Id.* at 838.

WCOG acknowledges the facts of this case are somewhat different than *Burt*. In that case the agency actively supported the employees’ action for an injunction, and in the absence of the requester there was no genuinely adversarial proceeding, and no party represented the requester’s or the public’s interest in disclosure. 168 Wn.2d at 835-836. One justice noted that the case had “all the earmarks of a collusive lawsuit.” 168 Wn.2d at 839 (Sanders, J., concurring). Here, the respondent school district has asserted at least some portion of the requested records are not exempt and should be disclosed. *Ans. to Pet. for Rev.* at 3-4. However, petitioners contend the district has ulterior motives for disclosing records containing allegations of misconduct by the petitioners. *Petition* at 12. WCOG takes no position on that disputed allegation. Nevertheless, the

allegation highlights the concerns expressed in *Hearst* and *Burt* that government agencies are *not* reliable advocates for transparency.

Assuming, *arguendo*, that the District's stated motives are genuine, this case still must be remanded for the same reasons as set forth in *Burt*. Not only have the parties failed to join the requester as required by CR 19, the District freely admits that it has no real legal interest in disclosure:

While the Spokane School District ("School District") is the named Respondent in this action, the School District has no real stake in the claim other than as the agency holding the three records at issue (each of which it determined should be produced). The School District thus submits this Response Brief more in the spirit of a "friend to the court" than as a party adverse to Appellants.

*Resp. Br.* at 1. Similarly, the district's answer states:

The District thus submits this Answer in the interest of obtaining clarity for its own future benefit and for the future benefit of all other agencies in the State as to the above issues.

*Answer to Pet. Rev.* at 2. Like *Burt*, this case does not present a truly adversarial dispute over whether public records are exempt or subject to disclosure. A party, such as the District, which only seeks "clarity," and which admits that it has "no real stake" in the outcome of the case, cannot effectively represent the interests of requesters.

For example, RCW 42.56.540 requires a party seeking an injunction to establish both a specific applicable exemption *and* that disclosure "would clearly not be in the public interest and would

substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.” *Bainbridge Is. Police Guild v. City of Puyallup*, 172 Wn.2d 398, 420, 259 P.3d 190 (2011) (“*BIPG*”). But the District has never raised the issue of whether the injunction standards in RCW 42.56.540 have been met. *See Resp. Br.* at 3-4. WCOG (and this Court) can only speculate about what other arguments a requester-litigant might have made in favor of disclosure.

In one of the earliest PRA cases, the Court of Appeals recognized that no justiciable controversy can even exist without the active participation of the requester. *City of Everett v. Van Dyke*, 18 Wn. App. 704, 571 P.2d 952 (1977). In that case the requester (Van Dyke) sought the personnel file of a former city employee. Upon the completion of *in camera* review, Van Dyke was permitted to take the records from the courtroom. *Van Dyke*, 18 Wn. App. at 705. The City appealed, but Van Dyke neither appeared in the appeal nor filed a brief. The Court of Appeals refused to hear the merits of the case, noting that the case was not a genuinely adversarial dispute. *Van Dyke*, 18 Wn. App. at 705-06.

In response to WCOG’s *Motion of Amicus [WCOG] to Remand Case for Compliance With CR 19* (August 11, 2014), petitioners argued that *Burt* is distinguishable because the District supposedly has advocated for disclosure, resulting in a “truly adversarial proceeding.” *Petitioners’*

*Ans. to WCOG Mot.* at 9. That is simply not true. As explained below, the District failed to appeal the trial court's ruling that the teachers' names should be redacted and has only asked this Court to "provide clarification" on that issue. *Ans. to Pet. Rev.* at 15. Technically, WCOG's argument that the names should not have been redacted is an argument raised only by amicus, which the Court could simply refuse to consider. *See State v. Gonzalez*, 110 Wn.2d 738, 752 n.2, 757 P.2d 925 (1998). In addition, the parties have failed to address the injunction standards in RCW 42.56.540.

