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NO. 62937-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

KING COUNTY DEPARTMENT OF ADULT AND JUVENILE
DETENTION,

Plaintiff-Respondent,

v.

ALLAN PARMELEE,

Defendant-Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE PALMER ROBINSON

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Whether the trial court properly held that employee photographs, dates of birth, gender, race, height and weight and employees' direct phone, cell, and pager numbers do not constitute public records under the PRA.

2. Even if the documents at issue are public records, whether the trial court properly enjoined their disclosure under applicable PRA exemptions.

3. Whether the trial court properly denied defendant's motion to strike DAJD's complaint.

4. Whether the trial court properly denied defendant's motion for in camera review of all the documents requested.

5. Whether the trial court properly denied defendant's request to consolidate this case with the case filed by the KCSO.

6. Whether the trial court properly denied defendant's discovery request.

7. Whether the trial court had the authority under RAP 7.2 to consider DAJD's second request for injunctive relief.

8. Whether defendant is collaterally estopped from challenging the trial court's second injunction.

9. Whether the trial court's second injunction, which was based on RCW 42.56.565, properly enjoined pending and future public record requests by defendant.

B. STATEMENT OF THE CASE

1. Procedural Facts

On July 2, 2008, the King County Department of Adult and Juvenile Detention (hereinafter DAJD or plaintiff) filed a complaint for declaratory and injunctive relief on behalf of employees who were the

subject of public disclosure requests filed by defendant Allan Parmelee (hereinafter Parmelee or defendant) on May 12, 2008 and May 26, 2008. CP 1. Parmelee is an inmate in the custody of the Washington State Department of Corrections in Shelton, Washington as a result of his convictions in 2004 on two counts of Arson in the First Degree, for which he received sentences of 288 months, to be served concurrently. CP 1.

Defendant filed his answer and affirmative defense on July 15, 2008. CP 15-21. He also filed several additional motions, including a motion for in camera review of the public records at issue, CP 36-42, a motion to consolidate the case filed by DAJD with the case filed by the King County Sheriff's Office (hereinafter KCSO), CP 22-25, and a motion to strike redundant, immaterial [sic], impertinent and scandalous matter in DAJD's complaint, CP 26-35.

On July 21, 2008, DAJD filed a Motion for Declaratory Relief and Permanent Injunction Regarding Public Records Requests, in which it requested the court to issue an order permanently enjoining DAJD from releasing records to defendant that contain the following personal employee information: employee photographs, dates of birth, gender, race, height and weight, and employees' direct phone, cell, and pager numbers.. CP 43-89.

On October 27, 2008, King County Superior Court Judge Palmer Robinson heard arguments on DAJD's motion, in addition to the various motions filed by the defendant, and granted DAJD's requested injunctive relief; the court's Findings of Fact and Conclusions of Law were entered on December 30, 2008. CP 1038-48 (Appendix A). Defendant appealed the court's order on January 20, 2009. CP 1051-63.

In March 2009, the Washington Legislature amended RCW 42.56.565. As a result of this amendment, on June 10, 2009, Daniel T. Satterberg, the King County Prosecuting Attorney (hereinafter PAO), and King County filed a Motion for Injunction to enjoin any pending or future public record requests from Parmelee to King County for the remainder of his incarceration. CP 1469 - 1527. On June 17, 2009, DAJD filed a motion to join in King County's motion. CP 1066. In response, defendant filed a Motion for Discovery and a Motion to Strike DAJD's joinder in King County's motion for injunctive relief. CP 1072,1123-1129. The court granted the defendant two continuances for his response to the Motion for Injunction and DAJD's motion to join in that motion. CP 1067-1071, 1121-22.

On August 24, 2009, Judge Robinson granted DAJD's motions and enjoined all pending and future public record requests to DAJD by Parmelee, or an entity owned or controlled in whole or part by him, for the

remainder of defendant's incarceration. (*see* Appendix B). The Court also denied defendant's Motion for Discovery and Motion to Strike. CP 1142-1155.

On September 23, 2009, defendant filed a supplemental notice of appeal in which he sought review of the trial court's August 24, 2009 order. CP 86. On October 5, 2009, Commissioner Neal accepted the supplemental notice, consolidated that appeal with defendant's appeal of the December 30, 2008 order, and directed that the perfection schedule for the consolidated appeal be reset.

2. Substantive Facts

Defendant has a nine-year history of dangerous and abusive behavior directed at DAJD and its employees. CP 905-81. This history is consistent with the intimidating and harassing behavior he has directed toward DOC, the PAO, and various King County Judges and Commissioners. CP 101, Ex 1. The declarations and exhibits filed in support of DAJD's Motion for Declaratory Judgment and Injunctive Relief established the following facts.

On December 7, 2001, Parmelee was found to possess self-drawn diagrams of KCCF, with notations as to which areas to bomb. CP 905, Ex 1. This same date, Parmelee also verbally threatened staff members and threatened to kick Sergeant Bacon. As a result of the drawing and his

assaultive behavior, Parmelee's security status was upgraded to the highest level, Ultra Security. *Id.*

On February 6, 2004, Parmelee's cell was searched and a razor blade was located, mixed in with his legal papers. CP 905, Ex 2. The same thing occurred on February 21, 2004. CP 905, Ex. 3.

Parmelee has also assaulted corrections officers during his incarcerations. On August 13, 2002, Parmelee grabbed an officer's hand through his pass-through, a narrow slot cut into a cell door where meals and medications are passed to the inmate. The purpose of the pass-through is to protect corrections officers from full and unfettered physical contact with dangerous or assaultive inmates. CP 898-904. This assault caused an injury to the officer's hand. CP 905, Ex. 4.

On December 27, 2002, Parmelee refused to return to his cell. Due to Parmelee's confrontational and disobedient behavior, the corrections officer called for back-up. In response, Parmelee grabbed an administrative checklist off the wall and flushed it down the toilet in his cell. As officers entered to try to take possession of the document, Parmelee took a combative stance, fists clenched, and swung at the officers. He then fought being handcuffed, forced an officer to use pepper spray to restrain him, and elbowed an officer in the face. CP 905, Ex. 5.

On April 10, 2003, then-Corrections Program Administrator (CPA) Bob DeNeui drafted a memorandum for then-DAJD Director Steve Thompson, listing various assaults by Parmelee on staff between June 2, 1999 and February 4, 2003. CP 905, Ex. 6.

Parmelee also has threatened corrections officers during his various incarcerations at KCCF. On August 17, 2001, Parmelee wrote to then-CPA Frank Fleetham, saying, "I realize you enjoy threatening me because it happens so often. Don't worry, the score will be evened one day. ... Till Death. AP." CP 905, Ex. 7.

On January 9, 2003, Parmelee filed several grievances. Three were about Corrections Officer V. Bautista and said, "Fire this idiot because it's people like him that get beat when their backup isn't present." And, once again, "cease this conduct, pay me money." And, "Fire these stupid idiots. This is what provokes violence and escalation of tension at the jail. ... Pay me money." Additionally, "Fire these stupid idiots before this harassment escalates into violence and someone gets hurt. ... Pay me money." Another on that date was about an unnamed female officer, and reads, "Fire these stupid idiots ... pay me money. This is how guards get beat up." Another was directed at "camera operator"¹ and said, "Fire these

¹ After Parmelee made scores of false accusations about his mail, his meals, etc., DAJD started videotaping its contacts with this inmate.

stupid idiots. Next time I should have something to throw in their face [sic] maybe if they want to get in my face. ... Pay me money. CP 905, Ex. 8.

On May 25, 2004, Parmelee threatened Corrections Officer Bedinger (in writing), stating, "he wants someone to hunt him down and beat his ass" and "I'll resolve this matter using other means." This also was one of the many grievances in which he stated that he was seeking money. CP 905, Exs. 9 & 10.

Parmelee also made threats specifically about going to DAJD employees' homes. On September 5, 2002, Parmelee indicated to then-CPA Frank Fleetham that he would "watch his home and get him." CP 905, Ex. 11.

On November 3, 2002, Parmelee became upset with CPA Fleetham and said to him, "Did you see that small black car drive by your house last Saturday evening?" Asked if Parmelee was threatening Mr. Fleetham, Parmelee replied, "You can take it anyway you want." CP 905, Ex. 12.

On January 27, 2004, another inmate came forward with two pieces of paper containing the names, addresses and dates of birth of DAJD staff members. Based on his voluminous correspondence with DAJD, it was determined that the handwriting on the documents was

Parmelee's. As a result, DAJD undertook additional precautions with Parmelee, evidencing its extreme concern for the safety and security of its staff. CP 905, Ex. 13.

On January 30, 2004, Parmelee filed a grievance regarding then-CPA Bob DeNeui, in which he rhetorically asked, "Or, should I call him at home [home phone number, listed in the document, redacted here], or mail requests to his home at [home address listed in the document, redacted here], to get supplies? ... Fire this despicable guard. Cease such conduct. Provide the supplies. Pay me money." CP 905, Ex. 14.

On February 5, 2004, Parmelee filed a grievance against Corrections Officer Helpenstell, saying, "Perhaps what she wants is for me to send these [apparently meaning the grievances] to her home. Is that what you're pushing for?" CP 905, Ex. 15.

On February 6, 2004, documents containing the names, addresses, home phone numbers, social security numbers and dates of birth of DAJD employees were discovered in Parmelee's cell. The same information also was secreted in his legal paperwork. CP 905, Ex. 16.

On April 17, 2004, Parmelee remarked to Corrections Officer Saeturn, after staring down at his name tag, "Do you want someone to come to your house?" Corrections Officer Saeturn took this as a direct threat against him and his family. CP 905, Ex. 17.

On May 18, 2004, Parmelee told Corrections Officer T. Murphy that he had his home address and would use that information to "get" him. CP 905, Ex. 18.

On December 9, 2001, Parmelee stated in a grievance response:

I admit telling Porter that I would put pictures of his [and other jail employees] residences, cars, themselves, and a wide variety of other personal information, all publicly available on the Internet. ... I am aware that past persons on this web site have had problems. ... Although it is common knowledge, public information may "fuck up someone's life," that's the price society pays for electronic and free information. I will put up many jail staff's publicly available personal information, and any secondary paranoia or unproven relationship to problems they have are coincidental. Enjoy the publicity.

Parmelee finished this threatening letter with the following reference: "Also checkout www.ParmeleeGunShop.com." CP 905, Ex. 19. Finally, Parmelee made a veiled threat to use the Internet against the trial judge in his criminal case. CP 101, Ex. 6.

Corrections Sergeant Doug Justus, a long-time DAJD employee who has worked with the inmates at KCCF for sixteen years, states that he is afraid of Parmelee getting his personal information or going to his home. Given Parmelee's numerous physical confrontations with uniformed, armed corrections officers, he has shown an utter lack of fear or respect for their authority, even at KCCF itself. CP 898-904.

Parmelee also threatened DAJD's attorney, Mary Beth Short. Parmelee contacted Ms. Short at her home, both by mail and by phone.

CP 867-87. As a result of these contacts, Ms. Short installed a security system at her home and was put onto a priority listing with Kent Police Department's 911 response center. *Id.*

C. **ARGUMENT**

1. **Injunctive relief was properly granted in December 2008.**

DAJD presented compelling and uncontroverted evidence that the defendant is an incarcerated felon with a well-documented history of using the Public Records Act in an abusive and threatening manner. Moreover, the evidence clearly established that the defendant's May 2008 public records requests of DAJD constituted a continuation of that pattern of abuse, and were designed to threaten, intimidate, and harass the department and its employees.

Defendant did not controvert this evidence below, nor did he assign error to any of the trial court's factual findings on appeal. Consequently, the court's Findings of Fact are verities on appeal, RAP 10.3(g), and support the December 30, 2008 order, which enjoined the release of the employee information that the defendant requested.

The PRA specifically grants courts the authority to enjoin the release of specific public records. 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 in the county in which the movant resides or in which the record is maintained, finds that such examination would [1] clearly not be in the public interest and [2] would substantially and irreparably damage any person, or [3] 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 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. [Emphasis supplied]

Injunctive relief is an extraordinary equitable remedy designed to prevent serious and irreparable harm. *Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 96 Wn.2d 785, 792-96, 638 P.2d1213 (1982); *Hollis v. Garwall, Inc.*, 88 Wn. App. 10, 16, 945 P.2d 717(1997). A party seeking injunctive relief can satisfy that burden only by demonstrating that (1) he has a clear legal or equitable right, (2) he has a well-grounded fear of immediate invasion of that right, and (3) that the acts he is complaining of resulted or will result in actual and substantial injury. *Tyler Pipe*, 96 Wn.2d at 792.

Applying these standards to the instant case, the trial court's December 30, 2008 Findings of Fact and Conclusions of Law support the court's order for injunctive relief.

a. The requested documents are not public records.

DAJD employees have a clear legal and equitable right to be safe and secure from dangerous felons like Parmelee who seek their personal information for nefarious purposes. No other remedy exists at law for these employees. This court need only review Parmelee's well-

documented history of harassment and intimidation of public employees to conclude that the purpose of Parmelee's public records requests is to further these objectives. Parmelee has proven himself to be a threat to public safety, even while incarcerated.

Affected employees likewise have a well-grounded fear for their safety and security should Parmelee gain access to their personal information. In the past, Parmelee has focused his intimidation and harassment on attorneys who have opposed him in various civil and criminal matters, numerous corrections officers at KCCF, and supervisors at the Department of Corrections.

