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SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Respondent,

v.

ALLAN PARMELEE,

Appellant.

**BRIEF OF RESPONDENT
WASHINGTON STATE DEPARTMENT OF CORRECTIONS**

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I. INTRODUCTION

After an inmate in the custody of the Department of Corrections requested the photographic images of Department employees for the express purpose of inserting the images onto flyers labeling the individuals as sex predators, the Department sought to enjoin disclosure under the Public Records Act. The superior court properly held that the public disclosure of the photographic images, in this factually unique case, would violate the employees' right to privacy because of the requestor's stated intention of using the photographs to defame the employees.

II. STATEMENT OF THE ISSUES

A prison inmate requested the electronic photographic images of over 2,500 employees of the Department of Corrections. The inmate voluntarily stated his intention to disseminate flyers, including the photographs, to falsely accuse the pictured employees of being sexual predators. In light of those circumstances, did the superior court properly enjoin release of the photographic images to the inmate under RCW 42.56.540 and RCW 42.56.230(2), because disclosure would violate an employee's right to privacy?

III. STATEMENT OF THE CASE

Allan Parmelee is a prison inmate in the custody of the Washington State Department of Corrections following his conviction for

two counts of Arson in the First Degree in 2002. CP 164. The two separate acts of arson involved the burning of two attorneys' personal vehicles, while parked at their residences, following two unrelated legal actions in which the attorneys represented parties adverse to Mr. Parmelee. CP 19. Mr. Parmelee's criminal acts were "designed to intimidate attorneys opposed to him in civil litigation." CP 170. In his first criminal trial, the presiding judge declared a mistrial after Mr. Parmelee was found in possession of discrete personal information about jurors in the case in violation of a court order. CP 20.

From February 2005 to July 2006, Mr. Parmelee submitted numerous requests to the Department for records under the Public Records Act, RCW 42.56.¹ CP 22-25. The requests included at least thirteen separate requests for electronic photographic images of over 2,525 employees of the Department. CP 22-23; CP 27-49. Some of the requests were for photographic images of specific employees, and some were for groups, such as all staff at a particular correctional facility. CP 27-49. The requests also included documents containing other specific information regarding Department staff members, but those requests and the agency's responses are not related to this litigation.

¹ Most provisions of the Public Records Act were recodified into RCW 42.56 from RCW 42.17. Laws of 2005, ch. 274. However, some policy provisions and definitions applicable to RCW 42.56 are still located in RCW 42.17.010-.020.

The agency never asked Mr. Parmelee to explain why he wanted the photographic images. However, on July 11, 2006, Mr. Parmelee had a conversation with a staff member at Clallam Bay Corrections Center, where Mr. Parmelee was incarcerated at the time, and during that conversation, Mr. Parmelee stated that it was his intention to use the photographic images on flyers that he had prepared and planned to disseminate. CP 62-63. Mr. Parmelee gave the staff person a draft of the flyer to which he was referring. CP 63. The flyer had spaces with rough drawings for several individuals whose photographic images were requested, along with the text “[i]nset actual photos here”. CP 63. The persons whose images Mr. Parmelee stated he intended to insert into the flyer were identified in the flyer as “sexual predators” (sic). CP 63. The flyers also stated, “Protect Your Families And Children. Demand The DOC Fire These People Now Before You Become Their Next Victim.” CP 63. A copy of Mr. Parmelee’s draft flyer is attached as Appendix A.

On August 1, 2006, the Department of Corrections initiated this case in Thurston County Superior Court by filing a Petition under RCW 42.56.540, which authorizes an agency or a person to whom a requested record specifically pertains to seek an injunction to prevent the examination of any specific public records. The Department requested

that the court enjoin the disclosure of the photographic images of Department staff requested by Mr. Parmelee.

While the case was pending, on November 28, 2006, Mr. Parmelee sent a letter to Mark Kuzca, Associate Superintendent of Washington State Penitentiary. CP 193-195. In the letter, Mr. Parmelee stated that he would be producing flyers labeling Department employees as “homosexual predators”. CP 194. As an enclosure to his letter, Mr. Parmelee provided a sample flyer with the title “SEXUAL PREDATORS IN YOUR NEIGHBORHOOD” and included hand-drawn outlines of individuals, with the names of Department employees underneath, and the phrase “[i]nset photos in image blocks.” CP 195.

