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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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JOHN DOE A, et al.,

Plaintiffs/Respondents,

v.

WASHINGTON STATE PATROL, et al.,

Defendants/Appellants

ON APPEAL FROM KING COUNTY SUPERIOR COURT
(Hon. Jean Rietschel)

Case No. 13-2-41107-5 SEA

BRIEF OF RESPONDENTS JOHN DOES

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I. INTRODUCTION

The Washington State Legislature mandates that the registration records of level I sex offenders—those deemed to be the lowest risk by the State—shall only be released to the public under limited circumstances, namely when release of the records is necessary and relevant. The public agency determines which records are exempt from public disclosure by applying RCW 4.24.550, which serves as an “other statute” under the Public Records Act (“PRA”). To hold otherwise, and allow level I sex offender records to be subject to blanket requests and disclosures under the PRA, would ignore the balanced approach to public disclosure that not only guards privacy interests, but protects the public interest through a tiered approach to sex offender registration.

II. STATEMENT OF THE CASE

A. The State of Washington Has A Comprehensive Scheme For The Release Of Information Regarding Sex Offenders

The State of Washington has established a comprehensive statutory scheme governing the release of records and information to the public specifically regarding sex offenders, set forth at RCW 4.24.550. In relevant part, RCW 4.24.550 states that an “agency may disclose, upon request, relevant, necessary, and accurate information” about any level I sex offender, but that the “extent of the public disclosure of relevant and necessary information shall be rationally related to (a) the level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs

of the affected community members for information to enhance their individual and collective safety.”

RCW 4.24.550 balances this limitation on the release of information for level I sex offenders in response to public requests with two mandatory disclosures relevant to level I offenders. First, under section 3(a), local law enforcement must share information with other appropriate law enforcement agencies and any public or private schools that the offender attends. Second, under section 5, law enforcement shall create a public website posting all level III and level II sex offenders, plus all level I offenders who are out of compliance with the registration requirements.

B. Procedural History

Ms. Donna Zink, a resident of Mesa, Washington, submitted a series of broad PRA requests to the Washington State Patrol (“WSP”) and the Washington Association of Sheriffs and Police Chiefs (“WASPC”) for records of level I sex offenders. CP 630-42 & 1641-49. These requests sought, among other things, a complete copy of the Washington State Patrol’s statewide Sex and Kidnapping Offender Database, sex offender registration forms pertaining to offenders with last names beginning with the letter “A”, and sex offender registration files pertaining to offenders with last names beginning with the letter “B.” CP 632-34 & 1644-45. With respect to any particular offender, the requested records may include, but are not limited to, names, complete and accurate residential addresses, dates of birth, crimes of conviction, physical descriptions, employer

address, schools, crimes, psychological diagnoses, treatment information, adolescent conduct reports, employment history, relationship history, and photographs of level I sex offenders. CP 1645. In response to Ms. Zink's request, the WSP and WASPC indicated that they would issue a blanket release of the records requested without undertaking the process mandated by RCW 4.24.550. CP 633 & 1645.

Respondents John Does A-E ("John Does"), all level I offenders compliant with registration, filed lawsuits on behalf of themselves and the thousands of others similarly situated, seeking injunctive relief to bar the blanket and generalized disclosure of the requested records. CP 630-42 & 1641-49. The John Does moved to proceed in pseudonym because the act of disclosing their identities would require them to incur the very harm they sought to prevent. CP 761-67. Preliminary injunctions were issued enjoining the release of level I sex offender records except as provided by RCW 4.24.550 (CP 943-45 & 1557-60), and the John Does were permitted to proceed in pseudonym (CP 956-57 & 1538-40).

In a consolidated class action, the trial court granted summary judgment in favor of the John Does and issued a permanent injunction enjoining the WSP and WASPC from producing a "blanket disclosure" of level I sex offender records to Ms. Zink. CP 561-70. The trial court also issued a declaratory judgment that such records are exempt from disclosure under RCW 42.56.070, because RCW 4.24.550 is the exclusive mechanism for public disclosure of sex offender records. CP 568. Accordingly, the trial court held that neither the injunction nor the

declaratory judgment prevents the WSP and WASPC from continuing to disclose level I sex offender records pursuant to RCW 4.24.550. CP 568-69.

