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No. 91427-3

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SUPREME COURT OF THE STATE OF WASHINGTON

JOHN F. KLINKERT,

Petitioner,

v.

WASHINGTON STATE CRIMINAL JUSTICE TRAINING
COMMISSION,

Respondent,

FILED

JUL 20 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

CBF

AMICUS CURIAE MEMORANDUM OF THE CENTER FOR
JUSTICE IN SUPPORT OF PETITION FOR REVIEW

Rick Eichstaedt, WSBA No. 36487
Center for Justice
35 W. Main Ave., Suite 300
Spokane, WA 99201
(509) 835-5211

Attorney for *Amicus Curiae*-Applicant
Center for Justice



ORIGINAL

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I. IDENTITY AND INTEREST OF AMICUS

Amicus curiae-applicant Center for Justice adopts and incorporates its statement of interest contained in its accompanying motion.

II. STATEMENT OF THE CASE

Petitioner John F. Klinkert filed a public records request with the Washington State Criminal Justice Training Commission on October 27, 2009, requesting documents involving a King County sheriff's deputy involved in an excessive force incident against a juvenile arrestee. *Klinkert v. Wash. State Criminal Justice Training Comm'n*, 185 Wn. App. 832, 833-34, 342 P.3d 1198, 1199 (2015). The Commission responded by sending Klinkert a one-page exemption log listing two documents the Commission withheld. *Id* at 834, 342 P.3d at 1199. The log identified the second document as a 713-page investigative file, which the Commission claimed it could not disclose pursuant to RCW 43.101.400(1). *Id.* at 834, 342 P.3d at 1199.

Klinkert informed the Commission via email in November 2009, and then again in August 2010 after receiving no response from the Commission, that in his opinion, the exemption log was inadequate under relevant statutory and case law. *Id* at 834-35, 342 P.3d at 1199. The Commission responded two days after Klinkert's August 2010 email,

saying that the log was “fully adequate,” and that publishing an inventory of the file’s contents was not required. *Id.* at 835, 342 P.3d at 1199.

On July 24, 2013, Klinkert filed suit in superior court, alleging the Commission violated the Public Records Act.¹ *Id.* at 835, 342 P.3d at 1199. The Commission moved to dismiss on the grounds that the Act’s one-year statute of limitations had expired, and the trial court granted the motion. *Id.* at 835, 342 P.3d at 1199. Division I of the Court of Appeals upheld the trial court’s decision upon appeal. *Id.* at 837, 342 P.3d at 1200.

III. ARGUMENT

A. Klinkert’s Petition for Review Involves An Issue of Substantial Public Interest That Should be Determined by the Supreme Court.

On this matter, Petitioner Klinkert contends that the exemption log the Commission provided him did not contain sufficient information to trigger the PRA’s one-year statute of limitations.² The Commission maintains its contention that it provided Klinkert with a “fully adequate” exemption log. *See Klinkert v. Wash. State Criminal Justice Training Comm’n*, 185 Wn. App. 832, 835, 342 P.3d 1198, 1199 (2015).

In *Rental Hous. Ass’n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009)(“RHA”), this Court held that the PRA’s

¹ RCW § 42.56 *et seq.*

² RCW § 42.56.550(6).

one-year statute of limitations is not triggered until the government agency from which public records are requested either produces the requested records or states a proper claim of exemption. However, *RHA* does not provide much specific detail as to what constitutes a proper claim of exemption, particularly when what an agency claims to be one “record” is abnormally large.

In *RHA*, this Court held that the City of Des Moines’s letter “did not (1) adequately describe individually the withheld records by stating the type of record withheld, date, number of pages, and author/recipient or (2) explain which individual exemption applied to which individual record rather than generally asserting the controversy and deliberative process exemptions as to all withheld documents.” 165 Wn.2d at 539-40, 199 P.3d at 400. However, *RHA* does not specifically address how “adequately” detailed an exemption log has to be in the event an agency compiles an abnormally large “record.” If an agency compiles several records over time to make one, and then lists the aggregate as one record on an exemption log sent to a PRA requestor, does the agency have to provide more detail of what constitutes the aggregate record, or can the agency list it as one record on the exemption log?

