Supreme Court No. 102182-8
(Court of Appeals Case No. 83700-1-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JOHN DOES 1, 2, 4, and 5,

Respondents,

v.

SEATTLE POLICE DEPARTMENT and
SAM SUEOKA,

Petitioner.

ANSWER OF JOHN DOE OFFICERS 1, 2, 4, AND 5 TO SAM SUEOKA'S PETITION FOR REVIEW

On Appeal From King County Superior Court
Hon. Sandra Widlan, Presiding

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I. INTRODUCTION

Rare should ever be a situation where a governmental agency investigates its public employees based solely on their lawful participation in an off-duty political event. Yet, that is exactly what happened here, when the Seattle Police Department's Office of Police Accountability ("OPA") inquired into the attendance of four off-duty police officers, who attended then-President Trump's rally ("Rally") in Washington D.C.

During those compulsory interviews, these officers were grilled about their political beliefs and associations, including whether they attended the Rally "to articulate [their] political views," whether they were "affiliated with any political groups," and "[their] impressions of, and reactions to, the content of the Rally."

However, even after the Doe Officers were cleared of any wrongdoing, including having any involvement in the ensuing riot whatsoever, their identities continued to be targeted by members of the public at large. Faced with such an extreme

scenario—*i.e.,* the mandatory reporting of off-duty political activities and subsequent compulsory disclosure to those seeking to publicize private identities, the Court of Appeals simply applied bedrock principles of First Amendment jurisprudence to preclude such widespread dissemination of the four Doe Officers' identities.

In doing so, the Court of Appeals simply observed the obvious chilling effect that such disclosure would have on lawful political expression and found that the City of Seattle lacked a compelling governmental interest in facilitating disclosure of the Doe Officers' identifying information. And, because the First Amendment would otherwise be violated here, the Court of Appeals merely applied Constitutional exemption grounded in the "other statutes" exemption of the Public Records Act (RCW 42.56 *et. seq*).

It is difficult to imagine when this factual scenario will arise in the future. It is likewise difficult to imagine how that circumstance, if, and when, it does arise, will not also offend the

United States Constitution when measured against longstanding constitutional principle—that is, "[w]hen the [government] seeks to compel disclosure of an individual's political beliefs and associations, it can do so only by demonstrating a compelling state interest with sufficient relation to the information sought to be disclosed." *See* Appendix at ***Exhibit C***, p. 0050. Because the Court of Appeals decision rests on an entirely straightforward proposition of Constitutional Law—the application of which is harmonious with the PRA, review need not be granted here.

II. IDENTITY OF THE ANSWERING PARTY

John Doe Officers 1, 2, 4, and 5, Respondents, are four unnamed Seattle Police Officers who, on June 28, 2021, were cleared of any wrongdoing following a comprehensive investigation into their whereabouts on January 6, 2021 (herein "Doe Officers").

The Doe Officers were investigated simply because of their attendance at then-President Donald Trump's political Rally in Washington, D.C. on January 6, 2021. In an 82-page

Opinion, the Court of Appeals resoundingly held that the Doe Officers had a Constitutional right to attend that Rally anonymously and to not have their names disclosed to the public via a records request pursuant to the Public Records Act.

Thus, the Doe Officers respectfully request that this Court deny Sueoka's petition for review.

III. STATEMENT OF THE CASE

As noted above, this case arises out of the imminent release of records relating to OPA investigations and the identities of four Doe Officers in response to a number of public records requests targeting their attendance at the Rally. CP 868-86. Tragically, some of the attendees at the Rally went on to riot and commit crimes at the United States Capitol. CP 535-37.

In the aftermath of the Rally, the Seattle Police Department ("SPD") asked any of its officers who attended the Rally to self-report and directed them to submit to an investigation by the OPA to determine if they participated in the Capitol Riot or engaged in other criminal acts or misconduct. CP

538. The four Doe Officers self-reported their presence at the January 6, 2021 Rally. CP 868-86.

Within a few weeks, each of the four Doe Officers received a complaint from OPA alleging a possible violation of the law and SPD policies by "trespassing on Federal property and/or participating in the planning and/or forced illegal entry of the U.S. Capitol Building that day." CP 869; 874; 879; 884. As part of the investigation, SPD ordered each Officer to submit to interviews. CP 868-86. At the outset of the interview, each Officer was informed by the OPA examiner of an SPD directive to answer *all* questions asked, truthfully and completely, and that failure to do so could result in discipline up to and including termination. CP 869; 874; 879; 884.

Understandably, the SPD held significant concerns about any officer's presence trespassing, at or near, the Capitol Building. Not only did OPA view this act as a "clear example of conduct which [was] unprofessional," "saying and doing nothing

to prevent these acts" during an ongoing insurrection was also a grievous concern. *Id.*

Despite these legitimate concerns over SPD officer involvement in the Capitol Riot, the investigation expanded and focused on more than just the four Doe Officers' whereabouts. Instead, OPA investigators explored their motivations for attending the Rally, their impressions and reactions to the Rally, as well as their political affiliations. CP 868-86. Importantly, in some cases, the four Doe Officers were asked, point blank, to explain how their lawful attendance at this Rally, in and of itself, did not amount to unprofessional conduct. CP 869; 874; 884. Because these Officers were ordered to answer these personal questions, they did so truthfully and completely. CP 869-70; 874-75; 879; 884.

In early 2021, SPD and OPA notified the Doe Officers of the receipt of four PRA requests for the identities, investigation records, and personnel files of any SPD officers who were under investigation by OPA for attending the political rally and speech

on January 6, 2021. CP 34. Because OPA's investigation was ongoing, the Doe Officers sought an Order enjoining the production. CP 30-44.

Following a March 10, 2021 hearing, Judge Sandra Widlan denied the Doe Officers' motion essentially finding that no right to privacy existed because of the public nature of the event. CP 515-16. Likewise, the Trial Court reasoned their public participation in this political event negated any First Amendment protections. CP 516-17. The Trial Court also found a likelihood of substantial and irreparable harm lacking because "no one other than the officers themselves [were] really asserting this." CP 517.

On March 12, 2021, the Officers appealed the denial of their motion for a preliminary injunction. CP 520-31. Following the submission of briefing to this Court, on June 28, 2021, OPA issued a 21-page decision ("OPA Summary"). The OPA Summary confirmed SPD's direction to these Officers to self-report and submit to the OPA investigation. CP 538. The

investigation resulted in "Not Sustained" findings[1] as to the Doe Officers. Of particular importance, the OPA Summary specifically cleared the Doe Officers of the allegation that they violated SPD Policy 5.001-POL-10, which provides that officers must not engage in behavior which undermines public trust in the Department. CP 533-53. OPA Director Andrew Myerberg explicitly recognized that "absent any acts on their part that were illegal, that the officers attended this rally is absolutely protected by the Constitution. These officers were entitled to exercise their freedom of expression and to assemble." *Id.*

Instead of recognizing the four Doe Officers' legitimate right to assemble at a political rally, Petitioner Sam Sueoka ("Sueoka"), along with many others, have tried to obtain the Doe Officers' identities while simultaneously demonizing them – baldly characterizing them as "white supremacists," "fascists," "violent extremists," and "irrational conspiracy theorists" based

[1] The OPA Summary included specific findings of "Unfounded" as to three of the Represented Officers, and "Inconclusive" with respect to one other Represented Officer. CP 550-53.

solely on the Officers' attendance at a lawful political demonstration. CP 578-79; 581; 586; 620.

After the OPA Summary was released, the Washington Supreme Court accepted direct review of this matter. CP 555-59. On November 17, 2021, the Washington Supreme Court granted leave to supplement the record with the OPA Summary. CP 561-62. Despite having accepted review, the full panel of the Supreme Court declined to address the merits of the Doe Officers' appeal observing the record was not sufficiently ripe for review in light of changed circumstances and remanded for the Trial Court to consider the OPA Summary. CP 561-62. Importantly, and as to the pseudonym issue, the Court found that "interlocutory review of the ruling allowing the use of pseudonyms is not warranted by the interests of justice." *Id.*

Following remand to the Trial Court, the four Doe Officers renewed their motion for a preliminary injunction to Judge Widlan arguing that the rubric of the PRA's privacy exemptions were met, and that compelling disclosure of off-duty

lawful political activities would impose a chilling effect on protected First Amendment speech. CP 494-509.

In yet another concerted effort to make an end run around the merits, Sueoka filed a series of cross-motions seeking to require disclosure of the four Doe Officers' identities, renewing his own motion to change the case caption, and seeking leave to file a litany of social media speculation on the DivestSPD blog supposedly identifying the Doe Officers with, admittedly, no factual basis for confirming such speculation. CP 273-84; CP 454-63; CP 469-72.

Importantly, in his written materials opposing the Doe Officers' motion for a preliminary injunction, Sueoka relied on none of this conjecture. CP 940-52. Instead, Sueoka essentially argued that the lack of any allegations of sexual misconduct rendered any controlling authority inapplicable. CP 946-50. Indeed, Sueoka made clear on the record, repeatedly, that he lacked any factual basis to confirm this online inuendo. RP 76:17-18. Yet, at oral argument on January 28, 2022, Sueoka

substantially relied on this speculation in urging the Trial Court to deny the four Doe Officers' motion for a preliminary injunction. RP 55-57.

The Trial Court ruled with Sueoka that the Doe Officers' identities were not protected from disclosure. However, among the many other issues with the Trial Court's ruling, its reasoning simply ignored the chilling effect which undeniably results from an employer requiring an employee to disclose their off-duty political activities and attendant impressions or motivations associated with those activities, followed by widespread dissemination to those who deliberately seek this information to subject these public servants to vilification without the commission of any misconduct whatsoever.

According to the Trial Court, these interrogations and widespread public disclosure did "not *prevent* them or anyone else from exercising their First Amendment rights" and that the Doe Officers could still go to the Rally. RP 91. But, as noted in the Court of Appeals' ensuing decision, an outright

prevention is not the applicable standard for First Amendment purposes; rather, it is whether such governmental action – *i.e.*, forced widespread disclosure of records pertaining to a mandatory interview seeking to elicit answers concerning an employee's off-duty political activities – would have a reasonable probability of a chilling effect on their First Amendment rights or others similarly situated.

Simply put: the Trial Court erred with an incorrect standard, as well as disregarding the abundant factual record before it as to the reasonable probability of a chilling effect.

On February 8, 2022, the Court of Appeals issued an emergency order continuing the Temporary Restraining Order, accepting discretionary review, and setting a briefing schedule. *See* Appendix at ***Exhibit A***, pp. 0002-0003. Oral argument occurred on September 15, 2022. After affording the parties additional briefing to more fully address the First Amendment considerations, the Court of Appeals issued its opinion. *Id.* at ***Exhibit B; Ex. C***.

In holding that the First Amendment prohibited the widespread dissemination of the Doe Officers' identifying information, the Court of Appeals saw no "need [] address the parties' arguments regarding PRA statutory exemptions to disclosure" and "[did] not evaluate [] whether disclosure of the Does' identities is precluded by a statutory right to privacy. *See* Appx., ***Ex. C*** at p. 0028, fn. 9; pp. 0029-0031. It, instead, noted that because these requests constituted "compel[ed] disclosure of an individual's political beliefs and associations," disclosure could *only occur* if the government could "demonstrat[e] a compelling state interest with sufficient relation to the information sought to be disclosed." *Id.* at p. 0050. And the Court of Appeals both recognized that the PRA's "other statutes provision" in RCW 42.56.070(1) contemplated a "catch all" exemption based on Constitutional considerations, and that the injunction standard under RCW 42.56.540 applied to *statutory* exemptions, and not to disclosure which would otherwise run afoul of the Federal Constitution. *Id.* at pp. 0047-0048.

In other words, the Court of Appeals did not find RCW 42.56.540 unconstitutional; instead, it found that the Legislature did not intend to condition the enforcement of the Constitutional right. *Id*. at pp. 0069-0071.

That said, the Court of Appeals also recognized that the application of RCW 42.56.540 warranted an injunction here because, "[g]iven the State's paramount interest in affirming the federal constitutional rights of its citizens, disclosure that would impinge the Doe Officers' First Amendment rights would clearly not be in the public interest and because the Does' constitutional rights would be impinged by disclosure of the unredacted records, such disclosure would of necessity substantially and irreparably damage the Does." *Id.* at p. 0071 (internal quotations omitted).

Accordingly, the Court of Appeals held that the four Doe Officers were entitled to a preliminary injunction.

IV. ARGUMENT

A. Review of the Pseudonym Issue is not Warranted.

Like four times before, Sueoka fails to explain how it is feasible to enforce one's right to remain anonymous if the very process for enforcement requires one to reveal their identity by filing a lawsuit in their own name. It is not only unfeasible; it is impossible.

And, despite the fact that the Doe Officers' *procedural necessity* to proceed in pseudonym (i) was granted at its initial presentation, (ii) has been affirmed by the trial court[2], an Appellate Court Commissioner, and this Appellate Panel, **and** (iii) a full panel of this Court has already determined that "interlocutory review of the ruling allowing the use of pseudonyms is not warranted by the interests of justice," Sueoka seeks review of this obvious procedural necessity once again. *See* CP 246-49; CP 273-84; CP 561-62; CP 1213; CP 1530; RP

[2] Notably, even when ruling against the Doe Officers regarding the substantive merits of their case.

61-62. And, just like every time before this, instead of supplying some cogent argument as to how one can proceed publicly in order to attain a remedy preserving anonymity, Sueoka, instead, resorts to selectively reasoned hyper technical arguments, which are dismissed below:

First, citing RAP 12.1, Sueoka argues the Court of Appeals should not have resolved the pseudonym issue on First Amendment grounds without ordering initial briefing on that issue. However, Doe Officers did, indeed, argue that their right to proceed in pseudonym was grounded in First Amendment concerns and, in particular, argued: "[t]o force the [Four Doe Officers], to proceed in their own names in Court would instantly deprive them, without adjudication, of the privacy and Constitutional rights they are going to Court to protect." *See* Appx, ***Exhibit D*** at p. 0192.[3]

Not surprisingly, the Court of Appeals found Officers Does' simple (and repeated) argument accorded *exactly* with

[3] Additionally, *see id.* at pp. 0199-0200, 0202-0204, 0207.

"federal open court jurisprudence," as "[s]uch jurisprudence permits litigants to proceed pseudonymously [because] the injury litigated against would be incurred as result of the disclosure of their identities. [And] that precise outcome would occur were the Does not permitted to litigate using pseudonyms." *See* Appx., ***Ex. C*** at p. 0072.

In addition to United States Constitutional jurisprudence, the Court of Appeals also made it clear that "application of Washington open courts law would dictate the same resolution of this [pseudonymity] issue." *Id.* at p. 0080. The Court noted there are numerous statutory exceptions already existing which allow individuals to proceed in pseudonym. This would indicate that requiring all parties proceed in their own names is not a compelling state interest – certainly not one which would override clear other First Amendment rights. *Id.* at p. 0081.

In sum, the Court of Appeals obviously concluded that the First Amendment issues throughout the briefing, and raised specifically in relation to pseudonyms, were "set forth in the

briefs" and no additional briefing was implicated, let alone necessary. *See* RAP 12.1. Finally, regardless of RAP 12.1, the Court of Appeals could rely on RAP 1.2(a) & (c) to liberally interpret Rules of Appellate Procedure to determine that the First Amendment issues were sufficiently present throughout the entire briefing, and "waive or alter" RAP 12.1(b) to avoid more in depth briefing on this procedural pseudonym issue side show – where Sueoka fails, time and again, to address, let alone solve, the conundrum.

Sueoka's second point that the Court of Appeals, or the Doe Officers, never engaged in "full open court" analysis and/or "logic" and "experience" analysis is as much confusing as it is inaccurate. Doe Officers and the Court of Appeals did engage in a lengthy discussion regarding the "logic" and "experience" tests and argued that Article I, §10 did not apply, *inter alia*, because of First Amendment concerns.

For instance, in *Doe G.*, Division One did examine Constitutional First Amendment jurisprudence in regard to

pseudonymity and found that the same rationale would support pseudonymity to address a *non-constitutional* right without implicating Article I, §10. *John Doe G v. Dep't of Corr.*, 197 Wn. App. 609, 391 P.3d 496 (2017), rev'd sub nom. *Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 410 P.3d 1156 (2018). And, although the Washington Supreme Court did reject Division One's reliance on First Amendment jurisprudence to resolve that issue—*Doe G*, unlike this case, did not implicate a claim of First Amendment infringement. Rather, *Doe G* concerned only a *statutory* exemption to the PRA. Thus, RAP 13.4(b)(1) does not apply here because the Court's Opinion looked to *federal* law to evaluate *federal* constitutional issues. Accordingly, there is no conflict with the Supreme Court's decision in *Doe G*. *Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 410 P.3d 1156 (2018).

Moreover, the Court's Opinion does not create a "conflict" between Article I, Section 10, and the First Amendment—and certainly not in this case where Article I, Section 10 does not apply—as argued by both Doe Officers and the Court's Opinion.

As to Sueoka's third point; needless to say, Sueoka did not address a right to a court record predicated on the First and Fourteenth Amendment in any of his briefings. It is unclear how he then cries foul that the Court's Opinion failed to address First and Fourteenth Amendment issues. More importantly, however, this assertion is false.

The Court of Appeals *did*, in fact, consider the "customary and constitutionally-embedded presumption of openness in judicial proceedings" implicated when restricting full public access to judicial proceedings." *Id.* at pp. 0078-0079, citing *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992). In contrast, Sueoka's cited cases, *Del Rio* and *Index Newspapers*, are inapposite. Neither involved a litigant seeking to remain anonymous when pursuing preservation of a First Amendment right to remain anonymous. *Doe v. Del Rio*, 241 F.R.D. 154, 156 (S.D.N.Y. 2006); *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1083–84 (9th Cir. 2014). There is no need for the Supreme Court to revisit the Court's Opinion balancing these

two First Amendment issues, *to wit,* access to courts versus anonymous political activity.

As to Sueoka's final point, he simply contorts the record and then misunderstands First Amendment basics. First, as stated, no attorney has ever confirmed the Officers' identities – not even Sueoka's. RP 76:17-18. There is a fundamental difference between speculative innuendo and Government confirmation – no doubt the Seattle Times is not publishing names based on Sueoka's gossip.

Second, Sueoka's argument that some tangible pecuniary or reputational harm must have, or will, befall the Doe Officers in order for disclosure to constitute a First Amendment violation is flatly inconsistent with longstanding First Amendment authority. The test is whether forced disclosure of the Doe Officers' identity would "chill" the First Amendment rights of the Doe Officers or others who would face a similar situation. This is thoroughly reviewed herein. *See* §C, *infra.*

Sueoka's position regarding pseudonymity inherently chills the First Amendment expression. It would force the Doe Officers to publicly disclose their names in order to prevent public disclosure of their names. The obviousness of this is self-evident. The Supreme Court should reject Sueoka's gimmick like all other jurists have.

B. Review of the PRA Issues is not Warranted.

Review of the PRA issues is unwarranted because the Court of Appeals did not base its decision on any statutory exemption to the PRA. Instead, it observed that the PRA envisions both constitutional exemptions and statutorily created exemptions. Although it found the rubric of RCW 42.56.540 applicable only to statutory exemptions, it squarely held that, even if the injunction statute applied to a constitutional exemption, an injunction was warranted here because "[g]iven the State's paramount interest in affirming the federal constitutional rights of its citizens, disclosure that would impinge the Does' First Amendment right to privacy would clearly not be

in the public interest" and "because the Does' constitutional rights would be impinged by disclosure of the unredacted records, such disclosure would of necessity substantially and irreparably damage the Does." *See* Appx., ***Ex. C*** at p. 0071 (internal quotation omitted).

Sueoka's Petition turns that First Amendment analysis on its head. It is a bedrock principle of First Amendment jurisprudence that government actions "that burden political speech are 'subject to strict scrutiny', which requires the Government to prove that the restriction 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340, 130 S. Ct. 876, 898, 175 L. Ed. 2d 753 (2010). Narrowly tailored requires the Government to find the "least restrictive alternative" that will achieve the pertinent state interest. *Ashcroft v. Am. C.L. Union*, 542 U.S. 656, 666, 124 S. Ct. 2783, 2791, 159 L. Ed. 2d 690 (2004). Additionally, because the PRA has repeatedly been viewed in harmony with the Constitution, the fact that the Court

of Appeals observed, "[t]he PRA, by design, cannot violate the Constitution, and constitutional protections (such as freedom of expression) are necessarily incorporated as exemptions, just like any other express exemption enumerated in the PRA." *See* Appx., ***Ex. C*** at p. 0048. *See also Freedom Found v. Gregoire*, 178 Wn.2d 686, 695, 310 P.3d 1252 (2013); *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 594-97, 243 P.3d 919 (2010).

This is especially so when the PRA's purpose of public oversight government has been accomplished, as it was here, with full publication of the investigation into the Does' activities on January 6, 2021. *Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d 896, 903, 346 P.3d 737, 740 (2015). This is exactly why the Court of Appeals soundly rejected the need to notify the Attorney General because Constitutional provisions are incorporated into the PRA via the "other statutes" exception, a facial challenge to the PRA is lacking here. *Washington Pub. Employees Ass'n v. Washington State Ctr. for Childhood Deafness & Hearing Loss*, 194 Wn.2d 484, 506, 450 P.3d 601,

612 (2019); RCW 42.56.070(1). And, because the facial challenge is absent, the Attorney General need not be notified. *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 846, 347 P.3d 487, 492 (2015) ("Dismissal of constitutional claims challenging the *facial* constitutionality of a state statute is appropriate where the state attorney general has not been notified") (emphasis added); *see also Hood Canal Sand & Gravel, LLC v. Goldmark*, 195 Wn. App. 284, 305-06, 381 P.3d 95, 107 (2016) (Declaratory judgments are proper "'to determine the facial validity of an enactment, as distinguished from *its application or administration*… [d]eclaratory judgments are not available where a party seeks to determine whether an agency properly applied *or administered* a law when it performed a discretionary act.'") (internal cites omitted) (emphasis added).

For this same reason—*i.e.*, the lack of any facial constitutional challenge to the PRA, the Court of Appeals did not err in analyzing the First Amendment. Yet, Sueoka contends an analysis of statutory exemptions is somehow a prerequisite to

analyzing Constitutional exemptions because of the *Doctrine of Constitutional Avoidance*. However, that doctrine in no way prohibits an Appellate Court from applying a Constitutional principle recognized by the Statute as an exemption. *See Reykdal v. Espinoza*, 196 Wn.2d 458, 460, 473 P.3d 1221, 1223 (2020) ("decision rests on the proper application of the statute, and thus there is no need to consider the constitutionality of the statute at this time"). In other words, that doctrine only requires a preference for statutory interpretation when brought in conjunction with a constitutional challenge to the Statute's validity. However, no one argues the PRA's facially invalid, only how it is applied in this instance.

C. The Court of Appeals' First Amendment Analysis Is Well Supported and Sound.

Sueoka struggles mightily to find some issue with the Court of Appeals' First Amendment analysis. However, he cannot because the Court of Appeals ruled correctly on this issue.

First, in recounting the Court of Appeal's Constitutional analysis, Sueoka flagrantly misstates its reliance on *Garrity v. State of N.J.*, 385 U.S. 493, 497–98, 87 S. Ct. 616, 618–19, 17 L. Ed. 2d 562 (1967). The Court of Appeals relied on *Garrity* to demonstrate a "Hobson's Choice" between submitting to an investigation and losing one's job is not a meaningful choice at all. *See* Appx., ***Ex. C*** at p. 0051. Such reliance was to refute Sueoka's "assertion that the Does relinquished their constitutional rights by cooperating with the OPA's investigation." *Id.* at 23; 36. Whether the claim of relinquishment pertains to First Amendment or Fifth Amendment Rights is not the point of Court's usage of *Garrity* – instead, the reasoning pertains to whether Police Officers are relegated to a "watered down" version of constitutional rights.

Unremarkably, the Court of Appeals held, that police officers are entitled to the same First Amendment rights as the citizens they protect, unless such exercise of First Amendment rights would have "some potential to affect the entity's

operations." *See* Appx., ***Ex. C*** at pp. 0053-0054, citing *Garcetti v. Ceballos*, 547 U.S. 410, 418, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006). Only then may a government employer have "an adequate justification for treating the employee differently from any other member of the general public," thus permitting it to restrict the public employee's speech. *Id.* This is commonly known as the *Pickering* standard. *Pickering v. Board of Education of Township High School District 205, Will County, Ill.*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968). And, as the Court of Appeals noted in thoroughly rejecting the arguments raised by the City's supplemental briefing, *Pickering*, and its progeny, only apply "when a public employee's speech may affect the employer's operations." *See* Appx., ***Ex. C*** at pp. 0052-0053.

Applying that very *Pickering* standard, the Court of Appeals rightfully rejected the notion that the Doe Officers' attendance at the January 6th Rally "had any impact on their employer" because the Doe Officers' employer *had already*

investigated whether the Doe Officers engaged in conduct contrary to their employer policy and found such allegation "Unfounded." This included, crucially, a finding that Doe Officers did *not* violate SPD Policy 5.001-POL-10, which provides officers must not engage in behavior which undermines public trust in the Department, the officer, or other officers. CP 533-53. Indeed, in clearing these Doe Officers, OPA Director Myerberg noted, ["t]hese officers were entitled to exercise their freedom of expression and to assemble" and "[a]ny contrary result would be incorrect – both constitutionally and morally …To OPA, that would be simply unpalatable and unacceptable." CP 552.

Finally, Sueoka's insistence on some tangible pecuniary or reputational harm in order for disclosure to constitute a First Amendment violation is flatly inconsistent with longstanding First Amendment authority. The key inquiry turns on whether "[the individual resisting disclosure] can show a reasonable probability that compelled disclosure will subject them to threats,

harassment or reprisals from either Government Officials or private parties" that would have a chilling effect on that activity. *John Doe No. 1 v. Reed*, 561 U.S. 186, 200, 130 S. Ct. 2811, 2820, 177 L. Ed. 2d 493 (2010); *Does 1-10 v. Univ. of Washington*, 798 F. App'x 1009, 1010 (9th Cir. 2020).

One does not need to show past infringement and/or certain infringement in the future – some probability is sufficient. *Snedigar v. Hoddersen*, 114 Wn.2d 153, 164, 786 P.2d 781, 786 (1990); *see also Loc. 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. Waterfront Comm'n of New York Harbor*, 667 F.2d 267, 271 (2d Cir. 1981).

Moreover, and very importantly, the inquiry also looks at those others, similarly situated, who may have their First Amendment rights chilled in the future. *Watkins v. United States*, 354 U.S. 178, 197, 77 S. Ct. 1173, 1184, 1 L. Ed. 2d 1273 (1957). That these Doe Officers, or other government employees in the future, would feel the chill of exercising their First Amendment views by depriving them of anonymity is common

sense considering what has happened here. Simply for exercising their off-duty, lawful, First Amendment rights, and after being fully investigated and cleared by their employer, the Doe Officers have suffered (i) repeated baseless references to Doe Officers being white nationalists/supremacists in Court pleadings by powerful groups like the National Lawyers Guild and National Police Accountability Project, (ii) threats to "get the names" of Appellants solely because of their *supposed* political beliefs, (iii) threats to publish Doe Officers' names widely in a community that reviles their political views, (iv) the inevitability that the Doe Officers' names will be published in the *Seattle Times*, and (v) if publicly known, Dr. Amy Sanders' expert opinion that the Appellants will be at further risk of harassment. *See* Appx., ***Ex. D*** at pp. 0178-0182.

V. CONCLUSION

For the foregoing reasons, this Court should deny Sueoka's Petition for discretionary review.

DATED this 14th day of August 2023.

Respectfully submitted,

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* I certify this Answer contains 4,988 words in compliance with RAP 18.17.

Supreme Court No. 102182-8
(Court of Appeals Case No. 83700-1-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JOHN DOES 1, 2, 4, and 5,

Respondents,

v.

SEATTLE POLICE DEPARTMENT and
SAM SUEOKA

Respondents.

APPENDIX

On Appeal From King County Superior Court
Hon. Sandra Widlan, Presiding

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Exhibit A

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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February 8, 2022

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Case #: 837001
Does 1, 2, 4, 5, Petitioners v. Seattle Police Department, et al., Respondents
King County Superior Court No. 21-2-02468-4

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on February 8, 2022, regarding Petitioner's Emergency Motion for Injunctive Relief:

> On February 4, 2022, John and Jane Does 1, 2, 4, and 5 filed a notice for discretionary review of a February 1, 2022 superior court order denying a preliminary injunction, along with an emergency motion to extend a temporary restraining order pending resolution of their motion for discretionary review.
>
> Trial court proceedings in the same case resulted in a prior appeal, No. 82430-9, which was also initiated as a motion for discretionary review of an order denying a preliminary injunction. In a ruling issued March 29, 2021 in the prior appeal, I determined that the trial court's order was appealable under RAP 2.2(3) because it had the effect of determining the action. In particular, because the denial of a preliminary injunction would lead to the disclosures the Does sought to prevent by initiating the lawsuit, the order effectively determined the action. Although the parties have not addressed appealability in the present matter, nothing in the materials presented at this point suggest that the February 1, 2022 order should be viewed differently as to appealability. Accordingly, the notice for discretionary

review filed on February 4, 2022 will be given the same effect as a notice of appeal. RAP 5.1(c). Any party wishing to submit additional information to justify revisiting this determination should promptly file a motion to determine appealability.

Given the subject matter, this appeal is set for accelerated review. RAP 18.12. The Does shall file a designation of clerk's papers and statement of arrangements by or before February 22, 2022. Any report of proceedings should be filed by or before March 8, 2022. The Does shall file their opening brief by or before March 22, 2022. Any respondent may file a brief by or before April 12, 2022. Any reply should be filed within ten days of the filing of any respondent's brief. When a brief of respondent is filed, the Court Administrator/Clerk will set the case for consideration by a panel on the first available calendar. (This briefing schedule may be altered by further ruling or order of this Court, but will not be reset automatically as a result of the filing of parties' motions).

As to the motion to extend the temporary restraining order that has been in place since March 12, 2021, the parties disagree on whether a debatable issue for appeal will be presented; whether the equities have changed over the course of the prior appeal, remand, and additional trial court proceedings; and whether any extension of the restraining order should be adjusted with regard to terms and scope. I am persuaded that extension of the temporary restraining order is necessary to ensure effective and equitable review. RAP 8.3; Wash. Fed'n of State Emps. v. State, 99 Wn.2d 878, 883, 665 P.2d 1337 (1983). If the order is not extended, the City will disclose the information at the center of the Does' original complaint for declaratory and injunction relief and a successful appeal of the February 1, 2022 order will be fruitless. As to the scope of review, the City, which has not taken a position as to the equities, has pointed out that segregating particular information for disclosure "is not feasible" because the "records at issue are interwoven." It appears that the most efficient means of maintaining the status quo to allow for accelerated review of the merits in this case is simply extend the restraining order that has been in place throughout the prior appeal. Accordingly, the injunction described in the trial court's March 12, 2021 order will be maintained until further ruling or order of this Court.

In the event counsel wishes to object, RAP 17.7 provides for review of a ruling of the Commissioner. Please note that a "motion to modify the ruling must be served . . . and filed in the appellate court not later than 30 days after the ruling is filed."

Sincerely,

Lea Ennis
Court Administrator/Clerk

lls

Exhibit B

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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November 15, 2022

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Case #: 837001
Does 1, 2, 4, 5, Appellants/Cross-Respondents v. Sam Sueoka, et al., Respondents/Cross-Appellants
King County Superior Court No. 21-2-02468-4

Counsel:

The following notation ruling by Court Administrator/Clerk Lea Ennis of the Court was entered on November 15, 2022 regarding Respondent's Motion for Leave to File Supplemental Briefing:

At the direction of the panel:

1. Respondent City of Seattle's motion for leave to file a supplemental brief is granted;
2. The supplemental brief of the City of Seattle is accepted;
3. Any other party may file a responsive brief; any such brief may not exceed 2,200 words in length and must be filed by 4:30 p.m., December 1, 2022;
4. No motion for extension of time to file a response brief will be entertained or granted;
5. No motion for leave to exceed 2,200 words in such a response brief will be entertained or granted;
6. No reply to any response brief will be accepted.

Sincerely,

Lea Ennis
Court Administrator/Clerk

lls

Exhibit C

FILED
6/26/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN DOES 1, 2, 4, 5,

Appellants/Cross Respondents,

JANE DOE 1 and JOHN DOE 3,

Plaintiffs,

v.

SEATTLE POLICE DEPARTMENT and the SEATTLE POLICE DEPARTMENT OFFICE OF POLICE ACCOUNTABILITY,

Respondents,

and

SAM SUEOKA,

Respondent/Cross Appellant,

JEROME DRESCHER, ANNE BLOCK, and CHRISTI LANDES,

Respondents.

DIVISION ONE

No. 83700-1-I

PUBLISHED OPINION

DWYER, J. — "There are rights of constitutional stature whose exercise a State may not condition by the exaction of a price." Garrity v. State of New Jersey, 385 U.S. 493, 500, 87 S. Ct. 616, 17 L. Ed. 2d 562 (1967). Among these are the rights guaranteed by the First Amendment to our federal constitution. Garrity, 385 U.S. at 500. Police officers "are not relegated to a watered-down version of [such] rights." Garrity, 385 U.S. at 500.

In this Public Records Act litigation, the trial court failed to heed this pronouncement. Accordingly, we reverse the trial court's order requiring disclosure of certain unredacted records. We affirm the ancillary orders of the trial court and remand the matter for further proceedings.

I

Soon after the United States Supreme Court pronounced that police officers are not condemned to a "watered-down version" of core constitutional rights, the voters of our state passed by popular initiative the predecessor to Washington's Public Records Act[1] (PRA). See Progressive Animal Welfare Soc'y v. Univ. of Wash., 125 Wn.2d 243, 250-52, 884 P.2d 592 (1994) (PAWS) (noting approval of the public disclosure act in November 1972). Thus, since the day of the enactment of our state's public records law, police officers in Washington have been entitled to the same federal constitutional protections as are all other Washingtonians. It is by adherence to this principle that we decide this case.

We are presented today with the question of whether the Seattle Police Department (SPD) and the City of Seattle (the City) may disclose in investigatory records the identities of current or former Seattle police officers who were investigated regarding potential unlawful or unprofessional conduct during the events of January 6, 2021, in Washington, D.C. John Does 1, 2, 4, and 5 (the Does) sought judicial declaratory and injunctive relief after being informed that SPD, their employer, intended to publicly disclose the unredacted investigatory

[1] Ch. 42.56 RCW.

records in response to several PRA requests. Investigators have determined that allegations against the Does of unlawful or unprofessional conduct were "not sustained." The Does contend that their identities should thus not be disclosed in the requested records, which include transcripts of interviews in which they were compelled to disclose and discuss their political beliefs and affiliations.

The trial court denied the Does' motion for a preliminary injunction, concluding that the exceptions to permitted disclosure set forth in the PRA are inapplicable. The Does appealed from the trial court's order. In addition, Sam Sueoka, a member of the public who filed a records request to obtain copies of the investigatory records, cross appealed, asserting that the trial court erred by permitting the Does to proceed pseudonymously in this litigation.

The United States Supreme Court has recognized a First Amendment right to privacy that protects against state action compelling disclosure of political beliefs and associations. Thus, only if the state actor (here, the City) demonstrates a compelling interest in disclosure, and that interest is sufficiently related to the disclosure, can the state actor lawfully disclose the Does' identities in the investigatory records. Because there is here established no compelling state interest in disclosing the Does' identities, the trial court erred by denying the Does' motion for a preliminary injunction.

The trial court properly concluded, however, that the Does should be permitted to use pseudonyms in litigating this action. Because the Does assert a First Amendment privacy right, it is federal constitutional law—not state law—that controls their request to litigate pseudonymously. Pursuant to federal First

Amendment open courts jurisprudence, plaintiffs may litigate using pseudonyms in circumstances wherein the injury sought to be prevented by prevailing in the lawsuit would necessarily be incurred as a result of the compelled disclosure of the plaintiffs' identities, required as a condition of commencing the very lawsuit in which vindication of the constitutional right is sought. Accordingly, the Does may remain anonymous in this action.

II

The Does are current or former SPD officers[2] who attended former President Donald Trump's "Stop the Steal" political rally on January 6, 2021 in Washington, D.C. Upon returning to Washington State, the Does received complaints from SPD's Office of Police Accountability (the OPA) alleging that they might have violated the law or SPD policies during their attendance at the rally.

The Does thereafter submitted to OPA interviews in which they were "ordered to answer all questions asked, truthfully and completely," and informed that "failure to do so may result in discipline up to and including termination." In addition to inquiring regarding the Does' whereabouts and activities on January 6, the OPA also inquired regarding their political beliefs and associations, including whether they attended the rally "to articulate [their] political views," whether they were "affiliated with any political groups," and "[their] impressions of, and reactions to, the content of the Rally." Because the Does were under

[2] John Doe 1 resigned from SPD in December 2021 "as a direct result of the pressure" from the investigation and "public backlash arising" therefrom, as well as his concern "over retribution" from the incident.

standing orders to do so, they answered these questions "truthfully and as completely as possible."

Sueoka and other members of the public submitted records requests pursuant to the PRA, chapter 42.56 RCW, seeking disclosure of the investigatory records pertaining to police officers who participated in the events of January 6, 2021, in our nation's capital. In response to the records requests, SPD informed the Does that it intended to disclose both records regarding its ongoing investigation and the Does' personnel files.

On February 23, 2021, the Does filed a complaint for declaratory relief and preliminary and permanent injunction in the trial court.[3] They concurrently filed a motion for permission to proceed pseudonymously and a motion for a temporary restraining order (TRO) and order to show cause why the preliminary injunction should not issue.

On February 24, 2021, the trial court granted the Does' motion for a TRO, enjoining production of the requested records until a show cause hearing was held. On March 9, 2021, the trial court granted the Does' motion to proceed pseudonymously, ruling that the order would "remain in effect at least until the merits of Plaintiffs' PRA claims are resolved."

Following the show cause hearing, held on March 10, 2021, the trial court denied the Does' motion for a preliminary injunction. The Does sought review of the trial court's ruling in this court, and review was granted. Sueoka thereafter

[3] The complaint was filed by Jane and John Does, 1 through 6. Jane Doe 1 and John Doe 3 are not parties in this appeal. While litigation was ongoing in the trial court, the OPA determined that Jane Doe 1 and John Doe 3 had violated both the law and SPD policies on January 6, 2021, and their employment by SPD was terminated.

moved to transfer the cause to our Supreme Court. Then, on June 28, 2021, the OPA concluded its investigation. The OPA determined that allegations that the presently-litigating Does had violated the law or SPD policies or had engaged in unprofessional conduct were "not sustained."

On August 4, 2021, our Supreme Court granted Sueoka's motion to transfer the cause to that court. However, following oral argument on November 9, 2021, the court determined that, "in light of changed circumstances," review of the preliminary injunction was moot. The court dismissed review of the matter and remanded the cause to the trial court for further proceedings.

The trial court proceedings at issue herein then commenced. On January 5, 2022, Sueoka filed a "motion to change the case title and bar the use of pseudonyms." On January 12, 2022, the Does filed an additional motion for a preliminary injunction, again requesting that the trial court redact their identities in any disclosed records.[4]

Following a January 28, 2022 hearing, the trial court again denied the Does' motion for a preliminary injunction, ruling that the Does had not "met their burden of proof that they have a privacy right that falls within an exemption under the [PRA]." The court additionally concluded that the record contains "insufficient evidence" that disclosure will cause the Does to "experience a level of harassment that will result in a chilling effect on their First Amendment rights."

[4] Jane Doe 1 and John Doe 3 were no longer parties at that point in the litigation. Accordingly, the motion was filed by the "Represented Doe Plaintiffs," who are the same individuals as the Does in this appeal.