The WSP has appealed the trial court's final order, assigning error to the finding that RCW 4.24.550 is an "other statute" and the scope of the permanent injunction. Ms. Zink has appealed every order the trial court entered, from temporary restraining order to final order, assigning error to all of the court's findings.¹

III. ARGUMENT

A. The Assignments of Error Before the Court are Limited

Appellant Ms. Zink lists seventy-six assignments of error, many with multiple subparts. Ms. Zink fails to support the bulk of her assignments with any argument or citations to the record, and thus waives those assignments. RAP 10.3(a)(5)-(6); *Milligan v. Thompson*, 110 Wn. App. 628, 635, 42 P.3d 418 (2002); *see also In re Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998) ("It is incumbent on counsel to present the court with argument as to why specific findings of the trial court are not supported by the evidence and to cite to the record to support

¹ Ms. Zink has added her husband, Jeff Zink, to her pleadings without formerly joining him as a party. This does not appear to create any substantive issues, but the John Does will refer to Ms. Zink alone as the appellant. Similarly, WASPC submitted a brief in large part supporting the arguments advanced in this appeal by Ms. Zink and the WSP. WASPC is thus not appropriately considered a respondent in this appeal and has not appealed the trial court's decision, sought to be considered as a party in the appeal, or sought permission to file an amicus curiae brief. As WASPC's arguments relevant to the John Does overlap with those made by Ms. Zink and the WSP, they are addressed without reference.

that argument.”); *Holland v. Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998) (“Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.”). The John Does will address those assignments to which Ms. Zink and the WSP directed argument.

B. RCW 4.24.550 Is An “Other Statute” Exemption From The Public Records Act

Washington’s Public Records Act requires agencies to produce public records upon request “unless the record falls within the specific exemptions of this chapter, or any other statute which exempts or prohibits disclosure of specific information or records.” *See* RCW 42.56.070. RCW 42.56.070 is clear in that it exempts from the PRA certain records that are exempt or prohibited from disclosure by “other statutes.” *See Hangarter v. City of Seattle*, 151 Wn.2d 439, 453, 90 P.3d 26 (2004). A plain reading of RCW 4.24.550 mandates the conclusion that it is an “other statute” under the PRA, a conclusion also supported by the statute’s legislative history and the statute’s basic purpose to limit information available to public request. The arguments to the contrary by Ms. Zink and the WSP—that the information related to sex offenders is not confidential, RCW 4.24.550 does not categorically prohibit the information from disclosure, and the statute provides immunity for community notification—do nothing to undermine that RCW 4.24.500 is another statute exception to the PRA.

1. RCW 4.24.550's plain language and legislative history demonstrates its limitation on public disclosure of level I sex offender records in response to public requests.

On its face, RCW 4.24.550 governs the “public disclosure” of information regarding level I sex offenders upon the request of community members. *See* RCW 4.24.550(2) (“...the extent of the public disclosure of relevant and necessary information shall be rationally related to [factors set forth therein]”); RCW 4.24.550(3) (“...local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure....”).

While RCW 4.24.550 does not define the term “public disclosure,” the Court may look to related statutes in determining its meaning. *State v. Sanchez*, 177 Wn.2d 835, 844, 306 P.3d 935 (2013). The term “public disclosure” is intimately associated with the PRA, *see, e.g.*, RCW 42.56.140, and the legislature is presumed to know prior use of the term. *Cf. State v. Torres*, 151 Wn. App. 378, 384-85, 212 P.3d 573 (2009). This commonality of language leads to a conclusion that the public disclosures under RCW 4.24.550 are the same as those discussed in the PRA. *See Sanchez*, 177 Wn.2d at 844 (“[W]here possible, statutes should be read together to achieve a harmonious total statutory scheme[.]”).

Unlike the Appellants’ proposed interpretation of RCW 4.24.550, which would read “public disclosure” out as a nullity, applying the “other statute exemption [here] avoids any inconsistency and allows [RCW 4.24.550’s] protections to supplement the PRA’s exemptions.”

