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NO. 91427-3

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SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE CRIMINAL JUSTICE TRAINING
COMMISSION,

Respondent,

v.

JOHN F. KLINKERT,

Appellant.

**ANSWER TO AMICUS MEMORANDUM IN SUPPORT OF
CORRECTED PETITION FOR REVIEW**

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ORIGINAL

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I. INTRODUCTION

Petitioner John F. Klinkert filed a petition for review on grounds that the decision of the Court of Appeals conflicts with decisions of this court. Respondent Washington State Criminal Justice Training Commission (“CJTC”) filed an answer addressing Klinkert’s petition.

Amicus “The Center for Justice” filed an amicus petition that was accepted by the Court. Amicus contends that review is also warranted on grounds that the issue presented is one of substantial public interest. This answer will address only that claimed ground for review.

The Court of Appeals decided a controversy that was important to the parties, but is not one of “substantial public interest.” The issue presented involves the interpretation of an “other statute” that exempts disclosure of records that would otherwise be disclosed under the Public Records Act. The “other statute,” RCW 43.101.400, governs only certain records held by CJTC, a relatively small Washington administrative agency. The statute at issue does not apply to *any* other agencies. The issue is not one of substantial public interest.

The records at issue are also available from law enforcement, who cannot invoke the “other statute” exemption available to CJTC. The Court of Appeals’ decision does not deny the public the ability to inspect the records in questions.

II. ISSUE PRESENTED

Amicus “The Center for Justice” argues that the decision of the Court of Appeals—which interpreted a statutory exemption to the Public Records Act that applies only to CJTC—is an “issue of substantial public interest.” If review were accepted, the issue presented would be whether CJTC can withhold an “investigative file” and describe it as an “investigative file” when RCW 43.100.400 provides that CJTC must keep the “investigative file” confidential and exempt from public disclosure.

III. STATEMENT OF THE CASE

The facts and history of the case are adequately described in the “Statement of the Case” set forth in CJTC’s “Answer to Corrected Petition for Review,” which is incorporated herein. Some of those facts are worthy of additional emphasis given the grounds for relief argued by amicus.

Most importantly, the statute in question in this case (RCW 43.101.400) applies *only* to very specific records (“the investigative file”) held by one state agency--CJTC. The “investigative file” in question is comprised of a law enforcement agency’s internal investigation of a terminated officer. CJTC does not receive the file until the officer has

been investigated and has been terminated by the law enforcement agency.
RCW 43.101.135.¹

The investigative exemption available under the Public Records Act is not available to law enforcement after the final internal investigation is completed, the officer is fired, and the internal investigative file is forwarded to CJTC. *See Sargent v. Seattle Police Dept.*, 179 Wn.2d 376, 314 P.3d 1093 (2013). Thereafter, the file is available for public inspection at the law enforcement agency that terminated the officer. *Id.*

IV. ARGUMENT

The petition for review should be denied on the grounds argued by amicus. RAP 13.4(b)(4). The issue presented is not one of substantial public interest.

The issue before the Court of Appeals was one of statutory interpretation—whether “the investigative file” could be described to the requestor as an “investigative file” of certain page length and withheld in its entirety; or whether CJTC was required to describe each page of each

¹ **Termination of peace officer--Notification to commission**

Upon termination of a peace officer for any reason, including resignation, the agency of termination shall, within fifteen days of the termination, notify the commission on a personnel action report form provided by the commission. The agency of termination shall, upon request of the commission, provide such additional documentation or information as the commission deems necessary to determine whether the termination provides grounds for revocation under RCW 43.101.105. The commission shall maintain these notices in a permanent file, subject to RCW 43.101.400.

document within the withheld “investigative file.” The statute that was interpreted—RCW 43.101.400—applies only to CJTC, as does the phrase “investigative file” as it used in RCW 43.101.400.

Amicus attempts to paint the issue as one of broad public import by describing the Court of Appeals’ decision as one that applies to all manner of public records cases. To the contrary, no other state agency can claim the exemption that CJTC claimed in this case. The adequacy of the description in an exemption log of records in an “investigative file” is unique to CJTC. The published opinion of the Court of Appeals in this case has little application outside of those who request an investigative file from CJTC. The issue decided by the Court of Appeals applies only to a small category of records held by one small state agency.

Amicus also attempts to portray the case as “an opportunity to clarify what duties agencies owe to public records requestors.” *Brief of Amicus* at 4. However, this court has repeatedly clarified the duties that agencies withholding records owe to requestors in the cases cited by amicus, *Progressive Animal Welfare Society v. University of Washington*,² *Rental Housing Ass’n of Puget Sound v. City of Des Moines*.³ The Court of Appeals decision in this case relied on those same cases in deciding this case. The Court of Appeals’ decision has little application outside of

² 125 Wn.2d 243, 884 P.2d 592 (1994).

³ 165 Wn.2d 525, 199 P.3d 393 (2009).

requests of CJTC to produce an investigative file. The issue presented is not one of “substantial public interest.

Finally, the argument of amicus is diminished by the simple fact that an “investigative file” held by CJTC may be requested from the law enforcement agency itself. While such argument would not be a proper response from an agency to a public records request, it nevertheless lessens the “public interest” in the case where records requestors can file the same request with the law enforcement agency and inspect the records. *See Sargent v. Seattle Police Dept.*, 179 Wn.2d 376, 314 P.3d 1093 (2013). The decision of the Court of Appeals has no bearing on the public’s access to the records in question.


V. CONCLUSION

The Court of Appeals decided a controversy that was important to the parties, but is not one of “substantial public interest.” The petition for review should be denied.

RESPECTFULLY SUBMITTED this 5th day of August, 2015.

ROBERT W. FERGUSON
Attorney General

By:



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NO. 91427-3

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN F. KLINKERT,

Appellant,

v.

WASHINGTON STATE CRIMINAL
JUSTICE TRAINING COMMISSION,

Respondent.

DECLARATION OF
SERVICE

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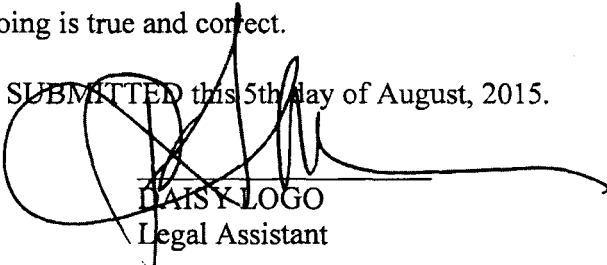
I HEREBY CERTIFY that on Wednesday, August 5, 2015, I served true and correct copies of the State's Answer to Amicus Memorandum in Support of Corrected Petition for Review and Declaration of Service by depositing same in the United States Mail, first-class delivery, postage prepaid and addressed as follows:

John F. Klinkert
Appellant pro se
14316 11th Place W
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And by electronic e-mail to: John Klinkert, e-mail-johnncar3@comcast.net

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

RESPECTFULLY SUBMITTED this 5th day of August, 2015.


DAISY LOGO
Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Logo, Daisy (ATG)
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Importance: High

Attached for filing for the case referenced above, please find the following documents:

- 1) Answer to Amicus Memorandum in Support of Corrected Petition for Review
- 2) Declaration of Service

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