The superior court heard the Department’s Motion for Permanent Injunction on December 1, 2006, and January 12, 2007, and issued an Order Granting Permanent Injunction on January 19, 2007. Based upon specific findings of fact, the court concluded that the photographic images sought by Mr. Parmelee were exempt, as disclosure would violate the employees’ right to privacy under RCW 42.56.050, and enjoined disclosure of the employee photographs pursuant to RCW 42.56.540. CP 228-230.

Mr. Parmelee moved for reconsideration of the order, which was denied. CP 216-222. Mr. Parmelee filed a timely notice of appeal. CP 225.

IV. STANDARD OF REVIEW

Review of an injunction issued pursuant to the Public Records Act is de novo. *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 35, 769 P.2d 283 (1989); *Dragonslayer, Inc. v. Washington State Gambling Comm'n*, 161 P.3d 428, 431-32 (2007). *See also* RCW 42.56.550(3). Where, as here, the record consists only of affidavits, memoranda of law, and other documentary evidence, “the appellate courts stands in the same position as trial court.” *Progressive Animal Welfare Soc’y v. Univ. of Washington*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). In this situation, the reviewing court is not bound by the trial court’s factual findings on disputed facts. *Id.* at 253. However, Mr. Parmelee has not assigned error to any specific findings of fact by the trial court, and his limited argument challenging the trial court’s findings of fact cite to nothing in the record supporting contrary findings. *See* Br. of App. at 13, n.4; 16-18. Finally, although exemptions to the Public Records Act are to be narrowly construed, RCW 42.56.030, there is no authority for Mr. Parmelee’s assertion that the standard of review in this matter requires deference to a requestor. *See* Br. of App. at 6.

V. ARGUMENT

A. THE TRIAL COURT PROPERLY GRANTED AN INJUNCTION UNDER RCW 42.56.540.

In addition to specific exemptions, the Public Records Act contains a process whereby an agency or person named in a record can seek an injunction against disclosure. RCW 42.56.540 reads in pertinent part:

The examination of any specific public record may be enjoined if upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

The superior court properly enjoined disclosure of the photographic images of Department employees using the above statutory standard. Based upon Mr. Parmelee's voluntarily and clearly stated intention to utilize the documents to defame individual employees, disclosure would not be in the public interest and would substantially and irreparably damage specific individuals. The record supports this conclusion.

With no citations to the record or any other authority, Mr. Parmelee asserts "[t]he trial court was incorrect when it claimed the information presented was not in the public interest." Br. of App. at 16.

Presumably, Mr. Parmelee was referring to one of the following findings of the trial court: the “requests are not being made to gather information about governmental functions in accordance with the purpose of the Public [Records] Act” (Finding of Fact #8); “[p]roducing the documents requested by [Mr. Parmelee] is not in the public interest” (Finding of Fact #9); and “[t]o simply classify a person as a sexual predator because they are a DOC employee is not [of] legitimate concern to the public” (Conclusion of Law #3). CP 214-215. Mr. Parmelee’s attempt on appeal to characterize the flyers as publicizing an issue of public importance is contrary to his stated plan to portray Department staff as sex predators. CP 63. Although prison rape and prison health care are issues of public concern, there is no support in this record that Mr. Parmelee was bringing information relevant to those issues to light in the public interest.² The flyer targeted individual employees, not prison health care concerns. Appendix A; CP 63. Despite Mr. Parmelee’s unsupported arguments that there may be other reasons for his request, the superior court properly relied upon his clearly stated purpose to disseminate the flyers with the photographic images of Department

² Mr. Parmelee argues, for the first time on appeal, that he was attempting to address the issues of prison rape and the HIV epidemic by requesting these photographs. Br. of App. at 17. This information was not presented to nor argued in the superior court, and as such, it should not be considered by this Court. RAP 2.5; *Marriage of Knutson*, 114 Wn. App. 866, 870, 60 P.3d 681 (2003).

employees, and properly concluded disclosure would not be in the public interest and would substantially and irreparably damage the individuals involved.