Accordingly, as this case implicates issues regarding the level of government transparency to which a public records requestor is entitled,

this case involves “an issue of substantial public interest that should be determined by the Supreme Court” for RAP 13.4(b)(4) purposes.

1. This Case Presents an Opportunity to Clarify What Duties Agencies Owe to Public Records Requestors.

The PRA dictates that “[a]ctions under this section must be filed within one year of the agency’s claim of exemption or the last production of a record on a partial or installment basis.”³ In *RHA*, this Court reaffirmed its holding in *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 271, 884 P.2d 592, 607 (1994)(“*PAWS II*”), stating that “[t]he plain terms of the Public Records Act, as well as proper review and enforcement of the statute, make it imperative that all relevant records or portions be identified with particularity.” *RHA*, 165 Wn.2d at 538, 199 P.3d at 399.

However, this Court also held in *PAWS II*, and reaffirmed in *RHA*, that “[t]he identifying information need not be elaborate, but should include the type of record, its date and number of pages, and, unless otherwise protected, the author and recipient, or if protected, other means of sufficiently identifying particular records without disclosing protected content.” *PAWS II*, 125 Wn.2d at 271 n.18, 884 P.2d at 608; *RHA*, 165 Wn.2d at 538, 199 P.3d at 399.

³ RCW § 42.56.550(6).

The preceding case law still leaves unanswered the question of how detailed identifying information in an exemption log should be. While saying the identifying information “need not be elaborate,” the case law still affirms that it is “imperative that all relevant records or portions be identified with particularity.” *RHA*, 165 Wn.2d at 538, 199 P.3d at 399.

Applying the case law to the facts at hand, Klinkert can argue the exemption log provided is insufficient in that it did not identify “all relevant records or portions...with particularity.” *See id.*, 165 Wn.2d at 538, 199 P.3d at 399. Given the size of the document in controversy, at 713 pages, contrasted with its corresponding claim of exemption and summary, at less than one page, it is unclear whether the Commission identified the relevant portions of this 713 page record with sufficient particularity, simply because the Court has not defined “sufficient particularity.” *See id.*, 165 Wn.2d at 538, 199 P.3d at 399.

Granting review of this matter provides an opportunity for the Court to clarify an ambiguous question of law that has substantial impact on public records requestors, such as: what constitutes sufficient particularity in a state agency’s claim of exemption in response to a public records request when the exempted document is substantially large?

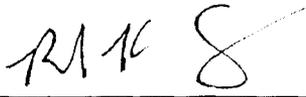
IV. CONCLUSION

For the above reasons, *amicus curiae*-applicant Center for Justice respectfully requests that this Court grant Klinkert's petition for review.

Respectfully submitted this 30th day of June 2015.

Respectfully submitted,

CENTER FOR JUSTICE

By: 
Rick Eichstaedt, WSBA No. 36487
Attorney for Amicus Curiae-Applicant Center for Justice

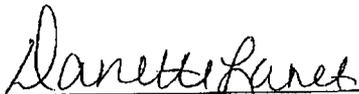
CERTIFICATE OF SERVICE

I, Danette Lanet, certify that on the 30 day of June, 2015, I caused the foregoing Amicus Curiae Memorandum to be served via USPS postage prepaid on the following:

John F. Klinkert
14316 11th Place W
Lynnwood, WA 98087

John Hillman, Asst. Attorney General
Attorney General's Office
Criminal Justice Division
800 Fifth Ave., Suite 2000
Seattle, WA 98104-3188

DATED this 30 day of June, 2015.


Danette Lanet

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Please see attached Motion for Leave to File Brief Amicus Curiae and Amicus Curiae Memorandum for filing in case 91427-3.

This is being sent on behalf of:

Rick Eichstaedt
WSBA No. 36487
Telephone: 509-835-5211
Email: rick@cforjustice.org

Danette Lanet

Danette Lanet
Paralegal
Center for Justice
35 W. Main, Suite 300
Spokane, WA 99201
509-464-7611 - Direct
509-835-3867 - Fax
dlanet@cforjustice.org

I say that justice is truth in action.
~ Benjamin Disraeli