Finally, DAJD was entitled to injunctive relief because allowing Parmelee access to employees' personal information would result in actual and substantial injury. Employees' right to privacy would be violated if Parmelee were given access to the requested records. Loss of this right would endanger their sense of safety and security. Every member of a free society has a right to feel safe and secure. This right is not forfeited, nor should it be compromised, when a person becomes a public employee.

"Public record" is defined in the PRA to mean "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency." RCW

42.56.010(2). Employees' photographs, dates of birth, gender, race, height and weight do not relate to the conduct of government or the performance of any governmental function, other than for security-related purposes of the correctional facility. This information is of a purely personal nature and has no impact on an employee's job performance. Each of these items is discussed in greater detail below.

First, although DAJD concedes that the photographs used in employees' badges are writings and are prepared, owned, used, or retained by the department, these photos do not relate to the conduct of government or the performance of any governmental or proprietary function. For this reason, they are not "public records" under the PRA.

The purpose of the PRA is to "enabl[e] our citizens to retain sovereignty over our *government* and to demand full access to information relating to our *government's activities*." *Lindeman v. Kelso Sch. Dist.* 458, 127 Wn. App. 526, 535, 111 P.3d 1235 (2005) (*Lindeman I*), *rev'd on other grounds*, 162 Wn.2d 196, 172 P.3d 329 (2007). *As Lindeman I* explains, the PRA "was not intended to make it easier for the public to obtain personal information about individuals who have become subject to government action due to personal factors...Such personal information generally has no bearing on how our government operates" *Id.* at 535-36.

The analysis in *Oliver v. Harborview Med. Ctr.* 94 Wn. 2d 559, 618 P.2d 76 (1980), and *Lindeman v. Kelso Sch. Dist. No. 458*, 162 Wn.2d 196, 172 P.3d 329 (2007) (*Lindeman II*), also demonstrates that such photos are not "public records".

The *Oliver* Court held that the "information relating to the conduct of government" element of a "public record" is not satisfied simply because government "prepares, owns, uses, or retains" a particular "writing." *Oliver*, 94 Wn. 2d at 565. Otherwise, all "writings" "prepared, owned, used or retained" by government would be public records and the second element of the definition would be meaningless. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 260, 884 P.2d 592 (1994) (statutes should not be read to render any portion superfluous).

The Court also recognized that a writing that comprises entirely personal or private information is not "information relating to the conduct of government or the performance of any governmental or proprietary function" and so is not a "public record" under the PRA. *Oliver*, 94 Wn.2d at 566. In contrast, the *Oliver* Court's determination that the record before it was a "public record" turned on the fact that the record contained not only personal information but "also ... information of a more public nature ... [matters] which are carried out or relate to the performance of a governmental or proprietary function." *Id.*

In *Lindeman II, supra*, the Court defined "personal information" for purposes of the student record exemption in RCW 42.56.020(1) as "[i]nformation peculiar or proper to private concerns" and rejected "not public or general" as the definition of "personal information." *Lindeman II*, 162 Wn.2d 202, 206.

Employee badge photos are personal information, as the only information in the photo -- the employee's image -- is "information peculiar or proper to private concerns." *Id.* Consistent with the analytical framework of *Oliver*, because the photo reveals no information concerning actions which "are carried out or relate to the performance of a governmental or proprietary function," *Oliver*, 94 Wn.2d at 566, the photos are not "public records" under RCW 42.56.010(2).

Second, a record of an employee's date of birth is not public. During the application process, an individual is required to provide DAJD with their date of birth for the purposes of conducting the background investigation. CP 888-97. Hence, an applicant's date of birth is crucial to DAJD's investigation of applicant eligibility; but, it has no bearing on how DAJD conducts its investigation or the investigation's adequacy or fairness. In fact, the public can scrutinize and evaluate DAJD's conduct in screening and hiring job applicants without being provided employees' dates of birth. For example, a member of the public could request testing

procedures and the criteria employed for evaluating applicants.

After being hired, employees provide their dates of birth for the purposes of receiving benefits such as health care, insurance and retirement. *Id.* The conduct of government in this regard, for example evaluating whether tax dollars are being used efficiently for employee health care, easily could be examined without disclosure of employees' dates of birth.

This information is also provided as part of a badge, which gives an employee access to secure areas of the facility. *Id.* Once again, this is unrelated to the function of the jail. Should a citizen have concerns about security at KCCF, a request could be made for policies and procedures regarding authorized access.

Similarly, providing Parmelee with race and gender, personally identifiable to each DAJD employee, would provide him a means to identify them in public or otherwise track them down; it would not provide a means for legitimate overview of a government entity.

If Parmelee were concerned about racial or gender discrimination in hiring at DAJD, he could request hiring statistics and application standards on these subjects. This he has not done, and he evinces absolutely no interest in these legitimate public concerns. Parmelee's obvious and unparalleled desire to harass and intimidate these public

employees should not be assisted under the guise of the PRA.

Finally, Parmelee cannot explain or justify how a personnel record with an employee's height and weight constitutes a public record. This information is not "of a more public nature" because it does not relate to the performance of a governmental or proprietary function. Compare *Oliver*, 94 Wn.d2 at 566.

b. The requested personal information is exempt from disclosure under RCW 42.56.250(8) and 42.56.230.

If the Court disagrees with the above analysis and concludes that the requested documents constitute public records, then their release should be barred under RCW 42.56.250(8) and the privacy exemption codified in RCW 42.56.230. DAJD employees also have constitutional², common law³, and statutory privacy rights⁴.

² As citizens of the State of Washington, county employees have a constitutional right to privacy under Art 1, Sec. 7 of the Constitution of the State of Washington: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

³ In *Reid v. Pierce County*, 136 Wn.2d 195, 206, 961 P.2d 333 (1998), the Washington Supreme Court unequivocally held that "the common law right of privacy exists in this state." The common law right most directly affected in this case is explained in Restatement (2d) Torts § 652 C as: "One who appropriates to his own use or benefit the name of likeness of another is subject to liability to the other for invasion of privacy." It is evident from Parmelee's past behavior and threats that he intended to use DAJD employees' likenesses for his own retributive benefits.

⁴ RCW 63.60.010 grants citizens property rights in the use of their likeness. DAJD would violate this statute by publicly releasing the photo of its employees without their consent. Other Washington regulations also recognize an individual's privacy right in a photo. For example, WAC 308-10-050 provides that photos and other personal information maintained by the Department of Licensing are private and not subject to disclosure. Even booking photos are not public records and may only be released under specific limited circumstances. RCW 70.48.100; *Cowles Publishing v. Spokane Police Dept.*, 139 Wn.2d 472, 987 P.2d 620 (1999). It would be an absurd result if the PRA were

First, RCW 42.56.250 was amended in the last legislative session and subsection 8 of the statute now specifically exempts "photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies." For the reasons discussed in section 8(a) below, this amendment of the PRA, like the 2009 amendment of RCW 42.56.565, should be applied retroactively as an additional basis to affirm the trial court's order in this case.

In addition, the PRA exempts from disclosure: "Personal information in any files maintained for employees ... of any public agency to the extent that disclosure would violate their right to privacy." RCW 42.56.230(2). The right to privacy is further defined in RCW 42.56.050 as follows:

A person's "right to privacy"...is invaded or violated only if disclosure of information about the person: (1) would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

A purported public concern is not legitimate where the agency proves that "the public interest in efficient government could be harmed significantly more than the public would be served by disclosure." *Dawson v. Daly*, 120 Wn.2d 782, 845 P.2d 995 (1993). Under the law applicable at the time of Parmelee's 2008 requests, DAJD could not

interpreted to afford less protection to DAJD employees than that granted to felons, like Parmelee, whose booking photos are exempt from public disclosure.

consider his status as an inmate in determining whether information was subject to disclosure. However, in deciding whether an injunction was necessary to protect the privacy and security of public employees, the trial court could properly consider Parmelee's history of threats and intimidation against DAJD employees. This analytical distinction was recognized in a recent Court of Appeals' decision. In *Delong v. Parmelee*,⁵ 157 Wn. App. 119, 236 P.3d 936 (2010), the court reasoned:

Although, in general an agency cannot consider the requestor's intent when determining whether public records are subject to disclosure under the PRA, when the requestor announces an explicit and volunteered threat, to ignore such an intent leads to absurd consequences unintended by the PRA. . . . To hold otherwise would eviscerate the fundamental and equitable purpose of an injunction. [citations omitted] *Id.* at 151-52.

Regarding the first part of the test set forth in RCW 42.56.050, "highly offensive to a reasonable person," the declarations and exhibits submitted in support of DAJD's motion for injunctive relief more than satisfy this criterion. That evidence, which details Parmelee's threats, propensity for violence, harassment, and intimidation, overwhelmingly establishes that disclosure of any personal information under such

⁵ While DAJD agrees and relies upon Division II's analysis regarding the propriety of a trial court's consideration of a requestor's intended use of the information requested when determining the need for injunctive relief under the PRA, DAJD does not concur with other portions of the *Delong* decision. For the reasons set forth in this brief, DAJD urges this Court to hold that the personal identifying documents sought by the defendant here do not constitute public records and their disclosure would violate employees' privacy rights. In addition, the 2009 amendment of RCW 42.56.565 is applicable in this case.

circumstances would be highly offensive to any reasonable person.

But the inquiry cannot end there. Disclosing this personal information to Parmelee would also significantly harm the public's interest in efficient government. *Dawson* makes it clear that this interest is a relevant inquiry when deciding whether disclosure is of legitimate concern to the public. *Dawson*, 120 Wn.2d at 782. Employees of DAJD must be free to do their jobs without constantly looking over their shoulder or calling home to make sure their loved ones are safe. They need to feel completely secure in parking their vehicles in their driveways at night without fearing that they will awaken to find their vehicles in flames.

Public safety will be jeopardized if corrections officers are too fearful or anxiety-ridden to do their jobs, and this should not be required of them. At a time when it is increasingly difficult to recruit and maintain qualified officers, knowing that their personal information will be provided to a dangerous felon like Parmelee and that their personal safety will be more at risk than it is by virtue of the job itself, could be the deciding factor for people weighing a job in corrections versus one in the private sector. If DAJD cannot protect its employees from this type of abuse, the hiring and retention of the best people to do this demanding, dangerous, and critically-important work will be undermined which, in turn, will put the safety and security of current employees, inmates, and

the public at risk. CP 888-97.

Moreover, identity theft has exploded as a profitable and prevalent crime. Concerns about identity theft are justifiably heightened when personal information is handed over to a notorious criminal like Parmelee, especially given his threats to post employees' photos and information on the Internet. CP 101, Ex. 1, (Dec. of Bundy, Ex 3.); CP 101, Exs. 2, and CP 905, Ex. 19.

Detective Mike Klokow, a veteran law enforcement officer in the King County Sheriff's Office who has extensive knowledge and experience investigating identity theft, explained that when a criminal is armed with an individual's name and date of birth, a wealth of other information, including the victim's social security number, can then easily be obtained using the Internet. CP 101, Ex 11.

As a result, even if Parmelee merely wants the requested information to harass public employees, CP 101, Ex 1 (Dec. of Bundy, Ex 6), which alone is objectionable, by having employees' personal information, Parmelee could subject the employees to additional criminal actions either by him or by someone with whom he shared the information.

For similar reasons, the height and weight of employees was not subject to disclosure. Given Parmelee's history, it is obvious that he

sought this highly personal information for identification purposes. When law enforcement officers are given a suspect's description, key descriptors include the suspect's height and weight. This same information could be employed by private detectives hired by Parmelee to track down public employees in order to harass and intimidate them, which Parmelee has done in the past. CP 101, Ex. 1.

Under these circumstances, the disclosure of employees' photographs, dates of birth, race and gender, and height and weight are both highly offensive to a reasonable person and not of legitimate concern to the public. The Court should affirm the trial court's order enjoining DAJD from providing these records to Parmelee because disclosure would violate the privacy rights of DAJD employees.

Finally, settled case law establishes that Parmelee's other requests are exempt from disclosure. Parmelee specifically requested employee identification numbers but such information is exempt from disclosure under the PRA. In *Tacoma Public Library v. Woessner*, 90 Wn.App. 205, 951 P.2d 357 (1998), the Court of Appeals held that release of employee identification numbers would be "highly offensive" and was not of legitimate public concern, and disclosure of this information would violate employees' right to privacy. *Tacoma Public Library*, 90 Wn. App. at 222-23. Therefore, DAJD properly was enjoined from providing Parmelee this

information.

- c. Parmelee's request for direct phone, pager, and cell phone numbers would jeopardize DAJD security and such information is exempt under RCW 42.56.420.**

The trial court properly enjoined disclosure of information in response to the following request from the defendant:

In electronic format, a copy of a means and to disclose [sic] the means of communications with employees at your agency, to include direct phone numbers, pager numbers, cell phone numbers and similar numbers assigned to specific persons employed at your government agency.

The requested information is exempt from disclosure under RCW 42.56.420.

In pertinent part, RCW 42.56.420 provides as follows:

The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans;

...

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the

security of a city, county, or state adult or juvenile correctional facility or any individual's safety[.]

Under subsection (1) of this exemption to the PRA, "records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government," DAJD is exempt from disclosing direct phone numbers, pager numbers or cell phone numbers which are assigned to particular DAJD staff.