The trial court also denied Sueoka's motion to preclude the Does from proceeding in pseudonym.

The Does appeal from the trial court's order denying their motion for a preliminary injunction. Sueoka cross appeals, asserting that the trial court erred by denying his "motion to change the case title and bar the use of pseudonyms." Sueoka also requests that we change the case title and bar the use of pseudonyms in this appeal.

III

The Does assert that the trial court erred by determining that they were unlikely to succeed on the merits of their claim that their identities are exempt from disclosure in the requested records and, accordingly, denying their motion for a preliminary injunction precluding such disclosure. We agree. The First Amendment, made applicable to the states though the due process clause of the Fourteenth Amendment, Gitlow v. New York, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925), confers a right to privacy in one's political beliefs and associations that may be impinged only on the basis of a subordinating state interest that is compelling.

Our Supreme Court's decisional authority, the profusion of legislatively enacted exceptions to disclosure, and the policy underlying the PRA indicate that there is no compelling state interest in disclosing to the public the identities of public employees against whom unsustained allegations of wrongdoing have been made. Therefore, we hold that the trial court erred by denying the Does'

request for a preliminary injunction precluding disclosure of their names and other identifying information in the requested records.

A

1

The party seeking an injunction pursuant to the PRA has the burden of proof. Lyft, Inc. v. City of Seattle, 190 Wn.2d 769, 791, 418 P.3d 102 (2018). When a party seeks a preliminary injunction or a TRO, "the trial court need not resolve the merits of the issues." Seattle Children's Hosp. v. King County, 16 Wn. App. 2d 365, 373, 483 P.3d 785 (2020). "Instead, the trial court considers only the *likelihood* that the moving party ultimately will prevail at a trial on the merits." SEIU Healthcare 775NW v. Dep't of Soc. & Health Servs., 193 Wn. App. 377, 392-93, 377 P.3d 214 (2016).

We stand in the same position as the trial court when, as here, "the record consists of only affidavits, memoranda of law, and other documentary evidence, and where the trial court has not seen or heard testimony requiring it to assess the witnesses' credibility or competency." Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398, 407, 259 P.3d 190 (2011). "Whether requested records are exempt from disclosure presents a legal question that is reviewed de novo." Wash. Pub. Emps. Ass'n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss, 194 Wn.2d 484, 493, 450 P.3d 601 (2019).

2

"The PRA ensures the sovereignty of the people and the accountability of the governmental agencies that serve them by providing full access to

information concerning the conduct of government." Predisik v. Spokane Sch. Dist. No. 81, 182 Wn.2d 896, 903, 346 P.3d 737 (2015). Its basic purpose "is to provide a mechanism by which the public can be assured that its public officials are honest and impartial in the conduct of their public offices." Cowles Publ'g Co. v. State Patrol, 109 Wn.2d 712, 719, 748 P.2d 597 (1988). To that end, the act requires state and local agencies to "make available for public inspection and copying all public records," unless the record falls within a specific exemption in the PRA or an "other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1).

We have interpreted the "other statute" provision to incorporate exemptions set forth not only in other legislative enactments, but also those deriving from the state or federal constitutions. Wash. Fed'n of State Emps., Council 28 v. State, 22 Wn. App. 2d 392, 511 P.3d 119 (2022), review granted, 200 Wn.2d 1012, 519 P.3d 585 (2022); see also White v. Clark County, 188 Wn. App. 622, 354 P.3d 38 (2015). Although our Supreme Court has not directly held that RCW 42.56.070(1)'s "other statute" provision incorporates constitutional protections against disclosure, the court has acknowledged that such an argument "has force." Yakima County v. Yakima Herald-Republic, 170 Wn.2d 775, 808, 246 P.3d 768 (2011) (addressing the argument that provisions of the United States Constitution qualify as "other statutes").

Moreover, the high court has recognized that, even absent legislative incorporation of constitutional guarantees in the PRA, Washington courts must nevertheless protect such rights. Seattle Times Co. v. Serko, 170 Wn.2d 581,

594-96, 243 P.3d 919 (2010). In the context of fair trial rights, the court explained that while "[t]here is no specific exemption under the PRA that mentions the protection of an individual's constitutional fair trial rights, . . . courts have an independent obligation to secure such rights." Seattle Times Co., 170 Wn.2d at 595. Indeed, because "the constitution supersedes contrary statutory laws, even those enacted by initiative," "the PRA must give way to constitutional mandates." Freedom Found. v. Gregoire, 178 Wn.2d 686, 695, 310 P.3d 1252 (2013).

In addition to setting forth exemptions to the mandate for disclosure of public records, the PRA includes an injunction provision stating that disclosure may be enjoined only when "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. Based on this statutory provision, our Supreme Court has held that "finding an exemption applies under the PRA does not ipso facto support issuing an injunction." Lyft, 190 Wn.2d at 786. Rather, for the disclosure of records to be precluded *due to a statutory exemption*, the court has held that the PRA's standard for injunctive relief must also be met. Morgan v. City of Federal Way, 166 Wn.2d 747, 756-57, 213 P.3d 596 (2009); see also Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 757, 174 P.3d 60 (2007) (plurality opinion) ("[T]o impose the injunction contemplated by RCW 42.56.540, the trial court must find that a specific exemption applies *and* that disclosure would not be in the public interest

and would substantially and irreparably damage a person or a vital government interest.").

3

Our analysis of the issues presented relies on the holdings of our nation's highest court establishing that the First Amendment to the United States Constitution confers a privacy right in an individual's political beliefs and associations. Accordingly, we must explore the decisional authority establishing the contours of that right.

The United States Supreme Court has recognized "political freedom of the individual" to be "a fundamental principle of a democratic society." Sweezy v. New Hampshire, 354 U.S. 234, 250, 77 S. Ct. 1203, 1 L. Ed. 2d 1311 (1957). "Our form of government," the Court explained, "is built on the premise that every citizen shall have the right to engage in political expression and association," a right "enshrined in the First Amendment." Sweezy, 354 U.S. at 250. Indeed, "[i]n the political realm . . . thought and action are presumptively immune from inquisition by political authority." Sweezy, 354 U.S. at 266.[5] Thus, the federal constitution protects not only the right of individuals to engage in political expression and association, but also to maintain their privacy in so doing.

Indeed, the Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by

[5] See also Gibson v. Florida Legis. Investigation Comm., 372 U.S. 539, 570, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963) (Douglas, J., concurring) ("'The First Amendment in its respect for the conscience of the individual honors the sanctity of thought and belief. To think as one chooses, to believe what one wishes are important aspects of the constitutional right to be let alone.'" (quoting Pub. Utils. Comm'n of Dist. of Columbia v. Pollak, 343 U.S. 451, 468, 72 S. Ct. 813, 96 L. Ed. 1068 (1952) (Douglas, J., dissenting))).

the First Amendment." Buckley v. Valeo, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (citing Gibson v. Florida Legis. Investigation Comm., 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963); Nat'l Ass'n for Advancement of Colored People v. Button, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963); Bates v. City of Little Rock, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960); Shelton v. Tucker, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960); Nat'l Ass'n for Advancement of Colored People v. Alabama, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958) (NAACP)); see also Doe v. Reed, 561 U.S. 186, 232, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010) (Thomas, J., dissenting) ("This Court has long recognized the 'vital relationship between' political association 'and privacy in one's associations,' and held that '[t]he Constitution protects against the compelled disclosure of political associations and beliefs.'" (alteration in original) (citation omitted) (quoting NAACP, 357 U.S. at 462; Brown v. Socialist Workers '74 Campaign Comm. (Ohio), 459 U.S. 87, 91, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982))). Thus, the Court has recognized a "pervasive right of privacy against government intrusion" that is "implicit in the First Amendment." Gibson, 372 U.S. at 569-70 (Douglas, J., concurring). This "tradition of anonymity in the advocacy of political causes . . . is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 343, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995); see also Sweezy, 354 U.S. at 266 ("It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election.").

The Supreme Court's jurisprudence regarding this constitutional right to privacy evolved in response to legislative investigations seeking to compel the disclosure of individuals' political beliefs. In the 1950s, the Court considered the constitutional limits of legislatures' authority to inquire into belief and activity deemed to be subversive to federal or state governments. Uphaus v. Wyman, 360 U.S. 72, 79 S. Ct. 1040, 3 L. Ed. 2d 1090 (1959); Watkins v. United States, 354 U.S. 178, 77 S. Ct. 1173, 1 L. Ed. 2d 1273 (1957); Sweezy, 354 U.S. 234; Wieman v. Updegraff, 344 U.S. 183, 73 S. Ct. 215, 97 L. Ed. 216 (1952). This "new kind of [legislative] inquiry unknown in prior periods of American history . . . involved a broad-scale intrusion into the lives and affairs of private citizens," Watkins, 354 U.S. at 195, thus requiring the Court to ensure that such inquiry did not "unjustifiably encroach upon an individual's right to privacy." Watkins, 354 U.S. at 198-99. In considering this "collision of the investigatory function with constitutionally protected rights of speech and assembly," Uphaus, 360 U.S. at 83 (Brennan, J., dissenting), the Court recognized the state interest in "self-preservation, 'the ultimate value of any society.'" Uphaus, 360 U.S. at 80 (quoting Dennis v. United States, 341 U.S. 494, 509, 71 S. Ct. 857, 95 L. Ed. 1137 (1951)). However, the Court rejected any notion that exposure itself was a valid state interest:

> We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals.

Watkins, 354 U.S. at 200 (footnote omitted); see also Uphaus, 360 U.S. at 82 (Brennan, J., dissenting) (recognizing the "investigatory objective" therein to be "the impermissible one of exposure for exposure's sake").

The Watkins Court recognized the governmental intrusion resulting from such legislative inquiry, as well as the "disastrous" consequences that may ensue as a result of compelled disclosure of the individual's political beliefs.

> The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference. And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous.

354 U.S. at 197; see also Uphaus, 360 U.S. at 84 (Brennan, J., dissenting) ("[I]n an era of mass communications and mass opinion, and of international tensions and domestic anxiety, exposure and group identification by the state of those holding unpopular and dissident views are fraught with such serious consequences for the individual as inevitably to inhibit seriously the expression of views which the Constitution intended to make free.").

However, it is not only those individuals compelled to disclose their beliefs who may be impacted. To the contrary, the Court recognized an additional "more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time." Watkins, 354 U.S. at 197-98. Moreover, that the injury was not inflicted solely by government actors did not nullify the constitutional infirmity; rather, that the "impact [was] partly the result of non-governmental

activity by private persons [could not] relieve the investigators of their responsibility for initiating the reaction." Watkins, 354 U.S. at 198.

The Supreme Court further defined this constitutional privacy interest in response to legislative action seeking to compel the disclosure of organizational membership. NAACP, 357 U.S. 449; Bates, 361 U.S. 516; Shelton, 364 U.S. 479; Gibson, 372 U.S. 539. In 1958, the Court considered whether Alabama could, consistent with our federal constitution, compel the NAACP to disclose its membership list to the Alabama Attorney General. NAACP, 357 U.S. at 451. "It is beyond debate," the Court held, "that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." NAACP, 357 U.S. at 460. Although the state itself had "taken no direct action" in the challenged contempt judgment, the Court recognized that "abridgement of [First Amendment] rights, even though unintended, may inevitably follow from varied forms of governmental action." NAACP, 357 U.S. at 461. Indeed, "[t]he governmental action challenged may appear to be totally unrelated to protected liberties." NAACP, 357 U.S. at 461. Nevertheless, the Court held, the State could require disclosure of the membership lists only if there existed a "'subordinating interest of the State [that is] compelling.'" NAACP, 357 U.S. at 463 (quoting Sweezy, 354 U.S. at 265); see also Bates, 361 U.S. at 524 ("Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating

interest which is compelling."). The Court concluded that it discerned no such state interest. NAACP, 357 U.S. at 464.

The Court again considered whether the First Amendment, incorporated through the due process clause, precluded the compelled disclosure of NAACP membership lists in Bates, 361 U.S. 516. There, the organization asserted the rights of its "'members and contributors to participate in the activities of the NAACP, anonymously, a right which has been recognized as the basic right of every American citizen since the founding of this country.'" Bates, 361 U.S. at 521. Again, the Court recognized that it was not simply a "heavy-handed frontal attack" against which First Amendment freedoms are protected, but "also from being stifled by more subtle governmental interference." Bates, 361 U.S. at 523. In concurrence, Justices Black and Douglas recognized that mere exposure by the government can impinge these constitutional protections. Bates, 361 U.S. at 528 (Black & Douglas, JJ., concurring). "First Amendment rights," the Justices recognized, "are beyond abridgement either by legislation that directly restrains their exercise or by suppression or impairment through harassment, humiliation, *or exposure by government*." Bates, 361 U.S. at 528 (Black & Douglas, JJ., concurring) (emphasis added). As in NAACP, the Bates Court discerned no sufficient state interest to compel the disclosure of the membership lists. 361 U.S. at 525.

That same year, the Court addressed the constitutionality of an Arkansas statute requiring public school teachers to disclose, as a condition of employment, all organizations with which they had been associated in the

previous five years. Shelton, 364 U.S. 479. Recognizing the State's undoubtedly legitimate interest in investigating the fitness and competency of its teachers, the Court nevertheless observed that the statute's "scope of inquiry" was "completely unlimited." Shelton, 364 U.S. at 485, 488. Significantly, the statute would have required "a teacher to reveal the church to which he belongs, or to which he has given financial support. It [would have required] him to disclose his political party, and every political organization to which he may have contributed over a five-year period." Shelton, 364 U.S. at 488. This "comprehensive interference with associational freedom," the Court held, "goes far beyond what might be justified in the exercise of the State's legitimate inquiry into the fitness and competency of its teachers." Shelton, 364 U.S. at 490.

As in NAACP, the Supreme Court in Shelton again recognized that exposure by the State could impinge constitutional privacy rights. Because the Arkansas statute nowhere required confidentiality of the information involuntarily disclosed to the government, the Court considered that the teachers' religious, political, and other associational ties could additionally be disclosed to the public. Shelton, 364 U.S. at 486-87. The Court was clear that such an intrusion into the teachers' privacy would further impinge their constitutional rights. Such "[p]ublic exposure, bringing with it the possibility of public pressures upon school boards to discharge teachers who belong to unpopular or minority organizations, would simply operate to widen and aggravate the impairment of constitutional liberty." Shelton, 364 U.S. at 486-87.

Four Justices dissented in Shelton, disagreeing with the majority's holding that, under the circumstances presented, the extent of constitutional infringement resulting from compelled disclosure was sufficient to override the countervailing legitimate state interest.[6] Nevertheless, even the dissenting opinions in Shelton recognized both the existence of a constitutional privacy interest and the potential for public exposure of associational ties to impinge upon those rights. For instance, Justice Frankfurter, distinguishing NAACP and Bates due to the absence of a legitimate state interest presented in those cases, recognized "that an interest in privacy, in non-disclosure, may under appropriate circumstances claim constitutional protection." Shelton, 364 U.S. at 490 (Frankfurter, J., dissenting). Similarly, Justice Harlan suggested that public disclosure of the teachers' associational ties, beyond simply the compelled disclosure to their school boards, might impinge their liberty rights: "I need hardly say that if it turns out that this statute is abused, either by an unwarranted publicizing of the required associational disclosures or otherwise, we would have a different kind of case than those presently before us." Shelton, 364 U.S. at 499 (Harlan, J., dissenting).

Three years later, the Court was "called upon once again to resolve a conflict between individual rights of free speech and association and governmental interest in conducting legislative investigations." Gibson, 372 U.S.

[6] See Shelton, 364 U.S. at 496 (Frankfurter, J., dissenting) (concluding that "the disclosure of teachers' associations to their school boards" is not "without more, such a restriction upon their liberty . . . as to overbalance the State's interest in asking the question"); Shelton, 364 U.S. at 497 (Harlan, J., dissenting) (concluding that the statute's disclosure requirement "cannot be said to transgress the constitutional limits of a State's conceded authority to determine the qualifications of those serving it as teachers").

at 543. There, a Florida legislative committee sought to subpoena NAACP membership lists, presumably to investigate suspected communist involvement. Gibson, 372 U.S. at 540-41. The Supreme Court again affirmed that such an investigation, "which intrudes into the area of constitutionally protected rights of speech, press, association and petition," is lawful only when the State can "convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest." Gibson, 372 U.S. at 546. The Court held that "all legitimate organizations are the beneficiaries of these protections," but noted that the protections "are all the more essential . . . where the challenged privacy is that of persons espousing beliefs already unpopular with their neighbors." Gibson, 372 U.S. at 556-57. In such circumstances, "the deterrent and 'chilling' effect on the free exercise of constitutionally enshrined rights of free speech, expression, and association is consequently the more immediate and substantial." Gibson, 372 U.S. at 557.

In the decades that have followed, the Supreme Court has continued to hold that First Amendment rights may be impinged when the government compels disclosure of political beliefs and associations. In 1982, the Court again affirmed that "[t]he Constitution protects against the compelled disclosure of political associations and beliefs." Brown, 459 U.S. at 91. "Such disclosures," the Court recognized, "'can seriously infringe on privacy of association and belief guaranteed by the First Amendment.'" Brown, 459 U.S. at 91 (quoting Buckley, 424 U.S. at 64). Again, the Court held that only by demonstrating a compelling interest can the State lawfully impinge such rights:

> The right to privacy in one's political associations and beliefs will yield only to a "'subordinating interest of the State [that is] compelling,'" NAACP[, 357 U.S. at 463] (quoting Sweezy[, 354 U.S. at 265]) (opinion concurring in result), and then only if there is a "substantial relation between the information sought and [an] overriding and compelling state interest." Gibson[, 372 U.S. at 546].

Brown, 459 U.S. at 91-92 (some alterations in original).

Over a decade later, in declaring unconstitutional an Ohio statute prohibiting the distribution of anonymous campaign literature, the Supreme Court once again "embraced [the] respected tradition of anonymity in the advocacy of political causes." McIntyre, 514 U.S. at 343 (citing Talley v. California, 362 U.S. 60, 80 S. Ct. 536, 4 L. Ed. 2d 559 (1960)); see also Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton, 536 U.S. 150, 122 S. Ct. 2080, 153 L. Ed. 2d 205 (2002) (recognizing a right to anonymity in declaring unconstitutional an ordinance requiring individuals to obtain and display a permit to engage in door-to-door advocacy). In McIntyre, the Court recognized the constitutional significance of "core political speech," describing the speech involved therein—the "handing out [of] leaflets in the advocacy of a politically controversial viewpoint"—as "the essence of First Amendment expression." 514 U.S. at 347. Acknowledging that the reasons for anonymity could be many,[7,8] the Court held that the freedom to remain anonymous, whether in "the literary realm" or "in the field of political rhetoric," "is an aspect of the freedom of speech protected by the

[7] "The decision in favor of anonymity," the Court noted, "may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." McIntyre, 514 U.S. at 341-42.

[8] "Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes." Talley, 362 U.S. at 65.

First Amendment." McIntyre, 514 U.S. at 342-43. For Justice Stevens, writing in McIntyre, the value of anonymity in political speech could not be overstated:

> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. See generally J. Mill, On Liberty and Considerations on Representative Government 1, 3-4 (R. McCallum ed. 1947). It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society.

514 U.S. at 357.

For nearly a century, the rights afforded by the First Amendment have been protected against intrusion by the States as an "inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." NAACP, 357 U.S. at 460; see Gitlow, 268 U.S. 652. During this time, the Supreme Court has repeatedly recognized that encompassed within this liberty interest is the right of individuals to privacy in their political beliefs and associations, wherein "thought and action are presumptively immune from inquisition by political authority." Sweezy, 354 U.S. at 266 (Frankfurter, J., concurring). This privacy interest "yield[s] only to a 'subordinating interest of the State [that is] compelling,' and then only if there is a 'substantial relation between the information sought and [an] overriding and compelling state interest.'" Brown, 459 U.S. at 91-92 (second and third alterations in original) (citation and internal quotation marks omitted) (quoting Sweezy, 354 U.S. at 265; Gibson, 372 U.S. at 546).

It is with cognizance of these principles that we consider whether SPD and the City may disclose the Does' identities in the investigatory records at issue.

B

The Does assert that the disclosure of their identities in the requested records will violate their First Amendment right to political anonymity.[9] They contend that the trial court erred by determining that no constitutional privacy interest is implicated in this situation. We agree.

Both the Does' attendance at the January 6 rally and their compelled statements to investigators implicate the First Amendment. Exposure by the government of this information, through disclosure of the unredacted requested records, would impinge the Does' constitutional right to anonymity in their political beliefs and associations.

Pursuant to United States Supreme Court decisional authority, the State must demonstrate that disclosure of the unredacted requested records would further a compelling state interest and that such disclosure is narrowly tailored to achieve that state interest. Because no compelling state interest exists to justify disclosure of the unredacted records, the Does are entitled to an injunction prohibiting exposure by the government of their identities.

[9] The parties' initial appellate briefing primarily concerns whether the Does are entitled to a preliminary injunction pursuant to statutory exemptions set forth in the PRA. However, the Does additionally contended that disclosure would violate their First Amendment rights. Following oral argument, the parties submitted supplemental briefing addressing this issue more thoroughly. Because the answer to the Does' request for a remedy is found in First Amendment jurisprudence, we need not address the parties' arguments regarding PRA statutory exemptions to disclosure.

The Does assert that disclosure of their identities in the requested records, both with regard to their attendance at the January 6 rally and their statements made to investigators concerning their political views and affiliations, will violate their First Amendment right to privacy. They aver that the trial court erred in two respects. First, the Does contend that the trial court erroneously concluded that, because the January 6 rally was a public event, the Does had no right to privacy in attending that event. Second, they argue that the trial court erred by concluding that they had not demonstrated a sufficient probability of a "chilling effect" on their constitutional rights to be entitled to the relief sought.

Sueoka contends, on the other hand, that the Does' attendance at the January 6 rally is not protected by a constitutional privacy right. He further contends that, even if disclosure of the Does' identities in the requested records implicates a First Amendment right, the Does relinquished that right by cooperating with the OPA's investigation. Finally, Sueoka asserts that the trial court properly determined that the Does have not shown a sufficient probability of harm to establish a constitutional right to privacy.

The Does' contentions, consistent as they are with United States Supreme Court decisional authority, are the more persuasive. We conclude that the Does have a First Amendment privacy right in their identities in the requested records.

(a)

The First Amendment to the United States Constitution, as incorporated through the due process clause of the Fourteenth Amendment, "protects against

the compelled disclosure of political associations and beliefs." Brown, 459 U.S. at 91; see also Buckley, 424 U.S. at 64 (noting that the Court had "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment"). Even when the State takes "no direct action" to abridge an individual's First Amendment rights, those rights may be impinged by "varied forms of governmental action" that "may appear to be totally unrelated to protected liberties." NAACP, 357 U.S. at 461. In other words, it is not solely a "heavy-handed frontal attack" by government that may abridge an individual's First Amendment rights; such constitutional transgression may also arise from "more subtle governmental interference." Bates, 361 U.S. at 523. Indeed, simple "exposure by government" may be sufficient to impinge such rights. Bates, 361 U.S. at 528.

Here, the trial court concluded, and Sueoka presently asserts, that the Does have no right to privacy in having attended a public political rally. The trial court reasoned:

> Whether a person attended a public rally is not the type of intimate detail that courts in Washington have said should remain private. Washington courts have not previously found an inherent right to privacy in attendance at a public political rally. Attending a public rally is not an act that is inherently cloaked in privacy.

In so ruling, the court was clearly referring to Washington law concerning whether an individual has a *statutory right to privacy* pursuant to the PRA.[10] We

[10] Because the PRA does not define "right to privacy," our Supreme Court adopted the common law tort definition of the term, which provides, in part, that the privacy right is implicated when the "'intimate details of [a person's] life are spread before the public gaze in a manner highly offensive to the ordinary reasonable [person].'" Hearst Corp. v. Hoppe, 90 Wn.2d 123, 136, 580 P.2d 246 (1978) (quoting RESTATEMENT (SECOND) OF TORTS § 652D, at 386 (AM. LAW INST. 1977)). The trial court referenced this language in ruling that the Does' attendance at the January 6 rally does not implicate a privacy right.

do not evaluate, however, whether disclosure of the Does' identities is precluded by a statutory right to privacy.

Rather, we conclude that, pursuant to United States Supreme Court decisional authority, the disclosure by the government of the Does' identities in the requested records would violate their federal constitutional right to anonymity in political belief and association. See, e.g., Watchtower Bible, 536 U.S. 150; McIntyre, 514 U.S. 334; Brown, 459 U.S. 87; Buckley, 424 U.S. 1; Gibson, 372 U.S. 539; Shelton, 364 U.S. 479; Talley, 362 U.S. 60; Bates, 361 U.S. 516; Uphaus, 360 U.S. 72; NAACP, 357 U.S. 449; Watkins, 354 U.S. 178; Sweezy, 354 U.S. 234; Wieman, 344 U.S. 183. Such governmental action would expose to the public not only records evidencing the Does' attendance at the January 6 rally, but also the transcripts of interviews in which the Does were compelled to "articulate [their] political views," discuss whether they were "affiliated with any political groups," and describe "[their] impressions of, and reactions to, the content of the Rally." The requested records thus implicate the Does' personal political views and their affiliations, if any, with political organizations.[11] "It cannot

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Because, at common law, sovereign immunity precluded actions against the government, it comes as little surprise that in this case—wherein the actions of government are directly at issue—the answer is found not in the common law but in the First and Fourteenth Amendments—which are each solely directed at governmental action.

[11] The trial court did not consider whether the Does' statements regarding their political beliefs and associations, compelled to be disclosed during the OPA investigation, implicated either a statutory or constitutional right to privacy. Instead, the court found that there was "no evidence . . . indicating whether the requested records sought contain explicit information about the Does' political beliefs or associations."

The record does not support this finding. The Does' declarations state that each was "ordered to answer all questions asked, truthfully and completely, and that failure to do so may result in discipline up to and including termination." These questions included "why [they] attended" the rally, whether they attended "to articulate [their] political views," whether they were "showing support for a political group" or were "affiliated with any political groups," and what were their "impressions of, and reactions to, the content" of the rally. In their declarations, each of the Does stated: "Because I believed I was under a standing order to answer these personal

require argument," the United States Supreme Court has stated, "that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties either in a state or national election." Sweezy, 354 U.S. at 266. If such direct governmental action would impinge the Does' constitutional privacy interests, then so, too, does exposure by the government of that same information pursuant to a records request. See Bates, 361 U.S. at 523; NAACP, 357 U.S. at 461.

Sueoka nevertheless contends that our Supreme Court's decision in Spokane Police Guild v. Liquor Control Board, 112 Wn.2d 30, 769 P.2d 283 (1989), "puts to rest any claim" that the Does' attendance at the January 6 rally is protected by a constitutional privacy right.[12] In that case, the court considered whether a statutory exemption precluded disclosure of an investigatory report that identified police officers who had attended a party on Spokane Police Guild Club premises. Spokane Police Guild, 112 Wn.2d at 31. The party, "variously referred to as a bachelor party, stag show and strip show," had been determined to violate regulations of the liquor board. Spokane Police Guild, 112 Wn.2d at 31. Our Supreme Court held that disclosure of the report would not violate the statutory right to privacy conferred by the statutory predecessor of the PRA. Spokane Police Guild, 112 Wn.2d at 37-38. Recognizing that this privacy right pertains "only to the intimate details of one's personal and private life," the court reasoned that there was "no personal intimacy involved in one's presence or

questions, I did so truthfully and as completely as possible." These declarations are themselves evidence that the requested records contain statements regarding the Does' political beliefs and affiliations.

[12] Br. of Resp't/Cross Appellant at 31.

conduct at such a well attended and staged event which would be either lost or diminished by being made public." Spokane Police Guild, 112 Wn.2d at 38.

According to Sueoka, this holding compels the conclusion herein that the Does' attendance at the January 6 rally—occurring, as it did, in a public location[13]—does not implicate a right to privacy. However, in so asserting, Sueoka confuses the *statutory privacy right* bestowed by the PRA with the *constitutional privacy right* deriving from the First Amendment. In Spokane Police Guild, the disclosure of the officers' political beliefs and associations was not at issue; accordingly, the court considered only whether a statutory exemption prohibited disclosure of the investigative report. 112 Wn.2d at 37-38. Moreover, in focusing solely on the Does' attendance at a public event, Sueoka disregards that disclosure of the requested records would additionally expose the Does' statements regarding their political beliefs and associations, which the Does were compelled to disclose during the OPA investigation. In short, Sueoka asserts that Washington Supreme Court decisional authority concerning a statutory right to privacy stemming from the common law of torts precludes a determination that a federal constitutional right prohibits disclosure by a government. This contention is wholly unavailing.

Sueoka additionally contends that the United States Supreme Court's decisional authority regarding the First Amendment right to political anonymity is

[13] The Capitol Police issued six permits authorizing gatherings on January 6, 2021 on property under its control. Jason Leopold, *The Capitol Police Granted Permits For Jan. 6 Protests Despite Signs That Organizers Weren't Who They Said They Were*, BUZZFEED NEWS (Sept. 17, 2021), https://www.buzzfeednews.com/article/jasonleopold/the-capitol-police-said-jan-6-unrest-on-capitol-grounds [https://perma.cc/LWM5-P3MN].

inapposite because, he argues, the Does "cannot be compared to members of small and powerless political or religious groups," and are not "seeking anonymity from the government itself."[14] Again, we disagree.

Contrary to Sueoka's assertion, the United States Supreme Court has not limited the applicability of the First Amendment's privacy right to members of "small and powerless political or religious groups." To the contrary, the Court has recognized that "the deterrent and 'chilling' effect on the free exercise of constitutionally enshrined rights of free speech, expression, and association" is "the more immediate and substantial" when "the challenged privacy is that of persons espousing beliefs already unpopular with their neighbors." Gibson, 372 U.S. at 556-57. Nevertheless, the Court was clear that, "of course, all legitimate organizations are the beneficiaries of these protections." Gibson, 372 U.S. at 556.[15] Moreover, the question is not whether an individual is a member of a "small and powerless" group, as Sueoka asserts, but whether the individual "espous[es] beliefs . . . unpopular with their neighbors," Gibson, 372 U.S. at 557, such that exposure of those beliefs could discourage the exercise of constitutional rights.

Thus, it is the opprobrium that the community has for the individual's beliefs that is material to any "chilling effect" on constitutional rights.[16] We are

[14] Br. of Resp't/Cross Appellant at 32.

[15] In Gibson, a Florida legislative committee sought to subpoena NAACP membership lists, 372 U.S. at 540-41, hence the Court's reference to "organizations." However, it was the constitutional rights of the individuals whose identities would be disclosed in the membership lists that was at issue. In any event, we see no reason to distinguish between "organizations" and individuals on this point.

[16] As discussed infra, case law does not support Sueoka's assertion that the Does were required to demonstrate a more substantial "chilling effect" to establish a First Amendment privacy right in the requested records.

cognizant that, in the Seattle community, the Does would likely face opprobrium were their identities disclosed.[17] This is likely notwithstanding the fact that the OPA investigation determined that any allegations of unlawful or unprofessional conduct against the Does were unsustained. We reach this conclusion with an awareness of the events of recent years, including the Department of Justice finding of the systemic use of excessive force by SPD officers (necessitating the federal district court's imposition of a consent decree), the horrific killing of George Floyd and other unarmed Black individuals throughout our country, and the eruption of protests, including in Seattle, in response to those incidents.[18] Whether correctly or not, as Sueoka's briefing demonstrates, the Seattle community is likely to presume that the Does' attendance at the January 6 rally indicates that they are white supremacists who sought to undermine our nation's democracy. But whatever various individuals might infer, it remains true that all

[17] In 2016, Donald Trump received 8 percent of the vote in Seattle precincts. *Here's How Seattle Voters' Support for Trump Compared to Other Cities'*, SEATTLE TIMES (Nov. 17, 2016), https://www.seattletimes.com/seattle-news/politics/heres-how-seattle-voters-support-for-trump-stacks-up-to-other-u-s-cities/ [https://perma.cc/4PNL-G68W]. In 2020, he again received 8 percent of the vote in Seattle. Danny Westneat, *Don't Look Now, but Trump Did Better in Blue King County Than He Did the Last Time*, SEATTLE TIMES (Nov. 11, 2020), https://www.seattletimes.com/seattle-news/politics/dont-look-now-but-trump-did-better-in-blue-king-county-than-he-did-the-last-time/ [https://perma.cc/N8F8-TFHL].

[18] Whether records are subject to disclosure must be determined without regard to the motivation of the records requestor. RCW 42.56.080 ("Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(8) or 42.56.240(14), or other statute which exempts or prohibits disclosure of specific information or records to certain persons."); see also Livingston v. Cedeno, 164 Wn.2d 46, 53, 186 P.3d 1055 (2008) (holding that the Department of Corrections, in "its capacity as an agency subject to" the PRA, "must respond to all public disclosure requests without regard to the status or motivation of the requester"). However, when the impingement of constitutional protections for speech and association are at issue, it is clear that courts may consider the pertinent political and cultural atmosphere in determining whether exposure could discourage the exercise of First Amendment rights.

citizens, including public employees, may benefit from the constitutional right to privacy in their political beliefs espoused by our nation's highest court.[19]

As the Court has held, the mere compelling of an individual to disclose "beliefs, expressions or associations is a measure of governmental interference." Watkins, 354 U.S. at 197. When these "forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of [that individual] may be disastrous." Watkins, 354 U.S. at 197; see also Uphaus, 360 U.S. at 84 (Brennan, J., dissenting) ("[E]xposure and group identification by the state of those holding unpopular and dissident views are fraught with such serious consequences for the individual as to inevitably inhibit seriously the expression of views which the Constitution intended to make free."). While we have no sympathy for those who sought to undermine our democracy on January 6, 2021, the fact here is that the allegations that the Does were engaged in unlawful or unprofessional conduct were not sustained. They did not forfeit their First Amendment rights.

As our nation's highest court long-ago made clear,

> [a] final observation is in order. Because our disposition is rested on the First Amendment as absorbed in the Fourteenth . . . our decisions in the First Amendment area make[] plain that its protections would apply as fully to those who would arouse our society against the objectives of the petitioner. See, e.g., Near v. Minnesota, 283 U.S. 697[, 51 S. Ct. 625, 75 L. Ed. 1357 (1931)]; Terminiello v. Chicago, 337 U.S. 1[, 69 S. Ct. 894, 93 L. Ed. 1131

[19] Concurring in Wieman, 344 U.S. at 193, Justice Black recognized the importance of ensuring that First Amendment protections are secured for all individuals:

> Our own free society should never forget that laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnaring and silencing many more people than at first intended. We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven. And I cannot too often repeat my belief that the right to speak on matters of public concern must be wholly free or eventually be wholly lost.

> (1949)]; Kunz v. New York, 340 U.S. 290[, 71 S. Ct. 312, 95 L. Ed. 280 (1951)]. For the Constitution protects expression and association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity, or social utility of the ideas and beliefs which are offered.

Button, 371 U.S. at 444-45.

Returning to Sueoka's contentions, we are similarly unpersuaded by his assertion that the Does cannot establish a First Amendment right to privacy because, according to him, they are not "seeking anonymity from the government itself."[20] In fact, as Sueoka notes, the Does have already been compelled to disclose their political beliefs and associations to SPD and the City. However, the government need not take "direct action" in order to unlawfully impinge an individual's constitutional privacy right. NAACP, 357 U.S. at 461. Rather, "abridgement of such rights, even though unintended, may inevitably follow from varied forms of governmental action," including action that "may appear to be wholly unrelated to protected liberties." NAACP, 357 U.S. at 461.

Indeed, the United States Supreme Court has held that "First Amendment rights are beyond abridgement either by legislation that directly restrains their exercise or by suppression or impairment through harassment, humiliation, or *exposure by government*." Bates, 361 U.S. at 528 (Black & Douglas, JJ., concurring) (emphasis added); see also Shelton, 364 U.S. at 486-87 ("Public exposure, bringing with it the possibility of public pressures upon school boards to discharge teachers who belong to unpopular or minority organizations, would simply operate to widen and aggravate the impairment of constitutional liberty.").

[20] Br. of Resp't/Cross Appellant at 32.

Here, the state action challenged is the government's exposure, pursuant to state statute, of the Does' identities in the requested records, which implicate their political beliefs and associations. Sueoka's insinuation that the City's disclosure of the Does' identities would not constitute governmental action is simply wrong.

(b)

Sueoka additionally asserts that, even if disclosure of the Does' identities would impinge their constitutional rights, the Does willingly relinquished their right to privacy. This is so, Sueoka contends, because the Does "had a right to keep their political opinions private," knew that their employer was subject to the PRA, but nevertheless attended the January 6 rally and "then informed their employer of their activities."[21] We disagree. Contrary to Sueoka's assertion, the Does did not relinquish their constitutional rights.

The facts are these. The Does submitted to interviews during an investigation in which they were alleged to have violated the law or SPD policies during their attendance at the January 6 rally. They were "ordered to answer all questions asked, truthfully and completely." They were informed that "failure to do so may result in discipline up to and including termination." They were then questioned regarding their reasons for attending the January 6 rally, their political beliefs and affiliations with political groups, if any, and their impressions of the content of the rally. The Does answered these questions "truthfully and as completely as possible" because they were under standing orders to do so.

[21] Br. of Resp't/Cross Appellant at 27-28.

In other words, the Does did not "ha[ve] a right to keep their political opinions private." Nor, contrary to Sueoka's assertion, did the Does voluntarily "inform[] their employer of their activities." Rather, the Does were placed in the untenable position of either refusing to answer investigators' questions, thus risking their livelihoods, or cooperating with the investigation, thereby compromising their constitutional rights.[22]

Nearly a century ago, the United States Supreme Court rejected the notion that an indirect assault on constitutional protections due to a purported "choice" is less insidious than is direct impingement of such rights. Frost v. RR Comm'n of State of Cal., 271 U.S. 583, 593, 46 S. Ct. 605, 70 L. Ed. 2d 1101 (1926). There, a California statute precluded private carriers from the privilege of using public highways for "transacting private business thereon" unless they submitted to regulation lawfully imposed on common carriers. Frost, 271 U.S. at 591. The Supreme Court struck down the statute, which, it concluded, was intended to protect the business of common carriers by controlling competition. Frost, 271 U.S. at 591, 593. In so doing, the Court held that a state may not require the relinquishment of a constitutional right as the basis to confer a privilege. Frost, 271 U.S. at 593. Were it otherwise, "constitutional guaranties, so carefully safeguarded against direct assault, [would be] open to destruction by the indirect but no less effective process of requiring a surrender, which, though in form voluntary, in fact lacks none of the elements of compulsion." Frost, 271

[22] Adopting Sueoka's assertion that the Does' cooperation in the investigation was voluntary would also lead to the problematic conclusion that police officers need not cooperate in such investigations. Little public good would flow from such a holding.

U.S. at 593. To be given only "a choice between the rock and the whirlpool," wherein the option is to forego one's livelihood or "submit to a requirement which may constitute an intolerable burden," is in reality, the Court announced, no choice at all. Frost, 271 U.S. at 593.

Four decades later, the Supreme Court explicitly rejected the proposition advanced by Sueoka herein—that statements obtained from police officers as a result of those officers cooperating (in compliance with a lawful request to do so) in investigations conducted by their employer or at their employer's direction are deemed voluntary. Garrity, 385 U.S. 493. In Garrity, police officers were ordered to cooperate in an investigation by the New Jersey Attorney General regarding "alleged irregularities in handling cases in the municipal courts" of certain New Jersey boroughs. 385 U.S. at 494. Prior to questioning, each officer was warned "(1) that anything he said might be used against him in any state criminal proceeding; (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but (3) that if he refused to answer he would be subject to removal from office." Garrity, 385 U.S. at 494. After cooperating in the investigation, the officers were convicted of conspiracy to obstruct the administration of the traffic laws, and "their convictions were sustained over their protests that their statements were coerced, by reason of the fact that, if they refused to answer, they could lose their positions with the police department." Garrity, 385 U.S. at 495 (footnote omitted).