Although the District may effectively represent its *own* interests, the fact remains that the public's right to full disclosure under the PRA is at issue in this case and none of the parties actually represent that interest. Indeed, the District freely admits that it has no *legal* interest in disclosure, *Resp. Br.* at 1, and the petitioners allege the District has *ulterior* motives for disclosing allegations of misconduct by the petitioners. *Pet.* at 12. *Burt* is not distinguishable; this case is *not* truly adversarial.

Petitioners also argued that the requesters have waived their right to participate in this case. *Petitioners' Ans. to WCOG Mot.* at 4. That may be correct, but the rights of the particular requesters are no longer the issue. Petitioners have argued, in effect, that when the particular requester refuses to defend an injunction action under RCW 42.56.540 the public's interest in the vigorous enforcement of the PRA is thereby waived and the

case may proceed with only the agency and the party seeking to enjoin disclosure presenting arguments about how the PRA should be interpreted. In such cases, there is a significant danger that the parties will inadvertently or intentionally fail to represent the interest in full disclosure. The District's failure to zealously represent the public interest on at least two major issues in this case proves the point.

The Court of Appeals should be reversed, and the case remanded to the trial court for reconsideration in light of CR 19 and *Burt*. On remand, if the requesters do not wish to litigate over these particular requests, they may withdraw them. *See Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 753 n.16, 174 P.3d 60 (2007). Alternatively, if the requesters are joined as parties but fail either to appear or to resist petitioners' requested injunction, then an injunction may issue by default. Either way, unnecessary litigation will be avoided and important PRA issues will not be decided in a case where no party represents the public interest in disclosure. Resolution of the substantive issues presented here should wait until those issues arise in an adversarial case involving a requester.

**B. Disclosure of the records would not violate the petitioners' right to privacy.**

One consequence of this case proceeding without requester input is that no party has advocated for full, unredacted disclosure of the records.

Release of petitioners' names in this case invades no privacy interest. As such, no PRA exemption applies, and if the Court reaches the merits it should order the District to release the records without redaction. *See* § B(1). Alternatively, the decision below should be affirmed because redaction of petitioners' names protects any alleged privacy interest. *See* § B(2). A second consequence of proceeding without requester input is that parties hostile to aspects of the PRA are attempting to use this appeal to roll back the public's established rights of access. Amicus ACLU invites this Court to upend the PRA's existing privacy and redaction requirements in favor of a multi-factor "public concern" test it concocted out of whole cloth. Its proposal violates RCW 42.56.080, and would grant agencies unlawful discretion to reject disfavored requests. *See* § B(3). Petitioners, through counsel who represents accused teachers in other cases,<sup>1</sup> ask this Court to treat school administrative records as "investigative records" subject to RCW 42.56.240(1). The Court should reject this unprecedented expansion of the investigative records exemption. *See* § C.

**1. The records should be fully disclosed because no PRA exemption applies.**

The only records at issue in this case are (i) an administrative letter disclosing the already-public fact that Mr. Predisik was being placed on

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<sup>1</sup> *See, e.g., Martin v. Riverside School Dist. No. 416*, 179 Wn. App. 1018, 2014 WL 346547 (Div. 3 Jan. 30, 2014) (unpublished).

leave; and (ii) two “payroll spreadsheets,” one for each petitioner. 179 Wn. App. at 517. The records do not disclose “any intimate details of [petitioners’] personal and private life. The records merely identify that [they] have been placed on administrative leave pending completion of an investigation into unspecified allegations – using a descriptor that is broad and vague.” *Resp. Br.* at 11. “[N]one of the records describe any allegations of misconduct whatsoever[.]” *Id.* at 12 (emphasis added).

None of the litigants objected to redaction of petitioners’ names, and the courts below failed to consider whether the records should be released in full. *Id.* at 15; 179 Wn. App. at 520. But the records implicate no privacy interest, and thus there was no legal basis for any redaction.