Ameriquet Mort. Co v. Wash. State Office of Attny. Gen., 170 Wn.2d 418, 439, 241 P.3d 1245 (2010). Indeed, “other statutes” have been recognized despite significantly less textual connection to the PRA. *See, e.g., Hangarter*, 151 Wn.2d at 453 (holding the attorney-client privilege statute of RCW 5.60.060(2) to be an “other statute” exemption to the PRA even though the privilege did not apply to agencies or specifically exempt public records from disclosure); *O’Connor v. Washington State Dep’t of Soc. and Health Serv.*, 143 Wn.2d 895, 910, 25 P.3d 426 (2001) (holding that court rules are an “other statute” incorporated into the PRA, despite the fact that court rules do not specifically address public disclosure requests); *Deer v. Dep’t of Soc. & Health Servs.*, 122 Wn. App 84, 95, 93 P.3d 195 (2004) (holding that RCW 13.50.050, governing access to juvenile justice and care records, is an exemption to the PRA).

The relevant legislative history of RCW 4.24.550 supports this reading. The statute was first crafted with public disclosure laws in mind, with the legislature specifically remarking that RCW 4.24.550 was necessary to correct the “reduced willingness to release information that could be appropriately released under the public disclosure laws.” Laws of 1990, ch. 3, § 116. Consequently, the original version of the law granted immunity related to these public disclosures, providing that “public agencies are authorized to release relevant and necessary information regarding sex offenders to the general public when the release of the information is necessary for public protection.” *See* Laws of 1990, Ch. 3, § 117(1). But even in providing immunity for the disclosure of

sexual offender records, the legislature found that the release of certain sex offender registration information to the general public was appropriate only “under limited circumstances” where the “information released is rationally related to the furtherance of [legislative] goals.” *Id.*

After repeated amendments to RCW 4.24.550, this limited authorization has been converted into a robust statute that distinguishes between offenders of different risk-level classifications and directs public agencies on the exercise of their discretion when the general public requests information about low risk sex offenders. *See, e.g.*, Final Bill Report on ESSB 5759 (1997) (the law identifies “the nature and scope of permissible public notifications . . . for each risk level classification”). Most notably, a 1997 amendment significantly rewrote the statute, adding a feature that differentiated the disclosure of information for level I sex offenders from levels II and III, specifically authorizing the release of level I offender information “upon request” only when certain criteria are met. *See* Laws of 1997, Ch. 364, §1(3). A finding that RCW 4.24.550 is not an “other statute” exempting or prohibiting disclosure of specific information or records would render these amendments (and the entire statutory scheme) entirely meaningless. *See Whatcom Cnty v. Bellingham*, 128 Wn.2d 527, 546, 909 P.2d 1303 (1996) (“Statutes must be interpreted and construed so that all language used is given effect, with no portion rendered meaningless or superfluous.”).

2. RCW 4.24.550 would be eviscerated if it were not an “other statute” under the PRA.

In addition to rendering portions of RCW 4.24.550’s language meaningless, the interpretation of Ms. Zink and the WSP would also undermine the balanced approach Washington has taken to releasing sex offender records and the discretion invested in public agencies regarding these records.

Practically, reading RCW 4.24.550 to allow blanket disclosures of level I sex offender records would make risk categorization useless for both communities and offenders. The State of Washington’s Assistant Secretary of the Juvenile Justice and Rehabilitation Administration in the Department of Social and Health Services has recognized this potential impact:

Release of level I juvenile sex offender information would be the equivalent to broad based community notification which is generally reserved for the highest risk sex offenders in our state. This would functionally eliminate our tiered risk level approach to community notification which the Legislature and many other system partners have worked diligently over the last 20 plus years to develop, implement and improve.

CP 301 (also opining on the harms to juveniles and their families of broad-based release)).

Moreover, when Washington’s Supreme Court examined whether sex offender registration constituted *ex post facto* punishment, the Court found it did not, on the very basis that “[t]he Legislature placed significant limits on (1) whether an agency may disclose registrant information, (2) what the agency may disclose, and (3) where it may disclose the

information.” *State v. Ward*, 123 Wn.2d 488, 502-04, 869 P.2d 1062 (1994) (finding also that disclosure was tied to risk and “the geographic scope of dissemination must rationally relate to the threat posed”). In so holding, this Court relied on legislative history instructing that release be made to public agencies “and *under limited circumstances*, the general public” which protected sex offenders from a “badge of infamy” through the limited disclosure of registration information. *Id.* (“We hold, however, that because the Legislature has limited the disclosure of registration information to the public, the statutory registration scheme does not impose additional punishment on registrants.”).

