No. 100181-9
Court of Appeals No. 81814-7-I

SUPREME COURT OF THE STATE OF WASHINGTON

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

Petitioners,

v.

KING COUNTY and

THE SEATTLE TIMES,

Respondents.

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# PETITION FOR REVIEW

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## I. INTRODUCTION

By enacting chapter 13.50 RCW, the Legislature determined, as this Court has affirmed, that "[a]ll records related to a juvenile . . . must be kept confidential" and are exempt from disclosure under the Public Records Act unless an exception applies. *State v. A.G.S.*, 182 Wn.2d 273, 280, 340 P.3d 830 (2014). Such exempt records unquestionably include records of criminal investigations of juveniles, yet the Court of Appeals in this case untenably held that such records may be disclosed when they are copied and placed in a file associated with an 18-year-old co-suspect.

In this case, a lengthy investigation into an alleged sexual assault involving three juvenile suspects and one 18-year-old suspect resulted in a decision by career prosecutors that no charges should be brought. When the Seattle Times requested records relating to the incident, the prosecutor's office determined the investigation file was wholly exempt from disclosure, at least when filed under the juveniles' names. But

it determined the *very same records*, as filed under the adult's name, should be disclosed. The juveniles named in the records filed this action, seeking a preliminary injunction to enjoin disclosure, which the trial court denied.

The Court of Appeals affirmed in an opinion that is inconsistent with precedent and subverts the Legislature's intent, warranting review under RAP 13.4(b)(1), (2), (4). The opinion held that because the juveniles' investigation records were duplicated in an adult's file, these purported "adult records" in the 18-year-old's file could be disclosed.

But decisions from this Court and the Court of Appeals have concluded that where a *type* of record is exempt, it is the nature or function of the record in question—not its location—that matters. This Court has also held that exemptions should not be construed so narrowly as to frustrate the Legislature's intent, as occurred here where juveniles lost confidentiality in their own investigation records based on the technicality that

the records were copied and also placed in a file labeled with the 18-year-old's name.

Further compounding its errors, the Court of Appeals' conclusion that redacting the juveniles' names sufficiently protects their juvenile confidentiality interests is inconsistent with this Court's precedent that redaction is appropriate only when it "can transform the record into one that is not exempted." *Resident Action Council v. Seattle Housing Auth.*, 177 W.2d 417, 437, 327 P.3d 600 (2013) ("*RAC*"). Where entire records (as opposed to types of information) are exempt, redaction generally is inappropriate. *Id.*

If allowed to stand, the Court of Appeals' ruling would permit the happenstance of an adult's presence at an incident under investigation to divest juvenile suspects of the confidentiality the Legislature intended to confer when their records are copied to an adult file. Such disclosure imperils juveniles' future employment, housing, and education

opportunities—the very reasons the Legislature mandated confidentiality—presenting issues of substantial public interest.

Also of substantial public interest is the opinion's conclusion that RCW 42.56.240(1) does not require redacting descriptions of the private conduct of juveniles relating to unsubstantiated allegations. Finally, the conclusion that it was appropriate to deny all relief including a preliminary injunction on this record is error, inconsistent with Washington precedent, and presents issues of substantial public interest which should be reviewed by this Court.

## II. IDENTITY OF PETITIONERS

Juvenile John Does 1–4, plaintiffs in the trial court and appellants/cross-respondents in the Court of Appeals, are petitioners here.

## III. CITATION TO COURT OF APPEALS DECISION

The Court of Appeals' September 7, 2021, unpublished opinion is attached to this petition at App. 1–15.

## IV. ISSUES PRESENTED FOR REVIEW

1. Records of investigations into juvenile suspects can be disclosed only in accordance with chapter 13.50 RCW. The Court of Appeals' opinion, concluding that *identical* records of an investigation into three juvenile suspects and one 18-year-old suspect fall outside chapter 13.50 RCW once they are placed in a file captioned with the adult's name, subverts the Legislature's intent and is inconsistent with this Court's and the Court of Appeals' precedents. Should review be granted under RAP 13.4(b)(1), (2) and (4)?

2. This Court has held that redaction is warranted only where it can transform a record into one that is no longer exempt. Yet the Court of Appeals held that redacting the juvenile suspects' names from the 18-year-old's file adequately protected their right to confidentiality, even though chapter 13.50 RCW maintains confidentiality of juvenile records in their entirety. Given that these purported "adult" records are identical to those relating to the investigation of juvenile

plaintiffs and present in files under the juveniles' names, is redacting only the names of juveniles insufficient, warranting review under RAP 13.4(b)(1), (4)?

3. Did the Court of Appeals err by affirming the denial of all relief, including a preliminary injunction, where the plaintiffs showed they would likely prevail; where they sought, at a minimum, redactions to descriptions of private conduct the disclosure of which would be highly offensive and additionally sought a declaratory judgment; where the injunction standard at RCW 42.56.540 need not apply; and where the plaintiffs met that standard regardless, warranting review under RAP 13.4(b)(1), (2), (4)?

## V. STATEMENT OF THE CASE

### A. The Clyde Hill Police Department Investigates an Incident Involving Juvenile John Does and One 18-Year-Old Suspect

This case arises out of allegations by 16-year-old Jane Doe that she had been sexually assaulted in April 2018 by juvenile John Does 2–4 and 18-year-old John Doe 5. Clerk's

Papers (CP) 86, 87, 89, 191, 288, 372. John Doe 1, also a juvenile, was identified as a witness. CP 49; *see* CP 86. The Clyde Hill Police Department conducted an eight-month-long investigation into the incident, creating a single investigative file. CP 48, 138, 202, 2723–4901; Report of Proceedings (RP) 15, 17.

### B. Clyde Hill Transmits Its File to KCPAO, Which Determines No Charges Should Be Filed

When it concluded its investigation, Clyde Hill transmitted its investigative file to the King County Prosecuting Attorney's Office ("KCPAO"), submitting copies to both the criminal division and juvenile division. CP 202. After reviewing all the evidence, KCPAO informed Jane Doe and the John Does that no criminal charges would be filed. CP 49, 203.

### C. KCPAO Provides Notice to the Juvenile Does of the Times' Public Records Request

Days after informing the parties no charges would be brought, KCPAO produced redacted records relating to the investigation to KING 5 News. *See* CP 203–04. The juveniles'

attorneys complained the records should have been kept confidential under chapter 13.50 RCW, and KCPAO agreed to provide interested parties with advance notice if a new public records request were submitted. CP 203–04. King County provided just such notice in early 2020 following the request of Geoff Baker, a Seattle Times reporter, seeking records "pertaining to the decision not to bring forth criminal charges" and listing the names of the involved juveniles. CP 93, 121, 205.

### D. John Does 1–4 Obtain a TRO Preventing Disclosure of the Copy of Their Juvenile Investigative Records Placed in an Adult File

After receiving this notice, Does 1–4 promptly filed a complaint against King County and Clyde Hill PD, seeking a declaratory judgment that the records are exempt and an injunction restraining disclosure.[1] CP 5–8. The same day, the

[1] When the action was filed, John Doe 2 was a minor, and his parents brought the case on his behalf. *See* CP 5. He has since reached the age of majority and was substituted in for his parents by order of the Supreme Court under RAP 3.2.

Does obtained a TRO barring production of the records. CP 9–12.

At the TRO hearing, the prosecuting attorney acknowledged that "if all the suspects had been juveniles" there "would be a pretty good argument that these records are categorically exempt" under chapter 13.50 RCW. RP 17. But because an adult was present, the prosecutor took the position that "the adult file … cannot [be] categorically exempt[ed]" even though the records relating to the juveniles and adult are "identical files." RP 17–18. The Times' counsel similarly argued that the name affixed to the file, and not the file's content or nature, controls the exemption analysis:

> And one of the four files pertains to an adult. So all of these arguments about the minors really sort of become moot. There's an identical file that involves an adult.

RP 15. The commissioner found that disclosure could lead to irreparable harm and granted a TRO. RP 24; CP 9–11.

## E. The Trial Court Denies Preliminary Injunctive and Declaratory Relief; the Court of Appeals Affirms

The plaintiffs then filed an amended complaint seeking declaratory and injunctive relief, adding as defendants the Times and the Palo Alto Daily Post.[2] CP 92–95. They then moved for a preliminary injunction and declaratory judgment, arguing that the records are exempt under chapter 13.50 RCW and the privacy exemption for investigative records at RCW 42.56.240(1). CP 96, 103, 107–09. They asserted standing under the Uniform Declaratory Judgment Act ("UDJA") and requested that their rights under the PRA be declared. CP 111–14.

In opposing the juveniles' motion, the Times' counsel embraced a "four corners" argument, claiming "it's not a juvenile record if it's in the adult file" and that it was

[2] The Palo Alto Daily Post withdrew its PRA request from Clyde Hill, and the parties stipulated to dismissing it and Clyde Hill from the case. *See* CP 390–94. This dismissal left only the Times's request for records from King County in issue. *See* CP 390–94.

"irrelevant" whether identical documents were in the juveniles' files. RP 54. The trial court held the records were subject to disclosure and denied a preliminary injunction, even though it found the records pertaining to the juvenile Does were identical to the records pertaining to 18-year-old Doe 5. CP 370–76.

In an unpublished opinion, the Court of Appeals affirmed, holding the records were not exempt. App. 1–15. The Court of Appeals also affirmed the trial court's order permitting the Does to proceed in pseudonym, which the Times had cross-appealed.

