

FILED
SUPREME COURT
STATE OF WASHINGTON
11/8/2021 1:55 PM
BY ERIN L. LENNON
CLERK

NO. 100181-9
COURT OF APPEALS NO. 81814-7-I

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4,

Petitioners,

v.

KING COUNTY and
THE SEATTLE TIMES,

Respondent.

KING COUNTY'S ANSWER TO PETITION FOR REVIEW

DANIEL T. SATTERBERG
King County Prosecuting Attorney

JOHN GERBERDING, WSBA #23157
MARI ISAACSON, WSBA#42945
Senior Deputy Prosecuting Attorneys
Attorneys for Respondent King County

King County Prosecuting Attorney
1191 2nd Ave, Suite 1700
Seattle, Washington 98101
(206) 477-1120

TABLE OF CONTENTS

I. IDENTITY OF RESPONDENT..... 1

II. COURT OF APPEALS DECISION 1

III. STATEMENT OF ISSUE..... 1

IV. STATEMENT OF THE CASE..... 2

 A. Alleged sexual assault 2

 B. PAO declines to file charges..... 2

 C. Request from Geoff Baker..... 3

 D. John Does lawsuit 5

V. ARGUMENT 6

 A. The Court of Appeals’ decision is consistent with decisions of the Supreme Court and published decisions of the Court of Appeals. 6

 1. Chapter 13.50 RCW is an “other statute” exemption to the Public Records Act, but it does not exempt adult records from disclosure. 6

 2. The Court of Appeals considered the nature of the records, not solely their location, to determine the records were not categorically exempt..... 8

 3. The Court of Appeals’ opinion gives effect to the Legislature’s intent..... 9

4. The Privacy Exemption in RCW 42.56.240(1) does not allow for categorical withholding of records... 10

B. The Petition does not present issues of substantial public interest 11

VI. CONCLUSION 11

TABLE OF AUTHORITIES

Washington Cases

<i>Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405</i> , 164 Wn.2d 199, 189 P.3d 139 (2008).....	10
<i>Doe 1 v. King County</i> , No. 81814-7-I, 2021 WL 4060302 (Wn. App. 9/7/2021).....	1
<i>Doe ex rel Roe v. Wash. State Patrol</i> , 185 Wn.2d 363, 371, 374 P.3d 53, 66 (2016).....	7
<i>Koenig v. City of Des Moines</i> , 158 Wn.2d 173, 142 P.3d 162 (2006).....	10
<i>Newman v. King County</i> , 133 Wn.2d 565, 947 P.2d 712 (1997).....	10

Washington Regulations and Rules

RAP 13.4	11
RCW 42.56.240(1).	6, 10

I. IDENTITY OF RESPONDENT

King County is one of the respondents in this case.

II. COURT OF APPEALS' DECISION

In an unpublished decision, *Doe 1 v. King County*, No. 81814-7-I, 2021 WL 4060302 (Wn. App. 9/7/2021) the Court of Appeals affirmed the trial court's holding that investigative records involving both adult and juvenile suspects are not categorically exempt from disclosure under chapter 13.50 RCW, and that redaction of the John Does' identifying information from the records adequately protects the John Does' privacy interests.

III. STATEMENT OF ISSUE

Does the Court of Appeals' ruling present grounds for discretionary review by this Court under RAP 13.4(b)(1)(2) or (4)?

///

///

IV. STATEMENT OF THE CASE

A. Alleged sexual assault.

In April 2018 an adult and three juveniles had sex with a juvenile in the city of Clyde Hill. The Clyde Hill Police Department (CHPD) investigated the matter and made referrals to the King County Prosecuting Attorney's Office (PAO) for criminal charges against the involved adult and three juveniles, who were all high school football players. An investigative file for the incident was submitted by CHPD to the PAO Criminal Division for potential charges of one adult suspect. A separate, and nearly identical, investigative file for the incident was submitted by CHPD to the PAO Juvenile Division for potential charges of three juvenile suspects. CP 202.

B. PAO declines to file charges.

On December 21, 2018, the PAO informed involved parties that no criminal charges would be filed as a result of CHPD's investigation. CP 203.

