

FILED
COURT OF APPEALS
DIVISION II

08 OCT -9 PM 1:56

STATE OF WASHINGTON
BY SW
DEPUTY

No. 37761-6-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

DAVID KOENIG,

Appellant,

v.

CITY OF LAKEWOOD,

Respondent.

BRIEF OF RESPONDENT

Matthew S. Kaser, WSBA # 32239
CITY OF LAKEWOOD
6000 Main Street
Lakewood, WA 98499-5027
Telephone: (253) 589-2489
Facsimile: (253) 589-3774
*Attorney for Respondent,
City of Lakewood*

This document was received but
SHOULD NOT be considered
10/19/08
Date Signature

*accepted for filing
10/21/08 Cross Appeal Dismissed*

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT 1

II. RESTATEMENT OF THE CASE 3

III. ARGUMENT 8

 A. The Relief Sought By Mr. Koenig Is Moot. 9

 1. All Responsive Records Have Been Produced. 10

 2. There Is No Basis For Any Further Attorney Fees. 15

 B. The City’s Claims of Redaction Under CRPA Are Harmonized
 With the PRA. 18

 1. These Materials Are Criminal History Record Information. 20

 2. The Dismissal of Mr. Espinosa’s Criminal Case Was Not an
 “Adverse Disposition” Authorizing Disclosure Of Criminal History
 Records Information. 24

 3. The Proceedings Were Not Actively Pending At The Time of
 the December 2005 Request. 30

CONCLUSION 32

TABLE OF AUTHORITIES

Cases

| | |
|--|--------|
| <i>ACLU v. Blaine School Dist.</i> , 95 Wn. App. 106, 975 P.2d 536 (1999).... | 16 |
| <i>Beltran v. DSHS</i> , 98 Wn. App. 245, 989 P.2d 604 (1999) | 19, 21 |
| <i>Bowers v. Transamerica Title Ins. Co.</i> , 100 Wn.2d 581, 675 P.2d 193 (1983)..... | 16 |
| <i>Bowman v. Webster</i> , 44 Wn.2d 667, 669, 269 P.2d 960 (1954) | 15 |
| <i>City of Tacoma v. Taxpayers</i> , 108 Wn.2d 679, 743 P.2d 793 (1988)..... | 9 |
| <i>City of Walla Walla v. Ashby</i> , 90 Wn. App. 560, 952 P.2d 201 (1998).... | 24 |
| <i>Hammond v. Hammond</i> , 26 Wn. App. 129, 611 P.2d 1352 (1980)..... | 18 |
| <i>Hearst Corp. v. Hoppe</i> , 90 Wn.2d 123, 580 P.2d 246 (1978) | 12 |
| <i>Hudgens v. City of Renton</i> , 49 Wn.App. 842, 746 P.2d 320 (1987).. | passim |
| <i>Hume v. Am. Disposal Co.</i> , 124 Wn.2d 656, 880 P.2d 988 (1994) | 17 |
| <i>In Re Cross</i> , 99 Wn.2d 373, 662 P.2d 828 (1983)..... | 9 |
| <i>In Re The Estate of Lyman</i> , 7 Wn. App. 945, 503 P.2d 1127 (1972), <i>aff'd</i> , 82 Wn.2d 693, 512 P.2d 1093 (1973)..... | 9 |
| <i>Kuehn v. Renton School District</i> , 103 Wn.2d 594, 694 P.2d 1078 (1985) . | 9 |
| <i>Limstrom v. Ladenburg</i> , 110 Wn. App. 133, 39 P.3d 351 (2002) | 9 |
| <i>Lindstrom v. Ladenburg</i> , 136 Wn.2d 595, 963 P.2d 869 (1998) | 12 |
| <i>Marquez v. Cascade Residential Design</i> , 142 Wn. App. 187, 174 P.3d 151 (2007)..... | 16 |
| <i>Marriage of Williams</i> , 84 Wn. App. 263, 927 P.2d 679 (1996) | 16 |
| <i>Mayer v. Sto Industries, Inc.</i> , 123 Wn. App. 443, 98 P.3d 116 (2004)..... | 17 |