## VI. ARGUMENT WHY REVIEW SHOULD BE GRANTED

### A. The Court of Appeals' Opinion that 18-Year-Old Doe 5's File—Containing Records Identical to Those Created in Investigating the Juvenile Does—Cannot Be Exempt Conflicts with Published Decisions and Presents an Issue of Substantial Public Interest, Warranting Review Under RAP 13.4(b)(1), (2), (4).

#### 1. Precedent holds that chapter 13.50 RCW is an "other" statute.

Ample authority establishes that chapter 13.50 RCW, which governs juvenile records, "supplements the [PRA] and

provides the exclusive process for obtaining juvenile justice and care records." *Deer v. Dep't of Soc. & Health Servs.*, 122 Wn. App. 84, 93, 93 P.3d 195 (2004). It is an "other statute" mandatory exemption to the PRA. RCW 42.56.070(1); *Doe ex rel. Roe v. Wash. State Patrol*, 185 Wn.2d 363, 375–76, 374 P.3d 63 (2016) (citing *Wright v. Dep't of Soc. & Health Servs.*, 176 Wn. App. 585, 597, 309 P.3d 662 (2013)).

The exemption applies to all chapter 13.50 RCW "records," meaning "the official juvenile court file, the social file, and records of any other juvenile justice or care agency in

the case."[3] RCW 13.50.010(1)(d). It is undisputed that Doe 2–4's juvenile records are not part of the official juvenile court file or social file. Instead, they constitute records of a "juvenile justice or care agency," a term defined to encompass a variety of agencies, including "[p]olice . . . prosecuting attorney, defense attorney . . . [and] schools," RCW 13.50.010(1)(b), and are therefore protected from disclosure.

[3] As used in chapter 13.50 RCW, the term "case" references not only juvenile court proceedings, but dependency proceedings, child abuse and neglect investigations, truancy issues, and related proceedings and investigations, regardless of whether they eventually mature into a filed "case" before a tribunal—and regardless of whether an adult was involved (as they often are). The purpose of chapter 13.50 RCW is to protect juveniles because the release of such records may invade their privacy, exacerbate trauma, and interfere with the legislative goals of removing barriers to housing, education, and employment. *See* LAWS OF 2014, ch. 175 § 1 (statement of intent). Thus the term "case" should be interpreted to encompass all records of an investigation or proceeding having juveniles as the focus or target.

This Court has held that RCW 13.50.050 "carves out the official juvenile court file as the only file open to the public and indicates that *all other records* are confidential." *A.G.S.*, 182 Wn.2d at 279. Thus, whether a record falls within the protections of chapter 13.50 RCW turns on whether it pertains to a juvenile suspect, offender, or otherwise has a juvenile at its center, such as in dependency or termination proceedings. The presence of an adult suspect does not change this analysis. For example, dependency and child welfare records retain their confidentiality despite often focusing on the alleged conduct of an adult (e.g., that of a parent or caretaker). *See, e.g.*, *Deer*, 122 Wn. App. at 91. The Legislature has prioritized the protection of juveniles over scrutinizing how governmental agencies investigate the alleged improper or criminal conduct of adults.

**2. The Court of Appeals' opinion conflicts with decisions establishing that the nature of records—not solely their location—determines whether an exemption applies.**

It is undisputed that if Doe 5 had not been present, or if he had been 17 instead of 18 years old at the time, *all* of the

records at issue in this case would remain confidential under chapter 13.50 RCW. The parties differ only on whether the presence an adult at an incident involving juveniles transforms juvenile investigation records into "adult" records that must be produced under the PRA.[4] The Court of Appeals' conclusion that it does erroneously elevates form over function and runs counter to its own and this Court's decisions that it is the nature of a record—not its location—that governs.

[4] While the Court of Appeals referenced Doe 5's records as "nearly identical" to those of the juveniles, App. 2, the records themselves, which were designated as clerk's papers and provided *in camera* to that court, show there was a single investigation, and single investigative file, relating to three juveniles and one 18-year-old suspect. *Compare* CP 2726–30 (referring case to both the adult and juvenile prosecutors for a filing decision); 2726-3219 (single Clyde Hill investigation file into Does 2–5). The plaintiffs only to keep confidential only the records identical to those in their juvenile investigation files (i.e., excepting the 2-page case summary at CP 2724–25 and 1-page decline on the adult suspect at CP 3220). CP 202–03; RP 17–18 (KCPAO attorney stating that "because the file at issue – they're identical files, the adult file we cannot categorically exempt it").

In *Lindeman v. Kelso School District No. 458*, this Court held that a bus surveillance video did not fall under the "student file" exemption, reasoning that "[m]erely placing the videotape in a location designated as a student's file does not transform the videotape into a record maintained for students." 162 Wn.2d 196, 203, 172 P.3d 329 (2007). And in *City of Tacoma v. Tacoma News, Inc.*, the Court of Appeals dismissed an argument that letters sent to the police department to support a parent accused of abusing a child should not qualify as law enforcement "investigatory records" exempt from disclosure because they "were not physically filed and retained as part of the police department's investigatory file." 65 Wn. App. 140, 144 & n.3, 827 P.2d 1094 (1992). The Court reasoned that "[t]he location in which the letters were physically filed or retained is one factor to look at, but is not by itself dispositive." *Id.*

*Lindeman* and *City of Tacoma* instruct that courts consider the nature or function of a record in assessing whether

it falls within an exemption. The legislative intent in creating the exemption is paramount. Here, the fact that the juveniles' investigative records were *also* placed in the file of an 18-year-old is not the controlling factor. 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 assault allegations against three juvenile boys, allegations that were ultimately found to be unsubstantiated. The Court of Appeals' decision is inconsistent with these authorities, meriting review under RAP 13.4(b)(1), (2).

### 3. The Court of Appeals' opinion conflicts with decisions instructing that exemptions must be construed to effect, not frustrate, legislative intent.

The Court of Appeals' decision means that the juvenile Does have no meaningful recourse to the privacy protections of chapter 13.50 RCW, and thus in effect they have *no* confidential records, despite having been the primary targets of an 8-month investigation that produced a file containing

hundreds upon hundreds of pages. It is these *identical* documents placed in Doe 5's file that the plaintiffs seek to keep confidential, as the Legislature intended. The Court of Appeals concluded that these records can be disclosed; thus in effect the plaintiffs who were investigated have *no* confidential juvenile records, despite having thick investigative files. This conclusion conflicts with precedents establishing that exemptions are construed to effect, not frustrate, the Legislature's intent.

These cases teach that while exemptions are "narrowly construe[d]," a court may not "ignore the plain language of [a] specific public disclosure exemption." *Bldg. Indus. Ass'n of Wash. v. Dep't of Labor & Indus.*, 123 Wn. App. 656, 662, 666, 98 P.3d 537 (2004). Where a "narrow reading of [an exemption] would ignore" the Legislature's intent, a court will rightly reject such a reading. *Nw. Gas Ass'n v. Wash. Utils. & Transp. Comm'n*, 141 Wn. App. 98, 119, 168 P.3d 443 (2007). Thus, this Court reversed a trial court's overly-narrow

interpretation of the "peer review" exemption to exclude reviews involving non-physicians, holding that such a narrow interpretation would not cover the peer review activities of many hospitals, "frustrating the legislature's intent." *Cornu-Labat v. Hosp. Dist. No. 2 Grant Cnty.*, 177 Wn.2d 221, 232–33, 298 P.3d 741 (2013). Contrary to these precedents, the Court of Appeals' ruling here frustrated the Legislature's intent for juvenile confidentiality, warranting discretionary review under RAP 13.4(b)(1), (2).

The Court of Appeals also erred in rejecting persuasive authority. In a case on all fours with this one, the Texas Court of Appeals concluded that a single law enforcement record pertaining to adult and juvenile suspects must be withheld in its entirety, even if the requestor seeks only the record in the adult's file. *See Loving v. City of Houston*, 282 S.W.3d 555, 559 (Tex. App. 2009).

The Court of Appeals misread *Loving* and the record below. *Loving* did *not* determine, as the Court of Appeals

wrote, that "two separate files should have been maintained" in that case. App. 7. Instead, *Loving* reasoned that *even if* a separate file should have existed for the adult, "the fact is" that the requestor in that case sought "one document"—the police incident report—which contained information relating to a juvenile suspect. *Loving*, 282 S.W.3d at 561. As such, it could not be disclosed, *even though the incident report also related to an adult suspect* and may have been copied in a separate adult file. *Id.* In other words, *even if* a separate file had been maintained for the adult suspect, the incident report could not be disclosed because it pertained to a juvenile suspect and was therefore a confidential record concerning a child. *See id.* *Loving*'s reasoning applies fully to this case.

Here, the requestor named the juvenile Does in seeking the records, giving the Texas court's holding in *Loving* even greater persuasive force. CP 121, 205. There is no reason why the Texas legislature, which has also enacted a broad public records disclosure law, would be more protective of juveniles,

more aware of the unfair, race-based collateral consequences of the juvenile justice system, and more willing to dispense with such protections than Washington's legislature.[5] To give meaning and effect to the juvenile records exemption, the records are properly regarded as exempt juvenile records that must be kept confidential.