B. IN THE CONTEXT OF THIS CASE, THE EMPLOYEES' PHOTOGRAPHIC IMAGES ARE EXEMPT FROM DISCLOSURE UNDER RCW 42.56.230(2).

Under the Public Records Act, public agencies are required to provide inspection or copying of public records. RCW 42.56.070. Providing records to the public effectuates the original purpose of the Public Records Act: “*full access* to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.” Laws of 1973, ch. 1, p. 1.

The Act contains specific exemptions from disclosure for certain categories of public records. RCW 42.56.210.³ One statutory exemption is RCW 42.56.230(2), which states:

³ Because of the procedural posture of this case, the only issue presented to the superior court was whether an injunction should issue under RCW 42.56.540. The Department asserted the exemption under RCW 42.56.230(2) to obtain the remedy sought, but allowed the superior court in effect to assume the documents were public records. However, it is not clear that employee photographs fall within the definition of “public record” which is defined in RCW 42.17.020(17) as “any writing containing information relating to the conduct of government or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Here the superior court specifically found that Mr. Parmelee was not requesting “information about government functions in accordance with the purpose of the Public [Records] Act.” CP 210. “The determination of whether a document is a ‘public record’ is critical for purposes of the [PRA]”. *Oliver v. Harborview Med. Ctr.*, 94

The following personal information is exempt from public inspection and copying under this chapter:

* * *
(2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

The term “[p]ersonal information” means information “of or relating to a particular person.” *Lindeman v. Kelso Sch. Dist.* 458, 127 Wn. App. 526, 539-40, 111 P.3d 1235 (2005), *review granted*, 156 Wn.2d 1006 (2006) (declining to conclude that personal information implies private information because it would render other language in the Act superfluous). The photographic images requested by Mr. Parmelee constitute personal information and are exempt under RCW 42.56.210(2) if their disclosure would violate the employees’ right to privacy.

The superior court found that disclosure of the photographic images of the employees involved, combined with Mr. Parmelee’s stated intention to insert those images on flyers labeling individuals as sexual predators and distributing the flyers in the community, would violate the employees’ right to privacy. CP 229-230. That conclusion was correct,

Wn.2d 559, 565 n.1, 618 P.2d 76 (1980). Accordingly, though this Court could assume the photographic images at issue are public records, that matter was not considered by the superior court, and that issue is not presented here.

and it was appropriate for the superior court to consider Mr. Parmelee's intended use of the records in order to reach its conclusion.

1. The Superior Court Properly Concluded That Release Of Employees' Photographs Would Violate Their Right To Privacy, Pursuant To RCW 42.56.050.

The release of employees' photographic images to Mr. Parmelee, under the facts of this case, would violate the employees' right to privacy.

RCW 42.56.050 states:

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

The records at issue here are photographic images of Department employees. When considering Mr. Parmelee's clearly stated intention to use the photographic images to insert them onto flyers falsely labeling individuals as sex predators, disclosure of the photographic images would violate the employees' right to privacy.

The first prong of the privacy analysis is whether disclosure of the photographic images for this purpose would be highly offensive to a reasonable person. "[T]he right of privacy applies 'only to the intimate details of one's personal and private life,'" in contrast to actions taking place in public. *Dawson v. Daly*, 120 Wn.2d 782, 796, 845 P.2d 995

(1993) (quoting *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 38, 769 P.2d 283 (1989)). “[A]n individual has a privacy interest whenever information which reveals unique facts about those named is linked to an identifiable individual.” *Tiberino v. Spokane Cy.*, 103 Wn. App. 680, 689, 13 P.3d 1104 (2000) (citations and internal quotation marks omitted). The exemption “protects personal information that the employee would not normally share with strangers.” *Dawson*, 120 Wn.2d at 796.