The Supreme Court held that, where the officers were given the choice between self-incrimination and losing their livelihoods, their statements were not voluntary:

> The choice given petitioners was either to forfeit their jobs or to incriminate themselves. The option to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent. That practice, like interrogation practices we reviewed in Miranda v. Arizona, 384 U.S. 436, 464-65[, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)], is "likely to exert such pressure upon an individual as to disable him from making a free and rational choice." We think the statements were infected by the coercion inherent in this scheme of questioning and cannot be sustained as voluntary under our prior decisions.

Garrity, 385 U.S. at 497-98 (footnote omitted). Police officers, the Court concluded, "are not relegated to a watered-down version of constitutional rights." Garrity, 385 U.S. at 500. Moreover, the Court therein confirmed that the rights secured by the First Amendment are among those "rights of constitutional stature whose exercise a State may not condition by the exaction of a price." Garrity, 385 U.S. at 500.

As in Garrity, the Does here were informed by SPD, their employer, that their continued employment could be contingent on their cooperation with the investigation. The answers elicited from the Does during interviews directly implicate speech protected by the First Amendment. The Does, as with the police officers in Garrity, were afforded a choice "'between the rock and the whirlpool,'" 385 U.S. at 496 (quoting Stevens v. Marks, 383 U.S. 234, 243, 86 S. Ct. 788, 15 L. Ed. 2d 724 (1966)), whereby only by relinquishing their constitutional privacy interests could the Does ensure their continued

employment. "[D]uress is inherent" when statements are thusly obtained. Garrity, 385 U.S. at 498.

As the precedent of our nation's highest court makes clear, the Does' statements to investigators were not voluntary. We reject Sueoka's assertion that the Does relinquished their constitutional rights by cooperating with the OPA's investigation.

(c)

Sueoka next contends that the Does have not set forth sufficient evidence that harm would result from disclosure of their identities in the requested records, such that they should be entitled to an injunction precluding such disclosure. He asserts that the Does must demonstrate that disclosure would create a "chilling effect" on their constitutional rights and that they have not done so. Again, we disagree. Adhering to precedent from our Supreme Court, and cognizant that federal courts have determined that a "chilling effect" may, at times, be assumed, we hold that the evidence submitted by the Does is sufficient to meet the necessary showing of potential harm.

In Doe v. Reed, the United States Supreme Court considered whether, pursuant to Washington's PRA, the disclosure of referendum petitions, and thereby of the identities of the petition signers, would violate the First Amendment. 561 U.S. 186. The Court therein concluded that disclosure would not violate the First Amendment with respect to referendum petitions in general. Reed, 561 U.S. at 202. However, the Court articulated the standard it had applied "in related contexts," that "those resisting disclosure can prevail under the

First Amendment if they can show 'a reasonable probability that the compelled disclosure [of personal information] will subject them to threats, harassment, or reprisals from either Government officials or private parties.'" Reed, 561 U.S. at 200 (alteration in original) (quoting Buckley, 424 U.S. at 74).

Our Supreme Court applied this standard in evaluating the constitutionality of a discovery order compelling the disclosure of meeting minutes of the Freedom Socialist Party. See Snedigar v. Hoddersen, 114 Wn.2d 153, 156, 786 P.2d 781 (1990). In that case, the court reversed a decision of this court, in which we had held that the party resisting the discovery order was required to make "an initial showing of *actual* infringement on First Amendment rights." Snedigar, 114 Wn.2d at 158. This was wrong, our Supreme Court explained, because "[t]he party asserting the First Amendment associational privilege is only required to show *some probability* that the requested disclosure will harm its First Amendment rights." Snedigar, 114 Wn.2d at 158. And, indeed, in that case, the Party's national secretary submitted affidavits stating that (1) "Party members and supporters had been subjected to acts of reprisal and harassment in the past," and (2) that "the expectation of confidentiality in internal discussions [was] essential to the Party's survival." Snedigar, 114 Wn.2d at 163. These affidavits, our Supreme Court held, were sufficient to demonstrate that disclosure would "chill" the Party's constitutional rights. Snedigar, 114 Wn.2d at 164.

In evaluating whether sufficient probability of harm was shown, our Supreme Court in Snedigar recognized that some courts have explicitly held that "a concrete showing of 'chill' is unnecessary" to determine that disclosure would

impinge First Amendment rights. 114 Wn.2d at 162 (citing Black Panther Party v. Smith, 661 F.2d 1243, 1267-68, (D.C. Cir. 1981); Britt v. Superior Court, 20 Cal. 3d 844, 855, 574 P.2d 766, 143 Cal. Rptr. 695 (1978)). Indeed, the court noted, some courts "have overlooked the absence of a factual record of past harassment and . . . assumed that disclosure of information" would chill such rights. Snedigar, 114 Wn.2d at 162 (citing Shelton, 364 U.S. at 485-86; Talley, 362 U.S. at 64; Local 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. Waterfront Comm'n of New York, 667 F.2d 267, 272 (2d Cir.1981); Pollard v. Roberts, 283 F. Supp. 248, 258 (E.D. Ark. 1968), aff'd, 393 U.S. 14, 89 S. Ct. 47, 21 L. Ed. 2d 14 (1968)).

Moreover, as the Second Circuit has recognized, "a factual record of past harassment is not the only situation in which courts have upheld a First Amendment right of non-disclosure." Int'l Longshoremen's Ass'n, 667 F.2d at 271. Rather,

> [t]he underlying inquiry must always be whether a compelling governmental interest justifies any governmental action that has "the practical effect 'of discouraging' the exercise of constitutionally protected political rights," "even if any deterrent effect . . . arises . . . as an unintended but inevitable result of the government's conduct in requiring disclosure."

Int'l Longshoremen's Ass'n, 667 F.2d at 271 (citation omitted) (quoting NAACP, 357 U.S. at 461; Buckley, 424 U.S. at 65). Based on this principle, courts, including the United States Supreme Court, have in various circumstances "adopted a commonsense approach [that] recognized that a chilling effect was

inevitable." Int'l Longshoremen's Ass'n, 667 F.2d at 272 (citing Shelton, 364 U.S. at 486; Pollard, 283 F. Supp. at 258).[23]

Here, the Does' declarations state that they have "a significant fear that disclosure of [their] attendance at the January 6 Rally would result in significant jeopardy to [their] personal safety and [their] ability to provide effective law enforcement to the community." Two of the Does described their fears for the safety and well-being of their families were their identities disclosed, one noting "the extreme volatility that has gone hand in hand with politics in this region over the last year regarding law enforcement." The Does additionally submitted the declarations of other SPD officers who stated that they had endured harassment and threats made against them and their families from members of the public.

[23] Such a "commonsense approach"—which assumes a "chilling effect" on speech and associational rights—has been utilized when disclosure was required to be made to a public employer and when the individuals seeking anonymity espoused beliefs unpopular in their communities.

For instance, in Shelton, the Supreme Court recognized that impingement of teachers' rights to free association "is conspicuously accented when the teacher serves at the absolute will of those to whom the disclosure must be made." 364 U.S. at 486. "[T]he pressure upon a teacher to avoid any ties which might displease those who control his professional destiny would be constant and heavy." Shelton, 364 U.S. at 486; see also Int'l Longshoremen's Ass'n, 667 F.2d at 272 (recognizing that the investigatory body had "pervasive control over the economic livelihood" of those seeking anonymity).

Likewise, in Pollard, there was "no evidence" that the individuals seeking anonymity had "been subjected to reprisals on account of" their contributions to the Arkansas Republican Party. 283 F. Supp. at 258. Nevertheless, given the unpopularity of the party in the state at that time, the court held that "it would be naïve not to recognize" that disclosure would subject the contributors to "potential economic or political reprisals," thus discouraging the exercise of constitutional rights. Pollard, 283 F. Supp. at 258. The court described the constitutional injury thereby inflicted thusly:

> To the extent that a public agency or officer unreasonably inhibits or discourages the exercise by individuals of their right to associate with others of the same political persuasion in the advocacy of principles and candidates of which and of whom they approve, and to support those principles and candidates with their money if they choose to do so, that agency or officer violates private rights protected by the First Amendment.

Pollard, 283 F. Supp. at 258.

Consistent with the cases cited above, we conclude that the Does have submitted sufficient evidence that disclosure of their identities would discourage the exercise of political speech and associational rights.[24] In so holding, we are mindful that it is not only the Does' constitutional rights that may be "chilled" by disclosure here, but also those of other public employees whose employers are subject to the PRA. Indeed, as the United States Supreme Court has recognized, in addition to the impact on the exercise of rights by those seeking anonymity, there is a "more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time." Watkins, 354 U.S. at 197-98.

We conclude that disclosure of the Does' identities in the requested records constitutes governmental action that would impinge their First Amendment rights. This is so despite the public nature of the January 6 rally. We find unmeritorious Sueoka's contentions that the Does relinquished their constitutional rights by cooperating with the OPA's investigation or that they failed to demonstrate that disclosure would discourage the exercise of such rights. Having so concluded, we must determine whether the State's interest in impinging those rights is sufficient to nevertheless mandate disclosure.

[24] We reach this conclusion notwithstanding Sueoka's assertion, in supplemental briefing, that the identities of the Does are already publicly known. As our Supreme Court has held, an individual's statutory right to privacy is not nullified because some members of the public may already know that individual's identity. Bainbridge Island Police Guild, 172 Wn.2d at 414 ("[J]ust because some members of the public may already know the identity of the person in the report does not mean that an agency does not violate the person's right to privacy by confirming that knowledge through its production."). The same is certainly true of the right to privacy inhering in the First Amendment to the United States Constitution.

(d)

Before we do so, however, we must address a related contention. In a statement of additional authorities submitted following oral argument, Sueoka asserts that, because the Does did not notify the attorney general of any intent to challenge the constitutionality of the PRA, we cannot consider whether the PRA violates the federal constitution if it is construed so as to require disclosure of unredacted records in this case.

This ground has been previously trod. Indeed, the District Court of the Western District of Washington considered this very issue in Roe v. Anderson, 2015 WL 4724739 (W.D. Wash. 2015), which we cite as evidence of our state attorney general's official position on this aspect of PRA analysis. In the cited case, certain erotic dancers and managers of an erotic dance studio sought to enjoin the disclosure of their personal information pursuant to a PRA request. Anderson, 2015 WL 4724739, at *1. They asserted that disclosure would violate their constitutional rights to privacy and free expression and sought a declaration that the PRA, as applied to them, was unconstitutional. Anderson, 2015 WL 4724739, at *1.

At the court's invitation, the Washington attorney general filed an amicus brief asserting that the PRA "does not require the disclosure of information protected from disclosure by the Constitution" because "*its exemptions incorporate any constitutionally-required limitation on such disclosures*." Anderson, 2015 WL 4724739, at *1 (emphasis added). The "other statute[s]" provision, RCW 42.56.070(1), the attorney general explained, is a "'catch all'

saving clause" that "*does not require a disclosure that would violate the Constitution*." Anderson, 2015 WL 4724739, at *2 (emphasis added). Citing decisional authority from our Supreme Court, the attorney general clarified that

> "[i]f the requested records are constitutionally protected from public disclosure, *that protection exists without any need of statutory permission*, and may constitute an exemption under the PRA even if not implemented through an explicit statutory exemption."
>
> "In other words, it is not necessary to read the PRA in conflict with the Constitution when the Act itself recognizes and respects other laws (including constitutional provisions) that mandate privacy or confidentiality."

Anderson, 2015 WL 4724739, at *2-3 (emphasis added).

The district court held that "[t]he State is correct." Anderson, 2015 WL 4724739, at *3. "The PRA, by design, cannot violate the Constitution, and constitutional protections (such as freedom of expression) are necessarily incorporated as exemptions, just like any other express exemption enumerated in the PRA." Anderson, 2015 WL 4724739, at *3.

We agree with and adopt this analysis. Thus, once the constitutional right is established and the constitutional injury that disclosure would cause is shown, it is entirely unnecessary for the citizen to establish an *additional* entitlement to an injunction in order to preclude disclosure. The law is clear and the principle simple—the government may not violate a person's First Amendment rights, even in the absence of an injunction specifically forbidding it from doing so.[25]

2

The United States Supreme Court has repeatedly affirmed that

[25] See discussion infra § III C.

> [t]he right to privacy in one's political associations and beliefs will yield only to a "'subordinating interest of the State [that is] compelling,'" NAACP[, 357 U.S.] at 463 (quoting Sweezy, 354 U.S. [at 265] (opinion concurring in result)), and then only if there is a "substantial relation between the information sought and [an] overriding and compelling state interest." Gibson[, 372 U.S. at 546].

Brown, 459 U.S. at 91-92 (some alterations in original). Thus, having concluded that disclosure of the Does' identities in the requested records would impinge their First Amendment rights, we must determine whether an overriding and compelling state interest nevertheless requires such disclosure.

For its part, the City contends that a less stringent standard should apply because, according to the City, "public employees have diminished First Amendment rights, even for purely private speech."[26] Not so. Police officers, such as the Does, "are not relegated to a watered-down version of constitutional rights." Garrity, 385 U.S. at 500. The City's assertion to the contrary, reliant as it is on inapposite decisional authority, is unpersuasive.

We conclude that the State has no compelling interest in disclosing the Does' identities in the requested records. The state interest in disclosing the entirety of a particular public record is illuminated by the purpose of the PRA and its scope, as determined by our legislature and Supreme Court. Such considerations demonstrate that the state interest here falls short of the standard required to impinge the Does' First Amendment rights. We thus hold that the State has no compelling interest in disclosing the Does' identities in the requested records.

[26] City of Seattle, Suppl. Mem. at 2.

(a)

We first address the City's argument, set forth in supplemental briefing, that the state actor need not demonstrate a compelling interest in order to impinge the Does' constitutional rights. The City, itself an employer of vast numbers of public employees, asserts that "public employees have diminished First Amendment rights, even for purely private speech."[27] Hence, the City contends, the constitutional rights of public employees, unlike those of other citizens, can be impinged absent the demonstration of a compelling state interest. We disagree.

When the State seeks to compel disclosure of an individual's political beliefs and associations, it can do so only by demonstrating a compelling state interest with sufficient relation to the information sought to be disclosed. See, e.g., Brown, 459 U.S. at 91-92; Gibson, 372 U.S. at 546; NAACP, 357 U.S. at 463; Sweezy, 354 U.S. at 265. That the State's interest must be compelling reflects the United States Supreme Court's recognition that "political freedom of the individual" is a "fundamental principle of a democratic society," Sweezy, 354 U.S. at 250, and that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Buckley, 424 U.S. at 64.

Moreover, as we have discussed, our nation's highest Court has rejected the notion that public employees are not entitled to the same stature of constitutional rights as are other citizens. In 1967, the Court in Garrity

[27] City of Seattle, Suppl. Mem. at 2.

considered whether police officers, by virtue of being compelled to cooperate in an investigation by the New Jersey Attorney General, relinquished the constitutional right against self-incrimination. 385 U.S. at 494-98. The Court determined that the statements of the police officers, who were given the choice between self-incrimination and losing their livelihoods, were not voluntary. Garrity, 385 U.S. at 497-98. In so holding, the Court "conclude[d] that policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." Garrity, 385 U.S. at 500.

In asserting to the contrary—that the Does are, indeed, condemned to a diluted version of First Amendment rights—the City urges us to apply the "balancing test" set forth by the Supreme Court in Pickering v. Board of Education of Township High School District 205, Will County, Ill., 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968).[28] The City's reliance on Pickering is misplaced.

In Pickering, a public school teacher submitted to a local newspaper a letter regarding a proposed tax increase that was critical of the manner in which the school board and superintendent had "handled past proposals to raise new revenue for the schools." 391 U.S. at 564. The teacher was dismissed from his position pursuant to an Illinois statute that permitted such dismissal for actions detrimental to the interests of the school system. Pickering, 391 U.S. at 564-65. He thereafter filed suit, asserting that the Illinois statute was unconstitutional as

[28] See City of Seattle, Suppl. Mem. at 6 ("It is this balancing test, not strict scrutiny, that applies to disclosure of the public records containing employees' speech.").

applied pursuant to the First and Fourteenth Amendments. Pickering, 391 U.S. at 565.

In considering the constitutionality of the Illinois statute, the Court recognized that "the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." Pickering, 391 U.S. at 568. Thus, the Court announced what has come to be known as the "Pickering balancing test,"[29] which seeks to "arrive at a balance between the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Pickering, 391 U.S. at 568.

However, the teacher's statements in Pickering were "neither shown nor [could] be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally." 391 U.S. at 572-73 (footnote omitted). The Court held that, in such circumstances, "the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public." Pickering, 391 U.S. at 573. In other words, the "Pickering balancing test," which the City urges us to apply here, is applicable

[29] See, e.g., Garcetti v. Ceballos, 547 U.S. 410, 418, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006) (describing the "two inquiries to guide interpretation of the constitutional protections accorded to public employee speech" as set forth in "Pickering and the cases decided in its wake"); Moser v. Las Vegas Metro. Police Dep't, 984 F.3d 900, 904-05 (9th Cir. 2021) (describing the "Pickering balancing test"). Neither of these opinions, both of which are cited by the City, is apposite to the circumstances presented in this case.

only when a public employee's speech may affect the employer's operations. See also Garcetti v. Ceballos, 547 U.S. 410, 418, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006) ("A government entity has broader discretion to restrict speech when it acts in its role as employer, but the restrictions it imposes *must be directed at speech that has some potential to affect the entity's operations*." (emphasis added)). Only then may a government employer have "an adequate justification for treating the employee differently from any other member of the general public," thus permitting it to restrict the public employee's speech. Garcetti, 547 U.S. at 418.

Indeed, in Pickering, the United States Supreme Court explicitly rejected the proposition that public employees are entitled to lesser constitutional protections simply by virtue of their public employment:

> To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court. E.g., Wieman v. Updegraff, 344 U.S. 183[, 73 S. Ct. 215, 97 L. Ed. 2d 216] (1952); Shelton v. Tucker, 364 U.S. 479[, 81 S. Ct. 247, 5 L. Ed. 2d 231] (1960); Keyishian v. Board of Regents, 385 U.S. 589[, 87 S. Ct. 675, 17 L. Ed. 2d 629] (1967). "[T]he theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." Keyishian[, 385 U.S.] at 605-06.

391 U.S. at 568 (some alterations in original).

Put simply, the notion that the Does, as public employees, "have curtailed First Amendment rights," as the City brazenly asserts,[30] is directly contradicted

[30] City of Seattle. Suppl. Mem. at 5.

by United States Supreme Court decisional authority. Unlike this case, each of the cases cited by the City involves an adverse employment action based on a speech restriction that precluded public employees from engaging in speech alleged to injuriously impact their employer's operations.[31] Indeed, it is only when a public employee's speech "has some potential to affect [the employer's] operations" that the employer may have "an adequate justification for treating the employee differently from any other member of the general public." Garcetti, 547 U.S. at 418. This rule is premised on the recognition that the government possesses a "legitimate purpose in 'promot[ing] efficiency and integrity in the discharge of official duties, and . . . maintain[ing] proper discipline in the public service.'" Connick v. Myers, 461 U.S. 138, 150-51, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983) (some alterations in original) (quoting Ex parte Curtis, 106 U.S. 371, 373, 1 S. Ct. 381, 27 L. Ed. 232 (1882)).[32] Such principles do not apply to the facts of this case.[33]

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[31] See Progressive Democrats for Soc. Just. v. Bonta, 588 F. Supp. 3d 960 (N.D. Cal. 2022); Garcetti, 547 U.S. 410; City of San Diego, Cal. v. Roe, 543 U.S. 77, 125 S. Ct. 521, 160 L. Ed. 2d 410 (2004); Waters v. Churchill, 511 U.S. 661, 114 S. Ct. 1878, 128 L. Ed. 2d 686 (1994); Pickering, 391 U.S. 563; Hernandez v. City of Phoenix, 43 F. 4th 966 (9th Cir. 2022); Moser, 984 F.3d 900; Berry v. Dep'. of Soc. Servs., 447 F.3d 642 (9th Cir. 2006). For the reasons described above, each of these cases is inapposite here.

[32] In Connick, Justice Brennan disagreed with the majority's balancing of the competing considerations set forth in Pickering. 461 U.S. at 157-58 (Brennan, J., dissenting). However, as pertinent here, he adeptly explained that the government, as a public employer, has an interest in regulating employee speech only when such speech may impact the government's ability to perform its duties. He wrote:

> The balancing test articulated in Pickering comes into play only when a public employee's speech implicates the government's interests as an employer. When public employees engage in expression unrelated to their employment while away from the workplace, their First Amendment rights are, of course, no different from those of the general public.

Connick, 461 U.S. at 157 (Brennan, J., dissenting) (citing Pickering, 391 U.S. at 574).

[33] The City also asserts that our Supreme Court's decision in Service Employees International Union Local 925 v. University of Washington, 193 Wn.2d 860, 447 P.3d 534 (2019) (SEIU), indicates that "disclosure of public records is mandated by the PRA notwithstanding any speech rights or a chilling effect thereon." City of Seattle, Suppl. Mem. at 3. We disagree.

Here, the Does' employer, SPD, did not impose a restriction on the Does' speech. Nor does the speech at issue—the Does' attendance at a political rally and their statements regarding their political views and affiliations—have any impact on their employer's operations. Indeed, any allegation that the Does engaged in conduct contrary to their employer's policies was found to be unsustained.

We decline the City's invitation to contravene United States Supreme Court decisional authority in order to restrict public employee speech in circumstances beyond those in which such speech may interfere with the public employer's operations. Instead, we take the United States Supreme Court at its word that police officers "are not relegated to a watered-down version of constitutional rights." Garrity, 385 U.S. at 500; see also Pickering, 391 U.S. at 568. Similarly, we recognize the Supreme Court's repeated affirmations that "[t]he right to privacy in one's political associations and beliefs will yield only to a 'subordinating interest of the State [that is] compelling,' and then only if there is a 'substantial relation between the information sought and [an] overriding and compelling state interest.'" Brown, 459 U.S. at 91-92 (second and third

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In that decision, our Supreme Court addressed only whether particular faculty e-mails relating to union organizing constitute "public records" pursuant to the PRA. SEIU, 193 Wn.2d at 867-76. Although the labor union seeking to enjoin disclosure of the requested e-mails asserted that "their release would chill union organizing efforts, restrain speech, and violate individuals' privacy rights," SEIU, 193 Wn.2d at 865, our Supreme Court explicitly stated that its "holding on the 'scope of employment' test does not dispose of" the labor union's other arguments, including "assertions of statutory and constitutional exemptions from PRA coverage." SEIU, 193 Wn.2d at 876.

Contrary to the City's assertion, our Supreme Court did not suggest in that decision that the constitutional rights of our state's citizens can be summarily dismissed on the basis of a legislative enactment. While we agree with the City that the PRA is an important statute, it nevertheless remains merely a statute. See Freedom Found., 178 Wn.2d at 695.

alterations in original) (citation and internal quotations marks omitted) (quoting Sweezy, 354 U.S. at 265; Gibson, 372 U.S. at 546). Accordingly, only if an overriding and compelling state interest exists to impinge the Does' constitutional rights may their identities be disclosed in the requested records. As discussed below, we determine that no such compelling interest exists.

(b)

The scope of the State's interest in public record disclosure—and, thus, whether the City, as a state actor, has a compelling interest in disclosing the Does' identities—is illuminated by the purpose of the PRA's disclosure mandate. "The basic purpose of the [PRA] is to provide a mechanism by which the public can be assured that its public officials are honest and impartial in the conduct of their public offices." Cowles Publ'g Co., 109 Wn.2d at 719. The statute "ensures the sovereignty of the people and the accountability of the governmental agencies that serve them by providing full access to information concerning the conduct of government." Predisik, 182 Wn.2d at 903. Similarly, our legislature has defined the policy of the PRA as such: "That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society." RCW 42.17A.001(11); see also In re Request of Rosier, 105 Wn.2d 606, 611, 717 P.2d 1353 (1986) (recognizing the policy underlying the statute as "allow[ing] public scrutiny of government, rather

than . . . promot[ing] scrutiny of particular individuals who are unrelated to any governmental operation").

To this end, while the PRA contains a broad mandate for disclosure, our legislature also included in the statute an exemption whereby "[p]ersonal information in files maintained for employees . . . of any public agency" are not subject to disclosure "to the extent that disclosure would violate their right to privacy." RCW 42.56.230(3). This "right to privacy" is "invaded or violated," such that the statutory exemption applies, when disclosure of the information would be "highly offensive to a reasonable person" and is "not of legitimate concern to the public."[34] RCW 42.56.050.

The PRA does not define the "right to privacy." Our Supreme Court thus sought to "'fill [this] definitional void'" by adopting the common law tort definition set forth in the Restatement. Cowles Publ'g Co., 109 Wn.2d at 721 (quoting Hearst Corp. v. Hoppe, 90 Wn.2d 123, 136, 580 P.2d 246 (1978)); see RESTATEMENT (SECOND) OF TORTS §652D (AM. LAW INST. 1977). Employing this definition, and consistent with the purpose of the PRA, our Supreme Court has deemed significant to the question of privacy whether a public employee's conduct "occurred in the course of public service." Cowles Publ'g Co., 109 Wn.2d at 726. "Instances of misconduct of a police officer while on the job are not private, intimate, personal details of the officer's life," but rather, "are matters

[34] We do not hold that the personal information exemption, RCW 42.56.230(3), a statutory exemption set forth within the PRA, precludes disclosure of the Does' identities in the requested records. Rather, as discussed supra, it is the First Amendment to the United States Constitution that precludes such disclosure, absent an overriding and compelling state interest. Nevertheless, the purpose of the PRA and the scope of its disclosure mandate, as set forth by our legislature and decisional authority interpreting the act, illuminates the state interest here at issue.

with which the public has a right to concern itself." Cowles Publ'g Co., 109 Wn.2d at 726. Premised on this principle, the court held that "a law enforcement officer's actions while performing his public duties or improper off duty actions in public which bear upon his ability to perform his public office" are not within the ambit of conduct exempt from disclosure due to statutory "personal privacy." Cowles Publ'g Co., 109 Wn.2d at 727.

In addition, in determining whether a public employee's statutory right to privacy is implicated, the court has distinguished between "substantiated" and "unsubstantiated" allegations. "[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." Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405, 164 Wn.2d 199, 215, 189 P.3d 139 (2008). However, the court has held that public employees have a statutory right to privacy in their identities in connection with unsubstantiated allegations of sexual misconduct, "because the unsubstantiated allegations are matters concerning [the employees'] private lives." Bainbridge Island Police Guild, 172 Wn.2d at 413; see also Bellevue John Does, 164 Wn.2d at 215-16. "An unsubstantiated or false accusation," the court reasoned, "is not an action taken by an employee in the course of performing public duties." Bellevue John Does, 164 Wn.2d at 215.

Similarly, our Supreme Court has concluded that whether allegations against a public employee are substantiated bears on whether disclosure of the employee's identity is a matter of "legitimate" public concern. Bainbridge Island

Police Guild, 172 Wn.2d at 416; Bellevue John Does, 164 Wn.2d at 221. Thus, consistent with the PRA's purpose to enable the public to oversee governmental agencies, the court determined that the public has no legitimate interest in the identities of public employees against whom unsubstantiated allegations of misconduct were asserted. Bellevue John Does, 164 Wn.2d at 220. This is because, when the allegations are unsubstantiated, precluding disclosure of the employee's identity would "not impede the public's ability to oversee" government investigations into alleged employee misconduct. Bellevue John Does, 164 Wn.2d at 220. Rather, disclosure in such circumstances, the court reasoned, "'serve[s] no interest other than gossip and sensation.'" Bellevue John Does, 164 Wn.2d at 221 (quoting Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405, 129 Wn. App. 832, 854, 120 P.3d 616 (2005)).

The state interest in disclosure pursuant to the PRA is to uphold the purpose of the statute—that is, to enable the public to ensure "that its public officials are honest and impartial *in the conduct of their public offices*." Cowles Publ'g Co., 109 Wn.2d at 719 (emphasis added); see also RCW 42.56.030 ("The people insist on remaining informed so that they may maintain control over the instruments that they have created."). To that end, in the context of defining the scope of statutory exemptions to disclosure, our Supreme Court has determined that disclosure of the identities of public employees is not permitted when (1) the allegations asserted against the employees are unsubstantiated and (2) the conduct did not occur in the course of public service or occur off-duty and impact the performance of public duties. Bainbridge Island Police Guild, 172 Wn.2d at

413; Bellevue John Does, 164 Wn.2d at 213-16, 221; Cowles Publ'g Co., 109 Wn.2d at 726. In other words, in such circumstances, the State does not have an interest in disclosing the employees' identities.

Significantly, in those cases, whether disclosure of the public officials' identities was precluded was determined pursuant to statutory exemptions, not premised upon the disclosure's impingement on constitutional First Amendment rights. Thus, the public officials' interests at issue in those cases, not being of constitutional import, were less significant than those presented here, where the Does' First Amendment rights are implicated. Nevertheless, here, as in those cases, the Does' alleged misconduct did not occur in the course of their public duties, and the allegations against the Does were determined to be unsustained.[35] Even when constitutional rights were not implicated by disclosure, those same circumstances have been deemed by our legislature and Supreme Court to fall outside the ambit of the state interest in such disclosure. Thus, here, where the Does' constitutional rights would be impinged by disclosure, the state interest cannot be said to be compelling, such that disclosure would nevertheless be permitted.[36]

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[35] We note that, while some of the OPA's findings were "not sustained" because the allegations were determined to be "unfounded," others were unsustained because the investigation as to those findings was deemed to be "inconclusive." However, an "inconclusive" finding remains a finding that the allegations were unsustained; it neither constitutes a finding against the officer nor authorizes disciplinary action. Accordingly, we treat the "inconclusive" unsustained findings in the same manner as the "unfounded" unsustained findings.

[36] Sueoka asserts that the trial court properly determined that the public has a legitimate interest in disclosure of the Does' identities in the requested records because OPA Director Andrew Myerberg may have previously represented one of the Does in a civil rights case. This purported conflict, Sueoka contends, may have undermined the investigation.

However, even when only a statutory privacy interest is implicated, Washington courts have held that complete records need not be disclosed for the public interest of government oversight to be achieved. See, e.g., Bainbridge Island Police Guild, 172 Wn.2d at 416 ("Although lacking a legitimate interest in the name of a police officer who is the subject of an

The United States Supreme Court has recognized that "[t]he public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals." Watkins, 354 U.S. at 200 (footnote omitted). Here, disclosure of the Does' identities would fulfill only the "impermissible [objective] of exposure for exposure's sake." Uphaus, 360 U.S. at 82 (Brennan, J., dissenting).

Based on our legislature's and Supreme Court's delineation of the purpose of the PRA's disclosure mandate, we conclude that the State has no compelling interest in disclosure of the Does' identities in the requested records. Accordingly, because the Does have established a constitutional privacy right that would be impinged by disclosure, the superior court erred by denying the Does' motion for a preliminary injunction precluding such disclosure.[37]

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unsubstantiated allegation of sexual misconduct, the public does have a legitimate interest in how a police department responds to and investigates such an allegation against an officer."); Bellevue John Does, 164 Wn.2d at 220 ("Precluding disclosure of the identities of teachers who are subjects of unsubstantiated allegations will not impede the public's ability to oversee school districts' investigations of alleged teacher misconduct."). Indeed, our Supreme Court has made plain that a public employee's "right to privacy does not depend on the quality of the [public employer's] investigations." Bellevue John Does, 164 Wn.2d at 223. Here, given the constitutional right at stake, we hold that the State has no compelling interest in disclosure of the Does' identities for this purpose.

Moreover, "[a]n agency should look to the contents of the document and not the knowledge of third parties when deciding if the subject of a report has a right to privacy in their identity." Bainbridge Island Police Guild, 172 Wn.2d at 414. In Bainbridge Island Police Guild, our Supreme Court held that notwithstanding the fact that some members of the public might know the identity of the individual identified in the records, the agency must nevertheless refuse to disclose those records if an exemption exists. 172 Wn.2d at 414. Otherwise, agencies would be required to "engage in an analysis of not just the contents of the report" but also of outside knowledge regarding the incident described therein. Bainbridge Island Police Guild, 172 Wn.2d at 414. The same logic applies here. Additionally, the City, in evaluating a records request, cannot be charged with presuming the need to disclose individuals' identities in investigative records on the chance of potential conflict of interest of the investigator that is not established in the records themselves. Such a presumption would gut the disclosure exemptions of the PRA.

[37] The Does sought a preliminary injunction precluding the disclosure of their identities in the requested records. They did not seek to prevent disclosure of redacted versions of those

(c)

We recognize that much of the United States Supreme Court's jurisprudence establishing a constitutional privacy right to anonymity in political belief and association, which is grounded in the First Amendment to the United States Constitution, predates the Court's modern formulation of the strict scrutiny standard applicable to governmental action impinging such rights. See Reed v. Town of Gilbert, Ariz., 576 U.S. 155, 167, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015) (recognizing that the Court's decision in Button, 371 U.S. 415, "predated [its] more recent formulations of strict scrutiny").[38] However, even applying these "more recent formulations" of the standard, Town of Gilbert, 576 U.S. at 167, the result herein remains unchanged.

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records. Thus, we do not consider whether the redacted records are subject to disclosure pursuant to the PRA. We do note, however, that once the Does' identities and other identifying information are redacted from the requested records, their constitutional rights are no longer implicated. Accordingly, it is the PRA, not federal constitutional principles, that dictate whether the redacted records may be disclosed. As no party seeks to preclude such disclosure, that issue is not before us.

However, we note that, when a constitutional right would not thereby be infringed, the State has an interest in permitting disclosure of public records to enable government oversight, thus fulfilling the purpose of the PRA. See, e.g., Bainbridge Island Police Guild, 172 Wn.2d at 416 ("Although lacking a legitimate interest in the name of a police officer who is the subject of an unsubstantiated allegation of sexual misconduct, the public does have a legitimate interest in how a police department responds to and investigates such an allegation against an officer."); Bellevue John Does, 164 Wn.2d at 220 ("Precluding disclosure of the identities of teachers who are subjects of unsubstantiated allegations will not impede the public's ability to oversee school districts' investigations of alleged teacher misconduct."). See also RCW 42.56.210 (requiring disclosure of records when exempted information can be redacted therefrom).

"[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." Shelton, 364 U.S. at 488. Here, the purposes of the PRA are achieved through disclosure of the redacted records.

[38] The Court in Button held that a Virginia state law purporting to regulate the legal profession unconstitutionally infringed on "the [First Amendment] right of the NAACP and its members and lawyers to associate for the purpose of assisting persons who seek legal redress for infringements of their constitutionally guaranteed and other rights." 371 U.S. at 428. This decision is among those cited by the Court for the proposition that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Buckley, 424 U.S. at 64 (citing Gibson, 372 U.S. 539; Button, 371 U.S. 415; Bates, 361 U.S. 516; Shelton, 364 U.S. 479; NAACP, 357 U.S. 449).

As demonstrated by the profusion of legislatively enacted exceptions to our state's public records law, there is no compelling government interest in disclosure of the unredacted requested records. Rather, the constitutionally mandated narrow tailoring here requires precisely the remedy sought by the Does—the redaction of their names and personal identifying information from the requested records prior to disclosure. Thus, we hold that, applying the United States Supreme Court's modern formulation of the strict scrutiny standard, disclosure of the requested records in redacted form serves to protect the First Amendment interests at stake while allowing for the attainment of the government's legitimate interest in disclosure.

The Supreme Court's modern formulation of the strict scrutiny standard, as pertinent here, is articulated in Citizens United v. Federal Election Commission, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010), in which the Court pronounced:

> Speech is an essential mechanism for democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. . . .
>
> For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest."

Citizens United, 558 U.S. at 339-40 (citation omitted) (quoting Fed. Election Comm'n v. Wisconsin Right to Life, Inc., 551 U.S. 449, 464, 127 S. Ct. 2652, 168

L. Ed. 2d 329 (2007)).[39] Thus, the Supreme Court's more recent formulations of the strict scrutiny standard require that government restrictions on protected speech be "narrowly tailored" to achieving the government's compelling interest, a mandate that was not explicitly articulated in the Court's previous jurisprudence establishing a First Amendment privacy right in political belief and association. See, e.g., Brown, 459 U.S. 87; Gibson, 372 U.S. 539; Bates, 361 U.S. 516; Shelton, 364 U.S. 479; NAACP, 357 U.S. 449.

The Citizens United explication of the modern formulation is grounded in the Court's historical jurisprudence and finds its genesis in the Court's statement in McIntyre that "[w]hen a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest." 514 U.S. at 347.

As discussed above, our Supreme Court's decisional authority and the policies animating the PRA lead to the inexorable conclusion that, here, the government has no compelling interest in disclosure of the Does' identities in the requested records. Rather, the government's interest in the disclosure of public records is to uphold the PRA's purpose of enabling the public to ensure "that its public officials are honest and impartial in the conduct of their public offices." Cowles Publ'g Co., 109 Wn.2d at 719. Further evidencing the absence of a

[39] We acknowledge that differing levels of scrutiny apply to various claims of infringement on federal constitutional rights. See, e.g., Town of Gilbert, 576 U.S. at 172 (in the context of federal free speech guarantees, distinguishing between those laws subject to strict scrutiny analysis and those "subject to lesser scrutiny"); Progressive Democrats for Soc. Just., 588 F. Supp. 3d at 975-76 (describing differing levels of scrutiny in the context of the First and Fourteenth Amendments, including rational basis review and strict scrutiny). However, no party credibly seeks to establish that other such constructs are applicable in this case. We take the United States Supreme Court at its word in Citizens United, 558 U.S. at 340, that the strict scrutiny standard applies in cases such as this.

compelling state interest in total disclosure of all records, our legislature has enacted a plethora of exceptions to the PRA's disclosure mandate—in fact, as of March 2022, there were *632* such legislatively enacted exceptions.[40] Without question, this proliferation of exceptions to the PRA's disclosure mandate renders implausible any argument that a compelling state interest in disclosure of the Does' identities exists here. Rather, the government's interest in disclosure of the requested records inheres only in making public a redacted version of those records.

When applying the modern strict scrutiny standard, we must ensure that the government's application of the PRA—the state action at issue here—is narrowly tailored to serve its legitimate interest in the disclosure of public records. See Citizens United, 558 U.S. at 340. Such narrow tailoring compels us to identify the "least restrictive alternative" that will achieve the pertinent state interest. Ashcroft v. Am. Civ. Liberties Union, 542 U.S. 656, 666, 124 S. Ct. 2783, 159 L. Ed. 2d 690 (2004). "The purpose of [this] test is to ensure that speech is restricted no further than necessary to achieve the [government's] goal, for it is important to ensure that legitimate speech is not chilled or punished." Ashcroft, 542 U.S. at 666.

Here, the very remedy sought by the Does—redaction of their names and identifying information from the requested records—is precisely the narrow

[40] See Appendix A ("Public Records Exemptions Accountability Committee – Sunshine Committee," Schedule of Review, updated March 2022). Original available at https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Schedule%20of%20Review%20Update%20March%202022.pdf.

tailoring that serves to protect the First Amendment rights at stake while simultaneously allowing for the attainment of the government's legitimate interest in public records disclosure. Thus, applying the United States Supreme Court's more recent formulations of strict scrutiny, which require that governmental action impinging on speech rights be narrowly tailored to serve a compelling state interest, we reach the same conclusion as when applying the Court's earlier jurisprudence. In both circumstances, we conclude that disclosure of the unredacted requested records would unconstitutionally impinge on the Does' federal privacy rights—rights that are grounded in First Amendment guarantees. The government's sole legitimate interest in disclosure here is in making public a redacted version of the requested records that excludes the Does' names and other identifying information.[41]

C

Sueoka and the City next assert that, even if the requested records are exempt from disclosure, the Does are nevertheless entitled to a preliminary injunction only if they can additionally demonstrate that they are likely to succeed on the merits of meeting the statutory injunction standard set forth in the PRA. We disagree.