In sum, the Court of Appeals' decision resulted in the exemption protecting none of the records relating to the juvenile Does, because the *very same* records in their files are

[5] Other cases confirm the preeminence of juvenile confidentiality. For example, the Supreme Court of Nevada concluded that records "relat[ing] to the investigation of a juvenile-involved incident" were entirely exempt from disclosure, even when the requestor asked for the records relating to a state senator's (who was also a parent of one of the juvenile suspects) interactions with police at the scene. *See Republican Attorneys Gen. Ass'n v. Las Vegas Metropolitan Police Dep't*, 136 Nev. 28, 458 P.3d 328, 330–31, 335 (2020) ("Ford's depiction and any communications he makes are inextricably commingled with the confidential juvenile justice information."). The fact that the information also related to a public official did not divest the records of their protection as records relating to the investigation of juveniles.

subject to disclosure. This holding threatens juvenile privacy where common investigative files for adult suspects are created and maintained, contrary to those published decisions of this Court and the Court of Appeals holding that the Legislature's intent must be effectuated, not frustrated, by judicial interpretations of exemptions.

**4. Whether juveniles lose protection in their investigative records where their records are also placed in a file relating to an adult co-suspect is of substantial public interest, warranting review under RAP 13.4(b)(1), (4).**

The Court of Appeals' decision imperils the Legislature's clear policy preventing disclosure of juvenile records to mitigate the harm of racial disparities, promote rehabilitation, and protect against lasting stigma. This Court has recognized that disclosing juvenile records can have "very real and objectively negative consequences," consequences that "are particularly unjustifiable in light of the fact that the mind of a juvenile or adolescent is measurably and materially different from the mind of an adult." *State v. S.J.C.*, 183 Wn.2d 408,

432, 433, 352 P.3d 749 (2015). And "open juvenile records implicate and exacerbate racial disparities" given the fact "that juveniles of color face disproportionately high rates of arrest and referral to juvenile court." *Id.* at 433 (citations omitted). In *S.J.C.*, this Court instructed courts to "give[] effect to" the Legislature's "careful policy judgments" in this arena, as "the legislature is in the unique and best position to publicly weigh the competing policy interests" with respect to such records. *Id.* at 422.[6]

The Legislature has determined confidentiality is the proper safeguard against the school-to-prison pipeline disparately impacting boys of color, including the Does here, who are mostly Black. CP 98. The Court of Appeals' contrary decision is inconsistent with this Court's decision in *S.J.C.* and presents an issue of substantial interest that should be determined by this Court under RAP 13.4(b)(1), (4).

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[6] While *S.J.C.* addressed juvenile court records, its rationale applies with equal force to other juvenile records.

### B. The Court of Appeals' Decision that Redaction of Juvenile Records Is Appropriate Conflicts with this Court's Precedent, Warranting Review

The Court of Appeals' decision that redacting the juveniles' names suffices to protect their privacy interests, App. 7–8, is inconsistent with this Court's decision in *RAC*, which held that redaction is appropriate only if redaction "can transform the record into one that is not exempted." *RAC*, 177 Wn.2d at 437. Where an exemption applies to the entire record (as it does under chapter 13.50 RCW), as opposed to a type of information, redaction is not warranted. *See id.* The Court of Appeals' contrary decision warrants review under RAP 13.4(b)(1).

### C. The Failure to Grant a Preliminary Injunction Conflicts with this Court's Decisions and Presents Issues of Public Interest, Meriting Discretionary Review

#### 1. The extent to which the records implicate the privacy exemption for investigative records is an issue of substantial public interest.

Investigative and law enforcement records are exempt under RCW 42.56.240(1) to the extent needed to protect a

person's right to privacy. The records here contain descriptions of private sexual conduct involving minors, yet the Court of Appeals concluded redaction of the juvenile Does' names alone sufficed to protect privacy.

Under the PRA, the right to privacy is violated where disclosure "[w]ould be highly offensive to a reasonable person" and "not of legitimate concern to the public." RCW 42.56.050. This Court has recognized that disclosure of "intimate details of one's personal and private life"—such as the conduct at issue here—would be highly offensive. *Spokane Police Guild v. Wash. State Liquor Control Bd.*, 112 Wn.2d 30, 38, 769 P.2d 283 (1983).

Here, the Court of Appeals held that release of the records, with only the juveniles' names redacted, was required to meet the legitimate public concern of overseeing investigations. App. 9–10. But if scrutiny of every investigation is necessarily of legitimate concern to the public, the investigative records exemption could never apply—an

absurd conclusion that negates the Legislature's exemption. Cases holding that an interest in overseeing investigations is legitimate involve substantiated allegations or conduct of public officials in their line of duty. *See Bellevue John Does 1–11 v. Bellevue Sch. Dist. #405*, 164 Wn.2d 199, 215, 189 P.3d 139 (2008) ("[W]hen a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right to privacy in the complaint."); *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 404, 416, 259 P.3d 190 (2011) (public has legitimate interest in how police department responds to allegation against its own officer in the line of duty); *Brouillet v. Cowles Pub. Co.*, 114 Wn.2d 788, 798, 791 P.2d 526 (1990) ("The public requires information about the extent of known sexual misconduct in the schools, its nature, and the way the school system responds in order to address the problem.").

By contrast, the issue of whether such concerns can be legitimate where the conduct involves purely private individuals—juveniles, no less—and where deeply private, noncriminal sexual conduct would be disclosed, is an important one this Court should decide. Whether public concern is "legitimate" must be assessed in light of the Legislature's policy that the public interest favors privacy for juveniles. The plaintiffs proposed, at a minimum, redacting descriptions of such private conduct, as they explained to the Court of Appeals, submitting the proposed redactions *in camera* as sealed clerk's papers. App. Br. 34 & n.8; CP 2723–4901. The Court of Appeals' conclusion the argument was waived suggests it did not evaluate the plaintiffs' argument, review the records it was provided *in camera*, or consider precedents establishing deference to the Legislature's policy respecting juveniles. These important issues should be resolved by this Court under RAP 13.4(b)(4).

### 2. Whether a preliminary injunction or declaration should have issued warrants review under RAP 13.4(b)(1), (4).

The Court of Appeals should not have affirmed the denial of even preliminary injunctive relief at the outset of the case. A preliminary injunction should issue if there is a "clear legal or equitable right," "a well-grounded fear of immediate invasion of that right," and "the acts complained of have or will result in actual and substantial injury." *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998). This temporary relief is designed to preserve the status quo, "not to adjudicate ultimate rights." *Id.* at 285. Here, the Does showed the records implicated rights under chapter 13.50 RCW and RCW 42.56.240(1) and that release would cause substantial and irreparable harm to them; indeed, even the trial court observed that it would be easy to learn the plaintiffs' identities from the internet. *See* CP 143, 173–4, 177, 180; RP 84. Thus, the Court of Appeals' affirmance was inconsistent with this Court's decisions, warranting review.

While the Court of Appeals did not reach the issue, the injunction standard at RCW 42.56.540 does not preclude relief. The plaintiffs sought preliminary injunctive relief and had standing under the UDJA to seek a declaration and an injunction. *See* RCW 7.24.080. Indeed, no injunction need issue at all where the Court declares records are exempt—the plaintiffs are entitled to trust the agency will obey the law as declared by the court. *See California v. Grace Brethren Church*, 457 U.S. 393, 408, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982) ("[T]here is little practical difference between injunctive and declaratory relief[.]"). Nor does *Lyft v. City of Seattle*, 190 Wn.2d 769, 418 P.3d 102 (2018), require a different result. That case held only that the standard in RCW 42.56.540 must be definitively met when seeking a permanent injunction under the PRA. *Id.* at 785.

Regardless, the plaintiffs amply met the standard contemplated by RCW 42.56.540, showing both substantial and irreparable harm and that examination would clearly not be in

the public interest. Disclosure clearly cannot be in the public interest where the Legislature has mandated that juvenile records may not be disclosed under chapter 13.50 RCW. The Legislature sought to prevent exactly the type of scrutiny and stigma that will befall these young men if the records are released, and the Court of Appeals' contrary decision threatens the balance the Legislature established. Whether declaratory or, at a minimum, preliminary injunctive relief was properly denied is an issue of substantial public interest that should be determined by this Court.

## VII. CONCLUSION

For all these reasons, the Does respectfully request the Court grant discretionary review under RAP 13.4(b)(1), (2), and (4).

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I certify that this brief contains 4,908 words, excluding the parts exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 7th day of October, 2021.

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FILED
9/7/2021
Court of Appeals
Division I
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

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| JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, and JOHN DOE 4,<br><br>Appellants/Cross Respondents,<br><br>v.<br><br>KING COUNTY,<br><br>Respondent,<br><br>THE SEATTLE TIMES,<br><br>Respondent/Cross Appellant. | ) | No. 81814-7-I<br><br><br><br><br><br>UNPUBLISHED OPINION |

BOWMAN, J. — The Seattle Times made a Public Records Act (PRA), chapter 42.56 RCW, request for records related to the decision of the King County Prosecuting Attorney's Office (KCPAO) declining to file sexual assault charges against several high school football players. Four of the students involved in the investigation were juveniles at the time and petitioned to enjoin release of the records. The trial court allowed the juveniles to pursue their lawsuit using pseudonyms. The court denied the preliminary injunction and ordered release of the records, redacted to remove the identities of the juveniles. The juveniles, identified as John Does 1-4 (the Does), appeal the trial court's denial of injunctive relief. The Seattle Times cross appeals the trial court's decision to allow the use of pseudonyms. We affirm.

## FACTS

In April 2018, a 16-year-old girl alleged that several high school football players sexually assaulted her. The Clyde Hill Police Department (CHPD) investigated the allegations, and referred nearly identical files for three juveniles and one adult to KCPAO for potential charges. KCPAO declined to file charges.