A person’s photographic image is intensely personal. By its very nature, a person’s photographic image is more personal than disclosure of almost any other identifying information. Reasonable people are justifiably cautious about having photographic images made of them and to whom they would distribute such photographic images – especially in the current technological environment of instant access and dissemination of electronic data.⁴

Although employees at correctional institutions would certainly understand that photographs of each employee are used for security purposes, those employees do not surrender all privacy in their

⁴ Mr. Parmelee’s assertion that the faces of employees are “not personal information that the employees do not share with strangers whenever they venture into the public”, Br. of App. at 9, misses the point. The request was for electronic images of individual employees, and while an employee certainly reveals their physical appearance in the workplace and in public, they do not normally disseminate photographic images of themselves to strangers – or even to persons they know well.

photographic image for any purpose. Rather, such disclosure would be highly offensive to a reasonable person. This Court has held that disclosure of employees' performance evaluations, which do not discuss specific instances of misconduct, is highly offensive with the meaning of the Public Records Act. *Dawson*, 120 Wn.2d at 797. This is consistent with the principle that the Act allows public scrutiny of particular individuals who are not high profile public officials. In *Spokane Research & Defense Fund v. City of Spokane*, 99 Wn. App. 452, 994 P.2d 267 (2000), the court repeated that disclosure of public employees' evaluations would ordinarily be offensive to the reasonable person. *Id.* at 456. However, the documents at issue in *Spokane Research & Defense Fund* were evaluations of the City Manager, and the court found that such a high profile public official is not like other public employees and therefore the evaluations were discloseable. *Id.* at 457. Here, the employees are not specific, high level public officials, but over 2,500 state employees, and disclosure would be highly offensive to a reasonable person.

The second prong of the privacy analysis is whether disclosure of photographic images of the employees is of legitimate public concern. In order to be legitimate, the public interest must be reasonable. *Dawson*, 120 Wn.2d at 798. “[S]ome balancing of the public interest in

disclosure against the public interest in ‘efficient administration of government’” is appropriate. *Id.* Because Mr. Parmelee voluntarily disclosed that his purpose in requesting the documents at issue was to defame individual employees and served no public interest, this prong of the test cannot be met. When considered in the context of this case, the superior court properly found that producing the photographic images would not be in the public interest. When disclosure would not be in the public interest, personal records in which employees have a reasonable expectation of privacy are exempt. *See Tacoma Pub. Library v. Woessner*, 90 Wn. App. 205, 218-20, 951 P.2d 357 (1998). Disclosing photographic images of employees strips the individuals of any choice in the use and dissemination of their own personal image – even for a tortious purpose – and disclosure is not of legitimate concern to the public.

The superior court specifically concluded that “[Mr. Parmelee’s] intention to place photographs of DOC employees on posters that label them as sexual predators is highly offensive to a reasonable person. To simply classify a person as a sexual predator because they are (sic) a DOC employee is not [of] legitimate concern to the public.” CP 229-230. The court’s conclusion is supported by the record and case law. Thus, the first prong of the privacy test is met.

2. The Superior Court Properly Considered The Purpose For Mr. Parmelee's Public Records Requests.

The Public Records Act does not prohibit a court from considering the stated purpose for a public records request, especially in the context of a request to the Department of Corrections from an inmate in the Department's custody. An agency cannot require a requestor, even a prison inmate, to provide information as to the purpose of their request to the agency. RCW 42.56.080. However, where the requestor voluntarily provides the agency with the intended use of the documents, and that use serves no public purpose and constitutes a tortious act, the Public Records Act does not require that a court ignore that information in determining whether to enjoin disclosure of the documents would infringe upon a person's right to privacy.

Mr. Parmelee stated that the purpose of his requests is to produce materials labeling Department employees as sexual predators. CP 62-63. Mr. Parmelee then provided the agency with mock-ups of proposed flyers and informed them that he intended to distribute the flyers in the neighborhoods of employees' homes. CP 62-63. The trial court properly found that "the purpose for his public disclosure requests is to label DOC employees as 'sexual predators' and put their picture up in a

public way.” CP 62-63. This finding of fact is supported by the record and has not been contested by Mr. Parmelee.