Ultimately, while Ms. Zink and the WSP would agree that RCW 4.24.550 limits a public agency’s affirmative disclosure of level I sex offender records, they argue that those limitations disappear if the public agency is responding to a request. Beyond ignoring the plain language (“upon request”), this argument elevates form over substance, destroys any semblance of a reasoned approach to sex offender registration that prevents *ex post facto* punishment, and renders obsolete the public interest balance struck in RCW 4.24.550 between the amount of disclosure and the risk an individual presents to the community.

3. The Appellants’ arguments regarding confidentiality, categorical prohibition of disclosure, and immunity for community notification merely describe the discretionary exemptions that the PRA envisioned.

Ms. Zink and the WSP argue that even accepting all of the above, RCW 4.24.550 cannot be an “other statute” because it specifically

disclaims that the records are confidential, it does not completely prohibit disclosure, and the statute provides immunity for a public agency's exercise of discretion in making community notifications. *See* Zink Br. at 31; WSP Br. at 10-20. However, these arguments do not undermine the conclusion that RCW 4.24.550 exempts certain records from public disclosure; they simply highlight the range of potential exemptions available under the PRA.

A statute need not specify that records are "confidential" or "prohibited" from disclosure for those records to be considered "exempt" under the PRA. There is a well-recognized distinction under the PRA between confidential records that a statute "prohibits" an agency from disclosing and "exempt" records that can be disclosed at the agency's discretion as directed by statute. Regulations promulgated by the Attorney General under the PRA explain this distinction:

Exemptions are "permissive rather than mandatory." Op. Att'y Gen. 1 (1980), at 5. Therefore, an agency has the discretion to provide an exempt record. However, in contrast to a waivable "exemption", an agency cannot provide a record when a statute makes it "confidential" or otherwise prohibits disclosure.

WAC 44-14-06002. The WSP has itself recognized this distinction. CP 304-09; *see* Washington State Patrol, "Exemption and Prohibition Statutes Not Listed in Chapter 42.56 RCW".² Indeed, despite its position in this litigation, the WSP's own website lists RCW 4.24.550 as one of the

² Available at http://www.wsp.wa.gov/publications/reports/exemption_statutes_not_listed_in_RCW-42.56.pdf (last visited December 15, 2014).

statutes “that the agency believes exempts or prohibits disclosure of specific information or records of the agency.” *Id.*

Despite RCW 4.24.550(9)’s acknowledgement that nothing in the statute “implies that information regarding [sex and kidnapping offenders] . . . is confidential except as otherwise provided by law,” this language simply provides that the records at issue are not prohibited from disclosure as confidential. This acknowledgement does not change the fact that RCW 4.24.550 provides an exemption from the PRA, subjecting the records to the agency’s discretionary analysis according to the standards in RCW 4.24.550. Indeed, reading section 9 in the context of the entirety of RCW 4.24.550 reaffirms that its purpose is to establish that while there is no sweeping prohibition on disclosure and no liability to public agencies and officials for a discretionary decision to release information related to sex offenders, certain records are nonetheless exempt from disclosure. *See generally* RCW 4.24.550; Laws of 1990, Ch. 3, §§ 116-17; *accord Russell v. Gregoire*, 124 F.3d 1070, 1082-84 (9th Cir. 1997) (noting that under RCW 4.24.550, if “an offender is classified as Level One, no public notification occurs”).³ This understanding echoes the original version of RCW 4.24.550, which contained only a simple balancing test to determine the “limited circumstances” under which a public agency was authorized

³ Notably, while the WSP cited *Russell* to support the argument that RCW 4.24.550 is merely a notification statute, WSP Br. at 18, the decision itself explicitly points out that level I records would not be subject to notification. *See* 124 F.3d at 1082-84. Moreover *Russell* recognized that the law “contains careful safeguards to prevent notification in cases where it is not warranted and to avoid dissemination of the information beyond the area where it is likely to have the intended remedial effect.” *Id.* at 1090.

to release information about a sex offender, even as the statute denied the records were confidential and provided immunity for agencies that did not act with gross negligence. Laws of 1990, Ch. 3. §§ 116-17. Thus, far from being a plain community notification statute, RCW 4.24.550 provides the legislature's determination that there must be some balancing of the privacy interests of level I sex offenders with the public's interest in disclosure, a balance that could not be met by a blanket disclosure under the PRA. *See, e.g., King v. Riveland*, 125 Wn.2d 500, 511-15, 886 P.2d 160 (1994) (finding that public safety and the privacy interests of sex offenders are not mutually exclusive).