In January 2020, the Seattle Times made public disclosure requests to KCPAO and CHPD. It asked for "all written, electronic and digital records pertaining to the decision not to bring forth criminal charges in relation to a spring 2018 sexual assault case involving current and former members of the . . . High School Football team." The request included "any correspondence between [KCPAO] representatives and police and school officials pertaining to the matter," and asked for correspondence between KCPAO and the "parents/guardians or legal representatives/lawyers for players involved." The Seattle Times later clarified that it was not seeking information related to the juvenile referrals.

KCPAO compiled 2,177 pages of records responsive to the Seattle Times' request. The pages consist mainly of the CHPD investigative file for the adult suspect and external communications with police, school officials, and parents or legal representatives for the players "relating to the [KC]PAO's decision" against filing charges. KCPAO proposed several redactions to the records. It redacted identifying information of the victim, suspects, witnesses who requested to remain anonymous, and parties in an unrelated case. It also redacted social security numbers and KCPAO's work product from the records.

KCPAO notified the adult and juvenile suspects that it intended to release the records to the Seattle Times, and sent them the redacted records. The Does sued King County, the Seattle Times, CHPD, and the Palo Alto Daily Post,[1] seeking to prevent release of the records. Because they were juveniles, the Does used pseudonyms in place of their names in the pleadings. John Doe 1 was a juvenile witness, and John Does 2-4 were juvenile suspects. While the adult suspect was not a party to the Does' lawsuit, they identified him in the complaint as John Doe 5. The Does moved for and the court granted a temporary restraining order barring release of the records.

The Does then petitioned for a preliminary injunction and declaratory judgment that the records were categorically exempt from disclosure. The Does also moved for permission to continue using pseudonyms to protect their privacy. The trial court reviewed in camera both the unredacted records and the proposed redactions. The court concluded that the records were not "wholly exempt from disclosure." Specifically, that the records "for possible charges against an adult are not categorically exempt" under chapter 13.50 RCW, protecting juveniles' privacy; that the records are not categorically exempt under the Washington State Criminal Records Privacy Act, chapter 10.97 RCW; and that the records are not wholly exempt under the PRA because the public has a legitimate interest in the investigation. The court denied the preliminary injunction and approved the KCPAO's redactions for release of the records.

[1] CHPD also received a PRA request from the Palo Alto Daily Post.

The Does moved for discretionary review in this court. A few days later, the parties entered a stipulated order to dismiss defendants CHPD and Palo Alto Daily Post without prejudice. The Does' case then became appealable as a matter of right. We issued a temporary injunction preventing release of the records pending appeal.

More than two weeks after denying the petition for preliminary injunction, the trial court granted the Does' motion to proceed under pseudonym. The Seattle Times then moved for direct review of that decision by the Washington Supreme Court. The Supreme Court combined the matter with the Does' pending appeal and designated the Seattle Times as a cross appellant, but denied review and transferred the case to this court. The Washington Coalition for Open Government and the Washington Defender Association each requested and received permission to file amici curiae briefs with this court.[2]

ANALYSIS

PRA Exemptions

The Does argue that the trial court erred in concluding no PRA exemption applied to the release of John Doe 5's adult investigation records. According to the Does, the records should be categorically exempt from disclosure because they are nearly identical to their juvenile records protected under chapter 13.50

[2] Amicus the Washington Defender Association supports the Does' broad application of the chapter 13.50 RCW protection of juvenile records because "young people in King County may find the privacy protections promised by the Legislature eviscerated any time their information finds its way into an adult investigative file." In contrast, amicus the Washington Coalition for Open Government emphasizes the PRA's mandate for broad public disclosure of public records, and argues the adult records at issue in this case are not protected as juvenile records or investigative records that would violate the Does' right to privacy.

RCW. In the alternative, they argue that the file is exempt as an investigative record under RCW 42.56.240(1). We disagree.

"The PRA is a 'strongly worded mandate for broad disclosure of public records.' " Cornu-Labat v. Hosp. Dist. No. 2 Grant County, 177 Wn.2d 221, 229, 298 P.3d 741 (2013) (quoting Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)). The act compels state and local agencies to disclose public records responsive to requests unless a specific exemption applies. RCW 42.56.070(1); Cornu-Labat, 177 Wn.2d at 229. In keeping with its mandate, the PRA's disclosure provisions must be " 'liberally construed and its exemptions narrowly construed.' " Cornu-Labat, 177 Wn.2d at 229 (quoting RCW 42.56.030).

Under the PRA, a party may seek to enjoin release of public records if "examination 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." RCW 42.56.540. But "[c]ourts shall take into account the policy of [the PRA] that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550(3).

In considering whether to enjoin disclosure of records, a trial court must conduct two separate inquiries. Lyft, Inc. v. City of Seattle, 190 Wn.2d 769, 789-90, 418 P.3d 102 (2018). First, the court must determine if the records at issue are exempt under a provision of the PRA. Lyft, 190 Wn.2d at 790. If a PRA

exemption applies, the court then looks to whether disclosure is against public interest and would cause substantial and irreparable damage. Lyft, 190 Wn.2d at 791 (citing RCW 42.56.540). The trial court must find both inquiries are satisfied before issuing an injunction. Lyft, 190 Wn.2d at 791. The party seeking an injunction has the burden of proof. Lyft, 190 Wn.2d at 791. We review de novo the issuance of an injunction under the PRA. RCW 42.56.550(3); Lyft, 190 Wn.2d at 791.

A. Juvenile Records

Despite the PRA's liberal construction in favor of release, its "mandate for broad disclosure is not absolute." Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 432, 327 P.3d 600 (2013). The PRA establishes specific grounds that exempt a record from release. See, e.g., RCW 42.56.210-.480. One of these grounds, the "other statutes" exemption, "incorporates into the [PRA] other statutes which exempt or prohibit disclosure of specific information or records." Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 261-62, 884 P.2d 592 (1994) (PAWS); RCW 42.56.070(1).

> [I]f another statute (1) does not conflict with the [PRA], and (2) either exempts or prohibits disclosure of specific public records in their entirety, then (3) the information may be withheld in its entirety notwithstanding the redaction requirement.

PAWS, 125 Wn.2d at 262. Whether a statute is an "other statute" under the PRA is a question of law we review de novo. Doe ex rel. Roe v. Wash. State Patrol, 185 Wn.2d 363, 371, 374 P.3d 63 (2016).

The Does argue that RCW 13.50.050 qualifies as an "other statute" exemption under the PRA prohibiting the release of juvenile records. We agree. RCW 13.50.050 protects "records relating to the commission of juvenile offenses," and provides that "[a]ll records other than the official juvenile court file are confidential and may be released only as provided in" chapter 13.50 RCW. RCW 13.50.050(1), (3). This protection extends to the "records of any other juvenile justice or care agency in the case." RCW 13.50.010(1)(d).

But citing Loving v. City of Houston, 282 S.W.3d 555 (Tex. App. 2009), the Does contend that chapter 13.50 RCW should also preclude release of John Doe 5's adult records because they "pertain to juvenile suspects," and disclosure would cause the juveniles to "forfeit confidentiality." In Loving, the Texas Court of Appeals upheld a trial court ruling that a single police report pertaining to both an adult and juvenile suspect was exempt from disclosure as a "law-enforcement record concerning a child." Loving, 282 S.W.3d at 561. The court determined that per statute, "two separate files should have been maintained," and rejected the appellant's argument that the file could be redacted because no authority to redact exists under Texas law. Loving, 282 S.W.3d at 561.

Here, the very safeguards of privacy that are missing in Loving protect the identities of the Does. CHPD created separate, though nearly identical, files for the juvenile and adult suspects. And in Washington, "an agency must redact [records] to overcome any and all relevant exemptions." Resident Action Council, 177 Wn.2d at 441. Consistent with Washington law, KCPAO redacted

John Doe 5's records to protect the identities of the juvenile suspects. Chapter 13.50 RCW does not preclude the release of John Doe 5's adult records.[3]

B. Investigative Records

Investigative and law enforcement information is exempt from public disclosure if it is "essential to effective law enforcement or for the protection of any person's right to privacy." RCW 42.56.240(1). Here, the parties do not dispute that John Doe 5's CHPD file amounts to a law enforcement investigative record. But the Does argue that release of the records would violate their right to privacy because the sexual misconduct accusations against them are "unsubstantiated" and "highly offensive."

A person's right to privacy "is invaded or violated only if disclosure of information about the person . . . (1) [w]ould be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public." RCW 42.56.050. Generally, this applies "only to the intimate details of one's personal and private life." Spokane Police Guild v. Wash. State Liquor Control Bd., 112 Wn.2d 30, 38, 769 P.2d 283 (1989). Embarrassment is not enough to prevent disclosure. RCW 42.56.550(3); West v. Port of Olympia, 183 Wn. App. 306, 313, 333 P.3d 488 (2014). Even if disclosure is offensive, records should be released "if there is a legitimate or reasonable public interest in the disclosure." Martin v. Riverside Sch. Dist. No. 416, 180 Wn. App. 28, 33, 329 P.3d 911 (2014).

[3] In the alternative, the Does challenge the sufficiency of KCPAO's redactions, arguing the trial court should adopt their proposed redactions. The Does have the burden to show that information is exempt and should be redacted. Does v. King County, 192 Wn. App. 10, 24, 366 P.3d 936 (2015). But they make no argument as to why KCPAO's redactions are inadequate, or why the Does' proposed redactions are necessary to protect their privacy interests. Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. Samra v. Singh, 15 Wn. App. 2d 823, 836, 479 P.3d 713 (2020). We do not consider this claim.