Recently, the Court of Appeals had the opportunity to address this exemption in a case of first impression. *Northwest Gas Ass'n v. Washington Utilities and Transp.*, 141 Wn. App. 98, 168 P.3d 443 (2007). In that case, the Court reversed the trial court and held that the pipeline companies were likely to prevail on their claim that detailed map and attribute-level pipeline data were exempt from disclosure in response to a newspapers' Public Records Act request. *Northwest Gas*, 141 Wn. App. at 120) ("[T]he Pipelines have established a likelihood that they will be able to prove at trial that keeping this shapefile data out of the hands of potential pranksters and terrorists is also critical to providing for the public safety...").

Here, the contact numbers included in the public records request are encompassed in contingency plans addressing criminal terrorist acts

and the specific and unique response and deployment plans of DAJD to events such as bomb threats and explosions, equipment and power failures, evacuation, jail freeze and lockdown procedure, and incident command structure.⁶ CP 888-97. These plans include critical information; i.e., contact phone and page numbers for staff holding such positions as Critical Incident Coordinator, Liaison Officer/information Officer, Safety Officer, Central Control and Facility Commanders. *Id.* at ¶11.

Defendant has stated his intent to post employee contact numbers on the Internet, which would thereby provide that information to countless unknown individuals. CP 101, Ex.1 (Dec. of Bundy, Ex. 4). Should a critical incident occur, incessant calls to these numbers could render them inoperable. CP 101, Ex. 8. The consequence of such behavior has already been demonstrated; commissioned police officers have been forced to cancel service and acquire new equipment. *Id.*

Further, RCW 42.56.420(2) squarely applies to this information. The directives discussed in DAJD's specific and unique emergency response plans, with regard to its correctional facilities, include required contacts to be made with staff assigned to respond to such emergencies, by phone or otherwise. CP 888-97. Public disclosure of these personally-

⁶ For obvious security reasons, such plans were not discussed in detail nor attached to the

assigned phone, pager and cell phone numbers poses a substantial likelihood of threatening the security of each of DAJD's correctional facilities and the safety of the individuals housed, working, volunteering and visiting therein, should overuse cause these devices to become inoperable.

This Court should reaffirm that these records are exempt from disclosure and that DAJD properly was enjoined from providing them to Parmelee.

2. The trial court did not abuse its discretion in denying defendant's motion to strike DAJD's Complaint.

Defendant asserts that under CR 12(f), DAJD's complaint should have been stricken as "inmaterial [sic], impertinent and scandalous matter and not relevant to the issues properly before the court." This assertion is meritless.

Under CR 8, a complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief, along with a demand for judgment for the relief to which he deems himself entitled. CR 8(a). DAJD's complaint complied with the applicable civil rule and plainly alleged the facts the court should consider to support the relief requested. The facts that defendant contends are "impertinent" or

motion or any declaration supporting the motion.

"scandalous" constitute accounts of his own actions and his resulting legal status as an incarcerated felon.

DAJD did not utilize profane or abusive language in its complaint. *Cf., In re Parmelee*, 115 Wn. App. 273, 63 P.3d 800 (2003); *Brin v. Stutzman*, 89 Wn.App. 809, 819, 951 P.2d 291 (1998). Nor did the alleged facts constitute a "meritless attack" on the defendant. Instead, the complaint contained all the elements required by the court rules; i.e., parties, jurisdiction and venue, factual allegations, causes of action, and prayer for relief.

The facts alleged in the complaint listed events that were pertinent to the action, including defendant's arrest, his trial and convictions for Arson, his incarceration in DAJD's facility, his treatment of DAJD staff, his litigation history with other public agencies, the public records request at issue in this case, and the resultant harm to DAJD if the requested records were disclosed to defendant. Consequently, CR 12(f) did not require the trial court to strike any part of DAJD's complaint.

In addition, the facts asserted in the complaint were neither immaterial nor redundant. The length and breadth of the complaint was purely a function of the plethora of critical information relevant to plaintiff's claims and the relief requested. Defendant also confuses "relevance" with "admissibility"; the trial court properly recognized that

any issue regarding the admissibility of evidence offered to prove the facts alleged was a matter for trial and not the basis for a motion to strike.

3. **The trial court did not abuse its discretion in denying defendant's motion for in camera review.**

The trial court properly refused--with the exception of the metadata on one employee photograph--to review all the requested personal employee information in camera to determine if such information was subject to public disclosure. Whether in camera review is necessary is generally left to the discretion of the trial court. *Overlake Fund v. City of Bellevue*, 60 Wn. App. 787, 796-7, 810 P.2d 507 (1991). In camera review is necessary only where the court cannot evaluate the nature of the documents requested or the applicability of asserted exemptions. *Id.*; see also, *Harris v. Pierce County*, 84 Wn. App. 222, 235, 928 P.2d 1111 (1996).

Here, the trial court did not abuse its discretion in declining to review the personal employee information that defendant requested. The court understood the nature of the request and the parties' pleadings clearly described the bases for their positions as to whether the documents were public records or otherwise were exempt from disclosure. Consequently, the trial court's refusal to view the requested documents in camera was an appropriate exercise of judicial economy.

4. **The trial court did not abuse its discretion in denying defendant's motion to consolidate.**

Defendant moved to consolidate the cases filed by DAJD and KCSO. CP 22-5. Although DAJD had no objection to the consolidation, the trial court refused to consolidate the two cases. Defendant's claim of error regarding the court's denial of his motion is meritless.

CR 42(a) provides that a court may consolidate actions involving a common question of law or fact pending before the court, but the trial court has broad discretion "to control the disposition of the causes on its docket." *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985). Moreover, CR 42(a) is a permissive rule and does not set forth any situations where consolidation is required. *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006, 1013 (5th Cir 1977); *see also Young v. City of Augusta*, 59 F.3d 1160, 1169 (11th Cir 1995) ("We have found no cases * * * in which a court's refusal to order consolidation had been overturned.") A trial court's decision regarding consolidation will not be overturned absent a showing of manifest abuse of discretion. *W.R. Grace & Co. v. State, Dept. of Revenue*, 137 Wn.2d 580, 590, 973 P.2d 1011 (1999).

In this case, the trial court did not abuse its discretion by denying consolidation. While DAJD and KCSO were relying on some of the same

facts, each was seeking the extraordinary remedy of injunctive relief. Therefore, DAJD and KCSO each were required to prove necessity and irreparable harm as to their respective employees, and the resulting order needed to be tailored to those individualized findings.

In addition, consolidation was not required by CR 12(g) or CR 16(a). Similarly, CR 19 was not violated; the defendant was the named defendant in all of the cases filed by King County and he actively participated in each case. As a result, he suffered no prejudice as a result of the court's order denying consolidation.

5. **The trial court did not abuse its discretion in denying defendant's discovery request.**

Defendant maintains that his due process rights were violated by the trial court's denial of his request for discovery and time to oppose DAJD's motions for injunction. Both contentions are meritless.

First, defendant had every opportunity to respond to DAJD's motion for injunctive relief. In fact, he filed several pleadings during the three-month period before the court heard argument on DAJD's motion. Nevertheless, none of defendant's pleadings included any declarations to controvert the declarations and exhibits filed in support of DAJD's motion. Moreover, in a letter from the trial court to defendant, dated December 30, 2008, it is clear that the court considered defendant's motion to reconsider

its October ruling and gave the defendant multiple opportunities to respond to the proposed Findings of Fact and Conclusions of Law.

Similarly, DAJD received defendant's discovery requests on October 15, 2008, only one week before the trial court was scheduled to hear arguments on DAJD's Motion for Declaratory Judgment and Permanent Injunction. The trial court granted DAJD's motion on October 27, 2008, which rendered defendant's discovery requests moot under CR 26. Having granted plaintiff's requested relief, there was nothing further at stake in the action, other than the in camera review of one photograph. Therefore, the trial court properly quashed defendant's untimely and irrelevant discovery requests.

6. The trial court had the authority to grant DAJD's second request for injunctive relief.

First, defendant contends that DAJD's motion to join in the PAO's Motion for Injunction did not comply with the rules pertaining to civil motions. This claim is specious. Defendant received the requisite notice of DAJD's motion, and it was evident that DAJD was relying on the facts and law set forth in the PAO Motion, which DAJD had incorporated by reference in its motion.

Second, defendant's assertion that the trial court violated RAP 7.2 by granting DAJD's second motion for injunctive relief is meritless. RAP

7.2 governs the authority of a trial court to act after review is accepted by the appellate court. RAP 7.2 (e) specifically gives the trial court the authority to consider post-judgment motions, and the court is required to seek permission prior to the entry of post judgment orders only where the subsequent order would change a decision that has already been accepted for review.

Here, the trial court had the authority to grant DAJD's second request for injunctive relief--without prior appellate court approval--because the resulting order did not change the first injunction order that was on appeal. The second injunction was based on the March 2009 amendment of the PRA and only enjoined DAJD from responding to defendant's pending and future public record requests; it did not change the court's prior December 2008 that addressed the pre-amendment requests.

Moreover, Parmelee did not object when the Court of Appeals consolidated his appeal of the first injunction with his appeal of the second injunction, because he had much to gain. That consolidation avoided the pending dismissal of the first appeal for lack of prosecution and resulted in a new perfection schedule, which ultimately afforded the defendant an additional eight months to file his opening brief.

7. **Defendant is collaterally estopped from challenging the second injunction, which was issued pursuant to RCW 42.56.565.**

This court should not review defendant's challenge to the trial court's second injunction because the issues raised in this appeal have been litigated and finally determined in the proceeding that was initiated by King County and the PAO.

After the enactment of RCW 42.56.565, King County and the PAO filed their Motion for Injunction, which DAJD and KCSO joined, to enjoin defendant's pending and future public record requests. King County, the PAO, KCSO, DAJD, and the defendant submitted pleadings, declarations, exhibits, and arguments in support of their respective positions. After considering those pleadings, the proffered evidence, and the oral arguments of the parties, the trial court entered its Findings of Fact and Conclusions of Law on August 24, 2009 and ordered the injunctive relief sought by the County and the above-named departments and elected officials.

Defendant, however, did not perfect the appeal of the order granting injunctive relief to King County and the PAO and the final mandate was issued in that case on May 21, 2010. (*see* Appendix C). Rather, defendant only appealed the August 24, 2009 injunctive orders

entered for DAJD and KCSO. Therefore, defendant is collaterally estopped from relitigating the propriety of the second injunction.

Collateral estoppel applies if: (1) the issues decided in the prior adjudication were identical to those presented in the action in question; (2) the prior adjudication ended in a final judgment on the merits; (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) application of the doctrine would not work an injustice on the party against whom the doctrine is to be applied. *Reninger v. Dep't of Corrections*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998). All four elements are met in this case.

First, the identical issues defendant raises in this appeal regarding the second injunction were finally decided by the trial court. Specifically, the court determined that RCW 42.56.565 enjoined the defendant's pending and future public record requests until the expiration of his incarceration. The court's order was based on its findings that the requests were made to intimidate, threaten and harass a public agency or its employees and fulfilling the request would likely threaten the safety of individuals and may assist criminal activity.

Second, the final mandate in the PAO action against the defendant was issued on May 21, 2010. Third, the defendant was a party to the PAO's action for injunctive relief. Fourth, application of the doctrine

would not be unjust because the defendant had a full and fair opportunity to litigate the issues before Judge Robinson. *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 795-99, 982 P.2d 601 (1999)(the injustice component of the doctrine is concerned with procedural, not substantive, irregularity).

The purpose of collateral estoppel is to "prevent relitigation of already determined causes, curtail multiplicity of actions, prevent harassment in the courts, inconvenience to the litigants, and judicial economy." *State v. Dupard*, 93 Wn.2d 268, 272, 609 P.2d 961 (1980). In short, the doctrine is intended to prevent the very type of abuse of the judicial system in which the defendant has engaged for the past decade.

8. Injunctive relief was properly granted in August of 2009.

If this Court decides to review the propriety of the second injunction, it should affirm the court's August 24, 2009 order, which was predicated on the 2009 amendment of the PRA. RCW 42.56.565 became effective on March 30, 2009 and allows a court to grant injunctive relief if it finds, by a preponderance of the evidence, that:

- (i) the request was made to harass or intimidate the agency or its employees;
- (ii) fulfilling the request would likely threaten the security of correctional facilities;
- (iii) fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members or any other person; or

(iv) fulfilling the request may assist criminal activity.

RCW 42.56.565(1)(c).

Based on this amendment of the PRA and the evidence DAJD submitted, which chronicled defendant's history of abusive use of the PRA to threaten, harass and intimidate the employees of DAJD and other government agencies, the trial court ordered that all pending⁷ and future public record requests to DAJD by defendant, or any entity owned or controlled in whole or part by him, are enjoined for the remainder of defendant's incarceration. For the sake of brevity, DAJD will not reiterate the evidence summarized above in the Statement of Facts that overwhelmingly supports the court's Findings of Fact and Conclusions of Law. In addition, none of the defendant's pleadings controvert the evidence that DAJD supplied in support of its motions.