Importantly, that information may be exempt from disclosure under the PRA despite lack of total confidentiality and the grant of discretion to agencies, is not a novel concept. The PRA itself lists several exemptions in which the permissibility of release of information is determined by whether certain criteria are met. *See, e.g.,* RCW 42.56.430(2) (permitting release of sensitive fish and wildlife data to government agencies, public utilities, and universities for management or research purposes, and listing criteria to determine what is sensitive fish and wildlife data); RCW 42.56.300(1) (exempting from production records, maps, or other information identifying the location of archaeological sites "in order to avoid the looting or depredation of such sites"); *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 434-36, 300 P.3d 376 (2013) (discussing categorical exemptions with conditional applications and conditional exemptions); *see also* RCW

46.12.635 (detailing limited circumstances under which the names and addresses of vehicle owners may be released to the public); RCW 70.95C.240 (providing that the Department of Ecology may delete portions of certain public records that it finds, in its discretion, adversely affects a competitive position and is thus confidential).⁴

C. The Requirements For Court Protection Of Public Records Are Satisfied In This Case

To permanently enjoin production of the requested records under the PRA, the John Does were required to demonstrate that: (1) the records in question name the John Does or specifically pertain to the John Does; (2) an exemption applies; and (3) disclosure would not be in the public interest and would substantially and irreparably harm the John Does. *See* RCW 42.56.540; *King Cnty. Dep't of Adult & Juvenile Det. v. Parmelee*, 162 Wn. App. 337, 351, 254 P.3d 927 (2011). Not only did the trial court correctly find an exemption under the PRA, as discussed above, it properly found from uncontradicted evidence that the first and third factors were met as well.

As an initial matter, there is no real dispute that the John Does have demonstrated that they are compliant level I offenders and that the requested records name them or specifically pertain to them. *See* CP 190-

⁴ This is not to say that RCW 4.24.550 is conditional rather than categorical. As noted in *Resident Action Council*, the “distinction between categorical and conditional exemptions is sometimes blurry, for numerous reasons.” 177 Wn.2d at 434-35. “If the application of a seemingly categorical exemption ever actually depends upon a case-by-case evaluation of the need to protect a privacy right or vital government interest, the exemption then acts as a conditional exemption.” *Id.*

211 (declarations of John Does). Ms. Zink passingly argues that the trial court should have ignored this evidence because the John Does were proceeding in pseudonym and through the class mechanism, *see* Zink Br. 33, but neither of these objections hold any weight. Proceeding in pseudonym does not prevent the court from determining that a record pertains to a particular individual so long as the relevant information is entered into the record.⁵ Similarly, the class mechanism presents no more peculiar problems in the context of the PRA than it does in any other; Ms. Zink cites no authority, and the John Does are aware of none, that indicate that the class mechanism is inappropriate for the protection of public records.⁶ *See, e.g., Moeller v. Farmers Ins. Co. of Washington*, 173 Wn.2d 264, 278, 267 P.3d 998 (2011) (upholding class certification under an abuse of discretion standard of review and explaining CR 23 is liberally interpreted because the rule avoids multiplicity of litigation, saves members of the class the cost and trouble of filing individual suits, and frees the defendant from the harassment in identical future litigation).

⁵ A discussion of the propriety of proceeding in pseudonym can be found below in Section D.

⁶ Beyond issues arising from disagreement with pseudonym, Ms. Zink's argument against class certification is largely a misunderstanding of the application of CR 23 in this case. Zink Br. at 37-38. For example, contrary to Ms. Zink's belief, the typicality of the class is that they are compliant level I sex offenders, and the facts of their underlying crimes are irrelevant to the question of a blanket disclosure under RCW 4.24.550. Similarly, Ms. Zink's complaint regarding numerosity does not dispute the evidence in the record regarding the thousands of level I sex offenders in the state (CP 8 & 140-43), and instead directs an attack at what they perceive to be irrelevant deficiencies in the notice to the class. Moreover, Ms. Zink's argument that CR 23(b)(2) has not been satisfied because the WSP and WASPC did not have any obligation to claim an exemption misses the point; the legal duty WSP and WASPC failed to perform is applying the mandated criteria found in RCW 4.24.550 to public disclosures of level I sex offender records.