Does 1-11 v. Bellevue School District, 164 Wn.2d 199, 189 P.3d 139 (2008), helps explain when, as here, the public disclosure of uncharged[4] accusations of sexual misconduct may violate the right to privacy. In that case, teachers accused of committing sexual misconduct against students sued to prevent release of their names in response to a public records request. Does 1-11, 164 Wn.2d at 205. The court determined that when allegations of misconduct are "unsubstantiated," disclosure of a teacher's identity violates their right to privacy, and enjoined release under the former public disclosure act.[5] Does 1-11, 164 Wn.2d at 206-07. The court noted, "It is undisputed that disclosure of the identity of a teacher accused of sexual misconduct is highly offensive to a reasonable person," and the public has no legitimate interest in finding out the names of falsely accused people. Does 1-11, 164 Wn.2d at 216-17. As a result, "[w]hen an allegation is unsubstantiated, the teacher's identity is not a matter of legitimate public concern." Does 1-11, 164 Wn.2d at 221.

Like the teachers in Does 1-11, the claims of sexual assault against John Does 2-4 are uncharged. Thus, the public has no legitimate interest in their identities.[6] But unlike the teachers in Does 1-11, the records here do not identify the Does by name. Instead, their identities are redacted. Release of the redacted records protects the Does' privacy, and also serves the legitimate public

[4] The Does and the cited Supreme Court cases use the term "unsubstantiated." Here, we use the term "uncharged" as the KCPAO determined available evidence did not meet its filing standards and declined to pursue charges. We consider the terms interchangeable for purposes of our legal analysis.

[5] The legislature recodified chapter 42.17 RCW as the PRA in 2005. LAWS OF 2005, ch. 274.

[6] As a witness who was never a suspect in the alleged assault, John Doe 1 has an even greater privacy interest.

concern of overseeing the police investigation of sexual assault allegations and the KCPAO's decision not to file charges. See Does 1-11, 164 Wn.2d at 221. As a result, John Doe 5's records are not exempt from disclosure under RCW 42.56.240(1).[7]

Pseudonyms

On cross appeal, the Seattle Times argues the trial court erred in granting the Does permission to pursue their case under pseudonym because the state constitution protects public access to party names.[8] We review a decision to allow parties to proceed under pseudonym for an abuse of discretion. Doe L. v. Pierce County, 7 Wn. App. 2d 157, 202, 433 P.3d 838 (2018).

Article I, section 10 of the Washington Constitution states, "Justice in all cases shall be administered openly." But "the public's right of access is not absolute, and may be limited to protect other interests." Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 36, 640 P.2d 716 (1982).

A trial court must justify redaction of names in pleadings under GR 15. Doe G. v. Dep't of Corr., 190 Wn.2d 185, 198, 410 P.3d 1156 (2018). GR

[7] The Does also argue the court erred in failing to grant declaratory relief. According to the Does, a favorable ruling under the declaratory judgment act, chapter 7.24 RCW, would have amounted to the " 'functional equivalent of an injunction,' " eliminating the need to seek relief under the PRA. (Quoting Florida ex rel. Bondi v. U.S. Dep't of Health & Human Servs., 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011), aff'd in part, rev'd in part by Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (2012).) But in rejecting the Does' petition for a preliminary injunction under the PRA, the court concluded that John Doe 5's records "are not categorically exempt under RCW 13.50.050" or the Washington State Criminal Records Privacy Act. The Does fail to explain why the court would have reached a different conclusion in the context of a declaratory judgment.

[8] The Seattle Times also argues that CR 10(a)(1), RAP 3.4, and King County Local Civil Rule (KCLCR) 10 "all reflect a policy that initials are necessary when names are concealed." But CR 10(a)(1) does not address initials at all, and RAP 3.4 requires the use of initials in only juvenile offender cases. And while KCLCR 10(a)(1)(B) states that a party "may file" a case using initials, the Seattle Times cites no authority that this permissive language prohibits the use of pseudonyms.

15(c)(2) authorizes the redaction of names when "justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record."

Redaction of names in pleadings may also infringe on the presumption of open access to courts and court documents guaranteed under article I, section 10. An Ishikawa analysis is necessary when a redaction implicates article I, section 10 protections. See State v. S.J.C., 183 Wn.2d 408, 412, 352 P.3d 749 (2015). Under Ishikawa, a court must satisfy a five-step analysis before sealing or redacting records. See Doe G, 190 Wn.2d at 198-99 (citing Ishikawa, 97 Wn.2d at 37-39). The court must

> 1) identify the need to seal court records, (2) allow anyone present in the courtroom an opportunity to object, (3) determine whether the requested method is the least restrictive means of protecting the interests threatened, (4) weigh the competing interests and consider alternative methods, and (5) issue an order no broader than necessary.

Doe G, 190 Wn.2d at 199.

Ishikawa augments the requirements of GR 15. See In re Dependency of M.P.H., 184 Wn.2d 741, 765, 364 P.3d 94 (2015); Indigo Real Estate Servs. v. Rousey, 151 Wn. App. 941, 949-50, 215 P.3d 977 (2009). Whether article I, section 10 applies hinges on the two-prong "experience and logic test." S.J.C., 183 Wn.2d at 412; Doe AA v. King County, 15 Wn. App. 2d 710, 719, 476 P.3d 1055 (2020), review denied by Doe AA v. Zink, 197 Wn.2d 1011, 487 P.3d 517 (2021). The "experience" prong examines " 'whether the place and process have historically been open to the press and general public.' " S.J.C., 183 Wn.2d at

417[9] (quoting In re Det. of Morgan, 180 Wn.2d 312, 325, 330 P.3d 774 (2014)). And the "logic" prong considers " 'whether public access plays a significant positive role in the functioning of the particular process.' " S.J.C., 183 Wn.2d at 430[10] (quoting Morgan, 180 Wn.2d at 325).

The Does contend that application of the experience and logic test here shows that article I, section 10 does not apply to their motion to proceed under pseudonym. The Seattle Times cites Doe G, 190 Wn.2d at 198-201, for the broad proposition that Ishikawa "clearly" applies whenever a party seeks to proceed under pseudonym. We agree with the Does.

In Doe G, convicted sex offenders tried to enjoin release of their SSOSA[11] evaluations, which were the subject of a PRA request. Doe G, 190 Wn.2d at 189-90. A pro se petitioner appealed the trial court's order allowing the respondents to proceed under pseudonym, and we affirmed that order. Doe G, 190 Wn.2d at 190. Our Supreme Court reversed, holding that "names in pleadings are subject to article I, section 10 and redaction must meet the Ishikawa factors." Doe G., 190 Wn.2d at 201. But the court arrived at this conclusion only after applying the experience and logic test to determine whether the specific facts concerning release of convicted sex offender SSOSA evaluations implicated article I, section 10. Doe G., 190 Wn.2d at 199-200.

Under the experience prong, the court concluded that "parties who have not been convicted of any crime may have a legitimate privacy interest [to

[9] Internal quotation marks omitted.

[10] Internal quotation marks omitted.

[11] Special sex-offender sentencing alternative.

proceed under pseudonym] because there is no public record associating them with the subject of their litigation." Doe G, 190 Wn.2d at 199-200. But "the names of people convicted of criminal offenses, including sex offenders, have historically been open to the public." Doe G, 190 Wn.2d at 199. The court determined that "[l]ogic also suggests that the John Does do not have a legitimate privacy interest to protect." Doe G., 190 Wn.2d at 200. Because a SSOSA is a sentencing alternative, the public plays a "significant role" in the process. Doe G, 190 Wn.2d at 200-01. As a result, the Supreme Court held that the convicted sex offenders' request to proceed under pseudonym was subject to article I, section 10, and any redactions of their names must satisfy the Ishikawa factors. Doe G, 190 Wn.2d at 201.

Here, the experience prong supports the Does' contention that article I, section 10 does not apply to their request to proceed under pseudonym. Unlike the convicted sex offenders in Doe G, the Does were never charged in connection with the alleged sexual assault. They are not "people convicted of criminal offenses" whose names have "historically been open to the public." Doe G, 190 Wn.2d at 199. And our Supreme Court has protected identities where allegations were uncharged because the public has no legitimate interest in the names of falsely accused people. See Does 1-11, 164 Wn.2d at 217. Moreover, the Does are juveniles. The legislature has always treated court records identifying juveniles as distinctive and deserving of more confidentiality than other types of records. S.J.C., 183 Wn.2d at 417. "Requiring an individualized

showing under the Ishikawa factors would thus be directly contrary to this court's entire history regarding juvenile courts." S.J.C., 183 Wn.2d at 423.

The logic prong also supports the Does' argument. As discussed, the public has an interest in the oversight of investigations. See Does 1-11, 164 Wn.2d at 219-20. But the public has no legitimate interest in the identities of juveniles facing uncharged accusations of sexual assault. See Does 1-11, 164 Wn.2d at 217. Redacting the Does' names serves to protect their identities without impeding the public's ability to oversee police investigation of the alleged sexual assault. Does 1-11, 164 Wn.2d at 2220. Applying both prongs of the experience and logic test shows that article I, section 10 is not implicated by the Does' motion to proceed under pseudonym, and satisfaction of the Ishikawa factors before granting their motion was unnecessary.