- a. **RCW 42.56.565 may be applied to requests defendant submitted before the enactment of the new law.**

⁷ **Request 09-01**(any and all Seattle-KCJ staff's first, middle and last name and hyphenated or maiden names if applicable; their present job title, position, rank and job classification; their respective monthly-annual pay and compensation information and rates; their gender, their date of birth; their race; and any special job qualifications, recognized training and awards);**Request 09-02**(electronic copy of every KCJ-Seattle staff person's ID pictures such as their ID cards, most recently taken with all metadata);**Request 09-03** (any and all records, other than letters from Mr. Parmelee and to him, that support, relate to and provide the evidence that "There is no evidence to support your claims that a staff member spit in your food..." etc); **Request (kite) received June 18, 2009** (request for jail policies); and records requested in the thirty-three requests received June 22, 2009. CP 1073-1116.

To the extent that the defendant contends that the Court has no authority to apply RCW 42.56.565 to the requests he made before the amended law went into effect, his argument fails for several reasons. First, the relief DAJD sought under the new statute was not retroactive. “When the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive.” *Landgraf v. USI Film Products*, 511 U.S. 244, 273, 114 S. Ct. 1483 (1994). As the Supreme Court observed, “relief by injunction operates *in futuro*.” *Id.* at 274 (citations omitted). Here, DAJD sought prospective relief – an injunction barring Parmelee from inspecting or copying records responsive to his pending requests and barring him from making future requests. Thus, the order granting the injunction constituted a prospective, not retroactive, application of RCW 42.56.565. *Id.* at 269 (statute does not operate ‘retrospectively’ merely because it is applied in a case arising from conduct antedating the statute’s enactment).

Moreover, the legislature intended that the amendment apply to the circumstances presented here. Generally, new laws operate prospectively, but when contrary legislative intent is expressed or implied, a court is obligated to give effect to that intent. *In re Estate of Burns*, 131 Wn.2d 104, 110, 928 P.2d 1094 (1997). The legislative history of SB 5130, *see* Appendix D, shows that the Legislature intended the relief provided under

RCW 42.56.565 to apply to any request demonstrated to have been submitted for purposes of harassment and/or intimidation, including those submitted before enactment. The public testimony presented in support of the SB 5130 focused on inmates who were current abusing the system, including “one offender” who made 830 requests, some for “personnel files and personal information for the sole purpose of harassing those employees he comes across in the corrections system.” Senate Bill Report, SB 5130 at 2. The testimony also included the suggestion to add an emergency clause “to stop this abuse as soon as possible.” *Id.* at 3. The Legislature plainly agreed, adopting an emergency clause in the law as passed and evidencing its intent to stop the abuse that was occurring. Indeed, it would have made no sense for the Legislature to declare an emergency to protect public employees and agencies from abusive inmate requests, and simultaneously permit hundred of such requests to stand.

Finally, even if the legislative history did not clearly reveal the intent to apply the new law to abusive inmate requests pending at the time the law went into effect, applying the law in that manner is permissible because the law is remedial in nature. *100 Virginia Ltd. Partnership v. Vertecs Corp.*, 158 Wn.2d 566, 586-87, 146 P.3d 423 (2006). “A statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right.” *Id.* at 586 (citations omitted). Despite defendant's arguments

to the contrary, he does not have now, nor has he ever had, a vested right to use the PRA for purposes of harassment and intimidation. *See id.* (noting that abolition of a statutory cause of action does not impair any vested right).

RCW 42.56.565 provides a remedy for public employees and agencies targeted with abusive PRA requests from inmates, such as those at issue in this case. The statute does not impact any vested right. *See In re F.D. Processing*, 119 Wn.2d 452, 463, 832 P.2d 1303 (1992) (quoting *Gillis v. King County*, 42 Wn.2d 373, 377, 255 P.2d 546 (1953) (“A vested right involves ‘more than...a mere explanation;’ the right must have become ‘a title, legal or equitable, to the present or future enjoyment of property.’”)) Defendant’s arguments to the contrary are baseless.

b. RCW 42.56.565 is constitutional and defendant's arguments to the contrary lack merit.

Defendant raises several claims that challenge the constitutionality of RCW 42.56.565. His arguments appear to be: (1) RCW 42.56.565 is void because the statute does not define numerous terms contained therein, and thereby chills First Amendment rights of inmate requestors; (2) RCW 42.56.565 violates equal protection because it treats inmate requestors differently than non-inmate requestors; and (3) RCW 42.56.565 violates due process because it allows “speculation and blind accusations to constitute proof by a preponderance of evidence.” Defendant’s burden in challenging

the constitutionality of the new statute is substantial, and he cannot meet that burden. *E.g. Bellevue v. State*, 92 Wn.2d 717, 719, 600 P.2d 1268 (1979) (statute is presume constitutional; one who challenges it must demonstrate its invalidity beyond a reasonable doubt).

i. The statute is not unconstitutionally vague, and it does not impermissibly chill First Amendment rights.

A vagueness challenge is rooted in principles of due process. “Under the due process clause, a statute is unconstitutionally vague if (1) it does not define the criminal offense with sufficient definiteness that ordinary persons can understand what conduct is proscribed, or (2) it does not provide ascertainable standards of guilt to protect against arbitrary enforcement.” *State v. Sullivan*, 143 Wn.2d 162, 181-82, 19 P.3d 1012, 1033 (2001). In determining whether statutory language allows for an unconstitutional degree of arbitrary enforcement, the reviewing court must give the language a “sensible, meaningful, and practical interpretation.” *City of Spokane v. Douglass*, 115 Wn.2d 171, 181, 795 P.2d 693 (1990). It should be noted that due process “does not demand impossible standards of specificity or absolute agreement” because some measure of vagueness is inherent in the use of our language. *Id.* at 179.

As a threshold matter, defendant has not established that the due process vagueness doctrine even applies in this context; i.e., to an

amendment to the Public Records Act. Courts apply this doctrine to criminal and other statutes that implicate constitutionally-protected rights. *See, e.g., Sullivan*, 143 Wn.2d 162 (criminal charge of barratry); *State v. Mays*, 116 Wn. App. 864, 68 P.3d 1114 (2003) (involuntary commitment for alcoholism treatment); *Haley v. Medical Disciplinary Bd.*, 117 Wn.2d 720, 818 P.2d 1062 (1991) (medical disciplinary sanctions). Defendant does not have a constitutionally protected right to request records under the PRA, let alone to use the PRA for purposes of harassment and intimidation. *See Giarratano v. Johnson*, 521 F.3d 298, 305-06 (4th Cir. 2008) (exclusion of inmates from Virginia's Freedom of Information Act does not offend the First Amendment or Due Process Clause of the Fourteenth Amendment).

Even if the Court were to analyze RCW 42.56.565 under the vagueness doctrine, it is clear the statute would survive due process scrutiny. A challenged statute is facially vague if its terms “are so loose and obscure that they cannot be clearly applied in any context.” *Sullivan*, 143 Wn.2d at 183. “In judicial interpretation of statutes, the first rule is ‘the court should assume the legislature means exactly what it says. Plain words do not require construction’” *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995) (quoting *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 329, 815 P.2d 781 (1991)). The terms “harassment,” “threats,” “would likely,” and “may assist,” which are contained in RCW 42.56.565(1)(c), are commonly understood

terms; they are not “so loose and obscure that they cannot be clearly applied in any context.” Similarly, the terms contained in subsection (2) of the statute are not vague. Rather, subsection (2) provides a non-exclusive list of factors for the court to consider in deciding whether to enjoin a request, and it clarifies the conduct that the statute was enacted to deter, i.e., conduct that constitutes a true threat.

Moreover, true threats are not protected by the First Amendment, *See State v. J.M.*, 144 Wn.2d 472, 477, 28 P.3d 720 (2001); *United States v. Orozco-Santillan*, 903 F.2d 1262, 1265-66 (9th Cir 1990). As this Court explained in *In re Parmelee*, 115 Wn.App. 273, 288, 63 P.3d 800 (2003):

A 'true threat' is a statement made in a context or under such circumstances in which a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon, or to take the life of another. It is only relevant that the speaker intentionally and knowingly communicated the threat, not that he intended or was able to carry out the threat. Moreover, the fact that a threat is subtle does not make it less of a threat.
(Citation omitted).

The injunctive relief set forth in RCW 42.56.565 requires the court to determine if a true threat exists. The legislative intent of this statute, and its application to the same set of circumstances presented in this case, were acknowledged by the Washington Supreme Court in *Burt v. Washington State Department of Corrections*, 168 Wn. 2d 828, 231 P.3d 191(2010):

We note that the legislature has enacted legislation that will greatly curtail abusive prisoner requests for public records. RCW 42.56.565 (effective Mar.

20, 2009). If Parmelee's motivation for seeking public records is an intent to harass penitentiary staff members, this case presents a model example of the types of public records requests that this new legislation will allow courts to enjoin.

Id. at 837, n. 9.

In this case, the trial court's specific findings, based on the evidence presented by the parties, support its conclusion that the defendant's requests to DAJD were made to harass or intimidate agency employees and that fulfilling the requests would threaten employee safety or may assist criminal activity. Defendant certainly could foresee that when he threatened DAJD employees and simultaneously requested their personal identifying information under the PRA, his conduct would be found to constitute harassment or intimidation. Therefore, RCW 42.56.565 is not vague, on its face or as applied, and the injunctive relief issued here did not chill the exercise of any protected First Amendment speech.

ii. The statute does not violate equal protection.

Defendant's equal protection argument also lacks merit. The Equal Protection Clause requires that all persons similarly situated be treated alike. *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S. Ct. 560 (1920); *Plyler v. Doe*, 457 U.S. 202, 216, 102 S. Ct. 2382 (1982); *Mayner v. Callahan*, 873 F.2d 1300, 1301 (9th Cir. 1989). A necessary element for a violation of equal protection is that the person be "similarly situated" to

others receiving different treatment. If the complainant is not similarly situated, there is no violation of equal protection. *Powell v. Ducharme*, 998 F.2d 710, 716 (9th Cir. 1993).

Even if a person is similarly situated, an equal protection claim must be rejected unless the "[state's] action is 'patently arbitrary and bears no relationship to a legitimate governmental interest.'" *Vermouth v. Corrothers*, 827 F.2d 599, 602 (9th Cir. 1987). To survive an equal protection challenge, the State need not elect the best means for advancing its goals. *Id* at 603. As long as the State's action bears some rational relationship to a legitimate governmental interest, a "court cannot 'sit as a superlegislature' and dictate another [course of action] that it believes to be wiser or more equitable." *Id* at 604 (quoting *City of New Orleans v. Dues*, 427 U.S. 297, 303, 96 S. Ct. 2513 (1976) (per curiam)).

The Court will apply a strict scrutiny analysis only if an allegedly discriminatory classification disadvantages a suspect class or burdens the exercise of a fundamental right. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440, 105 S. Ct. 3249 (1985). An intermediate level of scrutiny generally is applied only to classifications based on gender. *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724, 102 S. Ct. 3331 (1982). Equal protection claims concerning confined offenders

generally are reviewed under the rational basis test. *McQueary v. Blodgett*, 924 F.2d 829, 834 (9th Cir. 1991).

Defendant's equal protection argument fails for two reasons. First, he is not similarly situated with unincarcerated records requestors. As the U.S. Supreme Court noted, "[i]mprisonment carries with it the circumscription or loss of many significant rights." *Hudson v. Palmer*, 468 U.S. 517, 525, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984). At common law and under article VI section 3 of the Washington Constitution, incarcerated felons lose their civil rights, including the right to vote. *In the Matter of Walgren*, 104 Wn.2d 557, 569, 708 P.2d 380 (1985) (at common law, a person convicted of a felony was considered to be 'civilly dead'); Washington Constitution, Art. VI, § 3 (felons excluded from the franchise absent restoration of their rights).

Although prisoners retain certain constitutional protections, "[I]awful imprisonment necessarily makes unavailable many rights and privileges of ordinary citizen, a retraction justified by the considerations underlying our penal system." *Wolff v. McDonnell*, 418 U.S. 539, 555, 94 S. Ct. 2963 (1974) (internal quotation marks omitted). Those rights and privileges unavailable to inmates include not only the right to vote but also free access to public records available under the PRA. *Livingston v. Cedeno*, 164 Wn. 2d 46, 54, 186 P.3d 1055 (2008) (public records act does not limit the Department's discretion in prohibiting entry of public records it reasonably

deems inappropriate in a prison setting). Lacking these fundamental rights and privileges enjoyed by law-abiding citizens, it does not follow that inmate requestors are similarly situated to non-inmate requestors for purposes of equal protection analysis. Consequently, defendant's equal protection challenge to RCW 42.56.565 fails at the threshold level.

Second, even ignoring the stark dissimilarities between inmates and ordinary citizens, the distinction RCW 42.56.565 draws between the two classes of requestors plainly satisfies rational basis scrutiny. *See Giarratano*, 521 F.3d 298, 304-05 (Virginia's FOIA inmate exclusion did not offend equal protection because it furthered the state's interest in conserving state resources and preventing frivolous requests); *Proctor v. White Lake Township Police Dept.*, 248 Mich.App. 457, 639 N.W.2d 332 (2002) (Legislature's FOIA exclusion singling out incarcerated prisoners rationally relates to the Legislature's legitimate interest in conserving the scarce governmental resources squandered responding to frivolous FOIA requests by incarcerated prisoners).

Here, the Legislature has not excluded inmates from the PRA altogether, as in Virginia and Michigan, but rather has authorized courts to enjoin those inmates who are proven to have abused the PRA. Plainly, this restrained approach to the problem of inmate abuse of the PRA bears a rational relationship to the State's legitimate interest in preserving resources

and preventing abusive requests. Defendant's equal protection arguments are unfounded and should be rejected.

iii. The statute does not violate due process.