When the disclosure of an individual's identity in public records would impinge a First Amendment right to privacy, the State may not place on that individual an additional burden to vindicate that right. In such a circumstance,

[41] An appropriate grant of such relief, as articulated by the Ninth Circuit Court of Appeals, would preclude the disclosure of "'all personally identifying information or information from which a person's identity could be derived with reasonable certainty.'" Does 1-10 v. Univ. of Wash., 798 F. App'x 1009, 1010 (9th Cir. 2020).

the establishment of the right itself mandates the issuance of an injunction. This is consistent with our Supreme Court's jurisprudence establishing that, when a statutory right precludes disclosure, the individual seeking to vindicate that right must demonstrate not only that an exemption to disclosure applies, but also that the PRA's injunctive relief standard is satisfied. Mindful as we are that we must, when possible, read statutes to avoid constitutional infirmity, we hold that the PRA does not require that its statutory injunctive relief standard be met when a First Amendment right to privacy precludes the disclosure of public records.

The PRA provides that "[t]he examination of any specific public record may be enjoined if . . . the superior court . . . 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." RCW 42.56.540. This two-part injunctive relief provision "'governs access to a remedy' when records are found to fall within an exemption" to the PRA's disclosure mandate. Lyft, 190 Wn.2d at 789 (quoting PAWS, 125 Wn.2d at 258). Thus, when a statutory exemption to disclosure is asserted, the trial court may impose an injunction pursuant to RCW 42.56.540 only if the court finds that "a specific exemption applies *and* that disclosure would not be in the public interest and would substantially and irreparably damage a person or a vital government interest." Soter, 162 Wn.2d at 757.

Our Supreme Court so held in Lyft, 190 Wn.2d 769, wherein the court addressed whether the disclosure of certain public records could be enjoined pursuant to a statutory exemption to the PRA's disclosure mandate. There, the

parties seeking to enjoin disclosure asserted that the records at issue contained trade secrets protected by the federal Uniform Trade Secrets Act (UTSA), chapter 19.108 RCW. Lyft, 190 Wn.2d at 773. Our Supreme Court determined that portions of the public records likely met "the definition of 'trade secrets' under the UTSA." Lyft, 190 Wn.2d at 777, 780-84. The court nevertheless held that disclosure of the records could be enjoined only if the PRA's injunctive relief standard, set forth in RCW 42.56.540, was also satisfied. Lyft, 190 Wn.2d at 773. Thus, our Supreme Court held that "finding an exemption applies under the PRA does not ipso facto support issuing an injunction." Lyft, 190 Wn.2d at 786.

It is on the basis of this decisional authority that Sueoka and the City contend that, in order to obtain the relief that they seek, the Does must demonstrate that they are likely to succeed on the merits of meeting the PRA's two-part *statutory* injunctive relief standard. However, because disclosure of the Does' identities in the requested records would impinge their First Amendment right to privacy, the argument advanced by Sueoka and the City is untenable. Requiring that parties seeking to vindicate such rights establish not only the First Amendment right itself, but also the requirements of the PRA's injunctive relief standard, would run afoul of the Supremacy Clause of our federal constitution, which mandates that courts "'shall' regard the 'Constitution,' and all laws 'made in Pursuance thereof,' as 'the supreme Law of the Land.'" Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 324, 135 S. Ct. 1378, 191 L. Ed. 2d 471 (2015) (quoting U.S. CONST. art. VI, cl. 2).[42] We cannot interpret the PRA in a manner

[42] The Supremacy Clause provides:

that would render it unconstitutional. Utter ex rel. State v. Bldg. Indus. Ass'n of Wash., 182 Wn.2d 398, 434, 341 P.3d 953 (2015) ("We construe statutes to avoid constitutional doubt."). Nor does this resolution of the issue do so.

Rather, we read the PRA as consistent with the federal constitution simply by recognizing the distinction between a legislatively created statutory right and a federal constitutional right. When the state legislature creates a right, such as a statutory exemption from the PRA's disclosure mandate, the legislature may impose conditions on the exercise of that right. This is precisely what the legislature has done in enacting the PRA's injunctive relief standard, RCW 42.56.540. Thus, as our Supreme Court has held, when a statutory right is implicated, a finding that an exemption applies "does not ipso facto support issuing an injunction." Lyft, 190 Wn.2d at 786. Rather, the two-part standard set forth in RCW 42.56.540 must also be satisfied, as the legislature has imposed this statutory condition on the exercise of the statutory right against disclosure.

However, here, the Does' claim of right does not depend upon a statutory exemption, and the disclosure of the unredacted records would not merely impinge a statutory right. Rather, the Does' First Amendment right to privacy in their political beliefs and associations would be impinged. The significance of this distinction is readily apparent. Our state legislature can impose a condition on the exercise of a right created by the legislature itself. However, the

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> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

U.S. CONST. art. VI, cl. 2.

legislature, having created neither the First nor Fourteenth Amendments, cannot condition the exercise of this federal constitutional right on whether the Does can satisfy the statutory injunctive relief standard. Put simply, such a requirement would authorize a state or local government to violate citizens' constitutional rights when they establish the impingement of such rights but are unable to also demonstrate satisfaction of an additional statutory requirement to obtain injunctive relief.[43] The PRA injunction standard cannot serve as a bar to the City's obligation under the Fourteenth Amendment to safeguard the First Amendment rights of Washington citizens in its application of state law. See, e.g., Seattle Times Co., 170 Wn.2d 581 (discussed infra at 9-10).

Again, this analysis does not suggest a constitutional infirmity of the PRA. Rather, recognizing the distinction between legislatively created statutory rights and the First Amendment constitutional right implicated here, we note that the

[43] This very absurdity appears to be consistent with the City's understanding of its duty to Washington's citizens. In supplemental briefing, the City asserts that it has no "freestanding obligation to honor" the constitutional rights of our state's citizens. Specifically, the City contends that the third party notice provision set forth in the PRA is the proper means for it to address exceptions to disclosure premised on a constitutional right. The City argues, in other words, that it has no obligation to independently honor the constitutional rights of third parties in response to records requests. We do not so hold.

When, after receiving notice, an individual seeks injunctive relief premised on a constitutional right, and thereafter establishes both that the right would be impinged by disclosure and that no sufficient interest of the state permits disclosure, the City plainly has an obligation under the Fourteenth Amendment not to violate the individual's constitutional right, notwithstanding the PRA's injunction standard. In other words, here, once the constitutional right is established, the City does not have unfettered discretion to either refuse to disclose the records, pursuant to the PRA, or to permit disclosure premised upon the RCW 42.56.540's standard not being met. Such unfettered discretion of government actors to either honor citizens' constitutional rights or refuse to honor such rights is anathema to the constitutional rule of law.

The City need not serve as the lawyer for every individual mentioned in requested public records. However, when the constitutional right implicated by disclosure of particular requested records is clear, the City must refuse to disclose the records (or the relevant portions thereof). The City must then defend against any challenge to the action by the records requestor, unless, following notice, the individual whose rights are implicated does not object to disclosure. The City's supreme obligation is to the federal constitution, not to the state statute. See U.S. CONST. art. VI, cl.2.

application of RCW 42.56.540 would necessarily mandate the issuance of an injunction. Given the State's paramount interest in affirming the federal constitutional rights of its citizens, disclosure that would impinge the Does' First Amendment right to privacy "would clearly not be in the public interest." RCW 42.56.540. Moreover, because the Does' constitutional rights would be impinged by disclosure of the unredacted records, such disclosure would of necessity "substantially and irreparably damage" the Does. RCW 42.56.540.

Thus, when disclosure is precluded by a First Amendment right to privacy, rather than a statutory exemption, the establishment of that constitutional right does, indeed, ipso facto mandate the issuance of an injunction. The State has no lawful authority to impose an additional requirement on parties seeking to vindicate their constitutional rights in order to trigger its obligations pursuant to the Fourteenth Amendment. Because disclosure of the unredacted records would impinge their First Amendment rights, the Does cannot be required to additionally demonstrate satisfaction of an injunctive relief standard in order to obtain the relief they seek, unless that standard is one that is ipso facto satisfied by virtue of the establishment of the First Amendment right. Because the PRA standard is one such standard, the Does have met their burden.[44]

IV

In his cross appeal, Sueoka contends that the trial court erred by denying his motion to "change the case title and bar the use of pseudonyms" in this

[44] We acknowledge the existence of case law, primarily from lower federal courts, that occasionally applies non-PRA injunctive relief standards. Our Supreme Court has determined that PRA disclosure is regulated by only the PRA injunctive relief standard. Lyft, 190 Wn.2d at 784-85.

litigation. According to Sueoka, Washington's open courts principles, emanating from article I, section 10 of our state constitution, require that the Does litigate this matter using their actual names. We disagree.

In seeking to preclude the disclosure of their identities in the requested records, the Does assert a First Amendment right. Thus, it is federal open courts jurisprudence, which itself derives from the First Amendment, that here applies. Such jurisprudence permits litigants to proceed pseudonymously when the injury litigated against would be incurred as a result of the disclosure of their identities. Herein, that precise outcome would occur were the Does not permitted to litigate using pseudonyms.

Accordingly, we conclude that the trial court did not err in ruling that the Does could proceed in pseudonym in this litigation. For the same reason, we decline to grant Sueoka's request to preclude the use of pseudonyms on appeal.

A

In these proceedings, both the trial court and our commissioner have repeatedly entertained Sueoka's argument that the Does should not be permitted to litigate pseudonymously. In each instance, they have rejected that argument. First, Sueoka objected to the Does' motion to proceed in pseudonym filed concurrent with their initial complaint for declaratory and injunctive relief. On March 9, 2021, Judge Cahan granted the Does' motion. Prior to so doing, Judge Cahan considered the factors for redaction set forth in Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982), and made the findings required therein. Judge Cahan also determined that the Does had complied with the

relevant court rules, including General Rule (GR) 15. Three days later, on March 12, 2021, Judge Widlan denied the Does' complaint for injunctive relief, and the Does sought discretionary review.

Sueoka then filed a "motion to change the case title and bar the use of pseudonyms" in this court. He subsequently filed a notice of cross appeal, challenging Judge Cahan's order permitting the Does to litigate in pseudonym. Our commissioner denied Sueoka's motion to change the case title on April 9, 2021. The commissioner explained that there "appear[ed] to be no dispute that Judge Cahan evaluated the Ishikawa factors in reaching the March 9, 2021 decision and that no party asked Judge Widlan to revisit [that] order." The commissioner further reasoned that the "substance of Sueoka's motion to change the case title is inextricably tangled up with the merits of his appeal" and concluded that "maintaining the case name adopted by the trial court . . . appears to be necessary to allowing [this court] to reach the merits of this case."

Following transfer of the appeal from Division One to our Supreme Court, and that court's subsequent dismissal of review and remand to the superior court, Sueoka again filed a "motion to change the case title and bar the use of pseudonyms." Sueoka did not therein challenge Judge Cahan's order granting the Does' motion to proceed in pseudonym. Judge Widlan denied Sueoka's motion, reasoning that "the purpose of [the Does'] lawsuit is to procure an injunction to prevent disclosure of their names" and, thus, requiring use of their names in court filings "would effectively prevent them from seeking any relief."

B

Washington's open courts jurisprudence derives from article I, section 10 of our state constitution, which requires that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." WASH. CONST. art. I, § 10. Because "[t]he openness of our courts 'is of utmost public importance,'" Washington courts begin "with the presumption of openness when determining whether a court record may be sealed from the public." Hundtofte v. Encarnacion, 181 Wn.2d 1, 7, 330 P.3d 168 (2014) (quoting Dreiling v. Jain, 151 Wn.2d 900, 903, 93 P.3d 861 (2004)). Whether redaction implicates article I, section 10's mandate of open access to courts and court documents "depends on application of the experience and logic test." State v. S.J.C., 183 Wn.2d 408, 412, 352 P.3d 749 (2015). When article I, section 10 applies, redaction is permitted only after consideration of the factors set forth in Ishikawa, 97 Wn.2d 30. When our state constitution is not implicated, GR 15 permits the redaction of names in pleadings if the court "enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." GR 15(c)(2).

In a recent opinion, our Supreme Court reversed a decision of this court wherein we had determined that allowing the plaintiffs to litigate using pseudonyms did not implicate article I, section 10. John Doe G v. Dep't of Corr.,190 Wn.2d 185, 191, 410 P.3d 1156 (2018) (citing John Doe G v. Dep't of Corr., 197 Wn. App. 609, 627-28, 391 P.3d 496 (2017)). The Supreme Court therein addressed a privacy right arising from a state statute. The questions

presented were (1) whether special sex offender sentencing alternative evaluations are exempt from disclosure pursuant to statutory exemptions, and (2) whether "pseudonymous litigation was proper in [that] action." Doe G, 190 Wn.2d at 189.

On appeal before this court, we had looked to federal open courts jurisprudence for "guidance," recognizing the "parallel rights [to those derived from article I, section 10] under the First Amendment." Doe G, 197 Wn. App. at 627. We noted federal court holdings that the use of pseudonyms is appropriate when "'the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity.'" Doe G, 197 Wn. App. at 627 (quoting Doe v. Frank, 951 F.2d 320, 324 (11th Cir. 1992)). Based, in part, on this reasoning, we held that "[e]xperience and logic" demonstrated "that allowing [the] plaintiffs to proceed under pseudonyms [did] not implicate article I, section 10 where the public's interest in the plaintiffs' names is minimal and use of those names would chill their ability to seek relief." Doe G, 197 Wn. App. at 628. Thus, we affirmed the trial court's ruling permitting the plaintiffs to litigate using pseudonyms, notwithstanding that the trial court had not applied the Ishikawa factors. Doe G, 197 Wn. App. at 624.

Our Supreme Court reversed our decision, holding that "pseudonymous litigation was improper . . . because the trial court did not adhere to the requirements of article I, section 10 . . . and [GR] 15." Doe G, 190 Wn.2d at 189. In so holding, the court explained that it had "never used [the] analysis" set forth in the federal appellate court decisions on which we had relied for guidance. Doe

G, 190 Wn.2d at 198. Instead, the court held, Washington courts "rely on GR 15 and Ishikawa." Doe G, 190 Wn.2d at 198.

C

Citing our Supreme Court's decision in Doe G, 190 Wn.2d 185, Sueoka contends that Judge Widlan "used the wrong legal standard" in denying his motion to preclude the Does from litigating pseudonymously.[45] However, in so asserting, Sueoka misperceives the issue as one of Washington law.[46] It is not. Accordingly, his argument fails.

Unlike in Doe G, in this case, the Does assert that disclosure of their identities would impinge a federal constitutional First Amendment right. Preventing the Does from proceeding in pseudonym would preclude their ability to obtain the relief that they seek in this action. In other words, requiring the Does to use their actual names in the case caption would undermine their ability to assert the First Amendment right that they seek to vindicate herein. Such a result would violate the Supremacy Clause, U.S. CONST. art. VI, cl. 2, which mandates that we must not "give effect to state laws that conflict with federal laws." Armstrong, 575 U.S. at 324. When parties who assert that disclosure of their identities would violate a federal constitutional right seek to litigate

[45] Br. of Resp't/Cross Appellant at 69-71.

[46] We note that, if Washington law did apply here, Sueoka's contention would nevertheless be unavailing. As discussed above, Judge Cahan *did* apply GR 15 and the Ishikawa factors in ruling that the Does could proceed in pseudonym. Sueoka does not challenge Judge Cahan's findings, which are, therefore, verities on appeal. In re Welfare of A.W., 182 Wn.2d 689, 711, 344 P.3d 1186 (2015); see also Doe AA v. King County, 15 Wn. App. 2d 710, 717, 476 P.3d 1055 (2020) (accepting as true the trial court's Ishikawa findings that were unchallenged on appeal). Following Sueoka's subsequent motion seeking, once again, to preclude the Does from litigating in pseudonym, Judge Widlan simply declined to revisit Judge Cahan's earlier ruling.

pseudonymously, it is federal open courts jurisprudence, arising from the First Amendment itself, that we must apply.

This holding is consistent with our Supreme Court's decision in Doe G, 190 Wn.2d 185. There, the litigants seeking to use pseudonyms asserted that disclosure of their identities in the requested records was precluded by *statutory rights* arising from *statutory exemptions*, including an exemption enumerated within the PRA itself. Doe G, 190 Wn.2d at 189. Thus, our Supreme Court properly held that Washington's open courts jurisprudence applied and that we had erred by importing federal case law into Washington law. Doe G, 190 Wn.2d at 189, 198.

Here, however, the Supremacy Clause requires that First Amendment jurisprudence be applied, both as to the constitutional right at issue—whether disclosure of the Does' identities in the requested records would violate a constitutional privacy right—and as to the question of whether the Does may use pseudonyms in seeking to vindicate that right. Accordingly, because the Does assert an exemption from disclosure premised on a federal constitutional right, rather than a statutory exemption, the application of federal open courts jurisprudence does not conflict with our Supreme Court's decision in Doe G but does comport with the requirements of the Supremacy Clause.

Federal courts have made clear that "[p]ublic access [to plaintiffs' names in a lawsuit] is more than a customary procedural formality; First Amendment guarantees are implicated when a court decides to restrict public scrutiny of judicial proceedings." Doe v. Stegall, 653 F.2d 180, 185 (5th Cir. 1981); see also

Roe II v. Aware Woman Ctr. for Choice, Inc., 253 F.3d 678, 688 (11th Cir. 2001) (Hill, J., concurrence in part). When federal law applies, "[t]he ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right which outweighs the 'customary and constitutionally-embedded presumption of openness in judicial proceedings.'" Frank, 951 F.2d at 323 (quoting Stegall, 653 F.2d at 186). "A plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or *where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity*." Frank, 951 F.2d at 324 (emphasis added).

Thus, the First Amendment both confers privacy rights in political speech and also, in the standard regulating when a party can proceed in pseudonym, provides that these substantive rights cannot be extinguished merely because a party seeks to vindicate them. In other words, it provides that concerns about public access to the courts cannot be applied to the detriment of First Amendment rights under federal law, such that the vindication of constitutional rights would be improperly conditioned on disclosure.[47] In this action, the "injury

[47] In NAACP, 357 U.S. at 459-60, the United States Supreme Court relied on this principle—that federal law not be applied in a manner that precludes the vindication of individuals' constitutional rights to privacy—in holding that the plaintiff organization had standing to assert the rights of its members. The Court held that the general principle that parties must assert only those constitutional rights "which are personal to themselves" is "not disrespected where constitutional rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court." NAACP, 357 U.S. at 459.

There, the NAACP challenged a court order mandating disclosure of its membership lists to the Alabama Attorney General, asserting that such disclosure would violate its members' constitutional privacy rights. NAACP, 357 U.S. at 451, 458. The Court held that the "right [was] properly assertable by the [NAACP]," reasoning that "[t]o require that [the constitutional right] be claimed by the [NAACP's] members themselves would result in nullification of the right at the very moment of its assertion." NAACP, 357 U.S. at 459. See also Pollard, 283 F. Supp. at 256

litigated against" is disclosure of the Does' identities in the requested records. Were the Does not permitted to litigate pseudonymously, the very injury they seek to litigate against would be incurred. Pursuant to federal open courts jurisprudence, in this circumstance, "the almost universal practice of disclosure must give way . . . to the privacy interests at stake." Stegall, 653 F.2d at 186.

In summary, the Supremacy Clause prohibits the application of state open courts jurisprudence to a pending First Amendment claim when such application would cause the injury litigated against to be incurred, as federal open courts principles, arising as they do from the First Amendment itself, would not mandate the disclosure of the parties' names in that circumstance. If the Does ultimately prevail, they would be entitled to full protection of their First Amendment rights against the government—here, protection against disclosure of their identities within the requested records. State constitutional open courts provisions cannot be applied in contravention of First Amendment jurisprudence in a manner that frustrates protection of the citizen's federal constitutional rights.

Accordingly, we hold that the Does must be permitted to use pseudonyms in this action. The trial court did not err by so ruling. We additionally deny Sueoka's request that we change the case title in this appeal to require it to include the Does' actual names.

(recognizing "recent Supreme Court decisions establish[ing] that an organization made up of private individuals has standing to protect those individuals from unwarranted invasions of government of their rights of association and privacy guaranteed by the First and Fourteenth Amendments").

Similarly, here, the Does would be precluded from vindicating their constitutional rights were they unable to litigate pseudonymously. First Amendment open courts jurisprudence prohibits disclosure in such circumstances. Frank, 951 F.2d at 324.

D

The Does seek herein to vindicate rights enshrined in the federal constitution. Thus, applying the open courts principles arising from article I, section 10 of our state constitution to determine whether the Does may be permitted to litigate in pseudonym would contravene the Supremacy Clause's mandate of state law supersession. Accordingly, as discussed above, we must apply federal law to this question. We nevertheless note that application of Washington open courts law would dictate the same resolution of this issue.

Again, this is due to the Supremacy Clause's mandate that we not give effect to state laws that conflict with federal laws. Precluding the Does from litigating in pseudonym pursuant to article I, section 10 would itself be a state action that would compel the disclosure of the Does' individual political beliefs and associations. Indeed, application by Washington courts of our state constitution is itself a state action. Thus, only by demonstrating that the disclosure of the Does' identities "'furthers a compelling interest and is narrowly tailored to achieve that interest,'" Citizens United, 558 U.S. at 340 (quoting Fed. Election Comm'n, 551 U.S. at 464), could a Washington court require such disclosure when a party seeking to litigate in pseudonym asserts a federal First Amendment claim. Washington courts, too, are subject to the Supremacy Clause's mandate.

Here, as we have discussed, there is no compelling state interest in the disclosure of the Does' identities in the requested records. Similarly, there is no compelling state interest in requiring that the Does litigate using their actual

names. Given the profusion of exceptions to the disclosure mandate, this conclusion is inescapable. Our state law currently includes 632 legislatively created exceptions to the PRA's disclosure mandate. See Appendix A. This proliferation of exceptions undoubtedly demonstrates the absence of a compelling state interest in the disclosure of the Does' identities here.

Moreover, neither our legislature nor our Supreme Court, in permitting broad categories of persons to retain their anonymity in court records, has engaged in the particularized analysis that would be required if the disclosure of those persons' identities implicated a compelling state interest. For instance, our legislature has determined that individuals are automatically entitled to anonymity in certain court records, including records regarding adoptions, RCW 26.33.330; confidential name changes, RCW 4.24.130(5); child victims of sexual assault, RCW 10.52.100; juvenile nonoffender records, such as juvenile dependencies, parental terminations, and truancy, at risk youth, and child in need of services cases, RCW 13.50.100; juvenile offender records, RCW 13.50.050; mental illness commitments, RCW 71.05.620; and mental illness commitments of minors, RCW 71.34.335.

Similarly, by both court rule and order, Washington courts have deemed certain categories of persons to be exempt from the general mandate that court records include the actual names of the litigants. Washington court rule General Rule 15, consistent with article I, section 10 of our state constitution, "preserves a long-established principle that the complete names of parties are to be listed with the actions to which they are parties," subject to "carefully delimited" exceptions.

Hundtofte, 181 Wn.2d at 16 (Madsen, C.J., concurring). These exceptions, however, are not based on a particularized analysis of each case. Rather, like the legislative enactments discussed above, they exempt litigants in broad categories of cases from the disclosure mandate. For instance, in adopting Rule of Appellate Procedure (RAP) 3.4, our Supreme Court has determined that all juvenile offenders are entitled to anonymity in court records.[48] By order, the Washington Court of Appeals has similarly required that case titles in certain appeals—including those regarding adoption, civil commitment, dependency, termination of parental rights, truancy, at risk youth, child in need of services, and juvenile offender—use the parties' initials rather than their full names. Gen. Ord. for the Ct. of Appeals, In re Changes to Case Title (Wash. Ct. App. Aug. 22, 2018) (effective Sept. 1, 2018).

Thus, neither our state legislature nor Washington courts, in adopting exceptions to our state open courts law, have deemed it necessary to conduct a particularized case-by-case analysis prior to permitting the redaction of parties' names in court records. Instead, whether by legislative enactment, court rule, or court order, our state has exempted broad categories of persons from the general disclosure requirement. Certainly, such broad exemptions do not indicate the narrow tailoring that would be necessary were the state interest in the disclosure of litigants' actual names compelling. Thus, by exempting broad

[48] RAP 3.4 provides:
In a juvenile offender case, the parties shall caption the case using the juvenile's initials. The parties shall refer to the juvenile by his or her initials throughout all briefing and pleadings filed in the appellate court, and shall refer to any related individuals in such a way as to not disclose the juvenile's identity. However, the trial court record need not be redacted to eliminate references to the juvenile's identity.

swaths of persons from article I, section 10's open courts mandate, both the Washington legislature and Washington courts have impliedly indicated that the state interest in disclosure of litigants' actual names is not a compelling one.

The Supremacy Clause prohibits the application of state open courts jurisprudence when, as here, the right asserted is established by the federal First Amendment. Nevertheless, even were we to apply Washington law to the question of whether the Does may litigate in pseudonym, we would reach the same conclusion—that not only "may" they so litigate, but that the federal constitution demands they be permitted to do so. Such a determination by a Washington court is, itself, state action. The broad exemptions to the open courts mandate, both enacted by our legislature and adopted by our courts, demonstrate that the state interest in the disclosure of individuals' actual names in court records is not a compelling one. Absent such an interest, and given the Does' First Amendment right to anonymity in political belief and association, we cannot require the Does to litigate using their actual names here.

V

A

All members of the panel have taken an oath to "'support the Constitution of the United States.'" RCW 2.06.085. Each panel member views the methods of analyses employed herein and the decisions reached as being in accord with this oath.

Nevertheless, we are aware of the cultural and political tenor of our times. This includes an awareness that many Americans despair that judicial decisions

have become result-oriented to achieve political ends. To disabuse those so inclined from defaulting to such a judgment concerning this opinion, and to assure the general public that its appellate court exists in a reality-based environment, we choose to acknowledge several of the pertinent facts that underlie the dispute at issue.

1

The 2020 Presidential Election

1. Joseph R. Biden, Jr. won the 2020 presidential election, receiving 81,283,501 popular votes.[49] Donald J. Trump lost the 2020 presidential election, receiving 74,223,975 popular votes.[50] Biden received 7,059,526 more votes than did Trump.

2. Biden's popular vote total was the largest ever received by a candidate for President of the United States.[51]

3. Biden received 51.3 percent of the popular vote.[52] This was the highest percentage of the popular vote attained by a challenger to a sitting president since 1932, when Franklin Roosevelt defeated Herbert Hoover.[53]

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[49] U.S. FED. ELECTION COMM'N, FEDERAL ELECTIONS 2020: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE, AND THE U.S. HOUSE OF REPRESENTATIVES 5 (Oct. 2022), at 5, https://www.fec.gov/resources/cms-content/documents/federalelections2020.pdf [https://perma.cc/5XDB-2XJA]

[50] FEDERAL ELECTIONS 2020, supra, at 5.

[51] Domenico Montanaro, *President-Elect Joe Biden Hits 80 Million Votes in Year Of Record Turnout*, NAT'L PUB. RADIO (Nov. 25, 2020), https://www.npr.org/2020/11/25/937248659/president-elect-biden-hits-80-million-votes-in-year-of-record-turnout [https://perma.cc/4FZS-AWKK].

[52] FEDERAL ELECTIONS 2020, supra, at 5.

[53] *Presidential Election Margin of Victory*, AM. PRESIDENCY PROJECT (Mar. 7, 2020), https://www.presidency.ucsb.edu/statistics/data/presidential-election-mandates [https://perma.cc/9MJG-RAHE]; *Share of Electoral College and Popular Votes from Each Winning Candidate, in All United States Presidential Elections from 1789 to 2020*, STATISTA (Dec. 2020), https://www.statista.com/statistics/1034688/share-electoral-popular-votes-each-president-since-1789 [https://perma.cc/B5SE-NLLY].

4. Biden earned 306 electoral votes. Trump earned 232.[54] In 2016, Trump earned 306 electoral votes, while Hillary Clinton earned 232.[55] Thus, Biden defeated Trump by the same Electoral College margin as Trump defeated Clinton.

2

The Rally on January 6, 2021

1. A "Stop the Steal" rally was held on January 6, 2021 on public property in the District of Columbia. Various permits were sought and obtained, authorizing use of the public property.[56]

2. The theme of the rally was that the election had been "stolen" from Donald Trump. Thus, Trump and rally organizers urged, Congress should not finalize Biden's victory by certifying the Electoral College results (as the law required).[57]

3. Trump, the sitting president, spoke at the rally.[58]

3

The Insurrection at the Capitol

1. As the rally ended, a civil disturbance began at the Capitol. Hundreds of persons illegally broke through security lines and eventually into the Capitol

[54] FEDERAL ELECTIONS 2020, supra, at 7.
[55] *2016 Presidential Election Results*, N.Y. TIMES (Aug. 19, 2017, 9:00 AM), www.nytimes.com/elections/2016/results/president.
[56] See note 13, *supra*.
[57] H.R. REP. NO. 117-663, at 231-33, 499-502 (2022), https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT.pdf [https://perma.cc/UH8B-ZQ7D].
[58] H.R. REP. NO. 117-663, at 231-33.

Building.[59]

2. Both the House of Representatives and the Senate were forced to adjourn and flee to safety.[60]

3. In the riotous melee that ensued over 140 law enforcement officers were injured.[61] According to a U.S. Senate report, seven deaths were attributed to the violence that took place.[62]

4. The common goal of the rioters was to keep Congress from performing its lawful function—certification of Biden's presidential election victory.[63] Some rioters, including those who chanted "Hang Mike Pence," had other goals, such as the killing or kidnapping of members of Congress.[64]

5. For the first time since the War of 1812, the United States government lost physical control of the Capitol Building to a group of attackers.[65]

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[59] Audrey Kurth Cronin, *The Capitol Has Been Breached Before: This Time It Was Different*, AM. UNIV. SCH. OF INT'L SERV. (Feb. 9, 2021), https://www.american.edu/sis/centers/security-technology/the-capitol-has-been-attacked-before-this-time-it-was-different.cfm [https://perma.cc/Y4NJ-7GE3]. See discussion H.R. REP. NO. 117-663, at 637-88.

[60] H.R. REP. NO. 117-663, at 664-66.

[61] COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFAIRS & COMM. ON RULES & ADMIN., U.S. SENATE, EXAMINING THE U.S. CAPITOL ATTACK: A REVIEW OF THE SECURITY, PLANNING, AND RESPONSE FAILURES ON JANUARY 6, at 33 (June 2021), https://www.rules.senate.gov/imo/media/doc/Jan%206%20HSGAC%20Rules%20Report.pdf [https://perma.cc/DL5Q-5XT3].

[62] EXAMINING THE U.S. CAPITOL ATTACK, supra, at 1.

[63] EXAMINING THE U.S. CAPITOL ATTACK, supra, at 1.

[64] H.R. REP. NO. 117-663, at 37-39; Cronin, supra.

[65] Cronin, supra; Amanda Holpuch, *US Capitol's Last Breach Was More Than 200 Years Ago*, GUARDIAN (Jan. 6, 2021, 7:59 PM), https://www.theguardian.com/us-news/2021/jan/06/us-capitol-building-washington-history-breach [https://perma.cc/RU25-E3LP]; Amy Sherman, *A History of Breaches and Violence at the US Capitol*, POLITIFACT (Jan. 6, 2021), https://www.politifact.com/article/2021/jan/07/history-breaches-and-violence-us-capitol/ [https://perma.cc/8A7C-5L2H].

6. Over 1,000 persons have been charged with crimes premised on actions occurring at the Capitol on January 6, 2021.[66] Over 630 have, to date, pleaded guilty or been found guilty after trial.[67]

7. Many of the insurrectionists belonged to groups espousing white supremacist views. Others of the rioters, while not group members, were shown to possess such views.[68]

Given all of these facts, it is easy to understand the concerns motivating the City and the requesters. Nevertheless, our duty to the United States Constitution, and the Constitution's embrace and protection of a right to anonymity in political activity, lead us to the decisions we announce today.

B

The trial court's denial of the Does' motion for a preliminary injunction is reversed and remanded.

The trial court's issuance of a temporary restraining order is affirmed.

The trial court's order denying Sueoka's motion to preclude the Does' use of pseudonyms is affirmed.

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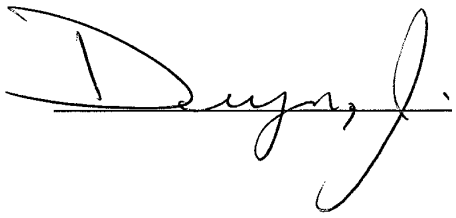
[66] *The Jan. 6 Attack: The Cases Behind the Biggest Criminal Investigation in U.S. History*, NAT'L PUB. RADIO (May 12, 2023, 5:25 PM), https://www.npr.org/2021/02/09/965472049/the-capitol-siege-the-arrested-and-their-stories [https://perma.cc/S38K-B8DK].

[67] *The Jan. 6 Attack: The Cases Behind the Biggest Criminal Investigation in U.S. History*, supra.

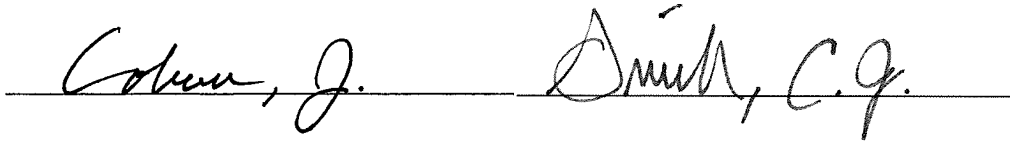
[68] See discussion H.R. REP. NO. 117-663, at 499-576; Sabrina Tavernise & Matthew Rosenberg, *These Are the Rioters Who Stormed the Nation's Capitol*, N.Y. TIMES (May 12, 2021), https://www.nytimes.com/2021/01/07/us/names-of-rioters-capitol.html; Deena Zaru, *The Symbols of Hate and Far-Right Extremism on Display in Pro-Trump Capitol Siege*, ABC NEWS (Jan. 14, 2021, 2:01 AM), https://www.abcnewsgo.com/us/symbols-hate-extremism-display-pro-trump-captiol-siege/story?id=75177671 [https://perma.cc/3T4R-2JRL]; Matthew Rosenberg & Ainara Tiefenthäler, *Decoding the Far-Right Symbols at the Capitol Riot*, N.Y. TIMES (Jan. 13, 2021), https://www.nytimes.com/2021/01/13/video/extremist-signs-symbols-capitol-riot.html.

Sueoka's motion to change the case title is denied.

Affirmed in part, reversed in part, and remanded.