This case is significantly different from the facts in *King Cy. v. Sheehan*, 114 Wn. App. 325, 57 P.3d 307 (2002), in which requestors sought a list of names of public employees, disclosure of which did not infringe upon the employees’ right to privacy, and the County was asserting that the information *could be used* in a way that impacted the safety of the employees. *Id.* at 339-40. Releasing a list of names is not the same as releasing the photographic images of employees. More importantly, Mr. Parmelee provided in detail his intention to disseminate the photographic images in conjunction with false and highly offensive accusations. The Department is not responding to a hypothetical set of events or potential use of the records. Rather, Mr. Parmelee is asking that the court be prohibited from considering his intended use of the photographs.

Mr. Parmelee has clearly communicated to the Department his plan to harass its employees, and he is demanding, through public disclosure requests, that the agency provide him with the very means to carry out that plan. This is a perverse abuse of the Public Records Act that violates the clearly stated public policy of the Act.

a. The Public Disclosure Act Does Not Require That An Agency Assist In Harassment Of Its Employees.

Mr. Parmelee claims that the Department is statutorily required to ignore the stated purpose of his public records request and provide him with the means to carry out his harassment of the Department employees. Br. of App. at 9-10; 13. To the contrary, the injunctive remedy provided by RCW 42.56.540 allows the Department to seek a court order enjoining disclosure to prevent harassment of this sort. Mr. Parmelee has never made an effort in this case to show that the allegations against the individuals he planned to label as sex offenders had any factual basis, and the trial court properly found that there was no factual basis for the statements. CR 229. Indeed, he does not disagree that the statements he intended to make were slanderous or libelous, although Mr. Parmelee indicates he could change his mind about publishing the flyers. Br. of App. at 13.⁵

Mr. Parmelee cites to *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 495, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1975), for the proposition that by placing information in the public domain, the government, is

⁵ Mr. Parmelee argues that the Department has not shown that the allegations he asserts against the employees are “factually untrue.” Br. of App. at 13 n.3. Here, the superior court properly addressed this issue by determining there “is no showing that [Mr. Parmelee’s] intent to state that DOC employees are sexual predators has any basis in fact.” CP 229.

presumed to have concluded that the public interest is being served by disclosure. However, the facts in *Cox Broadcasting* were very different in that the information at issue was already a matter of public record. Therefore, the United States Supreme Court concluded that states may not impose sanctions for the publication of information contained in official records open to inspection. *Id.* The Court stated what was not at issue in *Cox Broadcasting*:

[W]e should recognize that we do not have at issue here an action for the invasion of privacy involving the appropriation of one's name or photograph, a physical or other tangible intrusion into a private area, or a publication of otherwise private information that is also false though perhaps not defamatory.

Id. at 489.

What was not at issue in *Cox Broadcasting* is at issue here. Mr. Parmelee wishes to acquire the photographs of Department employees, not otherwise publicly available, and cast them in a false light. The Court's conclusion that there can be no recovery for publication of information that is a matter of public record is exactly why the Department properly requested an injunction from the superior court using the statutory process in RCW 42.56.540. After disclosure, there is no control on the dissemination of the documents.⁶ An agency is not

⁶ Contrary to Mr. Parmelee's argument, the Department was not required to prove the "higher standard" of slander or libel of a government official in order to show

required to ignore the stated purpose of the public records request; and the agency may seek an injunction as the Department did here. And the court may weigh all of the facts relevant to determining whether an exemption applies, and whether to enjoin release of the records under the standard for injunctive relief set forth in RCW 42.56.540.

b. The Department Should Not Be Required To Ignore Certain Inmate Behavior Simply Because It Arises In The Context Of Public Disclosure.

Even if the Court were somehow to conclude that a superior court ordinarily is required to turn a blind eye to the use to which specific records will be put in determining whether to enjoin their release under the Public Records Act, it should not reach such a conclusion on the unique facts of this case. That is because such a conclusion also would be antithetical to the role of the Department, and Mr. Parmelee's status as an inmate.