While Ishikawa does not apply to the Does' motion to proceed under pseudonym, the trial court must still enter written findings satisfying the less stringent standard of GR 15 to support its conclusion that the Does' privacy concerns outweigh the public's interest to access their identities. Yakima County v. Yakima Herald-Republic, 170 Wn.2d 775, 801-03, 246 P.3d 768 (2011) (Ishikawa analysis was unnecessary but trial court needed to follow requirements of GR 15). In support of their motion to proceed under pseudonym, the Does noted that they "have never been charged with any crime." They argued that revealing their identities would allow them to be "tarnished by connection to some unsubstantiated accusations involving sexual misconduct." According to the Does, the only public interest "is the prurient interest of community members,"

and "[s]uch 'gossip and sensation' is not a public interest." The trial court agreed, and entered written findings to support its conclusion that the Does identified a compelling privacy interest that outweighed the public's interest in knowing their identities. The trial court did not abuse its discretion in allowing them to proceed under pseudonym.

We affirm the order denying the Does' motion for injunctive relief and declaratory judgment and the order granting the Does' motion to proceed under pseudonym, and lift the temporary injunction.

Brauman, J.

WE CONCUR:

Vera Kan J.

Appelwick, J.

## RCW 13.50.010

## Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access—Confidential child welfare records.

(1) For purposes of this chapter:

(a) "Good faith effort to pay" means a juvenile offender has either (i) paid the principal amount in full; (ii) made at least eighty percent of the value of full monthly payments within the period from disposition or deferred disposition until the time the amount of restitution owed is under review; or (iii) can show good cause why he or she paid an amount less than eighty percent of the value of full monthly payments;

(b) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the oversight board for children, youth, and families, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, the department of children, youth, and families and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW **72.05.415**;

(c) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, notices of hearing or appearance, service documents, witness and exhibit lists, findings of the court and court orders, agreements, judgments, decrees, notices of appeal, as well as documents prepared by the clerk, including court minutes, letters, warrants, waivers, affidavits, declarations, invoices, and the index to clerk papers;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(e) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services or the department of children, youth, and families relating to a petition filed pursuant to chapter **13.34** RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) The court shall release to the caseload forecast council the records needed for its research and data-gathering functions. Access to caseload forecast data may be permitted by the council for research purposes only if the anonymity of all persons mentioned in the records or information will be preserved.

(10) Juvenile detention facilities shall release records to the caseload forecast council upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(11) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the oversight board for children, youth, and families or the office of the family and children's ombuds.

(12) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the administrative office of the courts for research purposes as authorized by the supreme court or by state statute. The administrative office of the courts shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. Data contained in the research copy may be shared with other governmental agencies as authorized by state statute, pursuant to data-sharing and research agreements, and consistent with applicable security and confidentiality requirements. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW **13.50.270** and **13.50.100**(3).

(13) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW **2.70.020**. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records.

(14) The court shall release to the Washington state office of civil legal aid records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW **2.53.045**. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of civil legal aid. The Washington state office of civil legal aid shall maintain the confidentiality of all confidential information included in the records, and shall, as soon as possible, destroy any retained notes or records obtained under this section that are not necessary for its functions related to RCW **2.53.045**.

(15) For purposes of providing for the educational success of youth in foster care, the department of children, youth, and families may disclose only those confidential child welfare records that pertain to or may assist with meeting the educational needs of current and former foster youth to another state agency or state agency's contracted provider responsible under state law or contract for assisting current and former foster youth to attain educational success. The records retain their confidentiality pursuant to this chapter and federal law and cannot be further disclosed except as allowed under this chapter and federal law.

(16) For the purpose of ensuring the safety and welfare of the youth who are in foster care, the department of children, youth, and families may disclose to the department of commerce and its

contracted providers responsible under state law or contract for providing services to youth, only those confidential child welfare records that pertain to ensuring the safety and welfare of the youth who are in foster care who are admitted to crisis residential centers or HOPE centers under contract with the office of homeless youth prevention and protection. Records disclosed under this subsection retain their confidentiality pursuant to this chapter and federal law and may not be further disclosed except as permitted by this chapter and federal law.

(17) For purposes of investigating and preventing child abuse and neglect, and providing for the health care coordination and the well-being of children in foster care, the department of children, youth, and families may disclose only those confidential child welfare records that pertain to or may assist with investigation and prevention of child abuse and neglect, or may assist with providing for the health and well-being of children in foster care to the department of social and health services, the health care authority, or their contracting agencies. For purposes of investigating and preventing child abuse and neglect, and to provide for the coordination of health care and the well-being of children in foster care, the department of social and health services and the health care authority may disclose only those confidential child welfare records that pertain to or may assist with investigation and prevention of child abuse and neglect, or may assist with providing for the health care coordination and the well-being of children in foster care to the department of children, youth, and families, or its contracting agencies. The records retain their confidentiality pursuant to this chapter and federal law and cannot be further disclosed except as allowed under this chapter and federal law.

(18) For the purpose of investigating child sexual abuse, online sexual exploitation and commercial sexual exploitation of minors, and child fatality, child physical abuse, and criminal neglect cases for the well-being of the child, the department of children, youth, and families may disclose only those confidential child welfare records that pertain to or may assist with such an investigation pursuant to RCW **26.44.180** and **26.44.175**. The records retain their confidentiality pursuant to this chapter and federal law and cannot be further disclosed except as allowed under this chapter and federal law.

[ **2019 c 470 § 22**; **2019 c 82 § 1**; **2018 c 58 § 78**; **2017 3rd sp.s. c 6 § 312**; **2017 c 277 § 1**. Prior: **2016 c 93 § 2**; **2016 c 72 § 109**; **2016 c 71 § 2**; prior: **2015 c 265 § 2**; **2015 c 262 § 1**; prior: **2014 c 175 § 2**; **2014 c 117 § 5**; **2013 c 23 § 6**; **2011 1st sp.s. c 40 § 30**; **2010 c 150 § 3**; **2009 c 440 § 1**; **1998 c 269 § 4**; prior: **1997 c 386 § 21**; **1997 c 338 § 39**; **1996 c 232 § 6**; **1994 sp.s. c 7 § 541**; **1993 c 374 § 1**; **1990 c 246 § 8**; **1986 c 288 § 11**; **1979 c 155 § 8**.]

## NOTES:

**Reviser's note:** This section was amended by 2019 c 82 § 1 and by 2019 c 470 § 22, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW **1.12.025**(2). For rule of construction, see RCW **1.12.025**(1).

**Effective date—2018 c 58:** See note following RCW **28A.655.080**.

**Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822:** See note following RCW **43.216.025**.

**Conflict with federal requirements—2017 3rd sp.s. c 6:** See RCW **43.216.908**.

**Finding—Intent—2016 c 72:** See note following RCW **28A.600.015**.

**Intent—2016 c 71:** See note following RCW **28A.300.590**.

**Finding—Intent—2015 c 265:** "The legislature finds that requiring juvenile offenders to pay all legal financial obligations before being eligible to have a juvenile record administratively sealed disproportionately affects youth based on their socioeconomic status. Juveniles who cannot afford to pay their legal financial obligations cannot seal their juvenile records once they turn eighteen and oftentimes struggle to find employment. By eliminating most nonrestitution legal financial obligations for juveniles convicted of less serious crimes, juvenile offenders will be better able to find employment and focus on making restitution payments first to the actual victim. This legislation is intended to help juveniles understand the consequences of their actions and the harm that those actions have caused others without placing insurmountable burdens on juveniles attempting to become productive members of society. Depending on the juvenile's ability to pay, and upon the consent of the victim, courts should also strongly consider ordering community restitution in lieu of paying restitution where appropriate." [ **2015 c 265 § 1**.]

**Findings—Intent—2014 c 175:** "The legislature finds that:

(1) The primary goal of the Washington state juvenile justice system is the rehabilitation and reintegration of former juvenile offenders. The public has a compelling interest in the rehabilitation of former juvenile offenders and their successful reintegration into society as active, law-abiding, and contributing members of their communities. When juvenile court records are publicly available, former juvenile offenders face substantial barriers to reintegration, as they are denied housing, employment, and education opportunities on the basis of these records.

(2) The legislature declares it is the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records. The legislature intends that juvenile court proceedings be openly administered but, except in limited circumstances, the records of these proceedings be closed when the juvenile has reached the age of eighteen and completed the terms of disposition." [ **2014 c 175 § 1**.]

**Application—Recalculation of community custody terms—2011 1st sp.s. c 40:** See note following RCW **9.94A.501**.

**Alphabetization—1998 c 269:** "The code reviser shall alphabetize the definitions in RCW **13.50.010** and **74.15.020** and correct any references." [ **1998 c 269 § 18**.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW **72.05.020**.

**Application—1997 c 386:** "Sections 8 through 14 and 17 through 34 of this act apply only to incidents occurring on or after January 1, 1998." [ **1997 c 386 § 67**.]

**Effective date—1997 c 386:** "Sections 8 through 13 and 21 through 34 of this act take effect January 1, 1998." [ **1997 c 386 § 68**.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW **13.40.0357**.

**Severability—Effective dates—1997 c 338:** See notes following RCW **5.60.060**.

**Effective dates—1996 c 232:** See note following RCW **13.40.030**.

**Application—1994 sp.s. c 7 §§ 540-545:** "Sections 540 through 545 of this act shall apply to offenses committed on or after July 1, 1994." [ **1994 sp.s. c 7 § 917**.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW **43.70.540**.

**Severability—1990 c 246:** See note following RCW **13.34.060**.

**Severability—1986 c 288:** See note following RCW **43.185C.260**.

**Effective date—Severability—1979 c 155:** See notes following RCW **13.04.011**.

## RCW 13.50.050

## Records relating to commission of juvenile offenses—Maintenance of, access to, and destruction.

(1) This section and RCW **13.50.260** and **13.50.270** govern records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to RCW **13.50.260**.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this chapter , RCW **13.40.215** and **4.24.550**.