WE CONCUR:



APPENDIX A

Public Records Exemptions Accountability Committee - Sunshine Committee

Schedule of Review - Updated March 2022

"Legislation" = bills with Committee recommendations + other bills related to Committee recommendations (+ some related bills where the Legislature independently introduced legislation)

	Category	RCW (thru 2012)	Description	Date * Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
1	Agriculture	42.56.380(6)	Information on individual American ginseng growers or dealers	1996	Oct. 2007	June 2008	SB 5295 (Ch. 128, 2010 Laws)
2	Personal Information - Research Data/Health Care	42.56.360(1)(f); [now (3)(a)]	Information relating to infant mortality pursuant to RCW 70.05.170	1992	Oct. 2007	Mar. 2008	SB 5295 (Ch. 128, 2010 Laws)
3	Personal Information - Research Data/Health Care	70.05.170	Medical records collected by a local department of health in the course of conducting a child mortality review	1992	Oct. 2007	Mar. 2008	SB 5295 (Ch. 128, 2010 Laws); SB 5049 (2011, 2012)
4	Legislative Records	42.56.010(2); [now (3)]	Definition of "public records" for the senate and the house are limited to definition of legislative records in RCW 40.14.100 and budget, personnel, travel records and certain reports. [Definition]	1995	Oct. 2007	Aug. 2009	
5	Personal Information - Public Employment	42.56.250(2)	Applications for public employment, including names, resumes	1987	Oct. 2007; March 2008; Sept. 2008; Feb. 2017; May 2017	Mar. 2008; September 2008; May 2017	SB 5294 (2009); SB 5049 (2011, 2012); HB 1298 (2013); SB 5169 (2013); HB 1537 (Ch. 229, 2019 Laws); SB 5246 (2019)
6	Agriculture	42.56.380(1); 15.86.110	Business records the department of agriculture obtains regarding organic food products	1992	Nov. 2007 Jan. 2008	June 2008	
7	Agriculture	42.56.380(2); 15.54.362	Information regarding business operations contained in reports on commercial fertilizer	1987	Nov. 2007 Jan. 2008	June 2008	
8	Agriculture	42.56.380(3)	Production or sales records required to determine payments to various agricultural commodity boards and commissions (Relates to exemptions in 10 commission statutes)	1996	Nov. 2007 Jan. 2008	June 2008	
9	Agriculture	42.56.380(4)	Consignment information contained on phytosanitary certificates issued by the department of agriculture	1996	Nov. 2007 Jan. 2008	June 2008	
10	Agriculture	42.56.380(5)	Financial and commercial information and records held by the department of agriculture for potential establishment of a commodity board or commission regarding domestic or export marketing activities or individual production information	1996	Nov. 2007 Jan. 2008	June 2008; November 2012	
11	Agriculture	42.56.380(7)	Identifiable information collected by department of agriculture regarding packers and shippers of fruits and vegetables for purposes of inspections and certification	1996	Nov. 2007 Jan. 2008	June 2008	
12	Agriculture	42.56.380(8)	Financial statements provided to the department of agriculture for purposes of obtaining public livestock market license	2003	Nov. 2007 Jan. 2008	June 2008	
13	Agriculture	42.56.380(9)	(Voluntary) National animal identification systems - herd inventory mgmt., animal disease	2006	Nov. 2007 Jan. 2008	June 2008	

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
14	Agriculture	42.56.380(10);16.36	Animal disease reporting	2006	Nov. 2007 Jan. 2008	June 2008	
15	Agriculture	42.56.270(17)	Farm plans that are voluntary and developed with conservation district assistance	2006	Jan. 2008; *See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets	June 2008; November 2012; *See also Oct. 2016 - 42.56.270 & trade secrets	2017: HB 1160/SB 5418
16	Agriculture	42.56.610	Livestock nutrient management information: Certain information obtained by state and local agencies from dairies, animal feeding operations not required to apply for a national pollutant discharge elimination system permit disclosable only in ranges that provide meaningful information to public	2005 (c510s5)	Nov. 2007 Jan. 2008	June 2008	;
17	Agriculture	15.49.370(8)	Seeds: operations and production information	1969	Nov. 2007 Jan. 2008	June 2008	
18	Agriculture	15.53.9018	Commercial Feed required reports	1975	Nov. 2007 Jan. 2008	June 2008	
19	Agriculture	15.58.060(1)(c)	Washington Pesticide Control Act: Business information of a proprietary nature regarding pesticide formulas	1971	Nov. 2007 Jan. 2008	June 2008	
20	Agriculture	15.58.065(2)	Washington Pesticide Control Act: Privileged or confidential commercial or financial information, trade secrets re: pesticides	1971	Nov. 2007 Jan. 2008	June 2008	
21	Agriculture	15.65.510	Information regarding agricultural marketing agreements (including info from noncompliance hearings)	1961	Feb. 2008	June 2008	
22	Agriculture	15.86.110	Business related information obtained by the department of agriculture regarding entities certified to handle and process organic or transitional food, or entities applying for such certification	1992	Nov. 2007 Jan. 2008	June 2008	
23	Agriculture	17.24.061(2)	Insect Pests & Plant Diseases (including: trade secrets or commercial or financial information obtained by department of agriculture regarding insect pests, noxious weeds, or organisms affecting plant life	1991	Nov. 2007 Jan. 2008	June 2008	
24	Agriculture	22.09.040(9)	Financial information provided by applicants for a warehouse license to the department of agriculture	1987	Feb. 2008	June 2008	
25	Agriculture	22.09.045(7)	Financial information provided by applicants for a grain dealer license to the department of agriculture	1987	Feb. 2008	June 2008	
26	Agriculture	43.23.270	Financial and commercial information obtained by the department of agriculture for export market development projects	1996	Nov. 2007 Feb. 2008	June 2008	
27	Personal Information	28C.18.020	List of nominees for director of work force training & education board [Later eliminated]	1991	Feb. 2008	Sept. 2008	SB 5295 (Ch. 128 Laws of 2010)
28	Personal Information	79A.25.150	Names of candidates for director of interagency committee for outdoor recreation [Later eliminated]	1989	Feb. 2008	Sept. 2008	SB 5295 (Ch. 128 Laws of 2010)

Schedule of Review
Public Records Exemptions Accountability Committee
Sunshine Committee

	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
29	Personal Information	43.33A.025(2)	State investment board criminal history record checks of finalists for board positions	1999	May 2008	June 2008	
30	Personal Information: Employment and Licensing	42.56.250(4)	Address, phone numbers, email addresses, SSNs, drivers' license numbers, identicard numbers, payroll deductions, and emergency contact information of public employees or volunteers held by public	1987; 2020	May 2008; Feb. 2016; May 2016	May 2016	2017: HB 1160/SB 5418; HB 1538 (2019)
31	Personal Information	42.56.230(1)&(2)	Personal information in files for students in public schools, patients or clients of public institutions or public health agencies, or welfare programs (1); children in listed programs (2)	1973 (I-276); Re (2): 2011 c 173 s 1, 2013 c 220 s 1, 2015 c 47 s 1	Nov. 2008; May 2014; Feb. 2016; May 2016	May 2016 (re consent)	2017: HB 1160/SB 5418. See also HB 1293 (2011); SB 5314 (2011), HB 2646 (2011); HB 1203 (Ch. 220, 2013 Laws); SB 5198 (2013); SB 5098 (Ch. 173, 2011 Laws); HB 1538 (2019); SB 5246 (2019)
32	Public Utilities & Transportation	42.56.330(3)	Personal information in vanpool, carpool, ride-share programs	1997	May 2008	Nov. 2008; November 2012	SB 5294 (2009); SB 5049 (2011, 2012); HB 1298 (2013); SB 5169 (2013); HB 1980 (2015); SB 6020 (2015) HB 1554 (2015) (re (2))
33	Public Utilities & Transportation	42.56.330(4)	Personal information of current or former participants or applicants in transit services operated for those with disabilities or elderly persons	1999	May 2008	Oct. 2008	
34	Personal Information	~~41.04.364~~ (repealed) - 41.04.362 - also see 42.56.360(1)(j) (same)	Personally identifiable information in state employee wellness program	1987; 2010 c. 128 s 3	May 2008 (2008 law)	July 2008 (2008 law)	SB 5295 (Ch. 128, 2010 Laws)
35	Public Utilities & Transportation	42.56.330(5)	Personal information of persons who use transit passes and other fare payment media	1999; 2012	May 2008	Oct. 2008	SB 5294 (2009); SB 5295 (Ch. 129, 2010 Laws); SB 5049 (2011); SB 2552 (Ch. 68, 2012 Laws); HB 1298 (2013); SB 5169 (2013); HB 1980 (2015); SB 6020 (2015)
36	Misc. Government Functions	42.56.290	Agency records relevant to a controversy but which would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts	1973 (I-276)	June 2008	Nov. 2008	SB 5294 (2009)
37	Personal Information	42.56.250(6)	Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed	1992	Sept. 2008	Oct. 2008	HB 1538 (2019)

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38	Personal Information	42.56.250(5)	Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.	1994	Sept. 2008; Feb. 2016; May 2016	Oct. 2008; May 2016	SB 5295 (Ch. 128, 2010 Laws) ; see also HB 2761 (2012) (employer investigations); 2017: HB 1160/SB 5418
39	Personal Information	42.56.250(8)	Employee salary and benefit information collected from private employers for salary survey information for marine employees	1999	Sept. 2008	Oct. 2008	SB 5295 (Ch. 128, 2010 Laws)
40	Personal Information	42.56.230(3) (formerly (2))	Personal information in files on employees, appointees, or elected officials if disclosure would violate their right to privacy	1973 (I-276)	Nov. 2008; Jan. 2012; March 2012; Feb. 2014; Aug. 2014; Oct. 2014; Feb. 2015; May 2016 (re consent)	Nov. 2012; May 2016 (re consent)	2017: HB 1160/SB 5418 (re consent)
41	Court Proceedings	13.34.100	Background information regarding a court appointed guardian ad litem.	1993	Oct. 2008	May-10	SB 5049 (2011); HB 1297 (2013); SB 5170 (2013) HB 1298 (2013), HB 1980 (2015); SB 6020 (2015)
42	Public Utilities & Transportation	42.56.330(7)	Personally identifying information of persons who use transponders and other technology to facilitate payment of tolls	2005	Mar. 2009	May 2009	
43	Public Utilities & Transportation	42.56.330(8)	Personally identifying information on an ID card that contains a chip to facilitate border crossing.	2008	Mar. 2009	May 2009	
44	Public Utilities & Transportation	42.56.330(2)	Residential addresses and phone numbers in public utility records	1987; 2014 c 33 s 1	Mar. 2009; Nov. 2013	Oct. 2009; Nov. 2013	HB 2114 (2014); SB 6007 (Ch. 33, 2014 Laws)
45	Public Utilities & Transportation	42.56.330(6)	Information obtained by governmental agencies and collected by the use of a motor carrier intelligent transportation system or comparable information equipment	1999	Mar. 2009	May 2009	
46	Public Utilities & Transportation	42.56.335	Records of any person belonging to a public utility district or municipality owned electrical utility	2007	Mar. 2009	May 2009	
47	Public Utilities & Transportation	42.56.330(1)	Valuable commercial information, trade secrets, etc. supplied to the utilities and transportation commission	1987	Mar. 2009	Mar. 2009	
48	Public Utilities & Transportation	80.04.095	Utility records filed with utilities and transportation commission containing valuable commercial information	1987	Mar. 2009	Oct. 2009	
49	Insurance & Financial Inst.	42.56.400(2)	Information obtained and exempted by the health care authority that is transferred to facilitate development, acquisition, or implementation of state purchased health care	2003	May 2009; May 2010	May 2010	
50	Insurance & Financial Inst.	42.56.400(3)	Names of individuals in life insurance policy settlements	1995	May 2009; May 2010	May 2010	
51	Insurance & Financial Inst.	48.102.030	Insurance viatical settlement broker records which may be required and examined by the insurance commissioner [later repealed]	1995	May 2009; May 2010	May 2010	

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52	Insurance & Financial Inst.	42.56.400(4)	Insurance antifraud plans	1995	May 2009; May 2010	May 2010	
53	Insurance & Financial Inst.	48.30A.060	Insurance company antifraud plans submitted to the insurance commissioner	1995	May 2009; May 2010	May 2010	
54	Insurance & Financial Inst.	42.56.400(5)	Insurers' reports on material acquisitions and disposition of assets, etc. filed with the insurance commission	1995	May 2009; May 2010	May 2010	
55	Insurance & Financial Inst.	42.56.400(7)	Information provided to the insurance commissioner regarding service contract providers	1997	May 2009; May 2010	May 2010	
56	Insurance & Financial Inst.	48.110.040(3)	Monthly financial reports made by service contract providers to the insurance commissioner	2005	May 2009; May 2010	May 2010	
57	Insurance & Financial Inst.	42.56.400(8)	Information obtained by the insurance commissioner relating to market conduct examinations	2001	May 2009; May 2010	May 2010	
58	Insurance & Financial Inst.	42.56.400(12)	Documents obtained by the insurance commissioner to perform market conduct examinations. Report is disclosable under RCW 48.37.060.	2007	May 2009; May 2010	May 2010	SB 5049 (2012); HB 1298 (2013); SB 5169 (2013) re RCW 48.37.060
59	Insurance & Financial Inst.	42.56.400(13)	Confidential and privileged documents obtained in market conduct examination	2007	May 2009; May 2010	May 2010	
60	Insurance & Financial Inst.	42.56.400(14)	Information provided to the insurance commissioner by insurance company employees asserting market conduct violations	2007	May 2009; May 2010	May 2010	
61	Insurance & Financial Inst.	48.37.080	Documents related to insurance commissioner's market conduct examination	2007	May 2009; May 2010	May 2010	
62	Insurance & Financial Inst.	42.56.400(9)	Proprietary information provided to the insurance commissioner regarding health carrier holding companies	2001; 2015 c 122 ss 13 & 14	May 2009; May 2010	May 2010	
63	Insurance & Financial Inst.	42.56.400(10)	Data filed with the insurance commissioner that reveals identity of claimant, provider, or insurer	2001	May 2009; Aug. 2010		SB 5049 (2012); HB 1299 (2013); SB 5171 (2013)
64	Insurance & Financial Inst.	42.56.400(11)	Documents obtained by insurance commissioner relating to insurance fraud	2006	May 2009; Aug. 2010	Aug. 2010	
65	Insurance & Financial Inst.	48.135.060	Documents obtained by insurance commissioner relating to insurance fraud	2006	May 2009; Aug. 2010	Aug. 2010	
66	Insurance & Financial Inst.	42.56.400(15)	Documents obtained by insurance commissioner regarding misconduct by agent/broker	2007 Eff. 1/1/09	May 2009; Aug. 2010	Aug. 2010	
67	Insurance & Financial Inst.	48.17.595(6)	Information obtained by insurance commissioner in investigation of misconduct by agent/broker	2007	May 2009; Aug. 2010	Aug. 2010	
68	Insurance & Financial Inst.	42.56.403	Documents that provide background for actuarial opinion filed with insurance commissioner	2006	May 2009; Aug. 2010	Aug. 2010	
69	Insurance & Financial Inst.	48.02.120	Formulas, statistics, assumptions, etc. used by insurance companies to create rates; such information that is submitted to the insurance commissioner	1985	May 2009; Aug. 2010	Aug. 2010	
70	Insurance & Financial Inst.	48.05.385(2)	Statement of actuarial opinion is a public record. Documents that provide background for statement of actuarial opinion filed with insurance commissioner are exempt	2006	May 2009; Aug. 2010	Aug. 2010	

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71	Insurance & Financial Inst.	48.03.040(6)(a)	Examinations and investigations by state insurance commissioner	1937	May 2009; Aug 2010	Aug. 2010	
72	Insurance & Financial Inst.	48.03.050	Examinations and investigations by state insurance commissioner	1937	May 2009	Oct. 2009	SB 5049 (2011)
73	Insurance & Financial Inst.	48.05.465	Insurance companies risk based capital (RBC) reports and plans	1995	May 2009; Aug. 2010	Aug. 2010	
74	Insurance & Financial Inst.	48.43.335(1)	Insurance companies risk based capital (RBC) reports and plans (should not be used to compare insurance companies and are therefore confidential)	1998	May 2009; Aug. 2010	Aug. 2010	
75	Insurance & Financial Inst.	48.20.530	Proof of nonresident pharmacy licensure used by insurance companies to provide drugs to residents	1991	May 2009; Aug. 2010	Aug. 2010	
76	Insurance & Financial Inst.	48.21.330	Proof of nonresident pharmacy licensure used by insurance companies to provide drugs to residents	1991	May 2009; Aug. 2010	Aug. 2010	
77	Insurance & Financial Inst.	48.44.470	Proof of nonresident pharmacy licensure used by insurance companies to provide drugs to residents	1991	May 2009; Aug. 2010	Aug. 2010	
78	Insurance & Financial Inst.	48.46.540	Proof of nonresident pharmacy licensure used by insurance companies to provide drugs to residents	1991	May 2009; Aug. 2010	Aug. 2010	
79	Insurance & Financial Inst.	48.31B.015(2)(b)	Source of consideration (identity of the lender) for loan associated with acquiring an insurance company	1993	May 2009; Aug. 2010	Aug. 2010	
80	Insurance & Financial Inst.	48.62.101(2)	Local government self-insurance liability reserve funds	1991	May 2009; Aug. 2010	Aug. 2010	
81	Placeholder						
82	Insurance & Financial Inst.	48.94.010(5)	Summary of reasoning for insurance commissioner's refusal to issue reinsurance intermediary license	1993	May 2009; Aug. 2010	Aug. 2010	
83	Insurance & Financial Inst.	48.130.070	Records of the interstate insurance product regulation compact involving privacy of individuals and insurers' trade secrets	2005	May 2009; Aug. 2010	Aug. 2010	
84	Insurance & Financial Inst.	70.148.060(1)	Examination and proprietary records of potential insurers obtained by the director of the Washington state pollution liability insurance agency when soliciting bids to provide reinsurance for owners of underground storage tanks	1989; 2015 c224 s 5	May 2009; Aug. 2010	Aug. 2010-modify	SB 5049 (2011, 2012); HB1298 (2013); SB 5169 (2013); HB 1980 (2015); SB 6020 (2015)
85	Insurance & Financial Inst.	70.149.090	Business and proprietary information of insurers obtained by the director of the Washington state pollution liability insurance agency, to provide insurance to owners of heating oil tanks	1995	May 2009; Aug. 2010	Aug. 2010	
86	Insurance & Financial Inst.	42.56.400(6)	Examination reports and information obtained by the department of financial institutions from banking institutions	1997	Oct. 2010	Sept. 2011	
87	Insurance & Financial Inst.	21.20.855	Reports and information from department of financial services examinations	1988	Oct. 2010	Sept. 2011	
88	Insurance & Financial Inst.	30.04.075(1)	Information obtained by the director of financial institutions when examining banks and trust companies	1977	Oct. 2010	Sept. 2011	
89	Insurance & Financial Inst.	30.04.230(4)(a)	Information obtained during investigations of out of state banks	1983	Oct. 2010	Sept. 2011	

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90	Insurance & Financial Inst.	31.12.565(1)	Examination reports and information obtained by the director of financial institutions while examining credit unions	1984	Oct. 2010	Sept. 2011	
91	Insurance & Financial Inst.	32.04.220(1)	Information from examinations of mutual savings banks	1977	Oct. 2010	Sept. 2011	
92	Insurance & Financial Inst.	33.04.110(1)	Information from examinations of savings and loan associations	1977	Oct. 2010	Sept. 2011	
93	Insurance & Financial Inst.	32.32.228(3)	Findings disapproving conversion from mutual savings bank to capital stock savings bank	1989	Oct. 2010	Sept. 2011	
94	Insurance & Financial Inst.	32.32.275	Information applicants deem confidential relating to conversion of mutual savings bank to capital stock savings bank	1981	Oct. 2010	Sept. 2011	
95	Insurance & Financial Inst.	7.88.020	Financial institution compliance review documents	1997	Oct. 2010	Sept. 2011	
96	Insurance & Financial Inst.	9A.82.170	Information obtained from a financial institution's records pursuant to subpoena under the criminal profiteering act	1984	Oct. 2010	Sept. 2011	
97	Insurance & Financial Inst.	21.30.855	Reports and information from department of financial services examinations	1988	Oct. 2010	Sept. 2011	
98	Insurance & Financial Inst.	30.04.410(3)	Findings related to disapprovals of bank acquisitions	1989	Oct. 2010	Sept. 2011	
99	Insurance & Financial Inst.	33.24.360(1)(d)	Name of lender financing the acquisition of a savings and loan, if requested by the applicant	1973	Oct. 2010	Sept. 2011	
100	Insurance & Financial Inst.	42.56.450	Personal information on check cashers and sellers licensing applications and small loan endorsements	1991; 1995	Oct. 2010	Sept. 2011	
101	Insurance & Financial Inst.	31.35.070	Reports on examinations of agricultural lenders	1990	Oct. 2010	Sept. 2011	
102	Insurance & Financial Inst.	31.45.030(3)	Addresses and phone numbers and trade secrets of applicants of a check casher or seller license	1991	Oct. 2010	Sept. 2011	
103	Insurance & Financial Inst.	31.45.077(2)	Addresses, phone numbers and trade secrets of applicants for a small loan endorsement to a check cashers or sellers license	1995	Oct. 2010	Sept. 2011	
104	Insurance & Financial Inst.	31.45.090	Trade secrets supplied by licensed check cashers and sellers as part of the annual report to director of financial institutions	2003	Oct. 2010	Sept. 2011	
105	L&I-Injured workers	51.16.070(2)	Information in employer's records obtained by labor & industries under industrial insurance	1957	Oct. 2010	Aug.2011	
106	L&I-Injured workers	51.28.070	Information and records of injured workers contained in industrial insurance claim files	1957	Oct. 2010	Aug.2011	
107	L&I-Injured workers	51.36.110(1)	Information (including patients' confidential information) obtained in audits of health care providers under industrial insurance	1994	Oct. 2010	Aug. 2011	
108	Personal Information	42.56.230(5) (formerly (3))	Credit card numbers, debit card numbers, electronic check numbers, and other financial information, except when disclosure is required by other law		Aug. 2010	Aug.2010; November 2012	SB 5049 (2011); HB 1298 (2013); SB 5169 (2013); HB 1980 (2015); HB 1980 (2015)
109	Personal Information	42.56.230(4)	Certain taxpayer information if it would violate taxpayers right of privacy	1973	Feb., May, Aug. 2016	May 2016 (re consent)	

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110	Personal Information	42.56.230(5)	Personal and financial information related to a small loan or any system of authorizing a small loan in section 6 of this act (RCW 31.45.---)	2009	May 2016 (re consent)	May 2016 (re consent)	
111	Personal Information	42.56.230(6)	Personal information required to apply for a driver's license or identicard	2008	May 2016 (re consent)	May 2016 (re consent)	
112	L&I-Injured workers	49.17.080(1)	Name of employee of company seeking industrial safety & health act	1973	Aug. 2011	Aug. 2011	
113	L&I-Injured workers	49.17.200	Trade secrets reported to labor & industries under Washington industrial safety & health act	1973	Aug. 2011	Aug. 2011	
114	L&I-Injured workers	49.17.210	Identification of employer or employee in labor & industries studies	1973	Aug. 2011	Aug. 2011	
115	L&I-Injured workers	49.17.250(3)	Info obtained by labor & industries from employer-requested consultation re. industrial safety & health act	1991	Aug. 2011	Aug. 2011	
116	L&I-Injured workers	49.17.260	Labor & industries investigative reports on industrial catastrophes	1973	Aug. 2011	Aug. 2011	
117	L&I-Injured workers	51.36.120	Financial or valuable trade info from health care providers	1989	Aug. 2011	Aug. 2011	
118	L&I-Injured workers	42.56.400(1)	Board of industrial insurance records pertaining to appeals of crime victims' compensation claims		Aug. 2011	Aug. 2011	
119	Fish & Wildlife	42.56.430 (1)	Commercial fishing catch data provided to the department of fish and wildlife that would result in unfair competitive disadvantage		May 2017; Aug. 2017; Oct. 2017; Feb. 2018		
120	Fish & Wildlife	42.56.430 (2)	Sensitive wildlife data obtained by the department of fish and wildlife		May 2017; Aug. 2017; Oct. 2017; Feb. 2018		
121	Fish & Wildlife	42.56.430 (3)	Personally identifying information of persons who acquire recreational or commercial licenses		May 2017; Aug. 2017; Oct. 2017; Feb. 2018		
122	Fish & Wildlife	42.56.430(4)	Information subject to confidentiality requirements of Magnuson-Stevens fishery conservation and management reauthorization act of 2006	2008 c 252 s 1	May 2017; Aug. 2017; Oct. 2017; Feb. 2018		
123	Employment and Licensing	42.56.250(1)	Test questions, scoring keys, and other exam information used on licenses, employment or academics	1973	May 2021; Aug. 2021; Oct. 2021		
124	Personal Information	66.16.090	Records of LCB showing individual purchases of liquor-confidential	1933	Jun. 2013	Jun. 2013	HB 2764 (2013); HB 2663 (Ch. 182, 2016 Laws) - Repealed
125	Investigative, law enforcement and crime victims	42.56.240(9)	Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs	2012 c 288 s 1			
126	Investigative, law enforcement and crime victims	42.56.240(11)	Identity of state employee or officer who files a complaint with an ethics board under RCW 42.52.420 or reports improper governmental action to the auditor or other official	2013 c 190 s 7			
127	Employment and Licensing	42.56.250(7)	Criminal history record checks for investment board finalist candidates	2010			

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128	Employment and Licensing	42.56.250(7)	Employee salary and benefit information collected from private employers for salary survey information for maritime employees	1999			
129	Employment and Licensing	42.56.250(8)	Photographs, month/year of birth in personnel files of public employees; news media has access	2010; 2020			HB 2447 (2010); See also HB 2259 (criminal justice agency/employee info) and HB 1317 (Ch. 257, 2010 Laws) (amending .230);
130	Real estate Appraisals	42.56.260	Real estate appraisals for agency acquisition or sale until project or sale abandoned, but no longer than 3 years in all cases	1973; 2015 c 150 s 1	Aug. 2014; Oct. 2014	Oct. 2014	HB 1431 (Ch. 150, 2015 Laws); SB 5395
131	Investigative, law enforcement and crime victims	42.56.240(1)	Specific intelligence and investigative information completed by investigative, law enforcement, and penology agencies, and state agencies that discipline members of professions, if essential to law enforcement or a person's right to privacy*	1973	Jan. 2012; March 2012; May 2012; March 2013; June 2013; Feb. 2014; Oct. 2014; Oct. 2019	Oct .2019	Burglar alarm info - HB 2896 (2010); HB 1243 (Ch. 88, 2012 Laws); SB 5244 (2011); SB 5344 (2011). Traffic stop info - SB 6186 (2009)
132	Investigative, law enforcement and crime victims	42.56.240(2)	Identity of witnesses, victims of crime, or persons who file complaints, if they timely request nondisclosure and disclosure would endanger their life, personal safety, or property—does not apply to PDC complaints		Jan. 2012; March 2012; March 2013; June 2013; Sept. 2013; May 2014; August 2014		HB 2764 (2013); see also HB 2610 (2010), SB 6428 (2010) (to amend .230))
133	Investigative, law enforcement and crime victims	42.56.240(3)	Records of investigative reports prepared by any law enforcement agency pertaining to sex offenses or sexually violent offenses which have been transferred to WASPC		Jan. 2012; March 2012; June 2013		
134	Investigative, law enforcement and crime victims	42.56.240(4)	Information in applications for concealed pistol licenses	1988	May 2011; March 2013	May, 2011	
135	Investigative, law enforcement and crime victims	42.56.240(5)	Identifying information regarding child victims of sexual assault	1992	May 2011; Feb. 2015; May 2015; Aug. 2015; Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019; Oct. 2019	Sept. 2011; August 2015	SB 5049 (2012); HB 1299 (2013); SB 5171 (2013); HB 1980 (2015); SB 6020 (2015)
136	Investigative, law enforcement and crime victims	42.56.240(6)	Statewide gang database in RCW 43.43.762	2008	May, 2011	Sept. 2011; November 2012	SB 5049 (2012); HB 1299 (2013); SB 5171 (2013); HB 1980 (2015); SB 6020 (2015)
137	Investigative, law enforcement and crime victims	42.56.240(7)	Data from electronic sales tracking system (pseudoephedrine)	2010	May, 2011	May, 2011	
138	Investigative, law enforcement and crime victims	42.56.240(8)	Person's identifying info submitted to sex offender notification and registration system to receive notice regarding registered sex offenders	2010	May, 2011	May, 2011	
139	Personal Information/proprietary and tax information	82.36.450(3)	Information filed with department of licensing or open to department of licensing inspection under agreement is personal information under RCW 42.56.230(3) (b) and exempt from public inspection and copying	2007	Sept. 2011		

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140	Personal Information/proprietary and tax information	82.38.310(3)	Information filed with department of licensing or open to department of licensing inspection under agreement is personal information under RCW 42.56.230(3) (b) and exempt from public inspection and copying	2007	Sept. 2011		
141	Lists of Individuals	42.56.070(9)	Lists of individuals for commercial purposes.	1973	Feb. 2017; May 2017		
142	Juries	2.36.072(4)	Information provided to court for preliminary determination of statutory qualification for jury duty	1993			
143	Personal Information	42.56.230 (7)(a)	Personal information required to apply for a driver's license or identicard	2008 c 200 s 5	Nov. 2013; Dec. 2013; May 2016 (re consent)	Feb. 2014; May 2016 (re consent)	2017: HB 1160/SB 5418
144	Personal Information	42.56.230 (7)(b)	Persons who decline to register for selective service under RCW 46.20.111	2011 c 350 s 2	May 2016 (re consent)	May 2016 (re consent)	2017: HB 1160/SB 5418
145	Financial, Commercial, and Proprietary Information	42.56.270(1)	Valuable formulae, designs, drawings and research obtained by agency within 5 years of request for disclosure if disclosure would produce private gain and public loss	1973 (I-276)	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
146	Financial, Commercial, and Proprietary Information	42.56.270(2)	Financial information supplied by a bidder on ferry work or highway construction	1983	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
147	Financial, Commercial, and Proprietary Information	42.56.270(3)	Financial information and records filed by persons pertaining to export services	1986	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
148	Financial, Commercial, and Proprietary Information	42.56.270(4)	Financial information in economic development loan applications	1987	*May 2016; Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
149	Financial, Commercial, and Proprietary Information	42.56.270(5)	Financial information obtained from business and industrial development corporations	1989	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
150	Financial, Commercial, and Proprietary Information	42.56.270(6)	Financial information on investment of retirement moneys and public trust investments	1989	May 2015; Aug. 2015; *May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	Aug. 2015; see also *Oct. 2016 - 42.56.270 & trade secrets/proprietary info	SB 6170 (Chap. 8, 2016 Laws 1st Sp. Sess.); 2017: HB 1160/SB 5418
151	Financial, Commercial, and Proprietary Information	42.56.270(7)	Financial and trade information supplied by and under industrial insurance coverage	1989	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
152	Financial, Commercial, and Proprietary Information	42.56.270(8)	Financial information obtained by the clean Washington center for services related to marketing recycled products	1994	May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
153	Financial, Commercial, and Proprietary Information	42.56.270(9)	Financial and commercial information requested by public stadium authority from leaser	1997	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418

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154	Financial, Commercial, and Proprietary Information	42.56.270(10)	Financial information supplied for application for a liquor, gambling, lottery retail or various marijuana licenses	2014 c 192 s 6	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
155	Financial, Commercial, and Proprietary Information	42.56.270(11)	Proprietary data, trade secrets, or other information submitted by any vendor to department of social and health services for purposes of state purchased health care		*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
156	Financial, Commercial, and Proprietary Information	42.56.270(12)(a)(i)	Financial or proprietary information supplied to DCTED in furtherance of the state's economic and community development efforts	1993, 1989	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
157	Financial, Commercial, and Proprietary Information	42.56.270(12)(a)(ii)	Financial or proprietary information provided to the DCTED regarding businesses proposing to locate in the state	1999	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
158	Financial, Commercial, and Proprietary Information	42.56.270(14)	Financial, commercial, operations, and technical and research information obtained by the life sciences discovery fund authority	2005 (c424s6)7/25/2006	May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
159	Financial, Commercial, and Proprietary Information	42.56.270(20)	Financial and commercial information submitted to or obtained by the University of Washington relating to investments in private funds	2009 c 384 s 3	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
160	Financial, Commercial, and Proprietary Information	42.56.270(21)	Market share data submitted by a manufacturer under RCW 70.95N.190(4)	2013 c 305 s 14	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
161	Preliminary records containing opinions or policy formulations	42.56.280	Preliminary drafts, notes, recommendations, and intra-agency memos where opinions are expressed or policies formulated or recommended, unless cited by an agency	1973 (I-276)	May 2021; Oct. 2021		
162	Archaeological sites	42.56.300(3)	Information identifying the location of archaeological sites	1976; 2014 c 165 s 1			
163	Library records	42.56.310	Library records disclosing the identity of a library user	1982			
164	Educational Information	42.56.320(1)	Financial disclosures filed by private vocational schools	1986			
165	Educational Information	42.56.320(2)	Financial and commercial information relating to the purchase or sale of tuition units				
166	Educational Information	42.56.320(3)	Individually identifiable information received by the WFTECB for research or evaluation purposes				
167	Educational Information	42.56.320(4)	Information on gifts, grants, or bequests to institutions of higher education (1975)	1975	May 2021; Oct. 2021		
168	Educational Information	42.56.320(5)	The annual declaration of intent filed by parents for a child to receive home-based instruction	2009 c 191 s 1			

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169	Timeshare, condominium owner lists	42.56.340	Membership lists and lists of owners of interests in timeshare projects, condominiums, land developments, or common-interest communities, regulated by the department of licensing	1987	Feb. 2017; May 2017; Aug.2017	Aug. 2017	2019: HB 1537 (repealed exemption) (Ch. 229, 2019 laws)
170	Health Professionals	42.56.350(1)	SSNs of health care professionals maintained in files of the department of health	1993			
171	Health Professionals	42.56.350(2)	Residential address and telephone numbers of health care providers maintained in files of the department of health	1993			
172	Investigative, law enforcement and crime victims	42.56.230(7)(c)	Records pertaining to license plates, drivers' licenses or identicards that may reveal undercover work, confidential public health work, public assistance fraud, or child support investigations	2013 c 336 s 3			
173	Employment and Licensing	42.56.240(13)	Criminal justice agency employee/worker residence GPS data	2015 c 91 s 1			
174	Health Care	42.56.360(1)(c)	Information and documents created, collected, and maintained by the health care services quality improvement program and medical malpractice prevention program	1995			
175	Health Care	42.56.360(1)(d)	Proprietary financial and commercial information provided to department of health relating to an antitrust exemption	1997	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
176	Health Care	42.56.360 (1) (e)	Physicians in the impaired physicians program	1987, 1994, 2001			
177	Health Care	RCW 70.05.170(3) - see also 42.56.360(3)	Information relating to infant mortality pursuant to former RCW 70.05.170/RCW 42.56.360 - See 184 and 185	1992; Amended 2010 c 128 s 3	2008 (2008 law)	March 2008 (2008 law)	
178	Financial, Commercial, and Proprietary Information	42.56.270(23)	Notice of crude oil transfers	2015 c 274 s 24	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
179	Health Care	42.56.360(1)(f)	Complaints filed under the health care professions uniform disciplinary act	1997			
180	Financial, Commercial, and Proprietary Information	42.56.270(24)	Certain information supplied to the liquor and cannabis board per RCW 69.50.325, 9.50.331, 69.50.342 and 69.50.345	2015 c 178 s 2	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
181	Health Care	42.56.360(1)(i)	Information collected by the department of health under chapter 70.245 RCW.	2009 c 1 s 1			
182	Health Care	42.56.360(1)(k)	Claims data and information provided to the statewide all-payer health care claims database that is exempt under RCW 43.373.040	2014 c 223 s 17			
183	Health Care	42.56.360(2) and 70.02	Health care information disclosed to health care provider without patients permission	1991			

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184	Financial, Commercial, and Proprietary Information	42.56.270(24)	Certain information and data submitted to or obtained by the liquor and cannabis board re applications for licenses or reports required under RCW 69.50.372	2016 1st sp.s. c 9 s 3	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
185	Health Care; Marijuana	42.56.625	Records in medical marijuana authorization database I RCW 69.51A.230	2015 c 70 s 22			
186	Domestic Violence	42.56.370	Client records of community sexual assault program or services for underserved populations [amended 2012]	1991; 2012 c 29 s 13	*Check*	*Check*	
187	Agriculture and Livestock	42.56.380(10)	Results of animal testing from samples submitted by the animal owner	2012 c 168 s 1(10)	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
188	Agriculture and Livestock	42.56.380(11)	Records of international livestock importation that are not disclosable by the U.S.D.A. under federal law.	2012 c 168 s 1(11)	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
189	Agriculture and Livestock	42.56.380(12)	Records related to entry of prohibited agricultural products imported into Washington that are not disclosable by the U.S.D.A. under federal law	2012 c 168 s 1(12)	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
190	Emergency or Transitional Housing	42.56.390	Names of individuals residing in emergency or transitional housing furnished to the department of revenue or a county assessor	1997			
191	Insurance & Financial Inst.	42.56.400(16)	Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.-051 (1) and 48.102.-140 (3) and (7)(a)(ii))	2009 c 104 s 37			
192	Insurance & Financial Inst.	42.52.400(17)	Documents, materials, or information obtained by the insurance commissioner under RCW 48.31.025 and 48.99.025	2010 c 97 s 3			
193	Insurance & Financial Inst.	42.56.400(18)	Documents, material, or information relating to investment policies obtained by the insurance commissioner under RCW 48.13.151	2011 c 188 s 21			
194	Insurance & Financial Inst.	42.56.400(19)	Data from (temporary) study on small group health plan market	2010 c 172 s 2			
195	Insurance & Financial Inst.	42.56.400(20); 48.19.040(5)(b)	Information in a filing of usage-based component of the rate pursuant to RCW 48.19.040(5)(b)	2012 c 222 s 1			
196	Insurance & Financial Inst.	42.56.400(21); 42.56.400(22); 42.56.400(23); 42.56.400(24); 42.56.400(25)	Data, information, and documents submitted to or obtained by the insurance commissioner	2012 2nd sp. s. c 3 s 8; 2013 c 65 s 5; 2013 c 277 s 5; 205 c 17 ss 10 & 11			
197	Employment Security	42.56.410	Most records and information supplied to the employment security department				
198	Security	42.56.420(1)	Records relating to criminal terrorist acts				
199	Security	42.56.420(2)	Records containing specific and unique vulnerability assessments and emergency and escape response plans – adds civil commitment facilities	2009 c 67 s 1			
200	Security	42.56.420(3)	Comprehensive safe school plans that identify specific vulnerabilities				

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201	Security	42.56.420(4)	Information regarding infrastructure and security of computer and telecommunications networks to the extent that they identify specific system vulnerabilities	1999	Feb. 2014	Feb. 2014	
202	Security	42.56.420(5)	Security sections of transportation security plans for fixed guideway systems				
203	Personal Information	42.56.230(8)	Information regarding individual claim resolution settlement agreements submitted to the board of industrial insurance appeals	2014 c 142 s 1			
204	Veterans' discharge papers	42.56.440	Veterans' discharge papers				
205	Fireworks, Explosives	42.56.460	Records and reports produced under state fireworks law, chapter 70.77 RCW and the Washington state explosives act, chapter 70.74 RCW	1995			
206	Correctional industries workers	42.56.470	Records pertaining to correctional industries class I work programs	2004			
207	Inactive programs	42.56.480(1)	Contracts files by railroad companies with the utilities & transportation commission prior to 7/28/91	1984	Jun. 2013	Jun. 2013	HB 2764 (2013); HB 2663 (Chap. 282, 2016 Laws) (repealed)
208	Inactive programs	42.56.480(2)	Personal information in international contact data base	1996 c 253 s 502	Jun. 2013	Jun. 2013	HB 2663 (Chap. 282, 2016 Laws) (repealed)
209	Inactive programs	42.56.480(3)	Data collected by department of social and health services pertaining to payment systems for licensed boarding homes	2003	Jun. 2013	Jun. 2013	HB 2764 (2013); HB 2663 (Chap. 282, 2016 Laws) (repealed)
210	Enumeration Data	42.56.615	Enumeration data used by office of financial management for population estimates per RCW 43.43.435	2014 c 14 s 1			
211	Financial, Commercial, and Proprietary Information; Marijuana	42.56.620	Reports submitted by marijuana research licensees that contain proprietary information	2015 c. 71 s 4	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
212	Mediation Communication	42.56.600	Records of mediation communications that are privileged under the uniform mediation act	2005 c 424 s 16			
213	Code Reviser	1.08.027	Code Reviser drafting services	1951	Feb. 2015	Feb. 2015	
214	Judicial - Investigative	2.64.111	Judicial conduct commission investigations and initial proceedings	1989			
215	Health Care Professions	4.24.250	Hospital review committee records on professional staff	1971	Sept. 2020; Oct. 2020		
216	Financial, Commercial, and Proprietary Information	4.24.601	Trade secrets and confidential research, development or commercial information	1994	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
217	Financial, Commercial, and Proprietary Information	4.24.611	Trade secrets, confidential research, development or commercial information concerning products or business methods	1994	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

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218	Claims	4.92.210	Information in centralized risk management claim tracking system	1989			
219	Privileges	5.60.060	General statements of privileged communications between persons & various professionals, e.g., attorneys or physicians – presumably applies to records (see also # 276)	1954 & later dates			
220	Mediation Communication	5.60.070	Materials used in any court ordered mediation	1991	Feb. 2017; May 2017;		
221	Mediation Communication	7.07.050(5)	Mediation communications	2005	Feb. 2017; May 2017		
222	Mediation Communication	7.07.070	Mediation communications	2005	Feb. 2017; May 2017		
223	Health Care Records	7.68.080(9)(a)	The director may examine records of health care provider notwithstanding any statute that makes the records privileged or confidential	2011 c 346 s 501			
224	Financial, Commercial, and Proprietary Information	7.68.080(10)	At the request of health care contractor, department must keep financial and trade information confidential	2011 c 346 s 501	See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
225	Crime Victims and Witnesses	7.68.140	Records re. Victims of crimes confidential & not open to inspection	1973	May 2021		
226	Crime Victims and Witnesses	7.69.A.030(4)	Name, address, or photograph of child victim or child witness	1985	Feb. 2015; May 2015; Aug. 2015; Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019; Oct. 2019	Oct. 2019	HB 2485 (2019)
227	Mediation Communication	7.75.050	County or city dispute resolution center records	1984			
228	Financial, Commercial, and Proprietary Information	7.88.020 & .30	Financial institution compliance review documents	1997			
229	Health Care	9.02.100	General statement of fundamental right to reproductive privacy – could apply to records	1991			
230	Health Care - Concealed Pistols	9.41.097(2)	Mental health info provided on persons buying pistols or applying for concealed pistol licenses	1994			
231	Concealed Pistols	9.41.129	Concealed pistol license applications	1994			
232	Crime Victims and Witnesses	9.73.230	Name of confidential informants in written report on wire tapping	1989			
233	Crime Victims and Witnesses	72.09.710 (recod eff 8/1/09) (See also # 451)	Names of witnesses notified when drug offenders released (formerly 9.94A.610)	1991 - Recod 2008 c 231 s 26, 56 (See dispositions table)			
234	Placeholder						
235	Crime Victims and Witnesses	72.09.712 (recod eff 8/1/09) (See also # 451)	Names of victims, next of kin, or witnesses who are notified when prisoner escapes, on parole, or released (formerly 9.94A.610)	1985 - Recod 2008 c 231 s 27, 56 (see dispositions table)			
236	Privileges	5.60.060	Alcohol or drug addiction sponsor privilege	2016 st sp. ss. c 24 s 1			
237	Offender Information	9.94A.745	Records of the interstate commission for adult offender supervision that would adversely affect personal privacy rights or proprietary interests	2002	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