The PRA is a broad mandate for disclosure, requiring “full access to information concerning the conduct of government on every level ... as a fundamental and necessary precondition to the sound governance of a free society.” *Progressive Animal Welfare Soc. v. University of Washington*, 125 Wn.2d 243, 251, 260, 884 P.2d 592 (1994) (“PAWS II”). Public records held by an agency must be disclosed in full upon request unless a specific statutory exemption applies. RCW 42.56.070(1), .210(3); *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 591, 243 P.3d 919 (2010).

The exemptions relied on below – RCW 42.56.240(1)’s privacy prong, and RCW 42.56.230(2) – both apply only to the extent disclosure

would violate a person's "right to privacy." Both exemptions thus required petitioners to prove that disclosure would be both "highly offensive to a reasonable person" and "not of legitimate concern to the public." RCW 42.56.050. Petitioners cannot meet this burden here.<sup>2</sup>

Disclosure of the petitioners' names would not be "highly offensive" because the three records *disclose no offensive information about them*. The PRA's privacy test, RCW 42.56.050, is taken from the Restatement (Second) of Torts § 652D, the common law standard for the "public disclosure of private facts" tort. *Hearst*, 90 Wn.2d at 135; *BIPG*, 172 Wn.2d at 410 n.6; 1987 c 403 § 1. Under this standard, it is no privacy invasion to "merely give[] further publicity to information about the plaintiff that is already public," Restatement § 652D, cmt. b, or already known to a substantial group of people. *See Spokane Police Guild v. Wash. State Liquor Control Bd.*, 112 Wn.2d 30, 38, 769 P.2d 283 (1989). Here, the fact that the petitioners had been placed on leave was not private: it was known, at the very least, to their students, to school officials, to other teachers, and to the requesters, all before the PRA requests were submitted. The fact they were placed on leave is not private, and its disclosure is not an invasion of privacy.

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<sup>2</sup> RCW 42.56.240(1) also does not apply for the additional reason that the records at issue are not "investigative records." *See* Section C below.

Moreover, the mere fact that one has been placed on leave is not the sort of private fact protected by the PRA's privacy test. This Court has recognized repeatedly that the test protects intimate matters such as sexual relations, "humiliating illnesses," and "details of a man's life in his home." Restatement § 652D, cmt. b, quoted in *Hearst*, 90 Wn.2d at 136. This Court has held that disclosure of a public employee's name in connection with unsubstantiated allegations can be a privacy invasion – but only if the allegation is itself highly offensive, as in the case of alleged sexual misconduct. *Bellevue John Does 1-11 v. Bellevue School Dist.*, 164 Wn.2d 199, 216, 189 P.3d 139 (2008). But "[t]he offensiveness of disclosure is implicit in the nature of an allegation of sexual misconduct." *Id.* at 216 n.18; *BIPG*, 172 Wn.2d at 415. Disclosure of other misconduct, even if unsubstantiated, is not highly offensive. *See Morgan v. Federal Way*, 166 Wn.2d 747, 756, 213 P.3d 596 (2009) (no privacy intrusion to disclose allegations judge engaged in "angry outbursts, inappropriate gender-based and sexual comments, and demeaning colleagues and employees"); *West v. Port of Olympia*, \_\_ Wn. App. \_\_, 2014 WL 4212738, at \*4-\*5 (Div. 2 Aug. 26, 2014) (disclosing employee name in connection with unsubstantiated allegations he violated administrative procedures and profited from agency activities not highly offensive).<sup>3</sup>

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<sup>3</sup> ACLU suggests that disclosure of *any* unsubstantiated allegation involving a public

Here, the records contain no “highly offensive” disclosure. The nature of the allegations is not disclosed at all. No basis exists for redacting petitioners’ names.

**2. Even if petitioners have a privacy interest, redaction of the names suffices to protect that interest.**

If this Court does not release the records in full (either because it declines to grant broader relief than the litigants sought, or because it finds petitioners have some privacy interest in non-disclosure), it still should hold the records must be disclosed, with only petitioners’ names redacted.