| | |
|---|------------|
| <i>Mueller v. Garske</i> , 1 Wn.App. 406, 461 P.2d 886 (1969)..... | 15 |
| <i>Progressive Animal Welfare Soc'y v. Univ. of Wash.</i> , 125 Wn.2d 243, 884 P.2d 592 (1994)..... | 11 |
| <i>Shelton v. Frakas</i> , 30 Wn. App. 549, 635 P.2d 1109 (1981)..... | 18 |
| <i>Soter v. Cowles Publ'g Co.</i> , 162 Wn.2d 716, 174 P.3d 60 (2007)..... | 12 |
| <i>Spokane Research & Def. Fund v. City of Spokane</i> , 155 Wn.2d 89, 117 P.3d 1117 (2005)..... | 17 |
| <i>State v. Ashue</i> , 145 Wn. App. 492, 188 P.3d 522 (2008) | 25, 26, 29 |
| <i>State v. Breazeale</i> , 144 Wn.2d 829, 31 P.3d 1155 (2001)..... | 27 |
| <i>State v. Carlyle</i> , 19 Wn. App. 450, 576 P.2d 408 (1978)..... | 27 |
| <i>State v. Enstone</i> , 137 Wn.2d 675, 974 P.2d 828 (1999) | 24 |
| <i>State v. Johnson</i> , 104 Wn.2d 338, 705 P.2d 773 (1985)..... | 30 |
| <i>State v. Kessler</i> , 75 Wn. App. 634, 879 P.2d 333 (1994) | 25, 26 |
| <i>State v. Marino</i> , 100 Wn.2d 719, 720-21, 674 P.2d 171 (1984)..... | 25, 26 |
| <i>State v. O'Connell</i> , 83 Wn.2d 797, 523 P.2d 872 (1974)..... | 15 |
| <i>State v. Rawls</i> , 114 Wn. App. 719, 60 P.3d 113 (2002) | 27 |
| <i>State v. Turner</i> , 98 Wn.2d 731, 658 P.2d 658 (1983)..... | 9 |
| <i>Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.</i> , 122 Wn.2d 299, 858 P.2d 1054 (1993)..... | 17 |
| Statutes | |
| RCW 3.66.067 | 27, 28 |
| RCW 4.16.170 | 5 |
| RCW 9.41.047 | 28 |

| | |
|---------------------------|------------|
| RCW 9A.44.130..... | 28 |
| RCW 10.05.020(3)(i)..... | 29 |
| RCW 10.05.060 | 29 |
| RCW 10.05.170 | 29 |
| RCW 10.77.110 | 28 |
| RCW 10.97.010 | 19 |
| RCW 10.97.030(1)..... | 11, 20, 21 |
| RCW 10.97.030(2)..... | 19, 30, 31 |
| RCW 10.97.030(4)..... | 24, 25, 26 |
| RCW 10.97.030(8)..... | 19 |
| RCW 10.97.040 | 19, 28 |
| RCW 10.97.080 | 19 |
| Former RCW 42.17.250..... | 4 |
| RCW 42.56.070(1)..... | 12 |
| RCW 42.56.230(4)..... | 14 |
| RCW 42.56.240(2)..... | 14 |
| RCW 42.56.550 | 16 |
| RCW 42.56.550(1)..... | 8 |
| RCW 42.56.550(4)..... | 8 |
| RCW 46.12.380 | 11, 14 |

| | |
|--|----|
| Rules | |
| CR 3 | 5 |
| RAP 3.1 | 9 |
| Other Authorities | |
| Bryan A. Garner, Blacks Law Dictionary (8 th Ed, 2004) | 28 |
| Lynette Meachum, <i>Private Rap Sheet or Public Record? Reconciling the Disclosure of Nonconviction Information Under Washington’s Public Disclosure and Criminal Record Privacy Acts</i> , 79 Wash. L. Rev. 693, 700 (2004) | 21 |

I. PRELIMINARY STATEMENT

In this matter, the Pierce County Superior Court ruled that the City of Lakewood incorrectly denied documents which were requested by Appellant, David Koenig. As allowed by the Public Records Act, chapter 42.56 RCW (PRA), the Pierce County Superior Court ordered the City of Lakewood to disclose documents and pay attorney fees and penalties to Mr. Koenig.