Instead, the central dispute regarding the application of RCW 42.56.540 is whether the trial court appropriately found that blanket disclosure would not be in the public interest and would substantially and irreparably damage the class. Ms. Zink and the WSP argue that due to the public availability of conviction and sentencing records, the State of Washington has expressed a strong public interest in the availability of sex offender records for public scrutiny. Zink Br. 31-35; WSP Br. at 19-20. Ms. Zink also argues that the availability of conviction and sentencing records prevents any finding of injury beyond a generalized stigma because the “information disclosed to the public is largely, if not entirely, available from public sources.” Zink Br. 33-35. This singular reliance on the availability of conviction and sentencing data to undermine protection under RCW 42.56.540 is misplaced.

The uncontradicted evidence in the record is that the John Does (many of them juveniles) and their families face grave mental, emotional, physical, and economic consequences as a result of being “outed” as a registered sex offender. *See* CP 190-211. The harms caused by blanket disclosure of the John Does’ records absent compliance with RCW 4.24.550 go far beyond that caused by public availability of conviction records. At the outset, conviction records (such as court records or records obtained under RCW 10.97) do not contain all of the information available in sex offender registration records, such as exact residential addresses, current employers or schools, treatment information, photographs, and

vehicle descriptions.⁷ See CP 1645. Further, the compilation and public dissemination of sex offender records is a distinct harm of its own. In *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764, 109 S. Ct. 1468, 103 L. Ed. 2d. 774 (1989), the Supreme Court recognized, “there is a vast difference between the public record that might be found after diligent search of the courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.” Clearly there is a vast difference between information that may be found by searching court records as to an individual and the compilation of bulk records reflecting the names and exact addresses of an entire class of individuals.

Moreover, the proposed release in this case presents a particularly distinct harm as Ms. Zink has evidenced the intent to post the results of the PRA request on a website available to, and searchable by, the general public. CP 212-17. Indeed, Ms. Zink has already posted registration records she obtained from Franklin County in 2013 to her public Google+ website. See CP 218-19. Thus, far from fear of a general stigma, the John Does have presented legitimate and tangible injuries that would result from the wide and searchable dissemination of their sexual offender

⁷ The fact that the WSP has previously released portions of this information in response to prior requests has no bearing on this analysis. See *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 410-11, 259 P.3d 190 (2011) (“[F]ailure to object to a single public records request is only a relinquishment of the right to prevent that specific production. It is not an intentional and voluntary relinquishment of a person's right to privacy regarding all future requests for that document.”).

records on the internet, from the loss of employment to the inability to secure housing. CP 251-79. The John Does recognize that a public agency may not consider the identity of the requestor when deciding the propriety of a disclosure under the PRA. *See* RCW 42.56.080. However, the PRA does not categorically prohibit consideration of the requestor's intent. *See id.* (stating that an agency may inquire into the requestor's purpose "to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute which exempts or prohibits disclosure of specific information or records to certain persons"). Moreover, a requestor's identity and avowed purpose is obviously relevant to a court's determination of whether an individual seeking an injunction under RCW 42.56.540 may be harmed as a result of the release of the records. *See Delong v. Parmelee*, 157 Wn. App. 119, 149-153, 236 P.3d 936 (2010) (holding that a requestor's intended use of the records was appropriately considered by the trial court to determine the potential injury to the subject of the record). *But see Franklin County Sheriff's Office v. Parmelee*, 175 Wn.2d 476, 481, 285 P.3d 67 (2011) (reversing a decision on the same subject because it was procedurally premature, but refraining from discussing the merits).

These overwhelming harms outweigh any public interest in disclosure. Indeed, the public interest in this case is not served by releasing the records in a "blanket" fashion. The un rebutted evidence shows it is served by preserving the legislative scheme with respect to public disclosure of information about sex offenders. *See, e.g.*, CP 295-

302 (declaration of the State of Washington’s Assistant Secretary of the Juvenile Justice and Rehabilitation Administration in the Department of Social and Health Services stating that a broad based community notification of level I sex offender records would functionally eliminate Washington’s tiered approach that the Legislature has worked to develop over the last 20 years); CP 256-67 (declaration of the Executive Director of the Association for the Treatment of Sexual Abusers opining that “[r]esearch to date suggests broad-based community notification for all sexual offenders is not supported and often has the unintended consequence of creating obstacles to community reentry that may actually compromise, rather than promote, public safety”). As numerous experts have testified, blanket disclosure of all sex offenders, regardless of risk to the general public, dilutes the efficacy of notification and undermines public safety and rehabilitation. *See* CP 271 at ¶ 6; CP 278 at ¶¶ 9-11; CP 326 at ¶ 4. It can also cause tremendous harm to the innocent victims of the original offenses. *See, e.g.*, CP 280-294. As the Supreme Court opined in *Ward*, “the Legislature has broad discretion to determine what the public interest demands and what measures are necessary to secure and protect that interest” and in the case of sex offender records, determined that “disclosure would serve no legitimate purpose” if not for the careful structure established under RCW 4.24.550. *Ward*, 123 Wn.2d at 502-03 & 516.