Defendant's other argument concerning the constitutionality of RCW 42.56.565 is difficult to understand, but apparently he is contending that the summary proceeding in the statute violates due process because it denies him adequate time to prepare and an opportunity to conduct discovery. Plaintiff previously addressed defendant's alleged need for more time to respond and/or for discovery and will not do so again here. *See* discussion above.

In any event, regardless of the nature of defendant's due process challenge to RCW 42.56.565, he cannot prevail. Due process protects against the deprivation of life, liberty, or property. *In re Cashaw*, 123 Wn.2d 138, 143, 866 P.2d 8 (1994). "The threshold question in any due process challenge is whether the challenger has been deprived of a protected interest in life, liberty or property." *Id.* Liberty interests may arise from either the due process clause or state laws. *Id.* at 144. "A liberty interest may arise from the Constitution, from guarantees implicit in the word liberty, or from an expectation or interest created by state laws or policies." *In re Pers. Restraint of Bush*, 164 Wn.2d 697, 702, 193 P.3d 103 (2008) (citations omitted).

As noted above, defendant does not have a constitutionally-recognized right to request records pursuant to the PRA. *See Giarratano*, 521 F.3d at 305-06 (exclusion of inmates from Virginia FOIA does not offend the First Amendment or Due Process). As the Fourth Circuit explained in *Giarratano*:

The question of whether *Giarratano*'s rights were violated with respect to his access-to-the-courts claim under the First Amendment and the Due Process Clause of the Fourteenth Amendment has been answered by the Supreme Court. In *Lewis v. Casey*, 518 U.S. 343, 355, 116 S. Ct. 2174, 135 L. Ed. 606 (1996), the Court cited the specific tools required to provide access to courts: "those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement." Further, "[i]mpairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Id.* In fact, the Supreme Court specifically disclaimed the notion that the right of access to the courts requires "that the State must enable the prisoner to discover grievances, and to litigate effectively once in court." *Id.* at 354, 116 S. Ct. 2174. Rather, the right of access affords only "the capability of bringing contemplated challenges to sentences or conditions of confinement." *Id.* at 356, 116 S. Ct. 2174.

Id. at 305-06.

Moreover, to the extent defendant claims the PRA itself gives rise to a state-created liberty interest in access to public records, his argument fails for at least three reasons. First, if neither the First Amendment nor the Due Process Clause guarantees inmates access to public records under state public disclosure laws as a mean to advance their grievances and access the courts, it follows that there could be no state-created "liberty" interest associated with the PRA. Second, even if the PRA did, at one time, give rise to a state-

created liberty interest, which DAJD disputes, the Legislature abrogated any such interest when it enacted RCW 42.56.565. Finally, if it were determined that a state liberty interest had been created, the summary proceeding mandated in RCW 42.56.565 satisfies any procedural due process requirements that would flow from such a finding

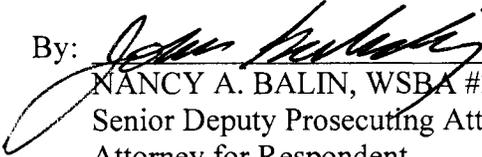
D. CONCLUSION

For all of the reasons set forth above, DAJD respectfully requests that the Court affirm the trial court's orders of December 30, 2008 and August 24, 2009. As a result, the defendant is not entitled to any costs, fees or penalties pursuant to RCW 42.56.550.

DATED this 14th day of October, 2010

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By:  #23157 For:
NANCY A. BALIN, WSBA #21912
Senior Deputy Prosecuting Attorney
Attorney for Respondent

Appendix A

FILED
KING COUNTY WASHINGTON

DEC 30 2008

**SUPERIOR COURT CLERK
BY TANNER M. COLE
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KING COUNTY DEPARTMENT OF ADULT)
AND JUVENILE DETENTION,)
)
) Plaintiff,)
)
 vs.)
)
 ALLAN PARMELEE,)
) Defendant)

No: 08 2 22252 7SEA
FINDINGS OF FACT AND
CONCLUSIONS OF LAW
CLERK'S ACTION REQUIRED

This matter came on before the Court on Plaintiff's Motion for Declaratory Judgment and Permanent Injunction Regarding Public Records Requests ("Plaintiff's Motion"). The Court hereby grants Plaintiff's Motion. In so doing, the Court considered Plaintiff's Motion, Defendant's responses and multiple pleadings related thereto, King County Department of Adult and Juvenile Detention's ("DAJD") reply thereto and accompanying attachments, oral argument of the parties, and the following evidence:

A. *Declaration of Nancy Balin and the following exhibits thereto:*

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

Palmer Robinson
King County Superior Court
516 Third Avenue
Seattle, Washington 98104
(206) 296-9103

1 1. King County Prosecuting Attorney's Motion for Permanent Injunction and
 2 the attached Declaration of Kris Bundy, King County Superior Court Cause No. 07-2-39332-
 3 3SEA, and the following Exhibits thereto:

- 4 1. Federal Court Orders re: Bar Order in *Allan Parmelee v. Douglas LeRoy and*
 5 *Timothy McTighe*, U.S. Western District Court of Washington No. C01-1467R.
 6 2. U.S. Party Case Index.
 7 3. Petition, Declarations and Exhibits (bates ## 1-511) in *The Washington State*
 8 *Department of Corrections v. Allan W. Parmelee*, Thurston County Superior
 9 Court No. 07-2-01222-0;
 10 4. Final Order in *Burt v. DOC*, Walla Walla County Superior Court No. 05-2-00075-
 11 0 and opinion of Division III of the Washington Court of Appeals, -- Wn. App. --,
 12 170 P.3d 608 (2007);
 13 5. Permanent Injunction in *Abbot v. DOC*, Walla Walla County Superior Court No.
 14 06-2-01016-8
 15 6. Permanent Injunction in *DOC v. Parmelee*, Thurston County Superior Court No.
 16 06-2-01406-2
 17 7. Permanent Injunction in *DeLong v. Parmelee*, Clallam County Superior Court No.
 18 06-2-00637-5;
 19 8. Permanent Injunction in *DeLong v. DOC*, Clallam County Superior Court No. 06-
 20 2-00878-5;
 21 9. Opinion in *State v. Parmelee*, 108 Wn. App. 702, 32 P.3d 1029 (2001),
 22 10. Application for Garnishment, Answer to Writ of Garnishment, and Certification
 23 of Mailing and Service entered in *State v. Parmelee*, King County Superior Court
 No. 02-C-07183-6SEA;
 11. Parmelee Letters to Petitioners Stamped as Received by Petitioners on October
 10, 2007; October 23, 2007 (5); November 7, 2007 (4); and November 16, 2007,
 and
 12. Petitioners' Responses to Parmelee's Letters Dated December 3, 2007 and
 December 17, 2007.

FINDINGS OF FACT AND
 CONCLUSIONS OF LAW - 2

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I. FINDINGS OF FACT

Based on the evidence submitted and the argument of the parties, the Court makes the following FINDINGS OF FACT:

1. On December 7, 2001, Parmelee was found to possess self-drawn diagrams of KCCF, with notations as to which areas to bomb.
2. On the same date, Parmelee verbally threatened staff members and threatened to kick Sergeant Bacon. As a result of this drawing and his behavior, Parmelee's security status was upgraded to the highest level, Ultra Security.
3. On February 6, 2004 and February 21, 2004, Parmelee's cell was searched and a razor blade was located, hidden in his legal papers.
4. Parmelee also has assaulted corrections officers multiple times during his incarcerations between June 2, 1999 and February 4, 2003.
5. Parmelee also has threatened corrections officers during his various incarcerations at KCCF, including on August 17, 2001, January 9, 2003 and May 25, 2004.
6. Parmelee has made specific threats about going to DAJD employees' homes, including on September 5, 2002, November 3, 2002, January 30, 2004, February 5, 2004, April 17, 2004 and May 18, 2004.
7. On January 27, 2004, an inmate came forward with two pieces of paper containing the names, addresses and dates of birth of birth of DAJD staff members. Due to his voluminous correspondence to DAJD to date, it was determined that the handwriting on the documents was Parmelee's. As a result, DAJD undertook additional precautions with Parmelee, evidencing its extreme concern for the safety and security of its staff.

- 1 8. On February 6, 2004, documents containing the names, addresses, home phone numbers,
 2 social security numbers and dates of birth of DAJD employees were discovered in
 3 Parmelee's cell. The same information also was found in his legal paperwork.
- 4 9. Parmelee has threatened to use the Internet against DAJD employees. On December 9,
 5 2001, Parmelee commented in a grievance response:

6 I admit telling Porter that I would put pictures of his [and other jail employees]
 7 [sic] residences, cars, themselves, and a wide variety of other personal
 8 information, all publicly available on the Internet. ... I am aware that past
 9 persons on this web site have had problems. ... Although it is common
 10 knowledge, public information may "fuck up someone's life," that's the price
 11 society pays for electronic and free information. I will put up many jail staff's
 12 publicly available persona information, and any secondary paranoia or unproven
 13 relationship to problems they have are coincidental. Enjoy the publicity.

- 14 10. The public disclosure requests at issue in this case are for the following records of DAJD
 15 employees:

- 16 A. In electronic format, first, middle and last name (including hyphenated,
 17 changed or married, divorced and maiden names if existing); date of birth;
 18 gender; race; date of hire; current employment job title (job position);
 19 annual pay and pay rate; height and weight; employment identification
 20 number; any employed related special training.
- 21 B. In electronic format, frontal face photographic type image records of each
 22 and every current employee at your agency, of the most recent version if
 23 older versions exist, such as used on photographic identification cards or
 other alternative is not precisely existing provide the best quality
 electronic format images in existence and without conversion to any other
 format, that may strip non-exempt metadata from the recording. ...
- C. Any and all reports, investigation records, photographs, administrative
 grievances, emails, letters, memos and related or similar records relating
 to a sex-by-guards reporting recently in the mainstream media including
 any omnibus records an independent study records for at least the past five
 years.
- D. In electronic format, a copy of a means and to disclose [sic] the means of
 communications with employees at your agency, to include direct phone

1 numbers, pager numbers, cell phone numbers and similar numbers
2 assigned to specific persons employed at your government agency.

3 E. In electronic original format, a copy of your agency's employee name and
4 work related email address list of employee's email addresses presently
5 employed by your agency [sic]. ... [T]he email address and means to
6 contact your agency's employees, including by text messaging and email
7 means.

8 F. Employment evaluation and termination records of any person(s)
9 employed past or present at your government agency whom [sic] was
10 terminated, disciplined in any way, or asked to resign for unprofessional,
11 improper, criminal, ethical [sic] or other reasons even if it did not result in
12 the termination of employment, since, for [sic] the last 10 years.

13 11. A number of DAJD employees, both uniformed and civilian, feel personally threatened
14 by Parmelee.

15 12. DAJD employees have a good faith concern about the requested information being
16 disclosed, both generally and to defendant.

17 13. Public safety and that of incarcerated persons would be put into jeopardy if the requested
18 records were provided, particularly with regard to direct telephone numbers, pager
19 numbers and cellular phone numbers assigned of DAJD personnel.

20 14. Providing the requested records would not fulfill the Public Records Act's stated purposes
21 of ensuring the efficient administration of government and public confidence in the
22 fairness of governmental processes.

23 15. The fact that information may be available through other sources, including the Internet,
does not require that that information be deemed "public" or that governmental records
containing such information be deemed "public records."

16. Choosing a profession as a public employee does not alone make photographs of such
people public records.

- 1 17. Public policy clearly dictates that employee photographs are not public records.
- 2 18. There already are indications of such clear public policy with regard to the non-public
3 nature of public employees' photographs. An example is the fact that the Washington
4 Department of Licensing does not disclose the photographs it produces and retains and
5 that doing so has been criminalized.
- 6 19. Data and photographs retained by government entities for transit passes also are exempt
7 from disclosure.
- 8 20. Employees of plaintiff would be highly offended by the disclosure of their photographs
9 or of records containing their date of birth, gender, race, height and weight, and
10 disclosing records containing such photographs or information would be of no legitimate
11 concern to the public.
- 12 21. The Public Records Act does not require the disclosure of records which would allow or
13 enhance the "ability to identify" governmental employees.
- 14 22. Disclosure of DAJD employees' direct phone numbers, pager numbers or cellular phone
15 numbers would significantly disrupt the conduct of government, would threaten public
16 safety and would cause a substantial likelihood of threatening the security of DAJD's
17 correctional facilities' as well as individuals' safety.
- 18 23. The Court heard and considered defendant's motion to strike plaintiff's Reply and its
19 accompanying pleading and attachments. The materials contained within are relevant to
20 plaintiff's motion under RCW 42.56.540 and to its argument regarding defendant's status
21 as an incarcerated felon.
- 22 24. The Court has heard and considered defendant's Verified CR-13 Counter/Crossclaim
23 Complaint and CR-19 Joinder Parties Countercomplaint for Libel/Slander; Constitutional

1 Free Speech Retaliation; Abuse of Process; Free Speech Infringement, Inter Alia,
2 Including Public Records Act Violations [sic]. RCW 42.56.540 does not provide for the
3 relief requested therein.

4 25. Defendant was properly served with plaintiff's Reply and its accompanying pleading and
5 attachments.