Allowing the Department to consider the statements and conduct of an inmate in their custody is consistent with the normal role and function of the agency. RCW 72.09.010.⁷ *See also* RCW 42.56.100

that the injunction here was proper. Br. of App. at 14. The Department does not have to prove slander or libel because this is not a tort action for damages, it is an injunction action under the Public Records Act, and the Department met its statutory burden under RCW 42.56.540.

⁷ RCW 72.09.010, describing the legislative intent of the statutory scheme establishing the Department of Corrections, states:

(“Agencies shall adopt and enforce reasonable rules and regulations, . . . consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency”). It would be irresponsible for the Department to ignore the statements of Mr. Parmelee as he is in the custody of the Department. Even in the context of public disclosure, the Department cannot abdicate its role to manage prisons in a manner that is safe and secure for inmates and staff. *See Sappenfield v. Dep’t of Corrections*, 127 Wn. App. 83, 88, 110 P.3d 808 (2005), reconsideration denied (2005) (recognizing that public disclosure in the prison context is “not the usual case”).

Matters affecting a prison’s internal security are generally the province of prison administrators, not the court. *Turner v. Safley*, 482 U.S. 78, 84-85, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987). Prison inmates do not enjoy privileges of the public community—they are imprisoned. *Mithrandir v. Dep’t of Corr.*, 164 Mich. App. 143, 147-48, 416 N.W.2d 352 (1987).

Id. at 88.

Federal and state courts have consistently deferred to prison officials regarding matters affecting prison management; that deference

It is the intent of the legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives.

- (1) The system should ensure the public safety. The system should be designed and managed to provide the maximum feasible safety for the persons and property of the general public, the staff, and the inmates.

has increased over the last thirty years. In *Turner v. Safley*, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987), the United States Supreme Court held that “when a prison regulation impinges on inmate’s constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.” *Turner*, 482 U.S. at 89, 107 S. Ct. at 2261. In arriving at this test, the *Turner* Court relied on separation of powers considerations by revising earlier tests applying a stricter level of scrutiny. The Court’s objective in *Turner* was to ensure that “prison administrators . . . , and not the courts, [are] to make the difficult judgments concerning institutional operations.” *Id.* at 89, 107 S. Ct. at 2261-62 (quoting *Jones v. North Carolina Prisoners’ Union*, 433 U.S. 119, 128, 97 S. Ct. 2532, 2539, 53 L. Ed. 2d 629 (1977)). The *Turner* Court also concluded:

Subjecting the day-to-day judgments of prison officials to an inflexible analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration. The rule would also distort the decision-making process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand.

Id. (quoting *Procunier v. Martinez*, 416 U.S. 396, 407, 94 S. Ct. 1800, 1808, 40 L. Ed. 2d 224 (1974)).

Here, the Public Records Act does not and should not expect prison officials to ignore Mr. Parmelee’s stated intentions regarding his

use of the photographs. However, where the Public Records Act so strongly favors disclosure over exemption and penalizes agencies for violations of its terms, an injunction action under RCW 42.56.540 allows prison officials to seek protection from disclosure of such records, while seeking clarification regarding the Act's intent and reach. Despite the deference given prison officials under the *Turner* standard, the intersection of prison management with the Public Records Act presents unique challenges. *See, e.g., Sappenfield*, 127 Wn. App. at 812 (because they are incarcerated, prisoner access to records may occur "by means of copies mailed upon payment of a reasonable fee."). While it is conceivable that prison mailroom officials could intercept and prevent a prisoner from receiving requested documents received under the Act, such action should not be the Department's only option. *See Livingston v. Cedeno*, 135 Wn. App. 976, 146 P.3d 1220 (2006). In light of the deference afforded prison officials, prison officials should be able to seek relief under RCW 42.56.540 where they are notified of an offender's intent to use such photographs; they should not be required to wait for the photos to appear in the prison mailroom before taking action.

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C. THE SUPERIOR COURT PROPERLY DENIED MR. PARMELEE'S MOTION FOR RECONSIDERATION.