The PRA mandates that records be disclosed to the maximum extent possible. PRA exemptions are inapplicable to the extent exempt information “can be deleted from the specific records sought.” RCW 42.56.210(1); RCW 42.56.070(1); *Resident Action Council v. Seattle Housing Auth.*, \_\_\_ Wn.2d \_\_\_, 327 P.3d 600, 606, 609-10 (2013).

In the case of public employee records containing unsubstantiated allegations of misconduct, this Court repeatedly has held that any asserted privacy interest can be adequately protected by redacting the employee’s name, and that categorical withholding of the entire document is not allowed. Even if disclosure of the employee’s name in connection with an

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employee is “highly offensive.” *ACLU Br.* at 6-8. While ACLU disingenuously couches this as a request that the Court “clarify” *Morgan* (*id.* at 7-8), it is in fact a request to overrule the case. *Morgan* precludes a finding that it is highly offensive to disclose the mere fact that a public employee has been accused of some unspecified misconduct.

unsubstantiated allegation would be highly offensive, the remainder of the records is not exempt because the public nevertheless has a “legitimate concern,” RCW 42.56.050, in how an agency responds to alleged misconduct, and in the adequacy of the investigation. *BIPG*, 172 Wn.2d at 416; *see also Bellevue John Does*, 164 Wn.2d at 220-21; *Morgan*, 166 Wn.2d at 756; *Brouillet v. Cowles Pub’g Co.*, 114 Wn.2d 788, 797–98, 791 P.2d 526 (1990). The fact that the redacted record may enable someone to discern the employee’s identity through other sources of information does not change the analysis. *BIPG*, 172 Wn.2d at 416; *Koenig v. Des Moines*, 158 Wn.2d 173, 182–83, 142 P.3d 162 (2006).

Here, the courts below found correctly that “the public has a legitimate interest in the administrative leave letter and spreadsheets,” based on the broader public concern in “seeing that a government agency conducts itself fairly and uses public funds responsibly.” 179 Wn. App. at 521. This finding precludes withholding the records in their entirety. They must be released with, at most, only the petitioners’ names redacted.

**3. The ACLU’s proposed “public concern” test is unlawful and unworkable.**

Petitioners and ACLU claim redaction of the employees’ names will be ineffective to protect their alleged privacy interests, because the requesters already know who they are. Again, this Court twice has

squarely rejected exactly the same argument. *Koenig v. Des Moines*, 158 Wn.2d at 181-82 (ordering release of incident report on child sex abuse with only victim' identity redacted, even though request referred to victim by name); *BIPG*, 172 Wn.2d at 418 (ordering disclosure of redacted records even though that “may result in others figuring out Officer Cain’s identity.”) Given that the records here are far less revealing than the records at issue in *Koenig v. Des Moines* and *BIPG*, there is no basis in this case to depart from this well-settled precedent.

ACLU nevertheless urges the Court to overrule *Koenig v. Des Moines* and replace it with a loose, multi-factor test entirely of its own invention. *ACLU Br.* at 9-13. According to ACLU, the test should be applied to evaluate the legitimacy of the public concern under RCW 42.56.050 “where redaction may not effectively protect privacy interests[.]” *Id.* at 10. Notably, ACLU proposed the same exact test in its amicus brief in *BIPG*.<sup>4</sup> This Court declined to consider the ACLU’s proposal and instead reaffirmed *Koenig* and its “four-corners” rule. *BIPG*, 172 Wn.2d at 416, 418 n.13. Should this Court be inclined even to consider ACLU’s renewed proposal now, it should reject this test for at least the following five reasons:

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<sup>4</sup> See <https://aclu-wa.org/sites/default/files/attachments/2010-10-15--ACLU%20Amicus.pdf>.