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238	Crime Victims and Witnesses	9.94A.885	Information regarding victims, survivors of victims, or witnesses that are sent clemency hearing notices may not be released to offender	1999			
239	Offender Information	9A.44.138	Sex offender registration information given to high school or institution of higher education regarding an employee or student is confidential	2011 c 337 s 4			
240	Criminal Proceedings - Investigative	10.27.090	Grand jury testimony	1971	Sept. 2020; Oct. 2020		
241	Criminal Proceedings - Investigative	10.27.160	Grand jury reports	1971	Sept. 2020; Oct. 2020; Feb. 2021; May 2021; Aug. 2021; Oct. 2021		
242	Public Utilities & Transportation	19.29A.100	Electric utilities may not disclose private or proprietary customer information	2015 3rd sp. S. c 21 s 1	*Check on any prior Committee discussion re utilities*		
243	Insurance & Financial Inst.	48.31B.015(1)(b)	Filing by controlling person of insurer seeking to divest its controlling interest is confidential until conclusion of transaction	2015 c 122 s 3			
244	Investigative, law enforcement and crime victims	42.56.240(14)	Body worn camera recordings	2016 c 163 s 2			
245	Investigative, law enforcement and crime victims	42.56.240(14)	Records and info in the statewide sexual assault kit tracking system under RCW 43.43.	2016 c. 173 s 8			
246	Crime Victims and Witnesses	10.52.100	Identity of child victims of sexual assault	1992	Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019; Oct. 2019		
247	Crime Victims and Witnesses	10.77.205	Information about victims, next of kin, or witnesses requesting notice of release of convicted sex or violent offenders	1990			
248	Offender Information	10.77.210	Records of persons committed for criminal insanity	1973	May 2021		
249	Crime Victims and Witnesses	10.97	Privacy of criminal records, including criminal history information on arrests, detention, indictment, information, or other formal criminal charges made after 12/31/77 unless dispositions are included	1977			
250	Crime Victims and Witnesses	10.97.130	Names of victims of sexual assaults who are 18 years of age or younger	1992	Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019; Oct. 2019	2018	HB 1505 (Ch.300, 2019 Laws); HB 2484 (2019)
251	Judicial - Indigent Defense	10.101.020	Information given by persons to determine eligibility for indigent defense	1989			
252	Crime Victims and Witnesses - Juvenile	13.40.150	Sources of confidential information in dispositional hearings on juvenile offenses	1977	Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019		
253	Crime Victims and Witnesses - Juvenile	13.40.215 and .217	Information about victims, next of kin, or witnesses requesting notice of release of juvenile convicted of violent sex offense or stalking	1990	Aug. 2018; Oct. 2018; Feb. 2019; May 2019; Aug. 2019		

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254	Juvenile Records	13.50.010(12)	Electronic research copy of juvenile records maintains same level of confidentiality and anonymity as juvenile records in judicial information system	2009 c 440 s 1; 2014 c 117 s 5			
255	Juvenile Records	13.50.010(13)	Information in records released to the Washington state office of public defense retain confidential nature	2009 c 440 s 1; 2014 c 117 s 5; 2016 c 72 s 109			
256	Juvenile Records	13.50.050(3)	Records on commission of juvenile crimes	1979; Oct. 2019		Oct. 2019	HB 2484 (2019)
257	Juvenile Records	13.50.010(14)(b)	Records of juveniles who receive a pardon are confidential, including the existence or nonexistence of the record	2011 c 338 s 4			
258	Juvenile Records	13.50.100(2)	Juvenile justice or care agency records not relating to commission of juvenile crimes	1979	Re 42.56.380(6) - Oct. 2007; May 2019; Aug. 2019; Oct. 2019	Re. 42.56.380(6) - Jun. 2008	
259	Agriculture and Livestock	15.19.080	Information on purchases, sales, or production of ginseng by individual growers or dealers (see also 42.56.380 (6))	1998	See # 1 on Schedule of Review; Aug. 2017; Oct. 2017; May 2018; Aug. 2018	See # 1 on Schedule of Review Aug. 2018	See # 1 on Schedule of Review
260	Agriculture and Livestock	16.65.030(1)(d)	Financial statement info in public livestock market license applications	2003	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
261	Health Care Professions	18.130.095(1)(a)	Complaints filed under uniform disciplinary act for health professionals	1997			
262	Health Care Professions	18.130.172(1)	Summary and stipulations in complaints against health care professionals	1993			
263	Health Care Professions	18.130.175(4)	Voluntary substance abuse records on health care professionals	1988			
264	Health Care Professions	18.130.057 (c 157 s 1(2)(b)	Disciplining authority may not disclose information in a file that contains confidential or privileged information regarding a patient other than the person making the complaint or report	2011 c 157 s 1			
265	Counselors	18.19.180	Information counselors acquire and acknowledgement of practice disclosure statements	1987			
266	Boarding Homes	18.20.120	Identity of individual or name of boarding homes from boarding home licensing records	1959	Sept. 2020; Oct. 2020		
267	Health Care Professions	18.20.390	Information and documents created, collected and maintained by a quality assurance committee	2004			
268	Health Care Professions	18.32.040	Implication that information in dentistry registration records is only accessible by the registered person unless disclosure would compromise the examination process	1937	Sept. 2020; Oct. 2020; Oct. 2021		
269	Placeholder						
270	Health Care Professions	18.44.031(2)	Personal information in applications for escrow agent licenses	1999			
271	Health Care Professions	18.46.090	Information on maternity homes received by department of health identifying individuals or maternity homes	1951	Sept. 2020; Oct. 2020; Feb. 2021; May 2021; Aug. 2021		

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272	Health Care Professions	18.53.200	Information and records of optometrists	1975	May 2021; Aug. 2021; Oct. 2021		
273	Health Care Professions	18.64.420	Records obtained by department of health regarding various insurance companies	1991			
274	Health Care Professions	18.71.0195	Contents of physician disciplinary report	1979			
275	Health Care Professions	18.71.340	Entry records under impaired physician program	1987			
276	Privileges	18.83.110 - also 5.60.060 (# 219)	Communications between client and psychologist—could apply to records	1955	Sept. 2020; Oct. 2020		
277	Other Professions - Plumbers	18.106.320(2)	Info obtained from contractors on plumbing trainee hours	2002			
278	Health Care Professions	18.130.095(1)(a)	Complaints filed under uniform disciplinary act for health professionals	1997			
279	Health Care Professions	18.130.172(1)	Summary and stipulations in complaints against health care professionals	1993			
280	Health Care Professions	18.130.095(1)(a) (Repealed 2019)	Complaint of unprofessional conduct against health profession licensee	1997			
281	Health Care Professions	18.130.175(4)	Voluntary substance abuse records on health care professionals	1988			
282	Health Care Professions	18.130.175(4)	Substance abuse treatment records of licensed health professionals				
283	Elderly Adults - Referrals	18.330.050(2)(f)	On referral disclosure statement, must include statement that agency will need client authorization to obtain or disclose confidential information	2011 c 357 s 6			
284	Other Professions - Business Licenses	19.02.115	Master license service program licensing information is confidential and privileged except as provided in this section	2011 c 298 s 12			
285	Financial, Commercial and Proprietary	19.16.245	Collection agency financial statements	1973	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
286	Other Professions - Electrical	19.28.171	Info obtained from electrical contractors on electrical trainee hours	1996			
287	Other Professions - Electrical	19.28.171	Information obtained from electrical contractor by department of licenses	1996			
288	Security - Electronic Keys	19.34.240	Private keys under the electronic authentication act	1996			
289	Security - Electronic Keys	19.34.420	Electronic authentication info	1998			
290	Financial, Commercial and Proprietary Information	19.108	Trade Secrets Act	1981	*May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info	*Oct. 2016 - 42.56.270 & trade secrets/proprietary info	2017: HB 1160/SB 5418
291	Juvenile Records	13.50.010(14)	Records released by the court to the state office of civil legal aid	2015 c 262 s 1			
292	Financial, Commercial and Proprietary - Mortgages	19.146.370(4)	Chapter 42.56 RCW relating to supervisory information or information subject to subsection (1) of this section is superseded by this section	2009 c 528 s 15	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

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293	Other Professions - Money Transfer Co's.	19.230.190	Money transfer licensing information	2003			
294	Financial, Commercial and Proprietary Information	19.330.080(5)	Confidential technology information used in manufacturing products sold in state is subject to a protective order	2011 c 98 s 8	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
295	Investigative Records	21.20.480	Security act investigations	1959	Sept. 2020; Oct. 2020; Feb. 2021		
296	Financial, Commercial and Proprietary information - Investigations	21.30.170	Some information obtained by the department of financial institutions	1986	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
297	Placeholder						
298	Financial, Commercial and Proprietary information - Nonprofits & Mutuals	24.06.480	Information in interrogatories of nonprofit miscellaneous and mutual corporations by secretary of state	1969; Feb 2021	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Sept. 2020; Oct. 2020; Feb. 2021; May 2021		
299	Crime Victims and Witnesses	26.04.175	Marriage applications and records about participants in address confidentiality program	1991			
300	Mediation Communications	26.09.015	Divorce mediation proceedings—may apply to records of the proceedings	1986			
301	Judicial - Court Files	26.12.080	Superior court may order family court files closed to protect privacy	1949	Sept. 2020; Oct. 2020; Feb. 2021		
302	Child Support Records	26.23.120(1)	Records concerning persons owing child support	1987			
303	Child Support Records	26.23.150	Social security numbers collected by licensing agencies not to be disclosed	1998			
304	Adoption Records	26.33.330 & .340 & .345	Adoption records (except by order of the court under showing of good cause); adoption contact preference form and parent medical history	1984; 2013 c 321 s 1			
305	Archaeological Records	27.53.070 (42.56.300)	Communications on location of archaeological sites not public records	1975	May 2021; Oct. 2021		
306	Financial, Commercial and Proprietary Information	28B.85.020(2)	Financial disclosures provided to HEC Board by private vocational schools	1996	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
307	Financial, Commercial and Proprietary Information	28C.10.050(2)(a)	Financial disclosures by private vocational schools	1986	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
308	Voter and Election Information	29A.08.710	Original voter registration forms or their images	1991	Oct. 2017; Feb. 2018; May 2018; Aug. 2018; Oct. 2018		

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309	Voter and Election Information	29A.08.720	The department of licensing office at which any particular individual registers to vote	1994	Oct. 2017; Feb. 2018; May 2018; Aug. 2018; Oct. 2018		
310	Voter and Election Information	29A.20.191; recod to 29A.56.670	Minor party and independent candidate nominating petitions	2004; 2013 c 11 s 93(4)	Oct. 2017; Feb. 2018; May 2018; Aug. 2018; Oct. 2018		
311	Voter and Election Information	29A.32.100	Argument or statement submitted to secretary of state for voters' pamphlet	1999	Oct. 2017; Feb. 2018; May 2018; Aug. 2018; Oct. 2018		
312	Financial, Commercial and Proprietary Information - Mortgages	31.04.274(4)	Chapter 42.56 RCW relating to disclosure of supervisory information or any information described in subsection (1) of this section is superseded by this section	2009 c 120 s 26	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
313	Security	35.21.228(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
314	Security	35A.21.300(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
315	Security	36.01.210(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
316	Placeholder						
317	Security	36.57.120(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
318	Security	36.57A.170(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
319	Financial, Commercial and Proprietary Information	36.102.200	Financial info on master tenant, concessioners, team affiliate, or sublease of a public stadium authority's facilities	1997	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
320	Financial, Commercial and Proprietary Information	39.10.100 (2) recod. as 39.10.470 (2); 39.10.470(3)	Trade secrets & proprietary information from contractors under alternative public works; proposals from design-build finalists for alternative public works until selection is made or terminated	1994	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
321	Financial, Commercial and Proprietary Information - Bids	39.26.030(2)	Competitive bids subject to chapter 42.56 RCW except exempt from disclosure until apparent successful bidder announced	2012 c 224 s 4	Aug. 2016; Oct. 2016	Oct. 2016	2017: HB 1160/SB 5418
322	Archive Records	40.14.030 (2)	Records transferred to state archives	2003	May 2012; August 2012; June 2013	Aug. 2012	
323	Offender Records	40.14.070 (2)(c)	Sex offender records transferred to Washington association of sheriffs and police chiefs	1999			
324	Bill Drafting Records	40.14.180	Bill drafting records of the code reviser's office	1971	Feb. 2015	Feb. 2015	
325	Crime Victims and Witnesses	40.24.070	Names of persons in domestic violence or sexual assault programs; and records in address confidentiality program	1999; 1991; 2015 c 190 s 2			
326	Public Employment Information	41.06.160	Salary and fringe benefit info identifying private employer from department of personnel salary survey	1981			

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327	Public Employment Information	41.06.167	Salary and fringe benefit rate info collected from private employers	1980			
328	Collective Bargaining	41.56.029(2)	Collective bargaining authorization cards of adult family home provider workers	2007			
329	Personal Information - Research	42.48.020 & .040	Personally identifiable public records used in scientific research	1985			
330	Health Care Records	43.01.425	Crisis referral services communications and information are confidential	2009 c 19 s 2			
331	Investigative Records	43.06A.050	Investigative records of office of family and children's ombudsman	1996			
332	Financial, Proprietary and Commercial Information	43.07.100	Info from businesses deemed confidential held by bureau of statistics in secretary of state	1895	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
333	Investigative Records - Whistleblower	43.09.186(4)	Identity of person and documents in report to toll-free efficiency hotline - state auditor	2007			
334	Financial, Proprietary and Commercial Information	42.56.270(22)	Certain financial information supplied to department of financial institutions or a portal to obtain an exemption from state securities registration	2014 c 144 s 6			
335	Juvenile Records	13.50.010(15)	Child welfare records that may assist in meeting the educational needs of foster youth	2016 c 71 s 2	May 2019; Aug. 2019		
336	Placeholder						
337	Personal Information - Printing Vendors	43.19.736	Print jobs contracted with private vendors must require vendor to enter into a confidentiality agreement if materials contain sensitive or personally identifiable information	2011 c 43 1st sp. s. s 309			
338	Claims	43.41.350 Recod 43.19.781	Risk management loss history information	1989; 2011 1st sp. s. c 43 s 535			
339	Financial, Proprietary and Commercial Information - Marijuana	42.56.270(25)	Marijuana transport, vehicle and driver ID data and account numbers or unique access identifiers issued for traceability system access per RCW 69.50.325, 9.50.331, 69.50.342, 69.50.345	2016 c 178 s 2			
340	Financial, Commercial and Proprietary Information	43.21A.160	Information on unique production processes given to the DOE	1970	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Sept. 2020; Oct. 2020; Feb. 2021		
341	Financial, Commercial and Proprietary Information	43.21F.060(1)	Proprietary information received by the state energy office	1976	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
342	Employer - Labor Statistics	43.22.290	Employer labor statistics reports provided to the department of labor & industries	1901	Sept. 2020; Oct. 2020		

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343	Financial, Commercial and Proprietary Information	43.22.434	Info obtained from contractors through an audit	2002	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
344	Deliberative Process - Records Provided to Governor	43.41.100	Confidential reports made to the governor by director of office of financial management	1969	Sept. 2020; Oct. 2020; Feb. 2021; May 2021		
345	Investigative Records	43.43.710	Washington state patrol information in records relating to the commission of any crime by any person	1972	May 2021; Aug. 2021		
346	Investigative Records	43.43.762 – referenced in 42.56.240(6)	Information in criminal street gang database	2008 c 276 s 201			
347	Investigative Records	43.43.856	Washington state patrol organized crime Investigative information	1973	May 2021		
348	Financial, Commercial and Proprietary Information	43.52.612	Financial information provided to operating agencies in bid forms and experience provided by a contractor to a joint operating agency regarding bids on constructing a nuclear project	1982	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
349	Health Care	43.70.050(2)	Health care related data identifying patients or providers obtained by state agencies	1989			
350	Health Care	43.70.052	American Indian health data	1995; 2014 c 220 s 2			
351	Health Care	43.70.056(2)(e)(ii)	Hospital reports and information on health care-associated infections	2007			
352	Health Care	42.56.360(4); 70.54	Info and documents relating to maternal mortality reviews per RCW 70.54	2016 c 238 s 2			
353	Health Care Professions - Whistleblower	43.70.075	Identity of whistleblower who makes a complaint to the department of health re: improper care	1995			
354	Health Care Professions	43.70.510	Information and documents created, collected and maintained by a quality assurance committee	2005			
355	Health Care Professions	43.70.695(5)	Healthcare workforce surveys identifying individual providers	2006			
356	Investigative Records	43.190.110	Complaint and investigation records of long-term care ombudsman	1983			
357	Employment Records, Investigative Records	43.101.400	Criminal justice training commission records from initial background investigations	2001; 2021			
358	Investigative Records - Fatality Review	43.235.040(1)	Domestic violence fatality review info	2000			
359	Financial, Commercial and Proprietary Information	43.330.062	Protocols may not require release of information that associate development organization client company has requested remain confidential	2011 c 286 s 1	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

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360	Health Care	43.370.050(2)	Individual identification in released health care data for studies and analysis	2007			
361	Motor Vehicle/Driver Records	46.12.380(1) Recod 46.12.635	Names and addresses of motor vehicle owners except for "business" & other purposes	1984; 2016 c 80 s 2			
362	Placeholder		*Check codified citation*	2010 c 161 s 1210			
363	Motor Vehicle/Driver Records	46.20.041	Info on physically or mentally disabled person demonstrating ability to drive	1965	Sept. 2020; Oct. 2020; Feb. 2021		
364	Motor Vehicle/Driver Records	46.20.118	Photos on drivers' licenses & identicards	1981			
365	Motor Vehicle/Driver Records	46.52.065	Blood sample analyses done by state toxicology	1971	May 2021; Aug. 2021; Oct. 2021		
366	Motor Vehicle/Driver Records	46.52.080 & .083	Most info in police accident reports	1937	Feb. 2021		
367	Motor Vehicle/Driver Records	46.52.120	Individual motor vehicle driver records	1937	Feb. 2021; May 2021; Aug. 2021		
368	Motor Vehicle/Driver Records	46.52.130	Abstracts of motor vehicle driver records				
369	Motor Vehicle/Driver Records	46.70.042	Application for vehicle dealer licenses, for 3 years	1967	Feb. 2021; May 2021; Aug. 2021; Oct. 2021		
370	Motor Vehicle/Driver Records	46.35.030(1)(a)	Information obtained by a court order pursuant to discovery is not subject to public disclosure	2009 c 485 s 3			
371	Financial, Commercial and Proprietary Information	47.28.075	Info supplied to department of transportation to qualify contractors for highway construction	1981	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
372	Financial, Commercial and Proprietary Information	47.60.760	Financial info submitted to qualify to submit bid for ferry construction contracts	1983	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; and RCW39.26.030 (bid information)		
373	Personal Information	42.56.420(6)	Personally identifiable info of employees and other security info of a private cloud service provider that has entered into a criminal justice information services agreement	2016 c 152 s 1			
374	Insurance Information	48.02.065(1)	Information provided in the course of an insurance commissioner examination	2007			
375	Insurance Information	48.05.510(4)	Insurer's reports to insurance commissioner	1995			
376	Insurance Information	48.13.151	Information related to investment policies provided to the insurance commissioner is confidential and not a public record	2011 c 188 s 16 (eff 7/1/12)			
377	Insurance Information	48.31.405(1)	Commissioner info relating to supervision of any insurer	2005			
378	Insurance Information	48.74. __(6)	Information obtained in the course of an actuarial examination/investigation	2016 c 142 s 6			

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379	Insurance Information	48.32.110(2)	Request for examination into insurer's financial condition	1971	May 2021; Oct. 2021		
380	Insurance Information	48.43.200(4)	Reports of material transactions by certified health plans	1995			
381	Insurance Information	48.44.530(4)	Reports of material transactions by health care service contractors	1995			
382	Insurance Information	48.46.540	Current licensure of nonresident pharmacies through which an insurer provides coverage	1991			
383	Insurance Information	48.46.600(4)	Reports of material transactions by health maintenance organizations	1995			
384	Insurance Information - Investigations	48.102.140(5)(a)	Documents and evidence provided regarding life settlement act fraud investigations are confidential and not public records	2009 c 104 s 17			
385	Insurance Information	48.104.050(1)	Holocaust insurance company registry records	1999			
386	Workers Compensation Records	49.17.260	Labor & industries investigative reports on industrial catastrophes	1973	May 2021; Aug. 2021; Oct. 2021		
387	Investigative Records	49.60.240	Option for human rights commission complaints not to be made public	1993			
388	Agriculture and Livestock	49.70.119(6)(a)	Name of employee seeking records of agricultural pesticide applications	1973	Aug. 2017; Oct. 2017; May 2018; Aug. 2018	Aug. 2018	
389	Crime Victims and Witnesses	49.76.040	Employee's information regarding domestic violence is confidential	2008 c 286 s 4			
390	Crime Victims and Witnesses	49.76.090	Domestic violence leave information in files and records of employees is confidential and not open to public inspection	2008 c 286 s 10			
391	Employment Security Records	50.13.060(8)	Welfare reform info in WorkFirst program	2000			
392	Financial, Commercial and Proprietary Information	53.31.050	Financial & commercial info & records supplied to port district export trading company	1986	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
393	Financial, Commercial and Proprietary Information	63.29.380	Info relating to unclaimed property that is furnished to the department of revenue	1983	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
394	Insurance Information	48.43.730	Provider compensation agreements are confidential	2013 c 277 s 1			
395	Financial, Commercial and Proprietary Information	63.29.300(4)	Material obtained during an examination under RCW 63.29 is confidential and may not be disclosed except per RCW 63.29.380	2015 3rd sp s c 6 s 2107			
396	Health Care; Investigative Records	68.50.105	Records of autopsies and post mortems	1953; 2013 c 295 s 1			
397	Health Care	68.64.190	Certain information released to tissue or organ procurement organization is confidential	2008 c 139 s 21			

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398	Financial, Commercial and Proprietary Information; Health Professions; Health Care	69.41.044; 42.56.360(1)(a); 42.56.360(1)(b); 69.45.090	Records and information supplied by drug manufacturers, and pharmaceutical manufacturer info obtained by the pharmacy quality assurance commission	1987; 1989; 2013 c 19 s 47	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
399	Health Care	69.41.280	Info on legend drugs obtained by the pharmacy quality assurance commission	1989			
400	Insurance Information	48.74.--(1)(a)	Opinion and memo submitted to the insurance commissioner under RCW 48.74.025	2016 c 142 s 7			
401	Health Care	69.51.050	Names of persons participating in controlled substances therapeutic research programs	1979			
402	Health Care	70.02.020, .050, et. al.	Health care info disclosed to heath care provider w/o patients permission	1991			
403	Health Care	70.24.022	Info gathered by health care workers from interviews re. sexually transmitted diseases	1988			
404	Placeholder						
405	Health Care	70.24.034	Records on hearings on dangerous sexual behavior of sexually transmitted disease carriers	1988			
406	Placeholder						
407	Health Care	70.28.020	Tuberculosis records	1899	Feb. 2021		
408	Health Care	70.41.150	Department of health info on inspections of hospitals	1955	Feb. 2021; May 2021		
409	Health Care Professions	70.41.200(3)	Info maintained by a health care services quality improvement committee	1986			
410	Health Care Professions	70.41.220	Hospital records restricting practitioner's privileges in possession of medical disciplinary board	1986			
411	Health Care	70.42.210	Identity of person from whom specimens of material were taken at a medical test site	1989			
412	Health Care	70.47.150	Records of medical treatment	1990			
413	Law Enforcement	70.48.100	Jail register records	1977			
414	Health Care	70.54.250	Cancer registry program	1990			
415	Health Care	70.58.055(2)	Info on birth & manner of delivery kept in birth certificate records	1991			
416	Fireworks	70.77.455	Fireworks license records	1995			
417	Financial, Commercial and Proprietary Information	70.94.205	Info provided to DOE on processes or if may affect competitive position relating to air quality	1967	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; May 2021; Oct. 2021		
418	Financial, Commercial and Proprietary Information	70.95.280	Guidelines for proprietary info on solid waste management practices in possession of DOE [Since this addresses guidelines, not clear if it is an exemption.]	1989	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

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419	Financial, Commercial and Proprietary Information	70.95C.040(4)	Proprietary info re. waste reduction in possession of DOE	1988	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
420	Financial, Commercial and Proprietary Information	70.95C.220(2)	Waste reduction plans	1990	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
421	Financial, Commercial and Proprietary Information	70.95C.240(1)	Some info in executive summaries of waste reduction efforts	1990	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
422	Financial, Commercial and Proprietary Information	70.95N.140(4)	Proprietary info in electronic product recycling reports	2006	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
423	Placeholder						
424	Health Care	70.104.055	Reports on pesticide poisoning	1989			
425	Financial, Commercial and Proprietary Information	70.105.170	Manufacturing or business info re: Hazardous waste management in possession of DOE	1983	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
426	Financial, Commercial and Proprietary Information	70.118.070	Trade secret info re: On-site sewage disposal in possession of DOE	1994	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
427	Investigative Records - Whistleblower	70.124.100	Name of whistleblower in nursing home or state hospital	1997			
428	Crime Victims and Witnesses	70.125.065	By implication records of community sexual assault program or underserved populations provider	1981; 2012 c 29 s 11			
429	Placeholder						
430	Health Care	70.127.190	Hospice records	1988			
431	Health Care	70.129.050	Personal and clinical records of long-term care residents	1994			
432	Financial, Commercial and Proprietary Information	70.158.050	Tobacco product manufacturers' information required to comply with chapter 70.58 RCW is confidential and shall not be disclosed	2003	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
433	Health Care	70.168.070	Limitations on disclosure of reports made by hospital trauma care on-site review teams	1990			
434	Health Care	70.168.090	Patient records and quality assurance records associated with trauma care facilities	1990			
435	Health Care	70.170.090	Charity care information in hospitals	1989			

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436	Health Care	70.230.110	Ambulatory surgical facilities data related to the quality of patient care	2007			
437	Health Care	70.230.170	Information received by department of health regarding ambulatory surgical facilities	2007			
438	Health Care	71.05.425	Persons receiving notice and the notice of release or transfer of a person committed following dismissal of offense	2013 c 289 s 6			
439	Health Care	71.05.620	Records on mental health treatment	1989; 2013 c 200 s 34			
440	Investigative Records; Attorney Client Privilege	74.34.035(10); 74.34.067	Investigation relating to vulnerable adult; attorney client privilege	2013 c 263 s 2			
441	Crime Victims and Witnesses	71.09.140(2)	Names of victims, next of kin, or witnesses who are notified when sexually violent predator escapes, on parole, or released	1995			
442	Health Care	71.24.035(5)(g)	Mental retardation records	1982			
443	Health Care	71.34.340	Records on mental treatment of minors	1985			
444	Health Care	71.34.335	Mental health court records are confidential	1985			
445	Health Care; Investigative Records	74.66.030; 74.66.120	Information furnished pursuant to the Medicaid fraud false claims act is exempt until final disposition and all seals are lifted; records and testimony provided under civil investigative demand	2012 c 241 s 203, 212			
446	Health Care	71A.14.070	Confidential info re. developmentally disabled persons	1988	May 2019		
447	Health Care	72.05.130(1)	Reports regarding children with behavioral problems	1951	Feb. 2021; May 2021		
448	Offender Records	72.09.116	Info from correctional industries work program participant or applicant	2004			
449	Offender Records	72.09.345(4)	Certain info on sex offenders held in custody	1997; 2011 c 338 s 5			
450	Personal Information	70.39A.--	Personally identifiable info used to develop quarterly expenditure reports for certain long term care services	2016 1st sp s. c 30 s 3			
451	Investigative, law enforcement and crime victims	[Former 9.94A.610(1)(b)] 72.09.710 (recod eff 8/1/09) (see also ## 233 and 235)	Names of witnesses notified when drug offenders released	1991; Recod 2008 c 231 s 26 9 (see dispositions table)			
452	Placeholder						
453	Investigative, law enforcement and crime victims	[Former 9.94A.612(1)] 72.09.712 (recod eff 8/1/09)	Names of victims, next of kin, or witnesses who are notified when prisoner escapes, on parole, or released	1995; Recod 2008 c 231 s 27			
454	Placeholder						
455	Public Assistance	74.04.060 & .062	Limited access to information in department of social and health services registry concerning parents of dependent children	1941	Feb. 2021		
456	Public Assistance	74.20.280	Child support records	1963	Feb. 2021		
457	Public Assistance	74.04.520	Names of recipients of food stamps	1969	Feb. 2021		

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458	Health Care	74.09.290(1)	Medical records of persons on public assistance	1979			
459	Juvenile Records	74.13.075(5)	A juvenile's status as a sexually aggressive youth and related information are confidential and not subject to public disclosure by department of social and health services	2009 c 250 s 2			
460	Juvenile Records	74.13.640	Child fatality reports are subject to disclosure but confidential information may be redacted	2011 c 61 s 2	May 2019; Aug. 2019		
461	Juvenile Records	[Former 74.13.121] 74.13A.045 (recod)	Info from adoptive parents of kids receiving public assistance	1971; 2009 c 520 s 95	May 2019; Aug. 2019		
462	Placeholder						
463	Juvenile Records	[Former 74.13.133] 74.13A.065 (recod)	Adoption support records	1971; 2009 c 520 s 95	May 2019; Aug. 2019		
464	Placeholder						
465	Juvenile Records	74.13.280(2)	Info on child in foster care & child's family	1990	May 2019; Aug. 2019		
466	Juvenile Records; Public Assistance	74.13.500 - .525	Disclosure of child welfare records	1997	May 2019; Aug. 2019; Oct. 2019; Feb. 2020		
467	Personal information - clients	74.18.127(1)	Personal info maintained by the department of services for the blind	2003			
468	Juvenile Records; Public Assistance	74.20A.360 & .370	Certain records in division of child support	1997	May 2019; Aug. 2019		
469	Whistleblower; Investigative, law enforcement and crime victims	74.34.040	Identity of person making report on abuse of vulnerable adult	1984			
470	Investigative, law enforcement and crime victims	74.34.090	Identity of persons in records of abused vulnerable adults	1984			
471	Investigative, law enforcement and crime victims	74.34.095(1)	Info concerning the abuse of vulnerable adults	1999			
472	Whistleblower	74.34.180(1)	Name of whistleblower reporting abuse of vulnerable adults in various facilities	1997			
473	Investigative, law enforcement and crime victims	74.34.300	Files, etc. used or developed for vulnerable adult fatality reviews	2008 c 146 s 10			
474	Health Care	74.42.080	Records on nursing home residents	1979			
475	Health Professions	74.42.640	Information and documents created, collected and maintained by a quality assurance committee	2005			
476	Financial, Commercial and Proprietary Information	78.44.085(5)	Surface mining info	2006	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

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477	Financial, Commercial and Proprietary Information	78.52.260	Well logs on oil capable of being produced from a "wildcat" well	1951	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Feb. 2021; May 2021		
478	Financial, Commercial and Proprietary Information	[Former 79.76.230] - recodified as 78.60.230	Geothermal records filed w. department of natural resources	1974 - Recodified 2003	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
479	Investigative, law enforcement and crime victims	79A.60.210	Certain boating accident reports provided to the parks & recreation commission	1984			
480	Investigative, law enforcement and crime victims	79A.60.220	Boating accident reports/coroner	1987			
481	Security	81.104.115(4)	Rail fixed guideway system security and emergency preparedness plan	1999; 2016 c 33 s 8			
482	Security	81.112.180(4)	Rail fixed guideway system security and emergency preparedness plan	1999			
483	Financial, Commercial and Proprietary Information - Tax Info	82.32.330(2)	Certain tax return and tax information	At least 1935	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Feb. 2021; Aug. 2021		
484	Financial, Commercial and Proprietary Information - Tax Info	82.32.585	Taxpayer info supplied for survey is not disclosable. Amt of tax deferral is not subject to 82.32.330 confidentiality provisions	2010 c 114 s 102(4)	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
485	Placeholder						
486	Financial, Commercial and Proprietary Information - Tax Info	82.38.310(4)	Info from tribes or tribal retailers received by the state under a special fuel taxes agreement	2007	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
487	Financial, Commercial and Proprietary Information - Tax Info		Taxpayer info supplied for survey is not disclosable. Amt of tax deferral is not subject to 82.32.330 confidentiality provisions	2008 c 15 s 2	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
488	Financial, Commercial and Proprietary Information - Tax Info	82.32.808	Amounts less than $10,00 claimed in a tax preference; exceptions	2012 snd sp s. c 13 s 1702			
489	Financial, Commercial and Proprietary Information - Tax Info	84.08.210	Tax info obtained by department of revenue if highly offensive to a reasonable person and not a legitimate concern to public or would result in unfair competitive disadvantage	1997	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		

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490	Financial, Commercial and Proprietary Information - Tax Info	84.36.389	Income data for retired or disabled persons seeking property tax exemptions	1974	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
491	Financial, Commercial and Proprietary Information - Tax Info	84.40.020	Confidential income data in property tax listings	1973	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
492	Financial, Commercial and Proprietary Information	84.40.340	Utilities & transportation commission records containing commercial info a court determines confidential	1961	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; May 2021; Oct. 2021		
493	Agriculture and Livestock	90.64.190	Livestock producer info	2005	Aug. 2017; Oct. 2017; Feb. 2018; May 2018		
494	Financial, Commercial and Proprietary Information	2007 c 522 § 149 (3) (uncodified)	Names and identification data from participants in survey to identify factors preventing the widespread availability and use of broadband technologies	2007	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info		
495	Health Care	70.02.220 - .260	Health care information	2013 sp. S c 200 ss 6-10			
496	Health Care	42.56.360(1)(f)	Information relating to infant mortality pursuant to RCW 70.05.170	1992			
497	Dairies, Animal Feeding Operations	42.56.610	Certain information obtained by state and local agencies from dairies, animal feeding operations not required to apply for a national pollutant discharge elimination system permit disclosable only in ranges that provide meaningful information to public	2005 (c510s5)	Aug. 2017; Oct. 2017; Feb. 2018; May 2018		
498	Investigative, law enforcement and crime victims	9.95.260	Information regarding victims, survivors of victims, or witnesses that are sent pardon hearing notices may not be released to offender	1999			
499	Financial, Commercial and Proprietary Information - Trusts	11.110.075	Instrument creating a charitable trust, possibly only if the instrument creates a trust for both charitable and non-charitable purposes	1971	*See also May 2016, Aug. 2016 & Oct. 2016 - 42.56.270 & trade secrets/proprietary info; Feb. 2021; May 2021		
500	Juvenile Records	13.04.155; 28A.320.163(5)	Information on juvenile conviction by adult criminal court given to school principal and received by school district staff	1997; 2020			
501	Juvenile Records	13.24.011	Records of the interstate compact for juveniles that would adversely affect personal privacy rights or proprietary interests	2003			
502	Boarding Homes	13.40.150	Sources of confidential information in dispositional hearings on juvenile offenses	1977			

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	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
503	Placeholder						
504	Employment Security	50.13.015; .020; .040, .050, .100 & .110	Most info supplied to employment security department	1977			
505	Financial, Commercial and Proprietary Information	51.36.120	Financial or valuable trade info from health care providers, if request	1989			
506	Health Care	70.05.170	Medical records re. Child morality review	1992			
507	Juvenile Records	13.34.046	Information regarding a youth subject to RCW 13.34 is confidential except as required under lawful court order	2013 c 182 s 5	May 2019; Aug. 2019		
508	Placeholder						
509	Investigative, law enforcement and crime victims	79A.60.210 79A.60.220	Certain boating accident reports provided to the parks & recreation commission	1984			
510	Investigative, law enforcement and crime victims	42.56.240(10)	Felony firearm offense conviction database of felony firearm offenders established in RCW 43.43.822	2013 c 183 s 1			
511	Investigative, law enforcement and crime victims	42.56.240(12)	Security threat group information collected and maintained by department of corrections	2013 c 315 s. 2			
512	Legal proceedings; Privilege	7.77.140; 7.77.150; 7.77.160; 7.77.170	Confidentiality of collaborative law proceedings; privilege	2013 c 119ss 15 - 18			
513	Emergency Information	38.32; 42.56.230(9); 38.52.575; 38.52.577	Enhanced 911 Call information	2015 c 224 s 2, 6	Feb. 2014; Feb. 2015	Feb. 2015	SB 1980 (2015); Ch. 224, 2015 Laws
514	Investigative, law enforcement and crime victims	42.56.240(16)	Campus sexual assault/domestic violence communications and records	2017 c 72 s 3			
515	Investigative, law enforcement and crime victims	42.56.240(17)	Law enforcement information from firearms dealers	2016 c 261 s 7			
516	Employment and Licensing	42.56.250(3)	Professional growth plans	2017 c 16 s 1			
517	Employment and Licensing	42.56.250(10)	GPS data of public employees or volunteers using GPS system recording device	2017 c 38 s 1			
518	Financial, Commercial and Proprietary Information	42.56.270(28)	Trade secrets etc. re to licensed marijuana business, submitted to LCB	2017 c 317 s 7			
519	Public Utilities and Transportation	42.56.330(9)	Personally identifying information in safety complaints submitted under ch. 81-61 RCW	2017 c 333 s 7			
520	Insurance & Financial Inst.	42.56.400(26)	Non public personal health information obtained by, discussed to, or in custody of the insurance commissioner	2017 c 193 s 2			
521	Insurance & Financial Inst.	42.56.400(27)	Data, information, documents obtained by insurance commissioner under RCW 48.02	2017 3rd sp. sess. c 30 s 2			
522	Fish & Wildlife	42.56.430(3); 77.12.885	Damage prevention agreement, non lethal preventative/measures to minimize wolf interactions	2017 c 246 s 1	May 2017; Aug. 2017; Oct. 2017; May 2018; Aug. 2018; Feb. 2019; Aug. 2020; Feb. 2021; May 2021; Aug. 2021; Oct. 2021; Nov. 2021		

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	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
523	Fish & Wildlife	42.56.430(4); 77.12.885	Reported depredation by wolves on pets or livestock	2017 c 246 s 1	May 2017; Aug. 2017; Oct. 2017; May 2018; Aug. 2018; Feb. 2019; Aug. 2020; Feb. 2021; May 2021; Aug. 2021; Oct. 2021; Nov. 2021		
524	Fish & Wildlife	42.56.430(7)	Tribal fish & shellfish harvest information - department of fish & wildlife	2017 c 71 s 1	May 2017; Aug. 2017; Oct. 2017		
525	Fish & Wildlife	42.56.430(8)	Commercial shellfish harvest information - department of fish & wildlife	2017 c 71 s 1	Aug. 2017; Oct. 2017		
526	Juvenile Records	13.50.010(16)	Health/safety information from DYF to department of commerce re youth in foster care admitted to CRCs/HOPE centers	2017 c 272 s 1	May 2019; Aug. 2019		
527	Juvenile Records	13.50.010(17)	DYF disclosures re child abuse/neglect, and for health care coordination	2017 3rd sp. s. c 6 5312	May 2019; Aug. 2019		
528	Personal Information	40.26.020	Biometric identifiers	2017 c 306 s 2; 2017 2nd sp. s. c 1 s 1			
529	Insurance Information	48.02.230	Information used to develop an individual health insurance market stability program	2017 3rd sp. s. c 30 s 1			
530	Health Care	50A.04.195(4)&(5)	Family/medical leave	2017 3rd sp. s. c 5 s 29			
531	Health Care	50A.04.080(2)(b)	Family/medical leave from employer records	2017 3rd sp. s. c 5 s 33			
532	Health Care	50A.04.205	Family/medical leave ombuds surveys	2017 3rd sp. sess. c 5 s 88			
533	Voter and Election Information - Personal Information	42.56.230(10)	Personally Identifiable voter registration information for individuals under 18	2018			
534	Religious Beliefs; Personal Information	42.56.235	Personal identifying information about an individual's religious beliefs	2018	Oct. 2018; Feb. 2019; May 2019; Aug. 2019	Aug. 2019	
535	Investigative, law enforcement, crime victims; Juvenile Records	42.56.240(18)	Audio and video recordings of child interviews regarding child abuse or neglect	2018			
536	Voter and Election Information - Employment and Licensing; Personal Information	42.56.250(11)	Personally Identifiable voter registration information for individuals under 18	2018			
537	Financial, Commercial and Proprietary Information	42.56.270(29)	Financial, commercial, operations, technical, and research information submitted to the Andy Hill cancer research endowment program pertaining to grants under chapter 43.348 RCW, that if revealed would result in private loss	2018			
538	Financial, Commercial and Proprietary Information; Health Care	42.56.270(30)	Proprietary information filed with the department of health	2018			