Mr. Parmelee assigns error to the superior court's denial of his motion for reconsideration. Br. of App. at 1. However, Mr. Parmelee does not present any argument on this assignment of error in his brief, nor does he cite to any references in the record supporting the assignment of error. He therefore waived that assignment of error. *Puget Sound Plywood, Inc. v. Mester*, 86 Wn.2d 135, 142, 542 P.2d 756 (1975), citing, *Bruce v. Bruce*, 48 Wn.2d 229, 230, 292 P.2d 1060 (1956). The Court should not consider it and should dismiss his appeal regarding this issue.

Pursuant to Thurston County LCR 59(a), motions for reconsideration are disfavored. A motion for reconsideration shall only be granted upon a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence. LCR 59(a)(3). The superior court properly determined that Mr. Parmelee did not meet the burden imposed by LCR 59(a)(3) and that his motion for reconsideration should be denied.

The bases for Mr. Parmelee's motion for reconsideration were his alleged new evidence and the superior court's asserted misapplication of the law in the original order. CP 218-219. Mr. Parmelee did not provide

new evidence or new argument that would warrant granting a motion for reconsideration.

Mr. Parmelee had an opportunity to argue, and in fact thoroughly argued, that the facts of this case did not warrant an injunction under the Public Records Act. Mr. Parmelee's motion for reconsideration merely re-argued the arguments made in the briefing and in the hearing on December 1, 2006. As such, even if this assignment of error has not been abandoned, Mr. Parmelee's appeal on this issue should be denied.

D. MR. PARMELEE'S ADDITIONAL ARGUMENTS SHOULD NOT BE CONSIDERED AS THEY ARE NOT PROPERLY RAISED.

Mr. Parmelee has articulated only two assignments of error in his appeal: 1) that the lower court erred in ruling that injunctive relief was appropriate under RCW 42.56.540 and RCW 42.56.050; and 2) that the lower court erred in denying the motion for reconsideration. Mr. Parmelee then spends a significant portion of his brief arguing that Department employees could proceed with a tort action and that Mr. Parmelee has a right to publish information received through public records requests. These issues were not raised in the assignments of error. This Court should not consider issues not presented for review and not contained in the assignments of error. *State v. Korum*, 157 Wn.2d 614, 623-24, 141 P.3d 13 (2006).

Assuming, *arguendo*, that this Court considers these arguments properly raised, they are not relevant in determining whether the superior court erred in granting the injunction. Department employees whose photographs are released, and who are subsequently defamed by Mr. Parmelee as a result, may have a basis for relief under a civil claim of libel and slander. However, that would not prevent the harm that Mr. Parmelee seeks to cause and does not preclude the Department from seeking injunctive relief under the Public Records Act. In addition, Mr. Parmelee has requested the photographs of over 2,500 Department employees and to have each individual employee seek relief from the courts for Mr. Parmelee's illegal actions is not in the interests of justice or judicial economy. Rather, it is precisely the sort of circumstance appropriate for the injunctive remedy provided by RCW 42.56.540. Furthermore, even if each of those 2,525 employees sought relief, Mr. Parmelee may not be held accountable for his actions. The lower court properly concluded, based on the evidence presented and the uncontested findings of fact, that injunctive relief was required. Mr. Parmelee's appeal should, therefore, be denied.

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E. MR. PARMELEE IS NOT ENTITLED TO ATTORNEY FEES AS HE HAS NOT PREVAILED IN AN ACTION SEEKING TO COMPEL DISCLOSURE OF PUBLIC RECORDS.

Mr. Parmelee requests attorney fees be awarded to him either pursuant to the Public Records Act or pursuant to equitable considerations.

The Public Records Act provides in pertinent part:

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

RCW 42.56.550(4). Of course, Mr. Parmelee has not prevailed in an action in court seeking to inspect or copy a public record. Additionally, this Court need not address the issue of attorney fees because even if the Court dissolves the injunction, the matter of fees and penalties should be determined by the superior court on remand.

Mr. Parmelee also argues that equitable considerations require that he be given attorney fees for his appeal. However, an award of attorney fees to a party who prevails in dissolving a wrongfully issued injunction is discretionary. *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 758, 958 P.2d 260 (1998). Mr. Parmelee's request for attorney fees should be denied.