6 26. Defendant has withdrawn his request for employee identification numbers and instead
7 may submit a new request for badge numbers instead.

8 27. Plaintiff filed and prosecuted this case in a timely manner.

9 28. Plaintiff brought this action in good faith and with due respect for the law, in an effort to
10 protect its employees and the safe and secure administration of its correctional facilities.

11 **II. CONCLUSIONS OF LAW**

12 1. This Court has the authority to consider Plaintiff's Motion for Declaratory
13 Judgment and Permanent Injunction Regarding Public Records Requests pursuant to CR 65 and
14 RCW Chapters 7.40 and 7.24 and RCW 42.56.540.

15 2. RCW 42.56.540 provides that examination of public records may be enjoined if
16 such examination would not be in the public interest and would substantially damage any person
17 or vital government function.

18 3. The Public Records Act is a strongly-worded mandate for broad disclosure of
19 public records.

20 4. Public records are those which relate to the conduct and performance of a
21 governmental function.

1 5. It is assumed that free and open examination of public records is in the public
2 interest, even though such examination may cause inconvenience or embarrassment to public
3 officials or others.

4 6. RCW 42.56.540 does not confer substantive authority on the Court, but rather sets
5 a procedure for seeking relief as may otherwise be found in the statute.

6 7. The language of the Public Records Act and its legislative history and the
7 resulting case law lead to the conclusion that all of the records listed in Plaintiff's Motion are not
8 public records and, additionally, are exempt from disclosure.

9 8. Plaintiff's employees' date of birth, gender, race, height, weight and photographs
10 are not public records.

11 9. Following *in camera* review of the metadata, the court concludes the metadata
12 contained in DAJD employees' photographs are not public records to the extent they contain
13 more information than an employee's name, date of hire, position and pay rate.

14 10. Exemption of records or portions of records based on privacy is governed by
15 RCW 42.56.050 which states:

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

21 11. DAJD employees' direct phone numbers, pager numbers and cellular phone
22 numbers not public records, as they do not relate to the conduct of government or performance of
23 a governmental function.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 8

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1 12. Only the "front desk" phone number(s) of plaintiff are public and hence subject to
2 disclosure, such as those found in a phone book.

3 13. The Public Records Act exempts "Personal information in files maintained for
4 employees, appointees, or elected officials of any public agency to the extent that disclosure
5 would violate their right to privacy." (RCW 42.56.230(2)).

6 14. Employees' photographs, date of birth, gender, race, height and weight are
7 "personal information maintained for employees, appointees or elected officials" of a public
8 agency.

9 15. The Public Records Act exempts "Personal information in files maintained for
10 employees, appointees, or elected officials of any public agency to the extent that disclosure
11 would violate their right to privacy." (RCW 42.56.230(2)).

12 16. Even if plaintiff's employees' date of birth, gender, race, height, weight or
13 photographs [or the photographs' metadata], or any of them, were public records, each would be
14 exempt from disclosure under RCW 42.56.230.

15 17. Even if direct phone numbers, pager numbers or cellular phone numbers were
16 public records, each would be exempt from disclosure under RCW 42.56.420.

17 18. Though none of the policies meant to be served by the Public Records Act are
18 served by release of the requested documents to Parmelee, the Court does not have the authority
19 to consider the identity of the requester in issuing its order.

1
2 ORDER

3 IT IS HEREBY ORDERED:

4 1. Plaintiff's blanket motion for injunction based solely on defendant's status as an
5 incarcerated felon is denied.

6 2. Plaintiff is permanently enjoined from producing for disclosure, to defendant or to
7 any person plaintiff believes to be an agent of, in privity with, or otherwise acting on defendant's
8 behalf, the records which are not public: photographs, date of birth, gender, race, height, weight,
9 direct phone number, pager number and cellular phone number of its employees.

10 3. The Court denies defendant's Motion for *In Camera* Review of Records at Issue
11 with one exception: The Court has reviewed *in camera* the metadata for one photograph to
12 determine whether there is any information contained therein which is subject to public
13 disclosure.

14 4. The Court denies defendant's motion to strike plaintiff's Reply and its
15 accompanying pleading and attachments and denies defendant's Motion to Strike Redundant,
16 Immaterial [sic], Impertinent and Scandalous Matter under CR 12(f), as the information contained
17 in all such documents is relevant to plaintiff's motion under RCW 42.56.540 and to its argument
18 regarding defendant's status as an incarcerated felon.

19 5. The Court denies defendant's Verified CR-13 Counter/Crossclaim Complaint and
20 CR-19 Joinder Parties Countercomplaint for Libel/Slander; Constitutional Free Speech
21 Retaliation; Abuse of Process; Free Speech Infringement, Inter Alia, Including Public Records
22 Act Violations [sic], as RCW 42.56.540 does not provide for the relief requested therein and
23 defendant has provided no other pertinent authority authorizing same.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 10

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516 Third Avenue
Seattle, Washington 98104
(206) 296-9103

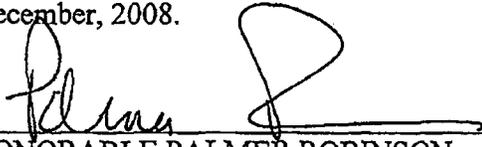
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6. All verbal rulings by the Court are hereby incorporated into this document.

7. The Court denies the defendant's motion to consolidated this case with King
County Cause No. 08 2 22251 9.

8. This case is DISMISSED.

DATED this 30 day of December, 2008.


HONORABLE PALMER ROBINSON

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 11

Palmer Robinson
King County Superior Court
516 Third Avenue
Seattle, Washington 98104
(206) 296-9103

Appendix B

FILED
KING COUNTY CLERK

The Honorable Palmer Robinson

AUG 25 2009

**SUPERIOR COUNTY CLERK
BY TAWNET M. COLE
DEPUTY**

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KING COUNTY DEPARTMENT OF ADULT)
AND JUVENILE DETENTION,)

Plaintiff,)

vs.)

ALLAN W. PARMELEE,)

Defendant.)

08-2-22252-7 SEA

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came on before the Court on Plaintiff's Joinder ("Joinder") with King County and King County Prosecuting Attorney's Motion for Injunction ("Plaintiffs' Motion"). The Court hereby grants Plaintiff's Motion, specifically including that of this Plaintiff. In doing so, the Court considered Plaintiffs' Motion, plaintiff's Joinder, oral argument of the parties, and the following evidence:

1. The Declaration of Kristofer Bundy with attached exhibits;
2. The Declaration of Marilyn Brenneman;
3. The Declaration of Denise Vaughan;
4. The Declaration of Dan Satterberg;
5. The Declaration of Mark Larson with attached exhibits;

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9015/FAX (206) 296-0191

- 1 6. The Declaration of Bernie Dennehy with attached exhibits;
- 2 7. The Declaration of Richard Seale;
- 3 8. The Eighth Declaration of Kristofer Bundy with attached exhibits; and
- 4 9. The Second Declaration of Janine Joly with attached exhibits.
- 5 10. Supplemental Declaration of Toni Rezab with attached exhibits.
- 6 11. The pleadings in this case and in King County Cause numbers 08-2-28701-7, 08-
- 7 2-30056-1, 08-2-22252-7 and 07-2-39332-3.

8 I. FINDINGS OF FACT

9 Based on the evidence submitted and the argument of the parties, the Court makes the
10 following FINDINGS OF FACT:

11 1. Allan Parmelee ("Parmelee") is a convicted felon currently incarcerated in
12 a Washington State correctional facility on two counts of arson. Parmelee's convictions arise
13 from the firebombing of cars belonging to two attorneys representing clients adverse to
14 Parmelee and his ex-roommate. Parmelee has also violated court-issued protection orders.

15 2. Throughout his ongoing incarceration, Parmelee has inundated various
16 Washington public agencies, including the Department of Corrections, the King County
17 Prosecutor's Office, the King County Sheriff's Office, the King County Jail, the City of
18 Seattle, and the City of Bellevue ("City"), with repeated requests under the Public Records
19 Act, ch. 42.56 RCW.

20 3. Parmelee's public records requests are generally targeted at agencies and public
21 servants that have interacted with Parmelee in some way, and frequently seek highly
22 sensitive personal information, identifying data, and security records. Parmelee's requests
23 include demands for complete personnel files, detailed identifying information (such as
divorced and maiden names; dates of birth; gender; race; height and weight; emails; personal

1 cell phone numbers, and employment identification numbers), photographs, locations of
2 emergency and fire exits, and other security records.

3 4. When Parmelee obtains the requested information, has used it to threaten and
4 intimidate the public servants and their families. When the requests are not filled because of
5 concerns for the safety of public servants, Parmelee bombards the agency with numerous
6 additional requests, and then aggressively seeks monetary penalties. He expressly attempts
7 to use the threat of additional and broader requests to compel payment of money to him or,
8 more recently, to those working in concert with him.

9 5. As of April 1, 2009, the Washington Department of Corrections had received 838
10 public disclosure requests from Parmelee. Over 700 of the requests were from 2007 and
11 2008 alone. Parmelee requested from DOC, among other things: photographic images of
12 DOC employees (in electronic format); staff ID photographs; staff phone numbers,
13 extensions, and emails; staff rosters, training and educational records; employee
14 investigations, employee personnel records, supervisory files, staff grievances, employee
15 evaluation records, and emergency response records. Parmelee, a convicted arsonist, also
16 requested all fire escape plans at Washington Correctional Centers. As of April 1, 2009, the
17 Department of Corrections had spent 5,205.75 hours responding to Parmelee's public
18 disclosure requests at an estimated cost in staff salary of \$106,821.99.

19 6. The King County Prosecuting Attorney's Office has also received extensive
20 requests from Parmelee—over 200 in a seven-year period. Among other things, Parmelee
21 sought extensive personal information regarding the entire prosecutor's office staff, and
22 specifically targeted requests toward the prosecutors who successfully secured his arson
23 convictions. He also sought videotape or laser media of the persons entering and departing
the Superior Court building through any main entrance or exit, and training and qualification
records, and compensation records relating to certain Judges and Commissioners for King
County. These requests led to a lawsuit in this Court in which Judge Hall found that

1 Parmelee's requests constituted harassment and threats against public employees and
2 officers. Judge Hall issued a permanent injunction enjoining the release of the records to
3 Parmelee.

4 7. In a six month period last year, Parmelee sent 34 requests to the City of Bellevue.
5 Four requests generated the initial filing of the present lawsuit, and 30 additional requests
6 were sent after this lawsuit was filed. Consistent with Parmelee's other requests, the requests
7 to the City sought extensive personal information about City employees and other
8 information targeted at undermining the employees' security at work and at home. Parmelee
9 has also sent demands for monetary payments to the City, and records recently introduced
10 before the Legislature confirm that Parmelee has attempted to use requests to the City to
11 generate revenue for a shell corporation he wants to create with his brother Vernon.

12 8. Parmelee's Public Records Act ("PRA") requests at issue in this motion were
13 made to harass and intimidate county agencies and employees as evidenced by the following:

14 a. Parmelee's requests are focused on the employees, officials, and agencies
15 that have had an official role in his conviction and incarceration;

16 b. Parmelee has threatened to use employee photographs and personnel
17 information to publicly label public employees and officials as "sexual predators";

18 c. Parmelee has threatened to publicly post photographs and what he
19 described as "a wide variety of other personal information" regarding public employees
20 and officials;

21 d. Parmelee has threatened to issue what he described as "press releases"
22 maligning and slandering the public employees and officials who are the subjects of his
23 requests;

e. Parmelee has threatened to have public officials' neighborhoods picketed;

1 f. Parmelee has attempted to get images of public employee and officials
2 arriving at and leaving their workplace through his requests for copies of security video;

3 g. County employees feel harassed and intimidated by Parmelee's public
4 disclosure requests for employee photographs, personal information and employment
5 information;

6 h. County employees are fearful of Parmelee and his stated relationships with
7 other criminals and are concerned that they could be subject to retaliation, stalking, or
8 another violent action by Parmelee or any other criminal to whom he might release
9 employee records;

10 i. Parmelee has submitted continuous streams of requests to public agencies,
11 forcing agencies to spend thousands of hours collecting tens of thousands of records for
12 which Parmelee may never submit payment;

13 j. Parmelee's requests to Plaintiff for personnel and personal information and
14 ID photographs of all King County Correctional Facility staff would require the County
15 to spend an extraordinary amount of time reviewing and redacting records that Parmelee
16 is unlikely to ever pay for or review;

17 k. Parmelee inundates agencies with requests hoping that his requests will
18 lead to a PRA violation for which he can benefit financially; and

19 l. Parmelee is aware of the concern his requests cause public employees and
20 officials.

21 9. Fulfilling Parmelee's requests at issue in this motion would likely threaten the
22 safety of public employees, officials and their families as evidenced by the following:
23

1 a. Parmelee has made numerous threats to the safety of the public employees
2 and officials who have been involved with his various cases and his incarceration(s) and
3 who have been the subjects of his PRA requests;

4 b. Parmelee threatened two Assistant Attorney Generals with harm;

5 c. Parmelee told one County employee Parmelee would "watch his home and
6 get him";

7 d. About a County employee, Parmelee stated, "it's people like him that get
8 beat up when their backup isn't present";

9 e. Parmelee has stated that "people owe him" and if he needed something
10 done, "he knew people who could get it done";

11 f. Public employees and officials will be at risk for serious harm if Parmelee
12 is given employee photographs, personnel information, and security videos; and

13 g. If Parmelee is given employee photographs, personnel information and
14 personal information, he will be able to distribute them as he wants, including posting
15 them on the Internet for viewing potentially by millions of people.