(1) ACLU's test violates RCW 42.56.080, because it would require agencies and courts to consider the identity of requesters, and to deny requests if the requester fails to demonstrate an acceptable purpose or "context" for the request. Remarkably, ACLU argues that one of the requests at issue in this case is acceptable because it was "made by a reporter" – as if the same request from an individual unaffiliated with the news media might not merit consideration. *ACLU Br.* at 14. The PRA expressly prohibits discriminating among requesters in this manner. RCW 42.56.080 ("Agencies shall not distinguish among persons requesting records"); *Bellevue John Does*, 164 Wn.2d at 224 ("our inquiry into the legitimacy of the public's concern cannot take into account the identity of the requesting party or the purpose of the request"). ACLU's first factor also requires agencies to consider the "scope" of a request – but the PRA bars agencies from denying requests on this basis. *ACLU Br.* at 10-11; RCW 42.56.080 ("Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad.").

(2) ACLU admits its proposal is a privacy "balancing test" that explicitly weighs the personal interests of the individual identified in the record against the public's concern. *ACLU Br.* at 3, 11 (second factor), 17 ("In some instances, the subject's privacy outweighs the public's interest"). But the Legislature specifically prohibited just such a balancing

test: RCW 42.56.050 leaves no room for weighing an individual's privacy interest against the public interest. Instead, the party favoring secrecy always bears the burden of proving both elements of the privacy test. *Dawson v. Daly*, 120 Wn.2d 782, 795, 845 P.2d 995 (1993); *Brouillet*, 114 Wn.2d at 791.

(3) ACLU's test allows agencies to consider "government efficiency" – *i.e.*, how disclosure might affect their own operations – as a basis for denying the legitimacy of a request. *ACLU Br.* at 12. This an invitation for agencies to suppress records at the whim of officials. This element ignores the PRA's stated policy "that free and open examination of public records is in the public interest." RCW 42.56.550(3). Agencies cannot deny requests on such grounds: "The people ... do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." RCW 42.56.030.

(4) ACLU ignores the PRA's rules of construction. These require disclosure unless a specific exemption applies and redaction rather than withholding entire documents. RCW 42.56.070(1); *Resident Action Council*, 327 P.3d at 606. Agencies need these bright-line rules to respond to PRA requests in a manner consistent with the PRA's purpose. An agency's determination of what information to redact must turn on whether or not a statutory exemption applies – not on the broader

“context” of the request, or the existence of other requests, or what the requester may already know, or what the record might disclose if linked with other information. In most cases, agencies have no legitimate way of learning such things, and the PRA does not allow records to be withheld on these grounds.

(5) ACLU presents its test as a way to evaluate the “legitimate public concern” prong of the PRA’s privacy provision, but it virtually ignores the extensive body of case law that already addresses the public concern element of RCW 42.56.050 and the Restatement provision on which the statute is based. *See, e.g.*, Restatement § 652D, cmts. d-k, illustrs. 12-26. ACLU fails to explain how the test it has concocted would interact with existing law, or why a new test is necessary.

**C. The School District’s administrative letter and payroll spreadsheets are not “investigative records.”**

Without directly addressing the issue, the Court of Appeals accepted petitioners’ argument that RCW 42.56.240(1), the PRA’s investigative records exemption, applied to this case. 179 Wn. App. at 521-22. This Court should reject that conclusion out of hand. Except in the context of law enforcement agency investigations of police officers,<sup>5</sup> employee discipline records are not subject to Section 240(1).

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<sup>5</sup> *See Cowles Publishing Co. v. State Patrol*, 109 Wn.2d 712, 729-31, 748 P.2d 597 (1988).

In relevant part, the PRA exempts “specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential ... for the protection of any person’s right to privacy.” RCW 42.56.240(1). As set forth above, disclosure of the records at issue does not intrude on petitioners’ privacy. But in addition, (i) the records are not “investigative records,” and (ii) the school district is not an investigative agency subject to the exemption.