D. Proceeding in Pseudonym Is Proper And Necessary

“Courts have the inherent authority to control their records and proceedings.” *Cowles Pub. Co. v. Murphy*, 96 Wn.2d 584, 588, 637 P.2d 966 (1981). Under this authority, the trial court in this case allowed the John Does to proceed in pseudonym because the very act of using their real names would cause the very harm they were seeking to prevent. CP at 956-57 & 1538-40 (orders); CP 710-11 at ¶¶ 6-8, 713-15 at ¶¶ 2 & 9-10; 718-20 at ¶¶ 2 & 9-10, 724-25 at ¶¶ 4-7 (detailing danger of harassment, stigmatization, physical and psychological harm, and loss of employment and other opportunities); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068-69 (9th Cir. 2000). The ruling is in accord with previous decisions of this Court. *See Bellevue John Does 1-11 v. Bellevue Sch. Dist.*, 164 Wn.2d 199, 189 P.3d 139 (2008) (permitting individuals seeking to prevent disclosure of their names and identities in public records to proceed in pseudonym); *Rufer v. Abbott Laboratories*, 154 Wn.2d 530, 551, 114 P.3d 1182 (2005) (upholding orders limiting public access to court records and proceedings—even absent explicit reference to *Ishikawa*—so long as the court weighs the public’s right to access against the compelling need for privacy); *North American Council on Adoptable Children v. Dept. of Soc. and Health Serv.*, 108 Wn.2d 433, 440, 739 P.2d 677 (1987) (relying on federal case law to support the conclusion that a plaintiff may proceed under pseudonym to protect a privacy interest); *see also Burt v. Dep’t of Corrections*, 168 Wn.2d 828, 231 P.3d 196 (2010) (allowing pro se plaintiffs to proceed without providing addresses on their

pleadings because plaintiffs were seeking protection from disclosure of their addresses under RCW 42.56.540).

Importantly, *Ishikawa* is inapplicable in this case because nothing in the court record is sealed or redacted and the public's ability to access the administration of justice is unfettered. *Accord Doe v. Smith*, 105 F. Supp. 2d 40, 45 (E.D.N.Y. 1999) (finding public would not be prejudiced where plaintiffs were allowed to proceed anonymously because it would otherwise have access to trial and results of the case). Here, everything available to the court is also available to the public; the John Does did not seek to seal either the records before the trial court or the underlying records requested by Ms. Zink. Even if *Ishikawa* should have been applied, the appropriate remedy is to remand for application of those factors by the trial court, a remedy that would result in the same outcome as proceeding in pseudonym.⁸ *See State v. Richardson*, 177 Wn.2d 351, 302 P.3d 156 (2013) (remanding to trial court to apply *Ishikawa*).

The anonymous nature of the record before the court and the public presents none of the issues raised by Ms. Zink, who appears to

⁸ As argued to the trial court below (CP 1289-91), the *Ishikawa* factors are easily met here even if they applied. Respondents face a serious and imminent threat to their compelling interest in seeking a court determination of whether RCW 4.24.550 is an exemption to the PRA and whether categorical release of their records should be enjoined to prevent the significant threat of physical violence, mental harm, and loss of economic opportunity that would occur as a result of the disclosure. *See generally* CP 727-44. Respondents have also established that their interests outweigh the public's right of access as the entire court file remains open to the public, with only Respondents' true names withheld. Respondents can establish that the requested relief is the least restrictive means to protect their interests and is limited in scope, because the only thing withheld from the public will be the Plaintiffs' exact names. Finally, the parties have had the opportunity to fully voice any objections.