16 10. The currently-pending public disclosure requests at issue in this case are for the
17 following King County records:

18 Request 09-01:

19 a. Any and all Seattle-KCJ staff's first, middle and last name (and
20 hyphenated or maiden names if applicable);

21 b. Their present job title, position, rank and job classification;

22 c. Their respective monthly-annual pay and compensation information and
23 rates;

d. Their gender;

- 1
2 e. Their date of birth;
3 f. Their race; and any
4 g. Special job qualifications, recognized training and awards.

5 Request 09-02:

6 Electronic copy of every KCJ-Seattle staff person's ID picture such as on
7 their ID cards, most recently taken with all metadata.

8 Request 09-03:

9 Any and all records, other than letters from Mr. Parmelee and to him, that
10 support, relate to and provide the evidence that "There is no evidence to
11 support your claims that a staff member spit in your food..." etc.

12 Request (kite) received June 18, 2009:

13 ~~PRINT YOUR REQUEST: I request access to a copy of the jail's administrative
14 grievance and infraction-hearing processes, and the policy related to
15 ad-seg, Behavior management status and related policies. I do not mean
16 any Inmate Handbook, but actual policies of the jail. Also, the legal access policy.~~

17 Thirty-three new requests received June 22, 2009.

- 18 10. A number of DAJD employees, both uniformed and civilian, feel personally
19 threatened by Parmelee.
- 20 11. DAJD employees have a good faith concern about the requested information
21 being disclosed, both generally and to defendant.
- 22 12. Providing the requested records would not fulfill the Public Records Act's stated
23 purposes of ensuring the efficient administration of government and public confidence in the
24 fairness of governmental processes.

1 13. The fact that information may be available through other sources, including the
2 Internet, does not require that that information be deemed "public" or that governmental records
3 containing such information be deemed "public records."

4 14. Choosing a profession as a public employee does not alone make photographs of
5 such people public records.

6 15. Public policy clearly dictates that employee photographs are not public records.

7 16. There already are indications of such clear public policy with regard to the non-
8 public nature of public employees' photographs. An example is the fact that the Washington
9 Department of Licensing does not disclose the photographs it produces and retains and that doing
10 so has been criminalized.

11 17. Data and photographs retained by government entities for transit passes also are
12 exempt from disclosure.

13 18. Employees of plaintiff would be highly offended by the disclosure of their
14 photographs or of records containing their date of birth, gender, race and disclosing records
15 containing such photographs or information would be of no legitimate concern to the public.

16 19. Disclosure of the metadata associated with DAJD employees' photographs would
17 serve no public interest nor fulfill the stated purposes of ensuring the efficient administration of
18 government and public confidence in the fairness of governmental processes.

19 20. The Public Records Act does not require the disclosure of records which would
20 allow or enhance the "ability to identify" governmental employees.

21 21. The Court heard and considered defendant's motion to strike plaintiff's Joinder.
22 The materials contained within the Joinder and the related Supplemental Declaration and
23 attachments are relevant to plaintiff's motion under RCW 42.56.620 and were timely, not least

1 because of the Court's granting of defendant's motion to continue the hearing of this and all
2 related motions from June 19, 2009 to June 26, 2009.

3 22. Defendant was properly served with all parties' pleadings and attachments in this
4 and the related cases.

5 23. Parmelee will continue to submit public disclosure requests to DAJD that serve no
6 public purpose and in fact harm the plaintiff, the judicial system and the public at large.

7 24. Plaintiff filed and prosecuted this case in a timely manner.

8 25. Plaintiff brought this action in good faith and with due respect for the law, in an
9 effort to protect its employees and the safe and secure administration of its correctional facilities.

10 II. CONCLUSIONS OF LAW

11 1. This Court has the authority to consider Plaintiff's Joinder in Plaintiff's Motion
12 under CR 65 and RCW Chapters 7.40 and 7.24 and RCW 42.56.620.

13 2. Substitute Senate Bill 5130 (to be promulgated as RCW 42.56.620) provides,
14 *inter alia*, that the inspection or copying of any nonexempt public record by persons serving
15 criminal sentences in state, local, or privately operated correctional facilities may be enjoined
16 pursuant to this section.

17 3. In order to issue an injunction, the court must find that:

18 (i) The request was made to harass or intimidate the agency or its employees;

19 (ii) Fulfilling the request would likely threaten the security of correctional
20 facilities;

21 (iii) Fulfilling the request would likely threaten the safety or security of staff,
22 inmates, family members of staff, family members of other inmates, or any other person;

23 or

1 (iv) Fulfilling the request may assist criminal activity.

2 4. In deciding whether to enjoin a request under subsection (1) of that section, the
3 court may consider all relevant factors including, but not limited to:

4 (a) Other requests by the requestor;

5 (b) The type of record or records sought;

6 (c) Statements offered by the requestor concerning the purpose for the request;

7 (d) Whether disclosure of the requested records would likely harm any person or
8 vital government interest;

9 (e) Whether the request seeks a significant and burdensome number of
10 documents;

11 (f) The impact of disclosure on correctional facility security and order, the safety
12 or security of correctional facility staff, inmates,
13 or others; and

14 (g) The deterrence of criminal activity.

15 5. Upon a showing by a preponderance of the evidence, the court may enjoin all or
16 any part of a request or requests. Based on the evidence, the court may also enjoin, for a period
17 of time the court deems reasonable, future requests by (a) The same requestor; or (b) An entity
18 owned or controlled in whole or in part by the same requestor.

19 6. An agency shall not be liable for penalties under RCW 34 42.56.550(4) for any
20 period during which an order under this section is in effect, including during an appeal of an
21 order under this section, regardless of the outcome of the appeal.

1 7. RCW 42.56.620 is necessary for the immediate preservation of the public peace,
2 health, or safety, or support of the state government and its existing public institutions, and took
3 effect immediately.

4 8. The language of the Public Records Act, including specifically RCW 42.56.620,
5 and its legislative history and the resulting case law lead to the conclusion that disclosure all of
6 the records listed in Plaintiff's Joinder and Plaintiff's Motion may be permanently enjoined by
7 this Court.

8 9. Plaintiff's employees' date of birth, gender, race and photographs are not public
9 records.

10 10. The metadata contained in DAJD employees' photographs are not public records.

11 It has been shown by a preponderance of the evidence that the requests at issue in this
12 motion were made to harass and intimidate the agencies to which the requests were submitted
13 and the public employees who are the subjects of the requests.

14 11. None of the policies meant to be served by the PRA is served by release of the
15 requested documents to Parmelee.

16 12. It has been shown by a preponderance of the evidence that future requests by
17 Parmelee or any entity owned or controlled by him to any King County agency, division,
18 department, or employee should be enjoined in order to protect public agencies, employees, and
19 officials from intimidation and harassment.

20 13. It has been shown by a preponderance of the evidence that future requests by
21 Parmelee to any King County agency, division, department, or employee or any entity owned or
22 controlled by him should be enjoined in order to protect public agencies, employees, and
23 officials from threats to their safety.

1 14. It has been shown by a preponderance of the evidence that future requests by
2 Parmelee or any entity owned or controlled by him to any King County agency, division,
3 department, or employee should be enjoined in order to prevent the use of records requested by
4 Parmelee in criminal activity.

5 15. It has been shown by a preponderance of the evidence that future requests by
6 Parmelee or any entity owned or controlled by him to any King County agency, division,
7 department, or employee should be enjoined in order to prevent Parmelee's misuse of the PRA
8 for financial gain.

9 16. It has been shown by a preponderance of the evidence that future requests by
10 Parmelee or any entity owned or controlled by him to any King County agency, division,
11 department, or employee should be enjoined in order to protect the laudable purposes of the
12 PRA.

13 17. It is reasonable to enjoin future requests by Parmelee or any entity owned or
14 controlled by him to any King County agency, division, department, or employee for the
15 remainder of Parmelee's incarceration.

17 **ORDER**

18 **IT IS HEREBY ORDERED:**

19 1. Plaintiff's Joinder in Plaintiffs' Motion is granted, and Plaintiffs' Motion is
20 granted.

21 2. Plaintiff is permanently enjoined during the entirety of defendant's incarceration
22 in any state, local or federal correctional institution from producing for disclosure, to defendant
23

1 or to any person plaintiff believes to be an agent of, in privity with, or otherwise acting on
2 defendant's behalf, any public record.

3 3. Specifically, plaintiff is permanently enjoined during the entirety of defendant's
4 incarceration in any state, local or federal correctional institution from producing for disclosure,
5 to defendant or to any person plaintiff believes to be an agent of, in privity with, or otherwise
6 acting on defendant's behalf, any record delineated in defendant's **Request 09-01** (any and all
7 Seattle-KCJ staff's first, middle and last name and hyphenated or maiden names if applicable;
8 their present job title, position, rank and job classification; their respective monthly-annual pay
9 and compensation information and rates; their gender; their date of birth; their race; and any
10 special job qualifications, recognized training and awards); **Request 09-02** (electronic copy of
11 every KCJ-Seattle staff person's ID picture such as on their ID cards, most recently taken with all
12 metadata); **Request 09-03** (any and all records, other than letters from Mr. Parmelee and to him,
13 that support, relate to and provide the evidence that "There is no evidence to support your claims
14 that a staff member spit in your food..." etc.); **Request (kite) received June 18, 2009** (request
15 for jail policies); and records requested in the thirty-three requests received June 22, 2009.

16 4. All future PRA requests by Parmelee or an entity owned or controlled in whole or
17 in part by him to any agency, department, division, or employee of King County, specifically
18 including but not limited to King County Department of Adult and Juvenile Detention, are
19 enjoined for the remainder of Parmelee's incarceration.

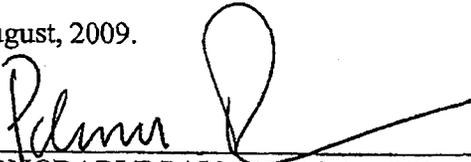
20 5. The Court denies defendant's Motion for Discovery and Motion to Strike
21 plaintiff's Joinder in Plaintiffs' Motion.

22 6. All verbal rulings by the Court are hereby incorporated into this document.
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7. This case is dismissed.

DATED this 24 day of August, 2009.



HONORABLE PALMER ROBINSON

Presented by:

For Plaintiff:
DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
NANCY A. BALIN, WSBA #21912
Senior Deputy Prosecuting Attorney
For Defendant

ALLAN PARMELEE, Pro Se

Appendix C

THE SUPREME COURT OF WASHINGTON

FILED
2010 JUN -9 PM 3:39

KING COUNTY and KING COUNTY
PROSECUTING ATTORNEY DANIEL T.
SATTEBERG,

Respondents,

v.

ALLAN W. PARMELEE,

Appellant.

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

MANDATE

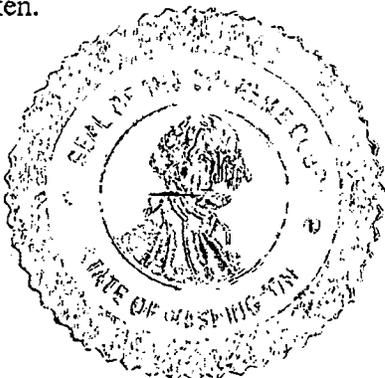
NO. 83669-8

King County Superior Court
No. 07-2-39332-3 SEA

FILED
KING COUNTY, WASHINGTON
MAY 24 2010
SUPERIOR COURT CLERK

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington
in and for King County.

This is to certify that the Supreme Court Clerk of the State of Washington entered a ruling dismissing the appeal in the above entitled cause on April 14, 2010, and the matter is now final. Accordingly, this cause is mandated to the superior court from which this appeal was taken.



I have affixed the seal of the Supreme Court of the State of Washington and filed this Mandate this 21st day of May, 2010.

Ronald R. Carpenter
Clerk of the Supreme Court
State of Washington

cc: Hon. Barbara Miner, Clerk
King County Superior Court
Allan Parmelee
Daniel Todd Satterberg
Kristofer John Bundy
Reporter of Decisions

FILED
SUPERIOR COURT
10 MAY 21 PM 12:00
BY RONALD W. CARPENTER
CLERK

THE SUPREME COURT OF WASHINGTON

KING COUNTY and KING COUNTY
PROSECUTING ATTORNEY DANIEL T.
SATTERBERG,

Respondents,

v.

ALLAN W. PARMELEE,

Appellant.

NO. 83669-8

ORDER

King County Superior Court
No. 07-2-39332-3 SEA

2010 MAR -3 A 9:58
by h E

Department II of the Court, composed of Chief Justice Madsen and Justices Alexander, Chambers, Fairhurst and Stephens, considered this matter at its March 2, 2010, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Appellant's Motion for Expenditure of Public Funds is denied.

DATED at Olympia, Washington this 3rd day of March, 2010.

For the Court

Madsen, C.J.
CHIEF JUSTICE

FILED
KING COUNTY WASHINGTON

The Honorable Palmer Robinson

AUG 25 2009

CLERK OF COURT
KING COUNTY WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 KING COUNTY AND)
 8 KING COUNTY PROSECUTING ATTORNEY)
 DANIEL T. SATTERBERG,)
 9)
 Petitioner,)
 10 vs.)
 11 ALLAN W. PARMELEE,)
)
 Respondent.)