VI. CONCLUSION

The superior court correctly considered Mr. Parmelee's clearly stated purpose in requesting photographic images under the Public Records Act. The superior court properly determined that disclosure of the photographic images would violate the employees' right to privacy, that the records therefore were exempt from disclosure, and that disclosure should be enjoined under RCW 42.56.540. This Court should affirm the superior court, and should decline to address other issues raised by Mr. Parmelee.

RESPECTFULLY SUBMITTED this 5th day of September,
2007.

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STATE OF WASHINGTON

CERTIFICATE OF MAILING

2007 SEP -5 P 4: 01

I certify that I served a copy of the BRIEF OF RESPONDENT
WASHINGTON STATE DEPARTMENT OF CORRECTIONS on all
parties or their counsel of record on the date below as follows:

- US Mail Postage Prepaid via Consolidated Mail Service
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by

MICHAEL C. KAHR
ATTORNEY AT LAW
5215 BALLARD AVENUE, NW, SUITE 2
SEATTLE, WA 98107

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

DATED this 5th day of September, 2007, at Olympia, WA.


JUDY LOMBORG
Legal Assistant

APPENDIX A

CG A Committee for Government Accountability

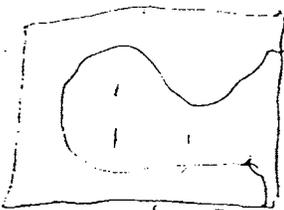
The Committee for Government Accountability seeks to encourage the good in government, and expose to remove the bad. Our allegations are not lightly made and are supported by more than one complaint.

When the public pays taxes for prisons, they seek safety. Safety from predators and bullies whom target anyone who is vulnerable then come home and do it again to their alarmed spouses, neighbors and neighbor kids and pets. Any pets disappear lately?

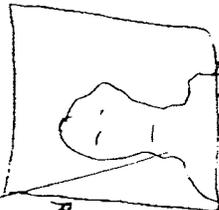
The viciousness of these people affects your prison staff, such as Robert O'Neil

Believes the Clallam County Prosecutor Keenan of, but has done nothing because exploiting the poor or vulnerable is acceptable.

Other persons like Carol Riddle similarly victimize the vulnerable and assumes anyone in his control is to be abused and used relentlessly. This overflows into your neighborhood.



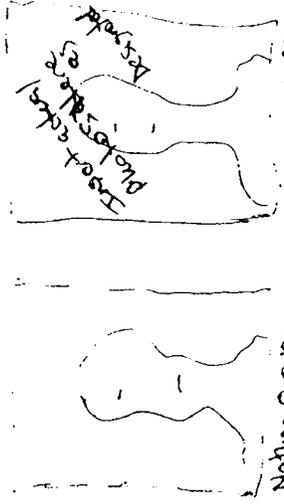
Robert O'Neil



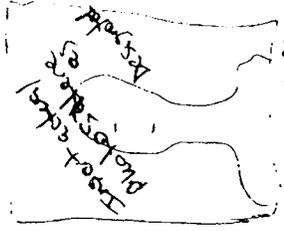
Carol Riddle

CAUTION
CLALLAM BAY - PORT A
RESIDENTS

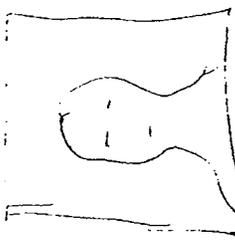
SEXUAL PREDATORS IN YOUR NEIGHBORHOOD



Nathan Cornish

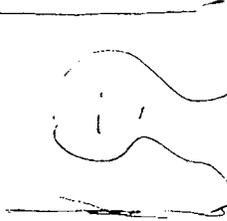


Jerry McTaffee



Michael Christensen

These sexual predators also work at the Clallam Bay Prison where homosexual assaults are encouraged against prisoners by Sandra Carter, the gay feminist Superintendent.



SANDRA CARTER

Protect Your Families And Children. Demand The DOJ Fine These people ~~badly~~ Now, Before You Become Their next victim.

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A Not for-profit organization

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Mailing label

Political Action For A Better Government Through Affirmative Advocacy.