claim the possibility of fraud on the court by the Does either pretending to be level I sex offenders or being figments of counsel's imagination. Zink Br. at 26 & 37. To the contrary, the John Does offered to disclose their identities to the trial court (CP 765), the Does' declarations are signed under the penalty of perjury (CP 708-25), the declarations contain significant background facts to support a reasonable inference that the information is credible and without a motive to falsify (CP 708-25), and the declarations were submitted, and their authenticity sworn to, by counsel for the John Does, Vanessa Hernandez, who met with each John Doe and verified their identities and that they were listed in the disputed records (CP at 678-760). *Accord State v. Cole*, 128 Wn.2d 262, 287-288, 906 P.2d 925 (1995) (upholding a search warrant based on an affidavit including an anonymous citizen informant because it contained specific information about the background and knowledge of the informant). Given these facts, Ms. Zink's unsupported and speculative fears do not warrant ignoring or discounting these declarations, especially where the central questions for the court (are the declarants level I sex offenders, are they named in the disputed records, do they face injury from release of the records) are neither remarkable nor likely to be manufactured.

**E. The Trial Court Properly Issued A Narrow Injunction
With Broad Declaratory Relief**

The WSP asks this court to limit the injunction ordered by the trial court, because they claim the court did not "narrowly tailor a permanent injunction enjoining production of public records to parties and records in

[this] litigation.” WSP Br. at 23. However, a review of the short and clear order demonstrates that the trial court issued a narrow injunction, and the gravamen of the WSP’s complaint is with the declaratory judgment entered.

The order at issue has three parts: 1) a declaratory judgment that “level I sex offender registration records are exempt from disclosure pursuant to RCW 4.24.550” and that “RCW 4.24.550 provides the exclusive mechanism for public disclosure of sex offender registration records”; 2) a narrowly tailored, permanent injunction that “WSP and WASPC shall not make a ‘blanket’ or generalized production of sex offender records of Class members in response to Ms. Zink’s requests for public records (whether pending or made during the duration of this litigation (including any appeals))”; and 3) guidance to the WSP and WASPC that they may still disclose sex offender records in accordance with the provisions of RCW 4.24.550. CP 568-69.

Despite WSP’s characterization of this order, the plain reading of the permanent injunction does not extend beyond the Class members’ records nor does it enjoin disclosure to future requestors. The WSP’s arguments to the contrary appear to be based on its interpretation of the trial court’s denial of some of the WSP’s requested clarifications in its competing proposed orders. WSP Br. at 24. However, as noted by the John Does at the time, the original order was clear and the WSP’s requested clarifications would only serve to inject ambiguity or broadness into the injunction, not limit its scope. CP 610-12 (arguing, for example,

that the requested clarifications could be interpreted to enjoin any disclosure, even if it were in compliance with RCW 4.24.550). The fact that the trial court denied some of the WSP's conflicting requests for clarification does not indicate that the trial court's order was unclear. CP 573 at n.1 (submitting competing proposed orders requesting either a clarification that the WSP is enjoined from producing records in response to Ms. Zink's public records requests or that the WSP is enjoined from producing all sex offender registration records in response to all public records requests).

Ultimately, the WSP's complaint is with the trial court's declaratory judgment, not the injunction. The WSP is enjoined only from a blanket disclosure of the class member's records in response to Ms. Zink's requests. Where the declaratory judgment states that RCW 4.24.550 provides the exclusive mechanism for disclosure of level I sex offender records, the WSP's complaint is simply repetitive of its disagreement with the court's finding regarding the PRA. Thus, while the declaratory judgment instructs public agencies on the proper procedure for disclosure of level I sex offender records, it does not enjoin them and WSP's assignment of error is without substance.

IV. CONCLUSION

Accordingly, the John Does respectfully request that direct review should be denied.

Dated this 15th day of December, 2014.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

1. I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys for Plaintiffs/Respondents herein.

2. On this 15th day of December, 2014, I caused the document to which this Certificate is attached to be filed with the Clerk of the Supreme Court of the State of Washington, and served upon counsel of record in the manner indicated below:

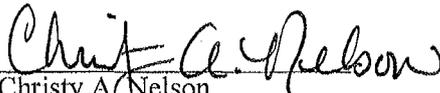
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 15th day of December, 2014 at Seattle, Washington.


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Attached for filing please find in .pdf format Brief of Respondents John Does in the matter titled *John Doe A, et al. v. Washington State Patrol, et al.*, Supreme Court No. 90413-8. The attorney submitting this document is David B. Edwards, WSBA No. 44680. Mr. Edwards' contact information is as follows:

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