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	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
539	Agriculture and Livestock	42.56.380(13)	Information obtained from the federal government if exempt from disclosure under federal law and personal financial information or proprietary data obtained by the department of agriculture	2018			
540	Agriculture and Livestock	42.56.380(14)	Hop grower lot numbers and lab results	2018			
541	Insurance & Financial Inst.	42.56.400(28)	An insurer's corporate governance annual disclosure and related information obtained by the insurance commissioner	2018			
542	Insurance & Financial Inst.; Health Care	42.56.400(28)	Claims, health care, and financial information submitted by school districts to the office of the insurance commissioner and health care authority	2018			
543	Firearms	9.41.350(6)	Records regarding a person's voluntary waiver of firearm rights	2018			
544	Agriculture and Livestock	15.135.100(1)	Information obtained from the federal government if exempt from disclosure under federal law	2018			
545	Agriculture and Livestock; Personal Information; Financial, Commercial, and Proprietary Information	15.135.100(2)	Personal financial information or proprietary data obtained by the department of agriculture	2018			
546	Child Abuse; Juvenile Records; Investigative Records	26.44.187	Recorded child interviews regarding child abuse or neglect	2018			
547	Parentage; Personal Information	26.26A.050	Personally identifiable information of the child and others in parentage proceedings	2018			
548	Elections; Personal Information	29A.08.720(2)(b)	The personally identifiable voter registration information of individuals under 18	2018			
549	Elections; Personal Information	29A.08.770	The personally identifiable voter registration information of individuals under 18 maintained by the secretary of state and county auditors	2018			
550	Elections; Personal Information	29A.08.359	Personal information supplied to obtain a driver's license or identicard and used to certify registered voters	2018			
551	Elections	29A.92.100(3)	A plaintiff's filing of an action regarding equal voting rights under the Washington voting rights act of 2018	2018			
552	School District Insurance	41.05.890(2)	Claims, health care, and financial information submitted by school districts to the office of the insurance commissioner and health care authority	2018			
553	State Government	43.216.015(15)	Oversight board for children, youth, and families records, only the information if otherwise confidential under state or federal law	2018			
554	State Government; Investigative Records	43.06C.060(3)	Information regarding investigations exchange between the office of the corrections ombuds and the department of corrections	2018			

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	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
555	Insurance Information	48.195.040(1)	An insurer's corporate governance annual disclosure and related information submitted to the insurance commissioner	2018			
556	Unwanted Medication Disposal; Financial, Commercial and Proprietary Information	69.48.170	Proprietary information submitted to the department of health regarding unwanted medication disposal	2018			
557	Financial, Commercial, and Proprietary Information	42.56.270(13)	Financial and proprietary information submitted to or obtained by the department of ecology				
558	Financial, Commercial, and Proprietary Information	42.56.270(15)	Financial and commercial information provided as evidence to the department of licensing from special fuel licensees or motor vehicle fuel licensees				
559	Financial, Commercial, and Proprietary Information	42.56.270(18)	Financial, commercial, operations, and technical and research information submitted to health sciences and services authorities if private loss would result				
560	Financial, Commercial, and Proprietary Information	42.56.270(19)	Information that can be identified to a particular business that was gathered as part of agency rule making				
561	Health Care Professionals; Health Care	42.56.355	Information distributed to a health profession board or commission by an interstate health professions licensure compact	2017			
562	Marijuana	42.56.630	Registration information of members of medical marijuana cooperatives submitted to the liquor and cannabis board	2015			
563	Health Professionals; Personal Information	42.56.640	Personal identifying information of vulnerable individuals and in-home caregivers	2017			
564	Health Care	71.05.445(4)	Court-ordered mental health treatment records received by the department of corrections	2000			
565	Health Care Professionals; Whistleblower	74.09.315(2)	Identity of whistleblower				
566	Personal Information; Public Assistance	43.185C.030	Personal information collected in homeless census				
567	Juvenile Records	26.44.125(6)	Child abuse or neglect review hearings	2012			
568	Juvenile Records	74.13.285(4)	Information on a child in foster care or child's family	2007			
569	Health Professionals; Personal Information	74.39A.275(5)	Personal information of vulnerable adults and in-home care providers	2016			
570	Health Professionals; Personal Information	43.17.410	Personal information of vulnerable individuals and in-home caregivers	2017			
571	Health Care; Personal Information; Investigative Records	74.39A.060(6)	Personal identifying information of complainant and residents in a complaint against a long-term care facility				
572	Health Care; Financial, Commercial, and Proprietary Information; Trade Secret	41.05.026	Health care contractor proprietary information				

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	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
573	Collective Bargaining	41.56.510	Collective bargaining authorization cards of public employees	2010			
574	Personal Information	42.56.230(11)	Information submitted to state regarding people self-excluding themselves from gambling activities under RCW 9.46.071 and 67.70.040	2019			
575	Personal Information; Firearms	42.56.230(12)	Personal information of individuals who participated in the bump-fire stock buy- back program under RCW 43.43.920	2019			
576	Financial Commercial, and Proprietary Information	42.56.270(31)	Confidential, valuable, commercial information filed with the Department of Ecology regarding the architectural paint stewardship program	2019			
577	Agriculture and Livestock; Financial, Commercial, and Proprietary Information; Trade Secret	42.56.380(15)	Trade secrets, commercial information, and other confidential information obtained by the federal Food and Drug Administration by contract	2019			
578	Agriculture and Livestock; Financial, Commercial, and Proprietary Information; Trade Secret	15.130.150	Trade secrets, commercial information, and other confidential information obtained by the federal Food and Drug Administration by contract	2019			
579	Insurance & Financial Inst.	42.56.400(29)	Findings and orders that disapprove the acquisition of a state trust company	2019			
580	Personal Information; Employment and Licensing	42.56.660 (effective 7/1/2020)	Agency employee records if the requester sexually harassed the agency employee	2019			
581	Personal Information; Employment and Licensing	42.56.675 (effective 7/1/2020)	Lists of agency employees compiled by agencies to administer RCW 42.56.660	2019			
582	Health Care	42.56.650, 41.05.410(3)(b)	Data submitted by health carriers to the Health Benefit Exchange and Health Care Authority	2019			
583	Court Proceedings; Guardian	11.130.300(3) (effective 1/1/21)	Visitor report and professional evaluation regarding appointment of guardian for an adult	2019			
584	Court Proceedings; Conservator	11.130.410(3) (effective 1/1/21)	Visitor report and professional evaluation regarding conservatorship of a minor	2019			
585	Health Care	19.390.070	Information submitted to the attorney general regarding potential anticompetitive conduct in the health care market	2019			
586	Placeholder						
587	Personal Information; Investigative, law enforcement, and crime victims	26.44.175(5)	Information provided to multidisciplinary child protection team members in the course of a child abuse or neglect investigation	2019			
588	Insurance and Financial Institutions; Financial Commercial and Proprietary	30B.44B.170	Department of Financial Institutions' records in connection to involuntary liquidation of a state trust company	2019			

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	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
589	Insurance and Financial Institutions; Financial Commercial and Proprietary	30B.53.100(3)	Department of Financial Institutions' findings and order on the disapproval of a proposed acquisition of a state trust company	2019			
590	State Government; Financial Commercial, and Proprietary Information	43.155.160(6)(g)	Broadband service provider confidential business and financial information submitted as part of an objection to an application for a grant to expand access to broadband service	2019			
591	State Government	42.17A.120(3)	Modification hearing information on the suspension or modification of campaign finance reporting requirements under 42.17A.710	2019			
592	State Government; Health Care	43.71C.030(2)	Pharmacy benefit manager information reported to the Health Care Authority	2019			
593	State Government; Health Care	43.71C.050(7); 060(5); 070(3)	Prescription drug manufacturer information reported to the Health Care Authority	2019			
594	State Government; Health Care	43.71C.100	Health Care Authority prescription drug data	2019			
595	Insurance; Health Care; Personal Information	48.43.505(4)	Nonpublic personal health information held by health carriers and insurers	2019			
596	Financial, Commercial, and Proprietary Information; Marijuana	69.50.561(6)	Licensed marijuana business's financial and proprietary information supplied during consultative services by the Washington State Liquor and Cannabis Board	2019			
597	State Government; Health Care	70.225.040(1)	Information submitted to the prescription monitoring program	2019			
598	State Government; Financial Commercial, and Proprietary Information	70.375.130	Confidential, valuable, commercial information filed with the Department of Ecology regarding the architectural paint stewardship program	2019			
599	State Government; Health Care	70.58A.400(5) (effective 1/1/21)	Sealed birth records with adoption decrees under chapter 26.33 RCW	2019			
600	State Government; Health Care	70.58A.500(3) (effective 1/1/21)	Sealed live birth records	2019			
601	State Government; Health Care	70.58A.530(15), (16)	Certification of birth or fetal death, including certification of birth resulting in stillbirth, that includes information from the confidential section of the birth or fetal death record	2019			
602	State Government; Health Care	70.58A.540 (effective 1/1/21)	Vital records, reports, statistics, and data	2019			
603	Employment and Licensing; Personal Information	42.56.250(11)	Personal demographic details voluntarily submitted by state employees	2020			
604	Financial, Commercial, and Proprietary Information	42.56.270(32)	Commercial information obtained by the Liquor and Cannabis Board in connection with distiller licensing	2020			
605	Educational Information	42.56.315	Certain student information received by school districts	2020			
606	Health Care	42.56.360(1)(l); 41.04.830	Medical information about members of retirement plans	2020			

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	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
607	Health Care	70.390.030(7)	Health care information held by the Health Care Cost Transparency Board that could identify a patient	2020			
608	Educational Information; Crime Victim and Witnesses	42.56.375; 28B.112.060(3); 28B.112.070(2); 28B.112.080(5)	Identifying information regarding sexual misconduct complainants and witnesses	2020			
609	Insurance and Financial Information; Health Care	42.56.400(31); 48.200.040; 48.43.731	Contracts with health care benefit managers filed with the Insurance Commissioner	2020			
610	Firearms; Health Care	9.41.111(1)(c)	Mental health information received in connection with a firearm frame or receiver purchase or transfer application	2020			
611	Juvenile Records; Investigative, law enforcement and crime victims	13.50.260(12)	Confidential information and sealed records accessed through the Washington state identification system by criminal justice agencies	2020			
612	Juvenile Records; Public Assistance	74.13.730(7)	Reports, reviews, and hearings involving certificates of parental improvement	2020			
613	Education Information	28B.96.020(8)	Data collected by the Undocumented Student Support Loan Program	2020			
614	Motor Vehicle/Driver Records	43.59.156(6)(a)	Confidential information obtained by the Cooper Jones Active Transportation Safety Council	2020			
615	Motor Vehicle/Driver Records	46.20.117(6); 46.20.161(6)	Self-attestations and data provided for identicard and driver's license designations	2020			
616	Juvenile Records	28A.300.544(6)	Confidential information received by the work group on students in foster care and/or experiencing homelessness	2020			
617	Public Utilities and Transportation	81.88.160(7)	Gas pipeline company reports submitted to the UTC that contain proprietary data or where disclosure would affect public safety	2020			
618	Financial, Commercial, and Proprietary Information	42.56.270(12)(a)(iii)	Financial and proprietary information provided to the Department of Commerce in connection with the industrial waste coordination program	2021			
619	State Government; Public Health	42.56.380(16)	Certain information obtained from the federal Food and Drug Administration by Department of Health public health laboratories for monitoring food supplies for contaminants	2021			
620	Elections	42.56.420(7)	Certain election security information	2021			
621	Personal Information	42.56.680	Personal information obtained by the Department of Commerce from residential real property notices of default	2021 c 151 s 12			
622	Security	42.56.422; 43.105.450(7)(d)	State agency information technology security reports and information compiled in connection with the Office of Cybersecurity	2021 c 291 s 8; 2021 c 291 s 1			

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	Category	RCW	Description	Date Enacted	Materials Presented	Recommendation	Proposed Legislation & Related Bills
623	Personal information; Crime Victims	7.105.105(2)	Confidential party information forms accompanying petitions for civil protection orders	2021 c 215 s 14			
624	Financial, Commercial, and Proprietary Information; Trade Secret	36.32.234(7)(a)	Trade secrets and proprietary information submitted by bidders, offerors, and contractors in connection with electric ferry design and procurement, when requested and county concurs	2021 c 224 s 1			
625	State Government; Financial, Commercial, and Proprietary Information	36.32.234(7)(b)	Electric ferry procurement documents, until notification of finalist made or selection terminated	2021 c 244 s 1			
626	Personal Information; Motor Vehicle/Driver Records	46.22.010	Information and records containing personal and identity information obtained by the Department of Licensing to administer driver and vehicle records	2021 c 93 s 4			
627	Personal Information; Health Care	49.17.062(3)	During public health emergencies, certain personally identifiable information regarding employees of the Department of Labor and Industries	2021 c 252 s 2			
628	Health Care	70.14.065(4)	Records obtained or created relating to partnership agreements for production, distributing, and purchasing generic prescription drugs and insulin	2021 c 274 s 1			
629	Health Care	71.40.140; 71.40.120(3)	Communications, records, and files of the Office of Behavioral Health Consumer Advocacy, and related organizations and advocates	2021 c 202 s 12; 2021 c 202 s 14			
630	State Government	70A.245.030(2)	Reports and information submitted to the Department of Ecology by producers of certain plastic products, when requested	2021 c 313 s 4			
631	Security; State Government	42.56.422	The report detailing the Office of Cybersecurity's independent security assessment of state agency information technology security program audits	2021			
632	Industrial Insurance; Injured Worker	51.04.063(13)	Information relating to individual claim resolution settlement agreements submitted to the board of industrial insurance appeals	2014			

*For subsequent legislative history, see statutes online on the state legislative's website; see also Code Reviser's Office list ("Exemptions from Public Records Disclosure and Confidential Records") available on Sunshine Committee web page.

Exhibit D

Case No. 83700-1-I
(King County Superior Court Case No. 21-2-02468-4 SEA)

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION I

JOHN DOES 1, 2, 4, and 5,
Appellants,

v.

SEATTLE POLICE DEPARTMENT, and the SEATTLE POLICE DEPARTMENT OFFICE OF POLICE ACCOUNTABILITY,

and

JEROME DRESCHER, ANNE BLOCK, SAM SUEOKA, and CRISTI LANDES,
Respondents.

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Other Authorities

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I. INTRODUCTION

There is no dispute that John Doe 1, John Doe 2, John Doe 4, and John Doe 5 (collectively, "Appellants") simply exercised their First Amendment rights by attending then-President Donald Trump's rally on January 6, 2021 while off-duty. There is likewise no dispute that The Office of Professional Accountability ("OPA") found that Appellants' off-duty political expression was lawful and "absolutely protected by the Constitution." CP 552. And, as OPA found, Appellants' attendance at this rally did not in any way "undermine" public trust in the Department. CP 551-53.

Despite these findings by the OPA Director, who is not only appointed by Seattle's Mayor and confirmed by Seattle's City Council but is also overseen by the Office of Professional Accountability Auditor ("OPA Auditor"), as well as another separate, seven-member citizen oversight board ("OPA Review

Board").[1], Respondent Sam Sueoka ("Sueoka") is *not* satisfied with the outcome.

Sueoka claims that "public interest" allows him to disregard OPA's Investigation and weaponize the Public Records Act, 42.56 *et seq.*, against public servants based solely on their attendance at a political rally. In other words, Sueoka seeks to use the PRA, not to evaluate government functioning, but to target government workers.

At its core, this Appeal presents the fundamental question: whether the PRA's transparency mandate, which is undoubtedly established as a mechanism to ensure governmental accountability, can be used as a means to empower certain members of the public to pursue personal vendettas against government employees based solely on those employees' lawful exercise of their Constitutional rights in their private lives.

[1] SMC §§3.28.810(B), 3.28.850-555, 3.28.900.

II. ARGUMENT

A. Trial Court Erred in Denying Appellants' Request for Preliminary Injunction.

1. *Denial of Preliminary Injunction under the PRA is reviewed* De Novo.

As an initial matter, review of the Trial Court's decision is *de novo* not just because of the documentary nature of the record, as suggested by Sueoka, but because the Supreme Court has long held that decisions under the PRA deserve a *de novo* review. *Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405*, 164 Wn.2d 199, 208, 189 P.3d 139, 144 (2008) ("We review decisions under the PDA de novo").

The PRA is a vital tool for Washington's citizenry to remain informed about the workings of their governmental agencies. Our Supreme Court has long believed the usage of this tool, even in the context of a preliminary injunction, is deserving of a *de novo* review to ensure that its essential purpose is preserved. *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 791, 418 P.3d 102, 114 (2018) ("A decision granting or denying an

injunction under the PRA is reviewed de novo"). That essential purpose is to enhance accountability, by ensuring transparency in government. However, members of the public should not weaponize the PRA, and detract from its purpose by aiming it at *unelected* public servants based solely on their lawful off-duty political activities.

Courts should heed the legislative mandate to construe the PRA's exemptions narrowly. However, they should also heed the reasoning behind that mandate: to ensure that Washington's citizenry knows the workings of the government, so that the government remains accountable. As stated in the PRA's declaration of purpose:

> The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed ***to promote this public policy*** and to assure that the public interest will be fully protected.

RCW 42.56.030 (emphasis added).

The PRA should be liberally construed to promote accountability. But liberal construction does not grant a license to invade the privacy of public employees, prying into their political and personal views, or to interfere with the exercise of constitutionally protected rights.

For this reason, the Legislature promulgated the PRA's detailed set of exemptions, designed to assist public agencies and the courts in balancing the interests of public disclosure for accountability through transparency versus the rights of personal privacy. Thus, this balancing deserves a *de novo* review irrespective of the nature of the documentary record considered by the Trial Court.

2. Any release of the full Investigative File is premature.

Sueoka argues that however this Appeal is decided, the full Investigative File should be released. Sueoka Br. at 23-25. Sueoka argues that even if Appellants' identities (inclusive of

any identifying information) are, indeed, exempted under the PRA's dual privacy exemptions or upon Constitutional objection, this Court, sitting in an appellate capacity, should nonetheless blindly order the release the full OPA investigative materials with redactions.

The problem with Sueoka's argument is, the PRA requires the City to first determine whether the redaction of records without compromising these exemptions is even feasible. This, of course, requires this Court to *first* construe the PRA's privacy exemption and Appellants' Constitutional rights, and *then* for the City to apply that ruling to the full OPA investigative file. Once the parameters of the privacy and Constitutional interest are defined, the City can and should – consistent with *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 432, 327 P.3d 600, 605 (2014) – determine whether redaction is actually feasible to preserve that exemption.

A public agency applying a "conditional exemption" – *i.e.,* one that requires "exempting a particular type of information but

only insofar as an identified privacy right or vital governmental interest is demonstrably threatened" – must determine whether "effective redaction is possible" before disclosing the record. *Id.* at 432. To do that, the Court must first determine the exemption's scope. *Id.* ("[A] conditional exemption will be upheld if the agency has accurately identified the nature of the specified information or record and properly determined that an identified interest must be protected in the given case") (citing *Bellevue John Does*, 164 Wn.2d at 210).

For good reason, Appellate Commissioner Jennifer Koh has already found that a wholesale extension of the Temporary Restraining Order blocking a release of the entire file "is necessary to ensure effective and equitable review" of the scope of the privacy exemption and Constitutional implications at issue.[2] Even the Trial Court, the judicial body charged with making factual findings, chose to extend the order in full based on the City's position that segregation was not feasible. RP 96:7-

[2] *See* Commissioner Koh's April 9, 2021 Notation Ruling at 2. CP 1589.

10[3]. And, if the City's position turns out to be correct, then the City must withhold the entire OPA investigation materials as mandated by *Resident Action Council*.

Thus, Sueoka is not correct as to the disputed issues here. Once the scope of the privacy exemption and Constitutional implications are defined, this matter should be remanded to the Trial Court to assess whether redaction is feasible to protect the threatened privacy and Constitutional interests, and, if so, to what extent. CP 1336-1337; 1340-1341. However, at this time, the statutory or Constitutional exemption has not been finally adjudicated. Without the exemptions being judicially recognized, the City's obligation to determine whether redaction is feasible has yet to be triggered. Thus, depending on the outcome of the appealed issues, further factual findings remain and any declarations as to "what is not in dispute" is premature at best.

[3] *See* City's Answer to Petitioner's Motion for Emergency Relief at p. 1.

3. Appellants' identities are protected under both the PRA's dual privacy exemptions.

The personal information at issue here encompasses wholly off-duty activities. Appellants do not, as Sueoka contends, simply rely on hatred and ridicule for establishment of the privacy interest and, instead, have briefed the nature of the privacy interest at length. App. Br. at 22-29. Appellants address the import of Comment b §652(D) to the Restatement of Torts in their Reply to the City's Response Brief.

For completeness sake, Appellants point out that Sueoka simply mischaracterizes the reasoning in *Bellevue John Does*. Sueoka Br. at 26-27. That decision did not just rely on the *Hearst* definition. In fact, that was the dissent's major criticism of the majority opinion. *See Bellevue John Does*, 164 Wn.2d at 227 (Madsen Dissenting) ("majority refuses to accept the common law meaning set out in *Hearst*"). Although the *Bellevue John Does* Court observed that the nature of the allegation was of a sexual nature, and thus covered by the enumerated subjects in the

Restatement, that observation was significant only to distinguish between alleged misconduct occurring on-duty versus off-duty. It was by no means a requirement to find a privacy interest. *Id.* at 212–13 ("One of the comments to §652D illustrates the nature of facts that *could* be considered matters concerning the private life") (emphasis added). The thrust of the Court's reasoning actually focused on whether the "unsubstantiated or false accusation" was made against "an employee in the course of performing public duties." *Bellevue John Does*, 164 Wn.2d at 215. Because sexual misconduct was not allegedly performed during the course of public service (*i.e.,* it was a private affair per the Restatement), the *Bellevue John Does* Court recognized an established privacy interest. Importantly, here, none of the claimed unsubstantiated misconduct occurred during the course of public service and, given the intimate subject matter involved, this Court should likewise recognize a privacy interest.

4. The fact that the OPA did not sustain findings against Appellants confirms the lack of legitimate public concern in learning Appellants' identities.

Sueoka ignores the inescapable truth that the unsubstantiated nature of any misconduct inherently means that there is no governmental response for the public to evaluate. *Bellevue John Does*, 164 Wn.2d at 221, 189 P.3d at 150. This refusal to recognize the basic reasoning underlying *Bellevue John Does* is unsurprising given that arguing unsubstantiated allegations lack any import, just like all Sueoka's other arguments, but disregards the basic purpose of the PRA – to ensure transparency in governmental workings. Needless to say, if misconduct is not substantiated and, as here with the OPA Summary, the public has been afforded "the nature of the allegations and reports related to the investigation and its outcome" (*id.* at 221), any *legitimate* concern in the identities of the Appellants is lacking.

What Sueoka is essentially arguing is that the assessment of the nature of the investigation should not be the focus of the

legitimate concern to the public. Rather, it is whether he is subjectively satisfied with the result of the investigation. However, such subjective satisfaction does not give rise to a legitimate concern to the public. *Id.* at 151. Nor could such a subjective standard ever be workable for a governmental agency to assess what is of legitimate concern to the public.

In a concerted effort to detract from the fundamental objective of the PRA, Sueoka attempts to single out one Appellant who was unable to affirmatively corroborate his whereabouts, and to draw a distinction between "exoneration" and failure to substantiate a burden of proof. Sueoka Br. at 36. First, Sueoka's characterization of the OPA's findings is wrong. Three Appellants were outright exonerated. And, more importantly for the purposes of this Appeal, the distinction between exoneration from misconduct and unsubstantiated misconduct was flatly rejected by the Supreme Court in *Bellevue John Does*:

> As a preliminary matter, we choose to address whether the public has a legitimate concern in the identities of teachers who are the subjects of unsubstantiated claims of sexual misconduct rather than patently false claims. Making a distinction between "unsubstantiated" and "patently false" is vague and impractical. Placing the burden on agencies and courts to determine whether allegations are patently false rather than simply unsubstantiated is unworkable, time consuming, and, absent specific rules and guidelines, likely to lead to radically different methods and conclusions.

Id. at 218.

Thus, whether claims are unsubstantiated versus patently false has no bearing on the analysis under the PRA. Instead, in evaluating the legitimacy of the concern to the public, the *Bellevue John Does* opinion went on to reason that the identities of the subjects caught up in an investigation into *unsubstantiated* claims of misconduct did not satisfy the legitimate concern to the public because the subjects' identities played little role in public oversight over the investigation. *Id.* at 220-21. Upon completion of the investigation without substantiated findings of misconduct, there was no governmental action to evaluate. *Id.*at

218. In other words, the only response to unsubstantiated misconduct is – no response. Thus, there is nothing to scrutinize other than the nature of the investigation itself, which, as noted repeatedly, has already been disclosed. Simply, the Washington Supreme Court was unconcerned with exoneration of the public employee because exoneration has no bearing on whether the records afford the public a window into the administrative process.

Importantly, the *nature* of the allegation does not somehow implicate a legitimate concern to the public. No matter the severity of the claimed misconduct, there should always be a legitimate public concern in the identity of the subject when the misconduct is *substantiated*. Not so when the claimed misconduct is unsubstantiated. In an effort to sidestep *Bainbridge Island* and *Bellevue John Does*, both of which unequivocally hold that unsubstantiated claims do not satisfy the legitimate public concern prong of the PRA's definition of privacy in RCW 42.56.050, Sueoka simply points out that this

case does not involve accusations of sexual misconduct, and somehow, because of the lack of an unfounded sexual misconduct allegations, the names of the Appellants are a matter of legitimate public concern. This argument is illogical for two reasons.

First, the Washington Supreme Court's assessment of the *nature* of the unsubstantiated allegation in *Bainbridge Island Police Guild* and *Bellevue John Does* is limited to whether its disclosure is "highly offensive." *Id.* at 215; *see also Bainbridge Island Police Guild*, 172 Wn.2d at 415, 259 P.3d at 198. In other words, the nature of the allegation – if unsubstantiated – has no bearing on the legitimacy of the concern to the public. Here, Sueoka's very argument adopted by the Trial Court, that Appellants might actually be racist right-wing extremists, even though *all* four of them were unequivocally found not to be racist right-wing extremists after a comprehensive administrative investigation into that very claim, confirms that the release of their identities would subject them to hatred and ridicule. No

such authority needs to be submitted for that proposition. Thus, just with unfounded allegations of sexual misconduct, this Court can take judicial notice that being unfairly labeled a right-wing extremist without any evidence to substantiate such a claim would subject one to hatred and ridicule.

Secondly, even if the nature of the allegation factored into the legitimacy of the concern to the public, intuitively, a more severe allegation (such as sexual exploitation of a minor) would presumably be of even greater public concern. But, if the legitimacy of the public concern varied directly with the severity of the alleged misconduct – in those less severe cases, the public interest would also be less significant. Conversely, the more severe the unsubstantiated allegation, the more likely its severity would expose the subject to hatred or ridicule, thus pitting the "highly offensive" prong directly at odds with the "legitimate public concern" prong of RCW 42.56.050. Because the fulfillment of both conditions is necessary to establish a privacy interest, if a court were to weigh the severity of the allegation in

assessing the legitimate concern to the public, rare, if ever, would an unsubstantiated allegation be exempt from disclosure. *See Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655, 663 (2002) (courts should construe a statute to avoid an absurd result). In other words, for the privacy exemption to apply according to Sueoka's reasoning, disclosure of the allegation would need to be severe enough to be highly offensive, but not so severe as to warrant public interest.

The Appellate Decisions cited by Sueoka do not assess the nature of the unsubstantiated allegation in analyzing whether disclosure of the subject identities is of legitimate concern to the public. Although in *City of Fife v. Hicks*, 186 Wn. App. 122, 345 P.3d 1 (2015), Division II alluded to *Bainbridge Island's* usage of the phrase "unsubstantiated allegation of sexual misconduct" in characterizing the prior holding in *Bellevue John Does*, it did so only to reject a bright-line rule that the identity of officers involved with unsubstantiated allegations are categorically

exempt from disclosure. *Id.* at 141. In analyzing whether the unsubstantiated allegation at issue was of legitimate concern to the public, that Court noted the legitimacy of the concern stemmed from the fact that the investigation "concerned the official conduct of high-ranking police officials." *Id.* at 143. It also noted the "investigation in fact confirmed that many of the events described had actually occurred." *See id.* Not so here. These were rank-and-file officers in a wholly off-duty capacity. Moreover, there was no evidence linking any of them to the Capitol Riot and, in three cases, indisputable evidence corroborated their departure from the Capitol before those events unfolded.

Likewise, *West v. Port of Olympia*, 183 Wn. App. 306, 333 P.3d 488 (2014), also cited by Sueoka, did not assess the nature of the allegation in analyzing the legitimate public concern prong. Far from it. The *West* Court declined to address that issue altogether because it found disclosure of allegations pertaining to accounting irregularities and office policy violations were not

highly offensive to a reasonable person. *Id.* at 333, fn. 3 ("Because we hold that disclosure of the employee's name and identifying information would not be highly offensive, we need not address whether the information is of legitimate public concern"). Thus, contrary to Sueoka's Brief, these Decisions do not in any way hold that a legitimate public interest somehow arises only in other types of alleged wrongdoing found to be unsubstantiated. Indeed, no case does.

In relying on an isolated snippet of dicta from *Predisik* arguing that identity of all public employees caught up in *any* investigation are in the public interest, Sueoka fails to point out that the issue in *Predisik* was whether the exemption applied to public records which merely reveal the existence of an investigation, "but do not describe the allegations being investigated." *See Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d at 900. The legitimacy of the public concern into the "mere fact" that an employee was under investigation derived from the taxpayers' need to know whether those employees,

placed on paid administrative leave, were performing their duties or not while on the public's payroll:

> Public employees are paid with public tax dollars and, by definition, are servants of and accountable to the public. The people have a right to know who their public employees are and when those employees are not performing their duties. In sum, we hold there is no privacy right under the PRA in the mere fact that a public employer is investigating a public employee or in the employee's use of administrative leave. Both are simply functions of the government.

Id. at 908.

The reasoning in *Predisik* underscores that *legitimate* public concern arises from the public's need to access records to assess governmental functioning. In that case, the importance to taxpayers as to which governmental employees had been placed on administrative leave, on the public dime, as result of alleged misconduct in the scope of their public service. Thus, an assessment of a governmental response to dealing with the administrative process. By contrast, here, none of the Appellants were investigated for any on-duty misconduct. And, unlike the

teachers in *Predisik*, none the Appellants were placed on administrative leave[4] resulting from an investigation into alleged on-the-job misconduct. *Predisik* is further distinguishable because the claimed misconduct was not implicated from either the requests or the targeted records themselves. Here, Appellants are being targeted because of their lawful off-duty participation in a political rally.

In an effort to apply *Predisik* to the facts here, Sueoka argues that being "off-duty is irrelevant" because police officers still have law enforcement powers. Sueoka Br. at 29. Sueoka cites no authority for this position other than a 1996 decision stating officers still have the "authority" to respond to emergencies and respond to crimes even when they are off duty.

[4] For completeness sake, Appellants note that Sueoka's briefing in the First Appeal cited to a January 8, 2021 Seattle Times article with reference to placement of officers on administrative leave in the URL address. CP 581. Importantly, the content of the article, which is not in the record, pertains only to Jane Doe 1 and John Doe 2, as it was published the day after Jane Doe's Facebook posting surfaced, and two weeks before Appellants self-reported. *See* CP 573. There is no evidence that Appellants were placed on administrative leave and, if this Court were to remand, Appellants are confident their assertion would be validated in findings of fact.

See State v. Graham, 130 Wn.2d 711, 719, 927 P.2d 227 (1996). *Graham* does not remotely discuss, let alone stand for, Sueoka's proposition: police officers can never have a right to privacy for off-duty activities or a First Amendment right to engage in lawful political activity without that being broadcast to the public.

To account for this deficit, Sueoka struggles to articulate how Appellants' *identities* are of legitimate concern to the public and resorts to all sundry of speculations, such as Director Myerberg's investigation and conclusion being ethically compromised based on online gossip that Director Myerberg *may* have simultaneously represented an Appellant *years* before the OPA Investigation when Director Myerberg was an assistant City Attorney, and not the director of OPA.

To defend the Trial Court's erroneous reliance on those materials, Sueoka merely resorts to a litany of procedural objections based on a blatantly inaccurate summary of the record. Appellants objected to consideration of this unreliable

speculation[5] repeatedly, just as they did in their Opening Brief. CP 1220:18-23 ("Nor is there a legitimate basis…to defend the applicability of the privacy exemption against prosperous conspiracy theories – such as the OPA Director simultaneously representing these Officers while operating in an adjudicative administrative capacity"); *see also* RP 67-68. App. Br. at 14-15, 36-37. Appellants also urged the Trial Court to conduct an in-camera review of the records and focus on what the records might show based on Appellants' firsthand accounts of what took place during the investigation. CP 1341:5-9; *see also* RP 71:7-10. Regardless, because this is a *de novo* review and Appellants have clearly challenged the Trial Court's denial of their motion

[5] Sueoka's claim that Appellants failed to object to the consideration of this extraneous material is particularly disheartening because, in addition to repeatedly arguing its irrelevance, Appellants filed a standalone motion to strike those exhibits (before they were filed) arguing that *Bainbridge Island* precluded such consideration. CP 1465 at 6:7-9 ("Even more clear cut is *Bainbridge Island's* reasoning that a public agency should not have to assess information outside the contents of the records, such as this unsubstantiated conjecture."). The Trial Court considered that argument in denying that motion. CP 1606-1608.

for a preliminary injunction, these criticisms are more than preserved for review.

Aside from this procedural minutia, Sueoka's attempt to manufacture a legitimate public concern based on conspiracy theory atop a conspiracy theory is unavailing. First, these incendiary accusations are unfounded, inflammatory, and dangerous. Sueoka, and others like him, have no regard for the *actual* results of OPA's investigation. His continued persistence to "get the names" after the conclusion of the Investigation finding no misconduct speaks volumes. If the OPA believed the rally was organized by "white nationalists," "fascist groups," and "conspiracy theorists," it would have made that belief known. Instead, it found that demonizing Appellants for their attendance at a lawful political rally would be "incorrect – both constitutionally and morally," would "undermine the rule of law that is the bedrock of our society," and would "serve to speed up the current decline of reason, objectivity, and fundamental fairness.". CP 552. Likewise, if the OPA believed that any officer

improperly refused to cooperate with its investigation, it would have made a finding of misconduct based on the violation of a direct order from SPD. CP 551-53. The OPA did not. There was no violation of SPD policy and, certainly, Appellants did not engage in any conduct which *legitimately* undermined the public trust. CP 551-553.[6]

Second, based on Sueoka's and the Trial Court's reasoning, any conspiracy theorist could come up with some claimed need for attacking the integrity of any investigation, and could thereby erase the privacy exemption altogether. In defining the very privacy right at issue, the Legislature expressly qualified the public concern element as one which is *legitimate*. *See Dawson v. Daly*, 120 Wn.2d 782, 798, 845 P.2d 995, 1004 (1993) (exemption turns on whether the concern of the public is "legitimate" not just "of interest").

[6] PD Policy 5.001-POL-2 ***Employees Must Adhere to Laws, City Policy and Department Policy,*** PD Policy 5.001-POL-10 ***Employees Shall Strive to be Professional***.

Ignoring that the OPA Director is already subject to an independent auditor per SMC 3.28.850[7], which establishes an office to independently oversee OPA's investigations, Sueoka attempts to conjure up a parallel "public interest" predicated on his baseless speculation of "a dishonest and incompetent OPA investigation lead by a compromised OPA Director." Sueoka then erroneously relies on *Lyft* to argue it was proper for the Trial Court to consider his theories based on sources outside the records themselves and appoint him as a parallel auditor who should oversee Director Myerberg's investigation. This is flat wrong.

Notably, *Lyft* did not involve either of the PRA's privacy exemptions at issue here. Instead, the *Lyft* decision involved the PRA's incorporation of the Uniform Trade Secrets Act, RCW

[7] *See* SMC 3.28.850 (There shall be an Office of Professional Accountability Auditor (hereinafter "OPA Auditor") who shall be appointed by the Mayor, subject to confirmation by the City Council, to provide review and assessment of Office of Professional Accountability (hereinafter "OPA") complaints and of Police Department policies and practices related to police accountability and professional conduct….).

19.108 *et seq.* ("UTSA"), as an "other statute which exempts or prohibits disclosure of specific information or records." The initial question in *Lyft* was whether the data at issue was a "trade secret" within the meaning of the UTRA. *Id.* at 798. That is an entirely different question than whether the PRA's dual privacy exemptions apply to employee identities caught up in an investigation into unsubstantiated claims and, as observed in *Bainbridge Island* and reiterated in *Predisik*, whether a trial court should only "look to the content of the document…in deciding if the subject of the report has a right to *privacy* in their identity." *Bainbridge* 172 Wn.2d at 414 (emphasis added).

Here, the Trial Court reasoned that the records were of legitimate concern to the public from sources other than what would be in the documents themselves. RP 64:17-20 ("Given such considerations, the Does have not met their burden of showing that the disclosure of their identities is not of a *legitimate public interest*") (emphasis added). In other words, the

Trial Court considered this extraneous conjecture assessing whether the privacy exemptions applied.

Both *Bainbridge Island* and *Bellevue John Does* expressly hold that the elements of RCW 42.56.540 are satisfied where the highly offensive disclosure of identifying information infringes upon a judicially recognized privacy interest. App. Br. at p. 21. Sueoka does not address this at all. Thus, unlike *Lyft*, where the Supreme Court rejected the categorical exemption of the disclosure of trade secrets and, instead, remanded for a specific finding as to whether an injunction was warranted, this Court would be justified in concluding under *Bainbridge Island* and *Bellevue John Does* that the existence of a privacy interest necessitates an injunction to preserve the very interest at stake. Moreover, once having found the privacy interest, it would then be appropriate for this Court to consider, just as the *Lyft* Court did, the requestor's motivations for seeking the records, which – in this case – is undeniably to do Appellants harm through public vilification and harassment. RP 54-55; CP 628-64, 666-708.

In sum, the Trial Court erred in refusing to recognize the applicable privacy exemptions under the PRA and in declining to enjoin the dissemination of the records at issue.

B. The First Amendment protects Appellants from the PRA being used to chill their political activities.

It is indeed ironic that, on the one hand, Sueoka argues that Appellants' First Amendment rights are not implicated and then, in his Response Brief, repeatedly rails Appellants as being disqualified from public service due to supposed alignment with "white nationalists," "fascists," and "racists" based on nothing more than their attendance at a political rally in which a then-sitting president spoke. *See e.g.,* Sueoka Br. at 5-6, 45-46. Putting aside that Sueoka's baseless accusations against Appellants have already been investigated, the issue for First Amendment purposes is whether the forced disclosure of Appellants' identities will impose a "chilling effect" on their protected speech. Sueoka's rhetoric merely serves to emphasize why injunctive relief is necessary to protect Appellants from

unwarranted harassment based on attendance at a political rally which, in Director Myerberg's words, was "*absolutely* protected by the Constitution." CP 552.