C. Request from Geoff Baker.

On January 8, 2020, the PAO received a Public Records Request from Geoff Baker of the Seattle Times (Times). After multiple conversations with Mr. Baker the PAO determined that he was seeking the CHPD investigative file for the adult suspect and external communications with the police, school officials and parents/guardians or legal representatives/lawyers for the players relating to the PAO's decision not to bring charges and the handling of earlier public records requests. CP 206-07.

On February 12, 2020, the PAO provided formal third-party notice of Mr. Baker's request to the John Does and other involved parties. Included with this notice were copies of the records with coded redactions proposed for release. These records consist of 2,177 bates numbered pages and six voicemails. These bates numbered pages can be broken down as follows:

- Page 1-2: the two-page PAO case summary,
- Pages 3-495: the CHPD investigative file,
- Page 496: the PAO's one-page decline on the adult suspect, and
- Pages 497-2177: external communications with the police, school officials and parents/guardians or legal representatives/lawyers for the players relating to the PAO's decision not to bring charges and the handling of earlier public records requests.

CP 207.

On February 24, 2020 the PAO provided a revised version of the records, as proposed for release with coded redactions, to several involved attorneys. The redactions in the PAO's proposed release include:

- Identifying information of the victim,
- Identifying information of the uncharged suspects,
- Identifying information of the witnesses who requested to remain anonymous,
- Social Security numbers,
- The PAO's work product,

- Identifying information of a child victim in an unrelated case, and
- Identifying information of uncharged suspects in an unrelated case.

The victim's medical records were fully withheld from release.

CP 207-08, 213-15.

D. John Does lawsuit.

On February 26, 2020 this lawsuit was filed in King County Superior Court. On that same day, the John Does obtained a temporary restraining order prohibiting the PAO from releasing records to the Times pending a preliminary injunction hearing before King County Superior Court Judge Ken Schubert. On March 27, 2020 the court denied Plaintiffs' motion for a preliminary injunction.

On September 7, 2021 the Court of Appeals affirmed the trial court holding that chapter 13.50 RCW does not provide a categorical exemption for the adult suspect's records. The Court also found that redaction of the John Does' identifying

information was sufficient to protect the John Does' privacy interests under RCW 42.56.240(1).

V. ARGUMENT

The John Does seek review under RAP 13.4(b)(1), (2), and (4) which provides, in relevant part, that:

A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

For the reasons set forth below the John Does have failed to establish that any of the criteria for review have been met.

A. The Court of Appeals' decision is consistent with decisions of the Supreme Court and published decisions of the Court of Appeals.

1. Chapter 13.50 RCW is an "other statute" exemption to the Public Records Act, but it does not exempt adult records from disclosure.

The John Does argue the Court of Appeals' decision conflicts with published decisions holding that chapter 13.50 RCW is an "other statute" and provides a categorical exemption to the Public Records Act (PRA) for juvenile records. *See* Petition for Review, pgs. 11-14.

This argument should be rejected because the cases the John Does cite do not involve investigative records of an adult suspect. The Court of Appeals acknowledged that chapter 13.50 RCW is an "other statute" that protects juvenile records, but then correctly decided that this statute does not provide a categorical exemption for records involving an adult offender.

It is well established that for an "other statute" to exempt materials under the PRA it must expressly prohibit or exempt the release of records. *Doe ex rel Roe v. Wash. State Patrol*, 185 Wn.2d 363, 371, 374 P.3d 53, 66 (2016). Chapter 13.50 RCW relates to the protection of juvenile records and contains no exemption for adult records.

2. The Court of Appeals considered the nature of the records, not solely their location, to determine the records were not categorically exempt.

The John Does argue the Court of Appeals ignored precedent and based its ruling on the fact that the records were provided to the adult Criminal Division of the PAO to determine that the records were not categorically exempt as juvenile records. “The mere placement of juvenile records into an adult file does not transform the records into something other than what they are: documentation of an investigation that focused on sexual allegations against three juvenile boys . . .” *See* Petition for Review, pg. 17.

This argument disregards that the records at issue relate to an adult suspect just as much as they relate to the juvenile suspects. The Court of Appeals properly considered that an adult suspect was involved, and that the records were sent by the CHPD to the PAO Criminal Division that handles adult prosecutions, and determined the records were not categorically exempt as juvenile records. A contrary ruling would result in a

significant limitation on the public's right to access important law enforcement records relating to investigation of an adult suspect, and would be inconsistent with the broad mandate of disclosure found in the PRA.