No. 07-2-39332-3SEA

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came on before the Court on Plaintiffs' Motion for Injunction. The Court hereby grants Plaintiffs' Motion. In doing so, the Court considered Plaintiff's Motion, Defendant's response, Plaintiffs' Reply and accompanying attachments, oral argument of the parties, and the following evidence:

1. The Declaration of Kristofer Bundy with attached exhibits;
2. The Declaration of Marilyn Brenneman;
3. The Declaration of Denise Vaughan;
4. The Declaration of Dan Satterberg;
5. The Declaration of Mark Larson with attached exhibits;
6. The Declaration of Bernie Dennehy with attached exhibits;

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION, W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9015/FAX (206) 296-0191

1 d. Parmelee has threatened to issue what he described as "press releases"
2 maligning and slandering the public employees and officials who are the subjects of his requests;

3 e. Parmelee has threatened to have public officials' neighborhoods picketed;

4 f. Parmelee has attempted to get images of public employees and officials
5 arriving at and leaving their workplace through his requests for copies of security videotapes;

6 g. County employees feel harassed and intimidated by Parmelee's public
7 disclosure requests;

8 h. County employees are fearful of Parmelee and his stated relationships with
9 other criminals and are concerned they could be subject to retaliation, stalking, or another violent
10 action by Parmelee or any other criminal to whom he might release employee records;

11 i. Parmelee has submitted continuous streams of requests to public agencies,
12 forcing agencies to spend thousands of hours collecting tens of thousands of records for which
13 Parmelee may never submit payment;

14 j. Parmelee's requests to Plaintiffs for 303 personnel files would require the
15 County to spend an extraordinary amount of time reviewing and redacting records that Parmelee
16 is unlikely to ever pay for or review;

17 k. Parmelee inundates agencies with requests hoping that his requests will
18 lead to a PRA violation for which he can benefit financially; and

19 l. Parmelee is aware of the concern his requests cause public employees and
20 officials.

21 5. Fulfilling Parmelee's requests at issue in this motion would likely threaten the
22 safety of public employees, officials, and their families as evidenced by the following:
23

1 a. Parmelee has made numerous threats to the safety of the public employees
2 and officials who have been involved with his various cases and incarcerations and who have
3 been the subjects of his PRA requests;

4 b. Parmelee threatened two assistant attorneys general;

5 c. Parmelee told one County employee he would "watch his home and get
6 him";

7 d. About a County employee, Parmelee stated, "it's people like him that get
8 beat up when their backup isn't present";

9 e. Parmelee has stated that "people owe him" and if he needed something
10 done, "he knew people who could get it done";

11 f. Public employees and officials will be at risk for serious harm if Parmelee
12 is given employee photographs, personnel information, and security videos; and

13 g. If Parmelee is given employee photographs, personnel information, and
14 security videos, he will be able to distribute them to any person he wants, including other felons.

15 6. Fulfilling Parmelee's requests at issue in this motion may assist in criminal
16 activity as evidenced by the following:

17 a. Parmelee has been convicted of felony stalking, three violations of a
18 protection or no contact order, and two counts of arson;

19 b. Parmelee distributed his ex-wife's personal information to other inmates
20 and was convicted of manipulating other inmates to send her explicit and intimidating letters;

21 c. Parmelee asked his former landlady to find someone to kill his ex-wife;

22 d. Parmelee has stated his intent to substantially harm public employees and
23 officials;

1 e. Parmelee has stated his intent to slander public employees and officials by
2 publicly labeling them as "sex offenders"; and

3 f. Parmelee has threatened to post personal information regarding public
4 employees and officials on the Internet and to send his "local felons" and "others eager to assist
5 [him]" to their homes.

6 7. The public disclosure requests at issue in this case are for the following King
7 County records:

- 8 a. All records relating to 303 different King County Prosecuting Attorney's
9 Office employees, including personnel files; performance evaluations;
10 work compensation records; training, CLE, education, and specialty
11 training, or qualification records; WSBA qualification records; work
12 performance statistical and actuarial records; complaints from any source
13 for any reason of the person; and related records.
- 14 b. Photographs of all King County Prosecuting Attorney's Office employees
15 and four judicial officers.
- 16 c. Security videos of the Third and Fourth Avenue entrances to the King
17 County Courthouse.
- 18 d. The gender, race, date of birth, employee identification number, job
19 classification, and date of hire for all King County Prosecuting Attorney's
20 Office employees.
- 21 e. The cell phone numbers and pager numbers of the King County
22 Prosecutor's Office, listing and revealing to whom they are assigned.
- 23 f. Where it did not result in formal discipline or termination, all
employment evaluation and termination records of any person employed
by the King County Prosecuting Attorney's Office who was terminated or
asked to resign for misconduct, criminal behavior, ethics violations, or
other conduct determined justification for formal or informal discipline
and/or removal from their jobs within the past five years.
- g. Security videotape of persons entering and departing the Superior Court
building through any main entrance or exit other than the Third and
Fourth Avenue entrances.

1 7. It has been shown by a preponderance of the evidence that the requests at issue in
2 this motion were made to harass and intimidate the agencies to which the requests were
3 submitted and the public employees who are the subjects of the requests.

4 8. It has been shown by a preponderance of the evidence that fulfilling the requests
5 at issue in this motion would likely threaten the safety of public employees, officials, and their
6 families.

7 9. It has been shown by a preponderance of the evidence that fulfilling the requests
8 at issue in this motion may assist in criminal activity.

9 10. None of the policies meant to be served by the PRA are served by release of the
10 requested documents to Parmelee.

11 11. It has been shown by a preponderance of the evidence that future requests by
12 Parmelee or any entity owned or controlled by him to any King County agency, division,
13 department, or employee should be enjoined in order to protect public agencies, employees, and
14 officials from intimidation and harassment.

15 12. It has been shown by a preponderance of the evidence that future requests by
16 Parmelee to any King County agency, division, department, or employee or any entity owned or
17 controlled by him should be enjoined in order to protect public agencies, employees, and
18 officials from threats to their safety.

19 13. It has been shown by a preponderance of the evidence that future requests by
20 Parmelee or any entity owned or controlled by him to any King County agency, division,
21 department, or employee should be enjoined in order to prevent the use of records requested by
22 Parmelee in criminal activity.

23
FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 7

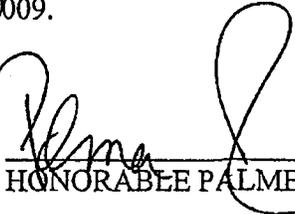
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- e. The cell phone numbers and pager numbers of the King County Prosecutor's Office, listing and revealing to whom they are assigned.
- f. Where it did not result in formal discipline or termination, all employment evaluation and termination records of any person employed by the King County Prosecuting Attorney's Office who was terminated or asked to resign for misconduct, criminal behavior, ethics violations, or other conduct determined justification for formal or informal discipline and/or removal from their jobs within the past five years.
- g. Security videotape of persons entering and departing the Superior Court building through any main entrance or exit other than the Third and Fourth Avenue entrances.
- h. Training and qualification records, compensation records including but not limited to general correspondence, Judicial Commission on Misconduct, and Washington Bar Association records relating to the following Judges and Commissioners for King County: (a) Judge Julie Spector (b) Commissioner Kimberly Prochnau (c) Commissioner Velategui (d) Judge Greg Canova.

2. All future PRA requests by Parmelee or anyone acting on his behalf or an entity owned or controlled in whole or in part by him to any agency, department, division, or employee of King County are enjoined for the remainder of Parmelee's incarceration.

3. This case is dismissed.

DATED this 24 day of ~~June~~^{August}, 2009.



 HONORABLE PALMER ROBINSON

Appendix D

SENATE BILL REPORT

SB 5130

As Reported by Senate Committee On:
Human Services & Corrections, February 10, 2009

Title: An act relating to access to public records by persons serving criminal sentences in correctional facilities.

Brief Description: Regarding prisoner access to public records.

Sponsors: Senators Carrell, Hargrove, Swecker, Hatfield, Holmquist, Brandland, Sheldon, Tom, King, Hobbs, McCaslin, Stevens and Marr; by request of Attorney General.

Brief History:

Committee Activity: Human Services & Corrections: 1/29/09, 2/10/09 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5130 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell and Kauffman.

Staff: Shani Bauer (786-7468)

Background: Upon request, an agency must make its public records available for public inspection and copying unless the records fall within a specific statutory exemption. Within five business days of receiving a request, the agency must provide the record, acknowledge receipt of the request and provide a reasonable time estimate of the time required to respond, or deny the request. A person who has been denied access, may petition the court to determine whether the agency was correct in its denial. If the court determines that the agency was not correct, the person requesting the record must be awarded all costs, including reasonable attorney fees, incurred in bringing the court action. The court may also award the petitioner a penalty award of not less than \$5 and not more than \$100 for each day the petitioner was denied the right to inspect or copy the public records requested.

The court may enjoin the examination of a specific public record if, upon motion by the agency or agency representative, the court finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person or a vital government function.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill (Recommended Substitute): The court may enjoin the examination of any nonexempt public record requested by a person serving a criminal sentence if, upon motion by the agency or agency representative, the court finds:

- The request was made to harass or intimidate the agency, its employees, or any person; or
- Disclosure of the record would likely threaten the security of correctional facilities, the safety and security of staff or other persons, or the deterrence of criminal activity.

Factors to be considered by the court in making its determination are prescribed. Upon a showing by a preponderance of the evidence, the court may enjoin all or part of the request, as well as future requests, by the same requestor or an entity owned in whole or in part by the same requestor. An agency is not liable for penalties during the time period for which a court injunction is in effect even if that order is later appealed and overturned.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Instead of "undermining a legitimate penological interest," a person may enjoin an inmate from requesting public records if the request(s) threatens the security of a correctional facility. In order to obtain an injunction, the moving party must meet its statutory burden by a preponderance of the evidence. The ability to enjoin requests by a third party is removed. The court may, however, enjoin future requests by an entity owned or controlled in whole or in part by the inmate. An emergency clause is added.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill: PRO: Inmate requests for public records have increased exponentially in the last few years. Out of a total of 11,133 requests last year, 74 percent of those were from inmates. Not all inmate requests are abusive. There are legitimate reasons that inmates need access to records that pertain to their conviction and incarceration. However, there is a small group of offenders who are abusing the system. One offender has submitted a total of 830 requests. The Attorney General's office has spent over 4,000 hours responding to those requests at a substantial cost to the agency. This particular inmate has requested numerous personnel files and personal information for the sole purpose of harassing those employees he comes across in the corrections system. Some are using the system for financial gain and make outrageous public records requests in order to sue the department for not providing records. Last year, 87 lawsuits were filed against the state for the failure to provide public records. Sixty-eight of these were filed by inmates. This bill does not categorically prevent inmates from making a public records request but is narrowly tailored to allow the Department of Corrections (DOC) to address those few who are abusing the system.

The Attorney General's office has worked with the Allied Daily Newspapers for adjustments to language. An emergency clause would also be a good idea to stop this abuse as soon as possible. This is a top priority for corrections employees. Employees of 25 years have quit because they cannot handle the requests for information regarding their background, children, and home life.

CON: Ideally this legislation should focus on the contents of the request and not the identity of the individual. Third parties also should not be enjoined unless there is some showing that they are involved. HB 1316 is an alternative solution to this and should be explored.

OTHER: There needs to be some way to ensure that a victim of custodial misconduct can expose the abuse without being labeled a harasser.

Persons Testifying: PRO: Tim Lang, Hunter Goodman, Attorney General's Office; Mike Rynerd, Teamsters; Scott Blonien, Denise Vaughn. DOC: Rowland Thompson, Allied Daily Newspapers.

CON: Melissa Lee. Columbia Legal Services, Institutions Project.

OTHER: Martha Woods. Stop The Bullies.

No. 62937-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ALLAN PARMELEE,)
)
 Appellant,)
)
 vs.)
)
 KING COUNTY OF ADULT AND)
 JUVENILE DETENTION [sic],)
)
 Respondent.)
)
 _____)

CERTIFICATE OF SERVICE

FILED
 2010 OCT 15 AM 9:53
 KING COUNTY CLERK

I, Margaret Flickinger, hereby certify and declare under penalty of perjury under the laws of the state of Washington as follows:

1. I am a legal secretary employed by King County Prosecutor's Office, am over the age of 18, am not a party to this action and am competent to testify herein.
2. On October 14, 2010, I did cause to be delivered in the manner noted below the Brief of Respondent and this Certificate of Service to the following:

ORIGINAL

Allan Parmelee
DOC #793782
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520
(Via U.S. Mail)

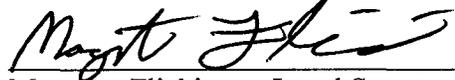
Allan Parmelee
DOC #793782
Monroe Correctional Complex
Post Office Box 888
Monroe, WA 98272-0888
(Via U.S. Mail)

Allan Parmelee
DOC #793782
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520
(Via Overnight Federal Express)

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

Dated this 14th day of October, 2010 at Seattle, Washington.

DANIEL T. SATTERBERG
King County Prosecuting Attorney



Margaret Flickinger, Legal Secretary to
NANCY A. BALIN, WSBA #21912
Senior Deputy Prosecuting Attorney
Attorney for Respondent