As the OPA found, Appellants' First Amendment activity did not violate SPD Policy requiring employees to "strive to be professional at all times," and to "not engage in behavior that undermines public trust in the Department."[8] Sueoka refuses to recognize that Director Myerberg made these determinations after being appointed by a democratically elected Mayor and confirmed by democratically elected Seattle City Council. SMC 3.28.810(B). His continued grievance can be brought up with the independent auditor of the OPA, or even the OPA Review Board. *See* SMC §§3.28.850, 3.28.900. Sueoka disregards all of this. He wants to be a self-appointed auditor to get Appellants' names to do as he wishes with them.

[8] *See* SPD Policy 5.001-POL-10. "**10. Employees Will Strive to be Professional** Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers…". CP 550-54.

1. *Appellants recognize First Amendment protection is not unlimited, but such limitations do not apply here.*

Sueoka essentially argues that Appellants are not entitled to a First Amendment right to anonymously attend the political rally of former-President Trump because they are public employees. This is wrong.

Appellants do not dispute that "while public employees do not surrender their First Amendment rights, those rights are subject to balancing against the interests of public employers." Sueoka Br. at 29. Nor do Appellants dispute that, despite First Amendment rights, an officer who is a KKK member, Nazi, or racist can be disciplined, or terminated, for those beliefs. *See* Sueoka Br. at 29, *citing Locurto v. Giuliani*, 447 F.3d 159 (2d Cir. 2006); *McMullen v. Carson*, 754 F.2d 936 (11th Cir. 1985); *Pappas v. Giuliani,* 290 F.3d 143 (2d Cir. 2002).

The problem with Sueoka's argument is that attending the political rally for then-President Trump does not automatically make one a "white nationalist," "fascist" or "racist." Sueoka's

authority involves overtly racist acts of officers which undeniably undermine the public trust in law enforcement and, thus, the employer's interest is in preserving its essential function. For example, in *Locurto*, police officers were legitimately fired for participating in a vile racist float, yelling racist chants, and glorifying the dragging of an African-American man behind a truck. *Locurto* at 164-65. In *McMullen*, a Sheriff was fired for being a member of the KKK, recruiting members for the KKK, and then conducting a televised interview stating he was both a member of the KKK and an employee of the sheriff's office. *McMullen* at 937. In *Pappas*, a police officer mailed out multiple mailings with offensive anti-black and antisemitic messages. *Pappas* at 144-45. These cases have nothing to do with the conduct at issue here.

Supporting former-President Donald Trump, and attending his January 6th rally, is simply not akin to being a Klansman, Nazi, Proud Boy, or any sort of white nationalist – nor is remotely similar to the cases above. Although Donald

Trump may engender disdain for many, if not the majority of, Seattleites, it is a false and defamatory equivalency to state one who attended his lawful rally is an incorrigible white supremacist.

Indeed, it is in the Court record that: 74,224,319 people voted for Donald Trump in 2020, which is 46.9% of all votes cast. 20% of all Black men voted for Donald Trump in 2020, including 20% of Black men with advanced educational degrees. Donald Trump received over 30% of the Latino vote. Indeed, one-third of all Americans believe that election fraud cost Donald Trump the election. CP 1197.

As *Locurto*, itself, recognizes, "the government must respect its employees' First Amendment rights to free speech," while balancing this private right with the right of a government employer "to protect its own legitimate interests in performing its mission." *Locurto* at 163.

The OPA *already* investigated Appellants' political participation, specifically to see whether those activities violated

SPD policy and undermined trust in the SPD, and, unlike the employers in *Locurto*, *McMullen,* and *Pappas,* the OPA determined that they did not. CP 550-53, 930. To say this 21-page review was corrupt is disingenuous to say the least – especially since *other* SPD officers attending the January 6 rally *were* found to have undermined trust in the SPD and were ultimately terminated. CP 497-500.

Sueoka apparently believes that a public "employer's interest" in performing its mission is *his* own personal interest in performing *his* mission. And, in his mind, because Director Myerberg was wrong about "whether there can be public trust in police officers who were intent on overturning the democratic process or were so naïve that they actually believed Trump's claims," it is acceptable for him to utilize the PRA to deliberately dissuade officers, such as Appellants, from expressing political views. Sueoka Br. at 47.

By Sueoka's logic, there is a "public interest" in interrogating every SPD Officer about their political beliefs *vis-*

à-vis Donald Trump so that Sueoka, instead of the OPA or the OPA Independent Auditor or the OPA Accountability Board, can determine on behalf of Seattle whether they can be "trusted." If Mr. Trump decides to run again in 2024, Sueoka's perception of "public interest" demands that every SPD Officer submit to interrogation as to whether they voted for former-President Trump to see if they can be "trusted."

However, thankfully, this Court need not venture down this Jacobin rabbit hole, where self-appointed segments of society get a chance to investigate officers on their political beliefs, to vet whether they can be "trusted." There is a process, established by the voters of Seattle, codified in SMC, for assessing whether misconduct is detrimental to the public employer's interest in fulfilling its mission. This process is also subject to independent audit, as well as an oversight board. A process which, in this case, has not determined that Appellants' lawful exercise of their First Amendment rights undermined public trust in the Department.

2. Appellants Were Entitled To Engage In Anonymous Political Participation In Public.

Sueoka correctly states that Appellants "argue extensively about the right to engage in 'anonymous' speech." Sueoka Br. at 31. This is because anonymity, if a speaker so chooses, is a fundamental component of one's First Amendment rights. As *Watchtower Bible* states:

> …there are a significant number of persons who support causes anonymously…anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, *or merely by a desire to preserve as much of one's privacy as possible.*

Watchtower Bible, 536 U.S. 150, 166, 122 S. Ct. 2080, 2089, 153 L. Ed. 2d 205 (2002) (emphasis added).

Sueoka's argument that to receive this benefit of anonymity, one must "mask their identities" and furtively move amongst the shadows is wrong. Sueoka Br. at 31-32. The seminal First Amendment cases addressing anonymity in public do not impose any "requirement" for individuals to disguise themselves during that public participation. *See Watchtower Bible*, 536 U.S.

at 166; *Talley v. California*, 362 U.S. 60, S. Ct. 536, 538, 4 L. Ed. 2d 559 (1960); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 115 S. Ct. 1511, 1516, 131 L. Ed. 2d 426 (1995). If there was a prerequisite to disguise and hide for anonymous participation, the cases would have addressed that. They do not. No such requirement exists.

Nor do these cases adopt the Trial Court's reasoning that "disclosing the Does' identity does not prevent them or anyone else from exercising their First Amendment rights and attending a rally." RP 93. In *Watchtower Bible*, *Tally,* and *McIntyre*, the government never prohibited door-to-door proselytizing or public handing out of flyers – it merely required the speakers to identify themselves before conducting such *public* activity.

Sueoka' argument that Appellants do not have First Amendment rights because "[Appellants] cannot be compared to members of small and powerless political or religious groups, often the subjects of persecution" lacks merit. Sueoka Br. at 32. No authority limits First Amendment protections to small

powerless political or religious groups. Indeed, *Citizens United* holds even the most powerful corporations are entitled to First Amendment political rights. *Citizens United v. Fed. Election Comm'n,* 558 U.S. 310, 365, 130 S. Ct. 876, 913, 175 L. Ed. 2d 753 (2010) (upholding the political speech for-profit corporations, unions, and nonprofits). The fundamental tenant of First Amendment jurisprudence is that the "popular" and "reviled" receive its protections as do both the "powerful" and the "weak."

Finally, *Spokane Police Guild* is factually inapposite. Attendance at "a bachelor party, stag show and strip show" is not an exercise of a First Amendment right. *Spokane Police Guild v. Washington State Liquor Control Bd.*, 112 Wn. 2d 30, 769 P.2d 283 (1989). *Spokane Police Guild* does not discuss the First Amendment *at all.* Undeniably, had these forty individuals assembled for a locally unpopular political party instead of a "bachelor party", the determination of whether their names could be disclosed would be markedly different. Disclosure of their

names would run afoul of basic First Amendment protections. *See Nat'l Ass'n for Advancement of Colored People v. State of Ala. Ex rel. Patterson*, 357 U.S. 449, 462, 78 S. Ct. 1163, 1172, 2 L. Ed. 2d 1488 (1958) (Privacy in group association may in many circumstances be indispensable to preservation of freedom of association).

In sum, neither Sueoka, nor the Trial Court, alludes to any authority as to why Appellants lost the right to anonymity while exercising their First Amendment rights in plain sight.

C. Objection to disclosure under the PRA is made at the time of threatened public disclosure.

Sueoka claims Appellants missed and waived their opportunity to assert their First Amendment rights and "sued the wrong people at the wrong time." Sueoka Br. at 34. According to Sueoka, in order to preserve their First Amendment rights, Appellants should have sued to enjoin their employer from investigating claims of misconduct. *Id.* However, he provides

no authority for this position – which is contrary to the actual law on enjoining PRA requests.

Dream Palace, *John Doe No. 1*, and a plethora of other authorities, do not view First Amendment rights "waived" for PRA purposes by cooperating with governmental requests for disclosure or voluntarily signing a public petition. *Dream Palace v. Cty. of Maricopa,* 384 F.3d 990, 1010 (9th Cir. 2004); *John Doe No. 1 v. Reed*, 561 U.S. 186, 200, 130 S. Ct. 2811, 2820, 177 L. Ed. 2d 493 (2010).[9]

In fact, *Dream Palace* explicitly analyzed First Amendment implications *both* (i) at the time of initial disclosure to the government, and *then again* (ii) at the time of disclosure to the public pursuant to a public records request. In regard to the initial disclosure to the government, *Dream Palace* found the disclosure of an erotic dancer's identity to the government to be reasonable given the crime surrounding erotic dancing and that

[9] See also *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cty., Tennessee,* 274 F.3d 377 (6th Cir. 2001).

this did not inhibit protected expression. *Dream Palace* at 1010. Nevertheless, *Dream Palace* granted injunctive relief preventing the county from subsequently disclosing *the same information* to the public. *Id.* In short, disclosure for governmental purposes to the government does not then allow widespread public dissemination without separately evaluating public disclosure impact in terms of a potential chilling effect.

Here, Appellants do not argue against OPA's interest in inquiring into the Appellants' off-duty conduct to ensure they did not run afoul of the law or department policies, such as SPD Policy 5.001-POL-10. However, this did not waive or concede their First Amendment rights to oppose widespread disclosure to the public which *would* chill their First Amendment rights.

Not only does Sueoka fail to provide any case that supports his "waiver" position, but he fails to address the applicable test to First Amendment challenges in an impending PRA disclosure.

As Appellants' Opening Brief states, the test is whether "those resisting disclosure can prevail under the First Amendment if they can show 'a reasonable probability that the compelled disclosure [of personal information] will subject them to threats, harassment, or reprisals from either Government officials or private parties'" *John Doe No. 1* at 200. Specifically, Courts evaluate whether such disclosure via threats, harassment, or reprisals "would have a chilling effect" on First Amendment activities. *Dream Palace* at 1012; *Does 1-10 v. Univ. of Washington*, 798 F. App'x 1009, 1010 (9th Cir. 2020); *Roe v. Anderson*, No. 3:14-CV-05810 RBL, 2015 WL 4724739, at *3 (W.D. Wash. Aug. 10, 2015). *Implicit within this framework* is that the information *has already been provided* to the government.

D. Appellants have suffered harassment and Respondent Sueoka's intentions should be taken seriously.

Sueoka claims that Appellants have gone on an "extended rant" about what has happened to them in this case. Sueoka Br. at 51. However, Appellants simply state that for lawfully

attending a political rally by a then-sitting President, they have been accused of being "white nationalists," "fascists," and supporting racist arrests/incarcerations/killings by national organizations like the National Lawyers Guild (NLG) and the National Police Accountability Project (NPAP) in briefings in the highest court in the State. CP 498. These briefs were so factually erroneous that they allege the Appellants participated in the actual Capitol insurrection. *Id.* It is a forgone conclusion that if Appellants' names are released – they will be publicized by the Seattle Times – as every step of this case has been published including the January 28, 2022 hearing. *See e.g.,* CP 573, 1030, 1466, 1582.

Appellants know their names will be broadly publicized, and with what occurred with other Police Officers who have found disfavor with a select segment of Seattle, the same could happen to them. Appellants' expert, Dr. Amy Sanders, Ph.D, identified eight separate factors predicting Appellants will suffer further harassment and reprisals. CP 863-64. Most importantly,

one factor still has not occurred, but certainly will if the names are released: Factor 8, which is that publication in the "major mainstream news outlets almost ensures [Appellants'] names will be broadcast to a mass audience, including people far from Seattle." Once this Factor 8 happens, it will expand and amplifies certain other Factors.[10]

Moreover, while Sueoka does not contest the First Amendment test for objecting to disclosure, *supra*, he misapplies it here.

First, Sueoka tries to set a uniform standard that only "residential picketing, threats of physical harm, incitement of violence, or actual physical harm," and/or stalking qualifies as harassment. Sueoka Br. at 54-55. However, the question is not simply the harasser's act. The focus is whether the harasser's act causes a *chilling effect* on First Amendment expression. The (i)

[10] For instance, the more people that know Appellants' names would increase the importance of Factor 4 (ease and history of repeatability of harassing tactics), Factor 5 (nationwide practice of doxxing), and Factor 7 (tendency hyperbole and falsehoods, and that the "truth rarely catches up with a lie"). CP 846-865

repeated baseless references to Appellants being white nationalists/supremacists in Court pleadings, (ii) threat to "get the names" of Appellants solely because of their *supposed* political beliefs, and (iii) threat to publish Appellants' names in the largest local newspaper, or widely in any other public forum, in a community that reviles their political views, constitutes harassment by the very definition of the word. *See* HARASSMENT, Black's Law Dictionary (11th ed. 2019) (harassment (hə-ras-mənt or har-əs-mənt) (18c) Words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress to that person and serves no legitimate purpose.).

Again, however, the Court does not evaluate harassment alone. The Court evaluates the "chilling effect"; whether having Appellants' names published in a major Seattle newspaper, and elsewhere far beyond, against their will for lawful off-duty political expression, along with everything else that has occurred in this case, would "seriously discourage the exercise of a

constitutional right." This is, of course, the definition of chilling effect. *See* CHILLING EFFECT, Black's Law Dictionary (11th ed. 2019) (chilling effect (1952) 1. *Constitutional law.* The result of a law or practice that seriously discourages the exercise of a constitutional right, such as the right to appeal or the right of free speech. 2. Broadly, the result when any practice is discouraged. — Also termed *chilling bidding*; *chilling the bidding.*). Thus, this Court should survey the entire situation and determine if there is a "reasonable probability" that these acts "have a chilling effect" and will be "seriously discourag[ing]" to Appellants' lawful exercise of their First Amendment rights.

The above analyzes what has happened here, thus far. However, as pointed out, Appellants need only show a "reasonable probability" of what may occur. The worst is yet to come upon publishing their names in the Seattle Times. Appellants are rightfully worried about how their professional and personal lives may be affected once their identities become generally known – including dragging their personal lives further

into the public sphere or having disgusting threats levelled against their family members *by name*. CP 711, 736, 741

Sueoka has no problem announcing to the Court that his intentions with Appellants' names are "irrelevant." Sueoka Br. at 48. However, Sueoka incorrectly states that Courts do not consider motivations of PRA requestors and what they may do with the information received. Clearly there are statutory exceptions which allow an inquiry into motivation. *DeLong v. Parmelee*, 164 Wn. App. 781, 784, 267 P.3d 410, 412 (2011). Moreover, *Dream Palace* clearly found the possible intended use of a PRA requestor to be a relevant consideration. The very basis for denying access to dancers' names was because those requesting such information may be "aggressive suitors" bringing "unwelcome harassment" or "overzealous opponents." *Dream Palace* at 1012.

Moreover, Sueoka is clear: He believes publicizing the private lawful off-duty lives of police officers to the press is not harassment. Sueoka Br. at 49. It is hard to believe that Sueoka

plans to do anything other than this. *Id.* Sueoka states that *Catlett* stands for the proposition that publishing records obtained through a PRA request is not harassment. *Catlett v. Teel*, 15 Wn. App. 2d 689, 477 P.3d 50, 57 (2020). This is misleading. *Catlett* merely states that *once* a record is made public through the PRA, then one is permitted to republish same. *Id.* at 699. Importantly, *Catlett* makes clear "an individual's right to privacy may sometimes prevent the *initial disclosure* of certain types of information." *Id.* at 701. Thus, publication of information *not* disclosed may certainly be harassment.

Hill states there is right to criticize police officers. *City of Houston, Tex. v. Hill*, 482 U.S. 451, 461, 107 S. Ct. 2502, 2509, 96 L. Ed. 2d 398 (1987). Sueoka Br. at 49 Respondent Sueoka is correct: of course, there is. However, there is no First Amendment right to use governmental channels designed to enhance accountability to attack rank-and-file public employees engaged in off-duty private First Amendment activities. Washington recognizes a common law right to privacy. *Reid v.*

Pierce County, 136 Wn.2d 195, 207, 961 P.2d 333 (1998). Invasion of privacy by publication is a recognized tort in Washington. *Id.* It is ludicrous to assert that rank-and-file police officers do not have that right for their private lives. Moreover, claims for invasion of privacy by publication can succeed without false or defamatory statements. *Emeson v. Dep't of Corr.*, 194 Wn. App. 617, 640, 376 P.3d 430, 443 (2016).

Sueoka's claim that *Gertz* and *Cohen* provide him cover to publicize Appellants' names is clearly misplaced. *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974) (Attorney who played minimal role at coroner's inquest and whose participation related solely to his representation of private client and who never discussed the litigation with the press and was not quoted as having done so and did not thrust himself into vortex of public issue or engage public's attention in attempt to influence its outcome); *Cohen v. Marx,* 94 Cal. App. 2d 704, 705, 211 P.2d 320 (1949) ("It is evident that when plaintiff sought publicity and the adulation of

the public" they may abandon a right to privacy in their public actions). Appellants did not grab the microphone or jump in center stage. Appellants were private figures who lawfully attended a political rally with thousands of others and who had no public speaking role, sought no publicity, nor adulation, nor did anything to bring publicity to themselves.

E. The Court should also consider the "reasonable probability" of continued harassment and reprisals.

Sueoka's claim that "past is prologue" is wholly unavailing. As Dr. Sanders points out, there are Eight Factors to consider when evaluating the "reasonable probability" that disclosing Appellants' names would have a chilling effect on their First Amendment expression. Moreover, Factor 8 – publicity in the Seattle Times – has not occurred yet. When it does, it will amplify all other identified Factors.

Sueoka reconstitutes challenges to Dr. Sanders in his Brief that he already made in his Response to Preliminary Injunction. CP 951. Dr. Sanders already considered them all, including,

specifically, that certain Seattle Police officers were named on DivestSPD, and that two officers (not Appellants) had already been publicly named – and that, *ad arguendo*, none of them had suffered any harassment. *Id.* Sueoka's identical Trial Court challenges did not change Dr. Sanders' opinion. She made that clear in her Supplemental Declaration. CP 1359-360.

Further, this Court should give little weight to John Doe 3's experience. John Doe 3 *did* publicly and voluntarily identify himself. John Doe 3's First Amendment rights were not chilled as he chose to forgo anonymity.[11] Moreover, the threat on DivestSPD is to those currently serving as police officers. CP 745. John Doe 3 is no longer a police officer.

Second, DivestSPD's innuendo has never been confirmed as the actual Appellants – let alone blasted by the Seattle Times. It will be far different when the mainstream press broadcasts Appellants' names to a far broader audience. Once Appellants

[11] John Doe 3 was one of the officers who OPA found to have committed misconduct in Investigation 2021OPA-0013. John Doe 3 has been publicly named.

are actually named and shamed, and serving as SPD Officers, DivestSPD or others can make good on its threat, which is to *active* officers.

Respondent Sueoka also misapplies *Grocery Manufacturers Ass'n* (GMA) in support of the "past is prologue" argument. *State v. Grocery Manufacturers Ass'n*, 195 Wn.2d 442, 467, 461 P.3d 334, 348 (2020). *GMA* considered membership lists already widely available and those fighting disclosure could not point to specific harassment.

First, "fear of reprisals" was only in "passing references" and not the main argument that *GMA* was making in trying to prevent disclosure.[12] More importantly, the *GMA* Court believed that the "fear of reprisals" against GMA members was clearly insufficient enough of a deterrent to prevent GMA from contributing to the political campaign *in the first place* because

[12] GMA "instead focus[ed] on arguments that the Fair Campaign Practices Act 'is hopelessly vague,' that disclosure would 'not benefit voters,' and that the FCPA 'imposed unjustifiable costs on GMA'." *GMA* at 468.

they *knew that their contributions would be publicly disclosed.* Essentially, the *GMA* Court did not find the *necessary* chilling effect.

This case is far different. First, Appellants' names are not available. Respondent Sueoka can speculate on innuendo only. Second, Appellants have been steadfast that publication of their names, let alone in the Seattle Times, would have a chilling effect on their First Amendment right to anonymous political expression. It is legions different for a business to have comments posted online because of its public business decisions than a private individual, with a private family and life, having their name strewn across mainstream media because of their lawful off-duty First Amendment political activity.

"In the end," Sueoka states, "Appellants seek to wrap themselves in the mantle of freedom of speech but do not want the responsibilities that go along with that right – risking mild criticism on the Internet." Sueoka Br. at 61. This belittling statement is emblematic of his entire campaign. Sueoka does not

get to determine what "responsibilities" one *undertakes* because First Amendment rights *granted* are established jurisprudence. Appellants believe their off-duty and lawful political expression is of private concern. They have every right, even on principle alone, to determine that they do not want their private lives strewn across the Seattle Times which makes them a public affair.

III. ARGUMENT RELATED TO CROSS-APPEAL & MOTION TO CHANGE CASE TITLE

A. Introduction.

Sueoka discusses all sundry of cases, theory, and alleged tests in his Cross-Appeal & Motion to Change Case Title (collectively referred to as "Cross Appeal & Motion"). However, just like his dodge at the Trial Court, Sueoka refuses to address the most basic question:

> If the sole purpose of your lawsuit is to establish your privacy and Constitutional right to keep your identity from being exposed, how do you vindicate your rights except by proceeding in pseudonym?

CP 1193.

Though posed this question multiple times, Sueoka refuses to answer. *See also* RP 23. This is because Respondent Sueoka cannot. Therefore, Respondent Sueoka's Cross Appeal & Motion must fail on that basis alone.

Appellants filed an action pursuant to Washington's Public Records Act 42.56 *et. seq.* to prevent the SPD from releasing their names in response to a public records request.[13] Appellants lodged both statutory and Constitutional grounds to prevent disclosure both originally, and then again once remanded. The Trial Court denied Appellants' second preliminary injunction motion on January 28, 2022. Nevertheless, Appellants timely appealed on these very statutory

[13] Appellants' action also encompasses a request to prevent the disclosure of *any* identifying information. However, for the purposes of responding to the Cross-Appeal & Motion, Appellants' argument is directed towards, specifically, the Appellants' names as that is, essentially, what changing the case title and barring the use of pseudonyms would do – reveal the names of the Appellants by designating them on the case title.

and Constitutional grounds and the status quo of their anonymity was preserved, which will be reviewed *de novo*. CP 1441-1442.

As King County Superior Court Judge Regina Cahan, King County Superior Court Judge Sandra Widlan, and Appellate Commissioner Jennifer Koh have all stated, in a Public Records Act lawsuit like the instant case, where the *only* substantive claim is to prevent the disclosure of Appellants' unknown names, how would Appellants have any meaningful opportunity to do so *unless the Appellants are allowed to proceed in pseudonym*.[14] To force them to proceed in their own names in Court would instantly deprive them, without adjudication, of the privacy and Constitutional rights they are going to Court to protect.

If the Appellate Court ultimately rules that Appellants have preliminarily established their privacy, safety, and Constitutional right to remain anonymous, then Appellants have

[14] Judge Cahan at CP 246-249; Commissioner Koh's April 9, 2021 Notation Ruling at 3, CP 1213; Judge Widlan at RP 61-62.

no other means to vindicate their rights *but* to proceed in pseudonym. Thus, this Court should sustain Judge Widlan's ruling which is, itself, a continuation of Judge Cahan's re-affirm of Commissioner Koh's previous ruling. FN 13.

B. Article I, §10 Does Not Apply. Thus, Only a Flexible GR 15(c)(2) Analysis Is Needed.

The Washington Supreme Court affirmed using pseudonyms in a PRA litigation to protect privacy interests. *See Doe G. v. Dep't of Corr.*, 190 Wn.2d 185, 200, 410 P.3d 1156 (2018) ("Washington courts have allowed pseudonymous litigation" in PRA cases, provided that "in *some* circumstances this court has still required a showing that pseudonymity was necessary") (emphasis added). In *Doe G.*, publicly convicted sex offenders *already publicly named* in their *public* criminal court cases and convictions, sought to – in a different court case – proceed in pseudonym to block disclosure of their SSOSA evaluations under the PRA. *Id.* at 189-91.

When discussing *Doe G.*, Sueoka muddles the two-step analysis the Court undertakes to determine if a litigant can

proceed in pseudonym. Sueoka improperly conflates and merges Article I, Section 10, GR 15, and *Ishikawa's* five-factor evaluative framework into a single step. However, Courts are instructed to *first* review Article I, §10, to see if it is even applicable, and then, *only* if Article I, §10 is necessary, review *Ishikawa's* five factors. *Id.* at 199 ("Whether an *Ishikawa* analysis is necessary depends on whether article I, section 10 applies."). *See also State v. S.J.C.,* 183 Wn.2d 408, 412, 352 P.3d 749 (2015) (finding that Article I, §10 did not apply; thus, there was no *Ishikawa* analysis necessary).

Here, Article I, Section 10, is simply not applicable to this case – especially when compared *vis-à-vis* to *Doe G.* or *Hundtofte* – the two cases Sueoka relies upon.

Article I, Section 10 requires that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." *Wash. Const. Art. I, § 10*. Moreover, "[w]hether article I, section 10 applies depends on application of the experience and logic test." *Doe G.* at 199. Under the "experience" prong, a

Court evaluates "whether the place and process have historically been open to the press and general public." *Id.* Here, "experience" informs this Court that rank-and-file public employees expect their political beliefs and private travel are simply not "open to the public." This is in stark contrast to *Doe G.*, where that Court found "the names of people convicted of criminal offenses, including sex offenders, have historically been open to the public" because "[c]onviction records [are required to] be disseminated without restriction. RCW 10.97.050." *Id*. at 199.

Meanwhile, the "logic" prong examines "whether public access plays a significant positive role in the functioning of the particular process in question." *Id.* Here, there is no "significant positive role" that the public could conceivably play in uncovering nonelected government workers' off-duty political beliefs and travel plans. This is especially true since Appellants have been investigated regarding January 6, 2021, and their attendance at the rally was determined not to violate SPD Policy.

In fact, so long as no violation of SPD Policy occurred, the public would play a *negative role* in that it would require government workers to undergo a public political litmus test to be able to serve. This is in contrast to *Doe G*. Regarding the "logic prong," this Court found that "because the SSOSA is a sentencing alternative, the public 'plays a significant positive role in the functioning of the particular process in question.'" *Id*. at 201. Specifically, "the public must be able to scrutinize the sentences given to offenders to ensure the court is following the sentencing statutes, is not overly deferential in granting SSOSA sentences, or is denying SSOSA sentences where warranted." *Id.*

Moreover, Sueoka's analysis of the "experience prong" and "logic prong" does nothing. While he correctly repeats each prong verbatim, Sueoka does not actually analyze the meaning Courts attach to the words. For the "experience prong," Respondent Sueoka simply repeats the presumption of the Court's openness. Sueoka Br. at 67-69. However, that applies to all cases, even ones where pseudonymity is a certainty – for

instance, cases involving minors. Moreover, presumption does not mean "a given." Courts look at the substance of what is sought to be protected.

For instance, *Doe G*. discussed, specifically, whether SSOSA records were open to the public. In fact, *Doe G.* distinguished between the private names whose acts were of public record, and "parties who have not been convicted of any crime may have a legitimate privacy interest because there is no public record associating them with the subject of their litigation." *Id.* at 200 Thus, it is clear, the analysis actually centers on the subject matter – not merely reciting the platitude that Courts are open "and well there you go." Instead, "experience" is that public employees expect their political beliefs and private travel will not be "open to the public."

Similarly, Sueoka does not actually analyze the logic prong. He only states that "[a]s for 'logic,' as noted, the Supreme Court has rejected the argument that a party seeking to prevent release of their identify under the PRA can automatically use a

pseudonym." Sueoka Br. at 69. However, the logic prong is "whether public access plays a significant positive role in the functioning of the particular process in question." The public plays no positive role and, indeed, a negative role, if they can demand that SPD officers forfeit off-duty lawful First Amendment expression.

In conclusion, *Doe G.* evaluated both these prongs, determined that Article I, §10 applied, and redaction must meet the *Ishikawa* factors. *Id.* at 201. However, *Doe G.*'s facts are so inapposite, they are not applicable here.

i. Since Article I, §10 does not apply, this Court can simply apply GR 15(c)(2).

Since Sueoka cannot prove that proceeding in pseudonym runs afoul of Article I, §10 – this Court's pseudonymity analysis can stop with a very basic, flexible, and relevant GR 15(c)(2) analysis:

> (2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the

> specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record…..Sufficient privacy or safety concerns that may be weighed against the public interest include findings that…:
> …
>
> (E) The redaction includes only restricted personal identifiers contained in the court record; or
>
> (F) Another identified compelling circumstance exists that requires the sealing or redaction.

See GR 15.

Here, Appellants *only* seek to redact their personal identifiers – *e.g.,* that which identifies them to protect their privacy, safety, and Constitutional interests. Three Jurists have evaluated the pseudonymity issue in this case and determined there is no way to do this until final adjudication except to proceed in pseudonym. FN 13. There is clearly an "identified compelling circumstance [that] exists." *See* GR 15(F).

Throughout the Cross Appeal & Motion, Sueoka lobs bombastic and conspiratorial reasons why the "public interest"

demands to know the names of Appellants "right here, right now." These are refuted in other portions of Appellant's Brief and Reply. However, most importantly, the "public interest" was fully satisfied by OPA investigation 2021OPA-0013. OPA Director Myerberg proved fully capable of finding that certain Seattle Police Officers who attended the January 6, 2021 rally engaged in acts which undermined "public trust in the Department." PD Policy 5.001-POL-10. However, Appellants did not. If the "public interest" needs a name, they have it – OPA Director Myerberg. If they are unsatisfied with the quality of the investigation in 2021OPA-0013 or otherwise, the "public interest" can contact the OPA's Independent Auditor or OPA's Supervisory Board. *See* SMC 3.28.850, SMC 3.28.900

Moreover, the "public interest" has full access to everything it needs – and can review the Trial Court's and this Appellate Court's analysis of the facts and application of the law in determining whether these Appellants have a sufficient privacy, safety, or Constitutional interest significant enough to

keep their names out of the public domain – without requiring a Kafkaesque mockery by compelling Appellants to first publicly disclose their names in order to file a lawsuit to keep their names private.

C. Even if Article I, §10 Does Apply, this Court can Apply the *Ishikawa* Factors to Find that Proceeding in Pseudonym is Appropriate.

If this Court finds that Article I, §10 does apply, then this Court must apply the seminal *Ishikawa* case. *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). As articulated by the Supreme Court in that case, the closure or sealing of court records under GR 15 is permitted where/when:

1. The proponent of closure or sealing must make some showing of the need for doing so, and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right.

2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.

3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.

4. The court must weigh the competing interests of the proponent of closure and the public.

5. The order must be no broader in its application or duration than necessary to serve its purpose.

Ishikawa at 36-39.

i. Showing of Need.

With regard to the first *Ishikawa* factor, Appellants present ample evidence in their Second Preliminary Injunction Motion that they have, and would, face a serious and imminent threat and harm to their privacy, safety, and Constitutional rights if their identities become known. CP 494-509. While the Trial Court did not agree, this was timely appealed. CP 1440-1441. The Appellate Court will review the factual record *de novo* and make its own determination upon the facts and law. *See, II.A.1, supra*.

This is far different than the situation in *Hundtofte*, the other Washington case Sueoka extensively discusses regarding pseudonymity. Sueoka Br. at 64-65; *see also Hundtofte v. Encarnacion*, 181 Wn.2d 1, 330 P.3d 168 (2014).

Hundtofte issued a narrow ruling involving two tenants (Tenants). Those Tenants sought to change the case title of a different unlawful detainer action. They believed having their names associated with an unlawful detainer prevented them from living in the suburb they desired. Their belief relied on a single landlord in Burien who rejected their application due to the unlawful detainer. However, the Tenants found another apartment on their second attempt. *Id.* at 3-6, 11.

Thus, *Hundtofte* provides no guidance here. Appellants do not seek to address a harm to a "reputation," or an unrecognized interest of "finding future rental housing in a desired location." *Id.* at 9. Appellants seek to address a harm to recognized PRA statutory privacy rights and Constitutional First Amendments rights. Clear jurisprudence establishes these rights.

Atop lacking a cognizable interest, the Tenants failed to show a serious and imminent threat. *Hundtofte* found the Tenants produced "no evidence of an imminent rejection based on the unlawful detainer action" and "merely cite one past

rejection based on the action and speculate about their future inability to find a suitable home. The threat of rejection is not imminent." *Id*. at 10. Indeed, the Tenants found housing on their *second* attempt. *Id.* at 11. *Hundtofte* found "pure speculation about the future inability to obtain housing in a desired location is not a serious and imminent threat to a compelling interest." *Id.*

Appellants, unlike the Tenants, have produced all sundry of evidence of past, current, and future threats to their privacy, safety, and Constitutional rights. This is not "pure speculation." It is all but certainty.

Finally, Sueoka's selective reference to Justice Madsen's *Hundtofte* concurrence is misleading. This concurrence also recognizes exceptions to the importance of court dockets using complete names – such as alcohol and drug treatment commitment records, mental illness commitment records, termination of parental rights, and confidential name change records. *Id.* at 17 (Madsen J. Concurring). Thus, there are matters where a privacy right supersedes the court docket.

ii. Opportunity to Object.

It is undisputed that, at the Second Preliminary Injunction Hearing, Mr. Sueoka, and any other party, was given an opportunity to object.

iii. Weighing Competing Private/Public Interests.

All the Jurists reviewing this matter have determined that Appellants' private interest and rights supersede the public's right until, at least, final adjudication – for the straightforward reason that, if the opposite would be true, it extinguishes the very rights Appellants ultimately seek to protect. If favorable adjudication occurs, it makes no sense to vitiate Appellants' victory by publicly slapping Appellants' name across the very decision which deemed their names private.

iv. Least Restrictive Means/Order No Broader than Necessary.

Finally, the third and fifth *Ishikawa* factors also support allowing Appellants to continue to proceed pseudonymously. Permitting this pseudonymity *is the only means* that will

adequately protect the interests that Sueoka's PRA threatens. If Appellants were to proceed using some other method of identifying information (*e.g.,* their initials or badge numbers), the public could use that information to "reverse engineer" Appellants' identities from other publicly available records.

Moreover, *even if Appellants proceed in pseudonym*, members of the public will still have access to the full court record in this matter – except for the identities of te Appellants. It is hard to fathom what exactly the public is being deprived of at this juncture.

D. Judge Widlan's Ruling and Standard Were Correct.

Sueoka misstates *Doe G.* and Judge Widlan's ruling when claiming, "Judge Widlan Used the Wrong Legal Standard." Sueoka Br. at 69-71. First, in *Doe G.*, the Washington Supreme Court overruled the Appellate Court because the Appellate Court failed to undertake an *Ishikawa* analysis. *John Doe G v. Dep't of Corr.*, 197 Wn. App. 609, 391 P.3d 496 (2017), *rev'd sub nom, Doe G v. Dep't of Corr.*, 190 Wn.2d 185, 410 P.3d 1156

(2018). The Supreme Court believed that Article I, §10, and, thus, *Ishikawa* was implicated. *Id.* at 202.

Here, Article I, Section 10, does not apply to Appellants proceeding in pseudonym. Thus, a simple GR 15 analysis was sufficient. Reply, pg. 62-65 *supra.* If the ultimate adjudicator finds that these Appellants have these privacy, safety, and Constitutional interests, then the only way to ensure that this adjudication has any meaning is to allow Appellants to remain in pseudonym. *Id.* This is exactly how Judge Widlan ruled. RP 61-62. Moreover, to the extent that *Ishikawa* does apply, Judge Cahan already undertook a full *Ishikawa* analysis regarding pseudonymity. CP 246-49. Then, after remand, Sueoka asked Judge Widlan to revisit Judge Cahan's determination. CP 273-84. Judge Widlan declined to do so and allowed Appellants to receive a meaningful final adjudication. RP 61-62.

E. There Is No Reason For This Court To Change The Case Title If Appellants Are Successful.

Commissioner Koh previously ruled that changing the case title would "dest[roy] the fruits of a successful appeal". FN 13. This Appellate Court is going to rule on Appellants' privacy, safety, and Constitutional issues. They have full discretion to overrule Judge Widlan's previous ruling on the basis of the facts, the law, or both. Until this Appellate Court rules, the caption should remain in pseudonym so as not to deprive the Appellant's of the fruits of their appeal. *Wash. Fed'n of State Emps. v. State*, 99 Wn.2d 878, 883, 665 P.2d 1337 (1983).

IV. CONCLUSION

Based on the aforementioned, Appellants respectfully request that this Appellate Court reverse the Trial Court's order denying their request for a preliminary injunction, deny Sueoka's attempt to change the case title, and remand with instructions to the Trial Court to enjoin production of Appellants' names or any other identifying information in the Investigative Files for the

investigations into January 6th until final adjudication on the merits.

DATED this 26th day of April, 2022.

Respectfully submitted,

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* I certify this Reply contains 11, 929 words in compliance with RAP 18.17.

CERTIFICATE OF SERVICE

I am employed by the law firm of Tomlinson Bomsztyk Russ, over the age of 18, not a party to this action, and competent to be a witness herein.

On Tuesday, April 26, 2022, I caused true and correct copies of the foregoing document (Reply Brief of Appellants) to be delivered to the following via Court of Appeals E-Filing Portal:

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I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

DATED this 26th day of April, 2022, in Snohomish County, Washington.

Signature: 
Lisa Sebree

STATUTORY APPENDIX

RAP 1.2 provides in part:

> (a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of the cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).
>
> …
>
> (c) Waiver. The appellate court may waive or alter the provisions on any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).

RAP 12.1 provides:

> (a) Generally. Except as provided in section (b), the appellate court will decide a case only on the basis of issues set forth by the parties in their briefs.
>
> (b) Issues Raised by the Court. If the appellate court concludes that an issue which is not set forth in the briefs should be considered to properly decide a case, the court may notify the parties and give them an opportunity to present written argument on the issue raised by the court.

RAP 13.4 provides in part:

> (b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RCW 42.56.070 provides in part:

> (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.

RCW 42.56.070 provides:

> 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.

RCW 42.56.540 provides:

> 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.

U.S. Const. art. VI, cl. 2 provides:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

U.S. Const. amend. I provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. V provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, § 1 provides in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Const. art. I, § 10, provides:

> Justice in all cases shall be administered openly, and without unnecessary delay.

CERTIFICATE OF SERVICE

I am employed by the law firm of Tomlinson Bomsztyk Russ, over the age of 18, not a party to this action, and competent to be a witness herein.

On Monday, August 14, 2023, I caused true and correct copies of the foregoing documents (Answer of Joe Doe Officers 1, 2, 4, and 5 to Sam Sueoka's Petition for Review) to be served by filing it through the Supreme Court E-Filing Portal, and thus a copy will be delivered electronically to all parties.

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

DATED this 14th day of August 2023, in Snohomish County, Washington.

Signature: 

Lisa Sebree

TOMLINSON BOMSZTYK RUSS

August 14, 2023 - 11:57 AM

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