3. The Court of Appeals' opinion gives effect to the Legislature's intent.

The John Does argue that under the Court of Appeals' opinion they "have no meaningful recourse to the privacy protections of chapter 13.50 RCW" and that the opinion frustrates the Legislature's intent for juvenile confidentiality. *See* Petition for Review, pg. 17. This argument is not persuasive because the PAO has redacted all identifying information of the uncharged juvenile suspects. Such redactions effectuate the Legislature's intent for juvenile confidentiality. Further, chapter 13.50 RCW must be read consistent with the PRA and controlling Supreme Court precedent, which requires that investigative records relating to adult suspects be produced with exempt material redacted unless a case is still under

investigation. *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997).

4. The Privacy Exemption in RCW 42.56.240(1) does not allow for categorical withholding of records.

The John Does' argument that disclosure of any portion of the records would violate their right to privacy under RCW 42.56.240(1) is misplaced. Under well-settled precedent the most that can be redacted from these investigative records is the identifying information of the uncharged suspects. *See Koenig v. City of Des Moines*, 158 Wn.2d 173, 142 P.3d 162 (2006); *Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405*, 164 Wn.2d 199, 189 P.3d 139 (2008). The rationale of these cases hinges on the public's strong interest in examining law enforcement's response to alleged criminal activity. As noted above, consistent with applicable law the PAO has redacted all identifying information of the uncharged suspects.

B. The Petition does not present issues of substantial public interest.

The release of an uncharged juvenile suspect's identifying information in connection with uncharged allegations of sexual assault could damage a juvenile's future employment prospects, education prospects, and present an issue of substantial public interest. Here, however, that risk is not present because the PAO has redacted all identifying information of the uncharged suspects. These redactions strike the proper balance for records involving both adult and juvenile uncharged suspects. The identity of the uncharged suspects is protected, but the public can evaluate the actions of its law enforcement agencies.

VI. CONCLUSION

The issues raised in the John Does' petition for review do not justify further consideration under the criteria found in RAP 13.4. The Court of Appeals' decision is consistent with existing

case law and does not present an issue of substantial public interest.

Certificate of Compliance

This document contains 1,590 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 8th day of November, 2021.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: *s/John M. Gerberding* _____
JOHN M. GERBERDING, WSBA #23157
Senior Deputy Prosecuting Attorney
Attorneys for King County Respondents
King County Prosecuting Attorney's Office
WSBA Membership ID #91002
1911 2nd Ave Suite 1700, Seattle, WA 98101
Phone: 206-477-1120, Fax: 206-296-0191
John.Gerberding@kingcounty.gov

Certificate of Service

I, Liah Travis, certify under penalty of perjury of the laws of the state of Washington that on November 8, 2021, a true and correct copy of the foregoing was filed with the Washington State Court of Appeals Court using the Court's e-filing system, which will automatically provide notice to all required parties.

By: 
Liah Travis, Paralegal

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

November 08, 2021 - 1:55 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,181-9
Appellate Court Case Title: John Does 1-4 v. King County, et al.

The following documents have been uploaded:

- 1001819_Answer_Reply_20211108135430SC282626_6988.pdf
This File Contains:
Answer/Reply - Reply to Answer to Petition for Review
The Original File Name was 11.08.2021 - John Does KC Answer to Petition for Review final.pdf

A copy of the uploaded files will be sent to:

- caesarkalinowski@dwt.com
- chris@cedarlawpllc.com
- christinekruger@dwt.com
- cisacke@mcnaul.com
- ericstahl@dwt.com
- julieann@cedarlawpllc.com
- kathy@johnstongeorge.com
- khambley@omwlaw.com
- kwalker@mcnaul.com
- lara@cedarlawpllc.com
- mari.isaacson@kingcounty.gov
- scot@johnstongeorge.com
- tdemonte@mcnaul.com
- tdo@mcnaul.com
- whitney@cedarlawpllc.com

Comments:

Sender Name: Liah Travis - Email: liah.travis@kingcounty.gov

Filing on Behalf of: John Martin Gerberding - Email: john.gerberding@kingcounty.gov (Alternate Email: natalie.brown@kingcounty.gov)

Address:
1191 2nd Ave Suite 1700
Seattle, WA, 98101
Phone: (206) 477-1120

Note: The Filing Id is 20211108135430SC282626