Mr. Koenig now argues that a preliminary decision of the Superior Court was error and this case should be remanded for disclosure of additional documents and calculation of additional fees. The focus of this appeal is a decision made early in the litigation, on August 3, 2007 wherein the lower court ruled that it would adhere to this Court's decision in *Hudgens v. City of Renton*, 49 Wn.App. 842, 746 P.2d 320 (1987).

The record presents this Court with a far simpler analysis for this and does not implicate *Hudgens*. As of September 7, 2007, when the trial court found the City of Lakewood in full compliance with Mr. Koenig's request did not involve any legal reliance on the holding of *Hudgens*. Rather, the City limited its reliance on the Criminal Records Privacy Act chapter 10.97 RCW (CRPA) in five (5) instances to redact certain portions

of certain “rap sheet”-like documents.¹ Mr. Koenig does not make any specific claims of erroneous redactions or withholding under the PRA vis-à-vis CRPA to these five redactions. Quite the opposite; although not expressly so stated in Mr. Koenig’s opening brief, a fair read of how he would interpret CRPA suggests that he agrees that these five redactions were properly made.

The applicable analysis before this Court is not whether *Hudgens* should be revisited or whether the lower court misapplied CRPA. Instead, the applicable analysis is: given these remaining limited redactions, is there any relief which this Court can afford Mr. Koenig?

Mr. Koenig requests a remand to order the production of additional documents and to award additional penalties and fees. But, the last of the documents so redacted on CRPA grounds are correctly redacted. No claim of error is raised or discussed as to why these documents are even allegedly subject to disclosure. And, Mr. Koenig failed to make any claims of attorney fees in conjunction with any CRPA-related arguments below, and arguably waived any such claim, and cannot revive this claim for fees on appeal.

The decision of the Pierce County Superior Court should be affirmed in all respects.

¹ The City’s final disclosure log and the affected documents appear as Clerks Papers (CP) 392-395, 404, 406, 408, & 414 and are attached as Appendix A to this brief.

II. RESTATEMENT OF THE CASE

This case involves public records requests seeking records from a matter criminally prosecuted by the City of Lakewood.

On October 14, 2004, an off-duty Seattle police officer, Daniel Espinoza, was arrested in Lakewood during an undercover operation for soliciting a prostitute. (CP 297; CP 636 (FF 1)). He was charged by the City of Lakewood in Lakewood Municipal Court for Solicitation of a Prostitute. (CP 295). Mr. Espinoza entered into a pretrial diversion agreement, known as a Stipulated Order of Continuance With Conditions (“SOC”), by which he agreed to maintain law abiding behavior for a one-year period, pay a monitoring fee, and obtain an HIV test. (CP 294; CP 636 (FF 2)). If he met these conditions, the charge would be dismissed with prejudice. (Id). As a condition of entry into the SOC, he agreed to waive his right to a speedy trial and his right to a trial by jury. (Id.). He also agreed that if he violated the agreement, the Lakewood Municipal Court could review the police report of the incident, and based solely on the police report, make a determination of guilt or innocence. (Id.). Mr. Espinoza successfully complied with the conditions of the SOC, and on November 10, 2005, the criminal case against him was dismissed with prejudice. (CP 293; CP 637 (FF 11)).

By letter dated November 11, 2004, Appellant, David Koenig made the first of two requests for public records from the City of Lakewood involving Mr. Espinoza. (CP 84).² In this first request, Mr. Koenig requested, “the case number and all investigative records connected with the arrest of a Seattle police officer for suspicion of patronizing a prostitute. The arrest occurred on a Thursday; apparently the 14th of October.” (Id). The City advised Mr. Koenig that the report was ready and indicated that if he desired copies, to remit payment. (CP 86). The City also advised him that certain identifying information would be redacted. (Id). Mr. Koenig mailed his check on or about November 26, 2004. (CP 88). He also asked the City to reconsider its decision to redact. (Id). The City mailed to Mr. Koenig a redacted copy of the report on or about December 3, 2004. (CP 91). The City offered Mr. Koenig the opportunity to view the unredacted copy of the police report and in February 2005, he did so, conveying the sense that his review of the report satisfied this request. (CP 113, 566).