An “investigative record” under Section 240 is one “compiled as a result of a specific investigation focusing with special intensity upon a particular party.” *Dawson*, 120 Wn.2d at 792-93. The investigation must be one “designed to ferret out criminal activity or to shed light on some other allegation of malfeasance.” *Koenig v. Thurston County*, 175 Wn.2d 837, 843, 287 P.3d 523 (2012) (citing *Columbian Pub. Co. v. City of Vancouver*, 36 Wn. App. 25, 31, 671 P.2d 280 (1983)).<sup>6</sup> Administrative and payroll records like those at issue here are not “investigative records.” *Cowles Publ’g Co. v. City of Spokane*, 69 Wn. App. 678, 683, 849 P.2d 1271 (1993); *Laborers Int’l Union of N. Am. v. City of Aberdeen*, 31 Wn.

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<sup>6</sup> Seizing on *Columbian*’s “malfeasance” language, Petitioners assert that the personnel records at issue here amount to “investigative records.” *App. Br.* at 36. But that case made clear that the requisite “malfeasance” has to be something akin to a crime: the matter at issue in *Columbian* was “purely a personnel matter, not an investigation in the intended sense,” just as it is here. 36 Wn. App. at 31.

App. 445, 448, 642 P.2d 418 (1982). Here, none of the records were “compiled as a result of” an investigation: the payroll spreadsheets were created in response to a PRA request, 179 Wn. App. at 803, and the leave letter is simply an administrative notice advising petitioner Predisik of his leave. Nor have petitioners met their burden of showing the investigation relates to serious wrongdoing.

In addition, the District is not a law enforcement or investigative agency subject to RCW 42.56.240(1). The exemption applies only to agencies that engage in “the act of putting ... law into effect,” or “imposition of sanctions for illegal conduct,” such as a fine or a prison term. *Brouillet*, 114 Wn.2d at 795-96. Revocation of a teaching certificate is not law enforcement. *Id.* at 796.<sup>7</sup> Petitioners seek to extend RCW 42.56.240(1) far beyond what this Court’s cases allow.

Petitioners also suggest disclosure is impermissible while administrative proceedings are still pending against them. *Petition* at 14. But even if this case did involve “investigative records,” the PRA does not permit the subject of an investigation to keep the public in the dark until

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<sup>7</sup> Section 240(1) applies to “state agencies vested with the responsibility to discipline” professionals. RCW 42.56.240(1)(emphasis added). But under standard canons of statutory construction, “to express one thing in a statute implies the exclusion of the other.” *In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002). Section 240(1)’s reference to state disciplinary agencies must be read to mean that local agencies (including the District) fall outside the scope of the exemption.

all proceedings are exhausted. Even criminal investigative records are routinely subject to disclosure while proceedings against the defendant remain pending: “Facts regarding pending criminal prosecutions are often made public prior to trial. ... [T]he fact that allegations have not yet been proven is not persuasive of the need to provide blanket protection for purposes of a defendant’s privacy.” *Cowles Pub. Co. v. Spokane Police Dept.*, 139 Wn.2d 472, 479, 987 P.2d 620 (1999); *see also Serko*, 170 Wn.2d at 596 (defendant’s constitutional fair trial right does not compel categorical withholding of investigative records). These principles apply with greater force here, where the investigation is merely administrative.<sup>8</sup>

#### IV. CONCLUSION

This Court should remand this case to the trial court for reconsideration in light of CR 19 and *Burt v. Dep’t of Corrections*, 168 Wn.2d 828. If the Court does reach the merits, the Court should hold that the records must be disclosed in their entirety or, in the alternative, that the records must be disclosed with only petitioners’ names redacted.

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<sup>8</sup> Finally, petitioners suggest that disclosure would somehow violate their rights under collective bargaining agreements. *Petition* at 15. But the PRA trumps any such contractual provisions, which are irrelevant to determining whether or not the records are exempt. *Hearst*, 90 Wn.2d at 137 (“Promises cannot override the requirements of the disclosure law.”); *Spokane Police Guild*, 112 Wn.2d at 40; *Brouillet*, 114 Wn.2d at 794.

RESPECTFULLY SUBMITTED this 15th day of September, 2014.



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The undersigned certifies that on 15th day of September, 2014, true and correct copies of this pleading were served on the parties as follows:

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Enclosed please find WCOG's amicus brief in this case.

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