(4) Except as otherwise provided in this chapter, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW **4.24.550**, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, incident reports may be released unless releasing the records would jeopardize the investigation or prosecution or endanger witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and school property.

(8) The juvenile court and the prosecutor may set up and maintain a central recordkeeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW **13.40.070** whether or not their cases are currently pending before the court. The central recordkeeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central recordkeeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(9) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(10) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

(11) Any juvenile to whom the provisions of this section or RCW **13.50.260** or **13.50.270** may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(12) Nothing in this section or RCW **13.50.260** or **13.50.270** may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(13) Except as provided in RCW **13.50.270**(2), no identifying information held by the Washington state patrol in accordance with chapter **43.43** RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

(14) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault.

[ **2014 c 175 § 3**; **2012 c 177 § 2**. Prior: **2011 c 338 § 4**; **2011 c 333 § 4**; **2010 c 150 § 2**; **2008 c 221 § 1**; **2004 c 42 § 1**; prior: **2001 c 175 § 1**; **2001 c 174 § 1**; **2001 c 49 § 2**; **1999 c 198 § 4**; **1997 c 338 § 40**; **1992 c 188 § 7**; **1990 c 3 § 125**; **1987 c 450 § 8**; **1986 c 257 § 33**; **1984 c 43 § 1**; **1983 c 191 § 19**; **1981 c 299 § 19**; **1979 c 155 § 9**.]

## NOTES:

***Rules of court:*** *Superior Court Criminal Rules (CrR), generally. Discovery: CrR 4.7.*

**Findings—Intent—2014 c 175:** See note following RCW **13.50.010**.

**Application—2011 c 333:** "RCW **13.50.050** (14)(b) and (17)(b) apply to all records of a full and unconditional pardon and should be applied retroactively as well as prospectively." [ **2011 c 333 § 5**.]

**Findings—Intent—2011 c 333:** See note following RCW **19.182.040**.

**Intent—2001 c 49:** "The legislature intends to change the results of the holding of *State v. T. K.*, 139 Wn. 2d 320 (1999), and have any motion made after July 1, 1997, to seal juvenile records be determined by the provisions of RCW **13.50.050** in effect after July 1, 1997." [ **2001 c 49 § 1**.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW **13.40.0357**.

**Severability—Effective dates—1997 c 338:** See notes following RCW **5.60.060**.

**Findings—Intent—Severability—1992 c 188:** See notes following RCW **7.69A.020**.

**Severability—1986 c 257:** See note following RCW **9A.56.010**.

**Effective date—1986 c 257 §§ 17-35:** See note following RCW **9.94A.030**.

**Effective date—Severability—1979 c 155:** See notes following RCW **13.04.011**.

**RCW 13.50.100**

## Records not relating to commission of juvenile offenses—Maintenance and access—Release of information for child custody hearings—Disclosure of unfounded allegations prohibited.

(1) This section governs records not covered by RCW **13.50.050**, **13.50.260**, and **13.50.270**.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW **13.50.010**.

(3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the statewide judicial information system. However, truancy records associated with a juvenile who has no other case history, and records of a juvenile's parents who have no other case history, shall be removed from the judicial information system when the juvenile is no longer subject to the compulsory attendance laws in chapter **28A.225** RCW. A county clerk is not liable for unauthorized release of this data by persons or agencies not in his or her employ or otherwise subject to his or her control, nor is the county clerk liable for inaccurate or incomplete information collected from litigants or other persons required to provide identifying data pursuant to this section.

(4) Subject to (a) of this subsection, the department of children, youth, and families may release information retained in the course of conducting child protective services investigations to a family or juvenile court hearing a petition for custody of a minor under chapter **11.130** RCW.

(a) Information that may be released shall be limited to information regarding investigations in which: (i) The juvenile was an alleged victim of abandonment or abuse or neglect; or (ii) the petitioner for custody of the juvenile, or any individual aged sixteen or older residing in the petitioner's household, is the subject of a founded or currently pending child protective services investigation made by the department of social and health services or the department of children, youth, and families subsequent to October 1, 1998.

(b) Additional information may only be released with the written consent of the subject of the investigation and the juvenile alleged to be the victim of abandonment or abuse and neglect, or the parent, custodian, guardian, or personal representative of the juvenile, or by court order obtained with notice to all interested parties.

(5) Any disclosure of records or information by the department of social and health services or the department of children, youth, and families, pursuant to this section shall not be deemed a waiver of any confidentiality or privilege attached to the records or information by operation of any state or federal statute or regulation, and any recipient of such records or information shall maintain it in such a manner as to comply with such state and federal statutes and regulations and to protect against unauthorized disclosure.

(6) A contracting agency or service provider of the department of social and health services or the department of children, youth, and families, that provides counseling, psychological, psychiatric, or medical services may release to the office of the family and children's ombuds information or records relating to services provided to a juvenile who is dependent under chapter **13.34** RCW without the consent of the parent or guardian of the juvenile, or of the juvenile if the juvenile is under the age of thirteen years, unless such release is otherwise specifically prohibited by law.

(7) A juvenile, his or her parents, the juvenile's attorney, and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the

information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of children, youth, and families or the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

(8) A juvenile or his or her parent denied access to any records following an agency determination under subsection (7) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsection (7)(a) and (b) of this section.

(9) The person making a motion under subsection (8) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(10) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (7) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied.

(11) No unfounded allegation of child abuse or neglect as defined in RCW **26.44.020**(1) may be disclosed to a child-placing agency, private adoption agency, or any other licensed provider.

[ **2020 c 312 § 121**; **2019 c 470 § 21**; **2017 3rd sp.s. c 6 § 313**; **2014 c 175 § 8**; **2013 c 23 § 7**; **2003 c 105 § 2**; **2001 c 162 § 2**; **2000 c 162 § 18**; **1999 c 390 § 3**; **1997 c 386 § 22**; **1995 c 311 § 16**; **1990 c 246 § 9**; **1983 c 191 § 20**; **1979 c 155 § 10**.]

## NOTES:

**Effective date—2020 c 312:** See note following RCW **11.130.915**.

**Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822:** See note following RCW **43.216.025**.

**Conflict with federal requirements—2017 3rd sp.s. c 6:** See RCW **43.216.908**.

**Findings—Intent—2014 c 175:** See note following RCW **13.50.010**.

**Application—Effective date—1997 c 386:** See notes following RCW **13.50.010**.

**Severability—1990 c 246:** See note following RCW **13.34.060**.

**Effective date—Severability—1979 c 155:** See notes following RCW **13.04.011**.

## RCW 42.56.050

## Invasion of privacy, when.

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

[ **1987 c 403 § 2**. Formerly RCW **42.17.255**.]

## NOTES:

**Intent—1987 c 403:** "The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in "*In Re Rosier*," 105 Wn.2d 606 (1986). The intent of this legislation is to make clear that: (1) Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records. Further, to avoid unnecessary confusion, "privacy" as used in RCW **42.17.255** is intended to have the same meaning as the definition given that word by the Supreme Court in "*Hearst v. Hoppe*," 90 Wn.2d 123, 135 (1978)." [ **1987 c 403 § 1**.]

**Severability—1987 c 403:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ **1987 c 403 § 7**.]

## RCW 42.56.070

### Documents and indexes to be made public—Statement of costs.

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW **34.05.010** and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW **34.05.240** and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW **34.05.010** that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW **34.05.010** that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such

indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency may establish, maintain, and make available for public inspection and copying a statement of the actual costs that it charges for providing photocopies or electronically produced copies, of public records and a statement of the factors and manner used to determine the actual costs. Any statement of costs may be adopted by an agency only after providing notice and public hearing.

(a)(i) In determining the actual cost for providing copies of public records, an agency may include all costs directly incident to copying such public records including:

(A) The actual cost of the paper and the per page cost for use of agency copying equipment; and

(B) The actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage and processing service.

(ii) In determining other actual costs for providing copies of public records, an agency may include all costs directly incident to:

(A) Shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; and

(B) Transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.

(b) In determining the actual costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and send the requested public records may be included in an agency's costs.

(8) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter **34.05** RCW, the administrative procedure act.

[ **2017 c 304 § 1**; **2005 c 274 § 284**; **1997 c 409 § 601**. Prior: **1995 c 397 § 11**; **1995 c 341 § 1**; **1992 c 139 § 3**; **1989 c 175 § 36**; **1987 c 403 § 3**; **1975 1st ex.s. c 294 § 14**; **1973 c 1 § 26** (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.260**.]

## NOTES:

**Part headings—Severability—1997 c 409:** See notes following RCW **43.22.051**.

**Effective date—1989 c 175:** See note following RCW **34.05.010**.

**Intent—Severability—1987 c 403:** See notes following RCW **42.56.050**.

*Exemption for registered trade names: RCW **19.80.065**.*

*Paid family and medical leave information: RCW **50A.05.020**(4).*

## RCW 42.56.240

### Investigative, law enforcement, and crime victims.

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and 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 to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter **9A.44** RCW or sexually violent offenses as defined in RCW **71.09.020**, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW **40.14.070**(2)(b);

(4) License applications under RCW **9.41.070**; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the specific details that describe an alleged or proven child victim of sexual assault under age eighteen, or the identity or contact information of an alleged or proven child victim of sexual assault who is under age eighteen. Identifying information includes the child victim's name, addresses, location, photograph, and in cases in which the child victim is a relative, stepchild, or stepsibling of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Contact information includes phone numbers, email addresses, social media profiles, and user names and passwords;

(6) Information contained in a local or regionally maintained gang database as well as the statewide gang database referenced in RCW **43.43.762**;

(7) Data from the electronic sales tracking system established in RCW **69.43.165**;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW **36.28A.040**(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and email address;

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business;

(10) The felony firearm offense conviction database of felony firearm offenders established in RCW **43.43.822**;

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW **42.52.410**, or who has in good faith reported improper governmental action, as defined in RCW **42.40.020**, to the auditor or other public official, as defined in RCW **42.40.020**;

(12) The following security threat group information collected and maintained by the department of corrections pursuant to RCW **72.09.745**: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates;

(13) The global positioning system data that would indicate the location of the residence of an employee or worker of a criminal justice agency as defined in RCW **10.97.030**;

(14) Body worn camera recordings to the extent nondisclosure is essential for the protection of any person's right to privacy as described in RCW **42.56.050**, including, but not limited to, the circumstances enumerated in (a) of this subsection. A law enforcement or corrections agency shall not disclose a body worn camera recording to the extent the recording is exempt under this subsection.

(a) Disclosure of a body worn camera recording is presumed to be highly offensive to a reasonable person under RCW **42.56.050** to the extent it depicts:

(i)(A) Any areas of a medical facility, counseling, or therapeutic program office where:

(I) A patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment; or

(II) Health care information is shared with patients, their families, or among the care team; or

(B) Information that meets the definition of protected health information for purposes of the health insurance portability and accountability act of 1996 or health care information for purposes of chapter **70.02** RCW;

(ii) The interior of a place of residence where a person has a reasonable expectation of privacy;

(iii) An intimate image;

(iv) A minor;

(v) The body of a deceased person;

(vi) The identity of or communications from a victim or witness of an incident involving domestic violence as defined in RCW **10.99.020** or sexual assault as defined in RCW **70.125.030**, or disclosure of intimate images as defined in RCW **9A.86.010**. If at the time of recording the victim or witness indicates a desire for disclosure or nondisclosure of the recorded identity or communications, such desire shall govern; or

(vii) The identifiable location information of a community-based domestic violence program as defined in RCW **70.123.020**, or emergency shelter as defined in RCW **70.123.020**.

(b) The presumptions set out in (a) of this subsection may be rebutted by specific evidence in individual cases.

(c) In a court action seeking the right to inspect or copy a body worn camera recording, a person who prevails against a law enforcement or corrections agency that withholds or discloses all or part of a body worn camera recording pursuant to (a) of this subsection is not entitled to fees, costs, or awards pursuant to RCW **42.56.550** unless it is shown that the law enforcement or corrections agency acted in bad faith or with gross negligence.

(d) A request for body worn camera recordings must:

(i) Specifically identify a name of a person or persons involved in the incident;

(ii) Provide the incident or case number;

(iii) Provide the date, time, and location of the incident or incidents; or

(iv) Identify a law enforcement or corrections officer involved in the incident or incidents.

(e)(i) A person directly involved in an incident recorded by the requested body worn camera recording, an attorney representing a person directly involved in an incident recorded by the requested body worn camera recording, a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person, or the executive director from either the Washington state commission on African American affairs, Asian Pacific American affairs, or Hispanic affairs, has the right to obtain the body worn camera recording, subject to any exemption under this chapter or any applicable law. In addition, an attorney who represents a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a United States department of justice settlement agreement, has the right to obtain the body worn camera recording if relevant to the cause of action, subject to any exemption under this chapter or any applicable law. The attorney must explain the relevancy of the requested body worn camera recording to the cause of action and specify that he or she is seeking relief from redaction costs under this subsection (14)(e).

(ii) A law enforcement or corrections agency responding to requests under this subsection (14)(e) may not require the requesting individual to pay costs of any redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording.

(iii) A law enforcement or corrections agency may require any person requesting a body worn camera recording pursuant to this subsection (14)(e) to identify himself or herself to ensure he or she is a person entitled to obtain the body worn camera recording under this subsection (14)(e).

(f)(i) A law enforcement or corrections agency responding to a request to disclose body worn camera recordings may require any requester not listed in (e) of this subsection to pay the reasonable costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the body worn camera recording prior to disclosure only to the extent necessary to comply with the exemptions in this chapter or any applicable law.

(ii) An agency that charges redaction costs under this subsection (14)(f) must use redaction technology that provides the least costly commercially available method of redacting body worn camera recordings, to the extent possible and reasonable.

(iii) In any case where an agency charges a requestor for the costs of redacting a body worn camera recording under this subsection (14)(f), the time spent on redaction of the recording shall not count towards the agency's allocation of, or limitation on, time or costs spent responding to public records requests under this chapter, as established pursuant to local ordinance, policy, procedure, or state law.

(g) For purposes of this subsection (14):

(i) "Body worn camera recording" means a video and/or sound recording that is made by a body worn camera attached to the uniform or eyewear of a law enforcement or corrections officer while in the course of his or her official duties; and

(ii) "Intimate image" means an individual or individuals engaged in sexual activity, including sexual intercourse as defined in RCW **9A.44.010** and masturbation, or an individual's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.

(h) Nothing in this subsection shall be construed to restrict access to body worn camera recordings as otherwise permitted by law for official or recognized civilian and accountability bodies or pursuant to any court order.

(i) Nothing in this section is intended to modify the obligations of prosecuting attorneys and law enforcement under *Brady v. Maryland,* 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v. Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and the relevant Washington court criminal rules and statutes.

(j) A law enforcement or corrections agency must retain body worn camera recordings for at least sixty days and thereafter may destroy the records in accordance with the applicable records retention schedule;

(15) Any records and information contained within the statewide sexual assault kit tracking system established in RCW **43.43.545**;

(16)(a) Survivor communications with, and survivor records maintained by, campus-affiliated advocates.

(b) Nothing in this subsection shall be construed to restrict access to records maintained by a campus-affiliated advocate in the event that:

(i) The survivor consents to inspection or copying;

(ii) There is a clear, imminent risk of serious physical injury or death of the survivor or another person;

(iii) Inspection or copying is required by federal law; or

(iv) A court of competent jurisdiction mandates that the record be available for inspection or copying.

(c) "Campus-affiliated advocate" and "survivor" have the definitions in RCW **28B.112.030**;

(17) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs and information and records prepared, owned, used, or retained by the Washington state patrol pursuant to chapter 261, Laws of 2017; and

(18) Any and all audio or video recordings of child forensic interviews as defined in chapter **26.44** RCW. Such recordings are confidential and may only be disclosed pursuant to a court order entered upon a showing of good cause and with advance notice to the child's parent, guardian, or legal custodian. However, if the child is an emancipated minor or has attained the age of majority as defined in RCW **26.28.010**, advance notice must be to the child. Failure to disclose an audio or video recording of a child forensic interview as defined in chapter **26.44** RCW is not grounds for penalties or other sanctions available under this chapter.

[ **2019 c 300 § 1**. Prior: **2018 c 285 § 1**; **2018 c 171 § 7**; prior: **2017 c 261 § 7**; **2017 c 72 § 3**; prior: **2016 c 173 § 8**; **2016 c 163 § 2**; prior: **2015 c 224 § 3**; **2015 c 91 § 1**; prior: **2013 c 315 § 2**; **2013 c 190 § 7**; **2013 c 183 § 1**; **2012 c 88 § 1**; prior: **2010 c 266 § 2**; **2010 c 182 § 5**; **2008 c 276 § 202**; **2005 c 274 § 404**.]

## NOTES:

**Retroactive application—2018 c 171 § 7:** "Section 7 of this act applies retroactively to all outstanding public records requests submitted prior to March 22, 2018." [ **2018 c 171 § 8**.]

**Effective date—2018 c 171:** See note following RCW **26.44.188**.

**Finding—Intent—2017 c 72:** See note following RCW **28B.112.030**.

**Finding—Intent—2016 c 173:** See note following RCW **43.43.545**.

**Finding—Intent—2016 c 163:** "The legislature finds that technological developments present opportunities for additional truth-finding, transparency, and accountability in interactions between law enforcement or corrections officers and the public. The legislature intends to promote transparency and accountability by permitting access to video and/or sound recordings of interactions with law enforcement or corrections officers, while preserving the public's reasonable expectation that the recordings of these interactions will not be publicly disclosed to enable voyeurism or exploitation." [ **2016 c 163 § 1**.]

**Finding—2013 c 190:** See note following RCW **42.52.410**.

**Severability—Part headings, subheadings not law—2008 c 276:** See notes following RCW **36.28A.200**.

*Restrictions on dissemination of child forensic interview recordings: RCW **26.44.187** and **26.44.188**.*

## RCW 42.56.540

## Court protection of public records.

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination 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. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

[ **1992 c 139 § 7**; **1975 1st ex.s. c 294 § 19**; **1973 c 1 § 33** (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW **42.17.330**.]

## DECLARATION OF SERVICE

On October 7, 2021, I caused to be served a true and correct copy of the foregoing document on counsel of record stated below, via the Washington Courts E-Portal:

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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 7th day of October, 2021, at Seattle, Washington.

By: s/Thao Do
Thao Do, *Legal Assistant*

**MCNAUL EBEL NAWROT AND HELGREN PLLC**

**October 07, 2021 - 4:43 PM**

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| **Appellate Court Case Title:** | John Does 1-4 v. King County, et al. |

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