The City did not hear from Mr. Koenig again until early December 2005 when Mr. Koenig made a second request for public records involving Mr. Espinoza’s criminal arrest and charges. This time, by letter

² At the time of his first request, public records requests were governed by the Public Disclosure Act (PDA), Former RCW 42.17.250 et seq. The Act has since been recodified as the Public Records Act (PRA), chapter 42.56 RCW. For consistency, the City cites to the PRA.

dated December 5, 2005, Mr. Koenig sought, “all records concerned the prosecution or contemplated prosecution related to [Mr. Espinoza’s incident].” (CP 56). The City wrote back to Mr. Koenig and advised him that the case was dismissed after twelve-months pursuant to SOC and informed him that it considered this information as non-conviction data and non-disclosable per RCW 10.97. (CP 57).

The City did not hear back from Mr. Koenig for approximately fifteen months, when it was served with a Summons and Complaint in mid-March 2007.³ (CP 638 (FF 22, 23)). Believing that the December 2005 request was a reiteration of his earlier request, the City unsuccessfully attempted telephone contact with Mr. Koenig after being served to attempt an informal resolution. (CP 58-59). When the City was unable to obtain clarification from Mr. Koenig, it sought a judicial determination that it had complied with Mr. Koenig’s December 2005 request. (CP 8). Mr. Koenig requested, and received a continuance so that he could obtain counsel. (1 VRP 5).

At an August 3, 2007 hearing, the trial court noted that it elected to adhere to *Hudgens*; that the final disposition of Mr. Espinoza’s case was not an adverse disposition as contemplated by CRPA; by August 17, 2007

³ Mr. Koenig delayed filing of his lawsuit until the next-to-last day of the applicable one-year statute of limitations and delayed serving the City until the end of the 90 day tolling period afforded by CR 3 and RCW 4.16.170.

the City was to inform the Court and Mr. Koenig which documents were withheld and how exemption were applied and noted that a specific request for records was made in December 2005 and that record should have been produced in response to that request. (CP 334-335)⁴. However, in advance of this hearing, the City abandoned its reliance on CRPA, as interpreted by *Hudgens* to deny the request, processed the report by means of a letter dated July 9, 2007 (but received by Mr. Koenig on July 23, 2007 as an attachment to the City's responsive briefing, owing to the City sending this to an earlier address and to a "Daniel Koenig") and supplied the documents requested by Mr. Koenig. (CP 21, 186, 640-41 (FF 35, 36)). The City relied on CRPA as one of four general classes of redactions, but did not identify which exemptions or redactions applied to which documents. (CP 186).

Nevertheless, consistent with the trial court's August 3, 2007 ruling, the City again sent to Mr. Koenig responsive documents, together with exemption logs dated August 10, 2007 detailing which exemptions applied to which documents (CP 291-329); and a revised exemption log on September 7, 2007. (CP 392). The trial court conducted an *in camera* review of the disputed documents, and found that the City was in full

⁴ There are actually two orders stemming from the August 3, 2007 hearing. The other order is at CP 288-290. One is handwritten and prepared on the day of the hearing. (CP 288). The other is typed and prepared post-hearing. (CP 334). There appears to be no difference between the two orders. The City cites to the more legible of the orders.

compliance with Mr. Koenig's request as of September 7, 2007. (CP 455; CP 644 (FF 57); 3 VRP 101).

In April 2008, the trial court held a hearing to affix fees and penalties. The trial court held that the total period of time for which Mr. Koenig was delayed access to records was 636 days (from December 9, 2005 until September 7, 2007). (CP 637 (FF 15); CP 644 (FF 59)). The trial court found that 159 days of this period were attributable to delay by Mr. Koenig; 89 days was attributable to delays in service of process and 70 days were attributable to the plaintiff's request for a continuance. (CP 645 (FF 60)). For these 159 days, the trial court found that the City was acting in good faith, but nevertheless negligent, and should be penalized \$5.00 per day. (Id). For the remaining periods, the trial court found that City was negligent in responding to Mr. Koenig's request and failed to exercise ordinary care and should be penalized \$25.00 per day. (Id). The trial court also, over the City's objection, awarded those hours in attorney fees which he requested, but reduced the hourly rate which Mr. Koenig requested. (CP 645-46 (FF 63-67)).

This appeal follows. (CP 648).⁵

⁵ After a review of the issues raised by the appellant, the City has elected to withdraw its cross-appeal.

III. ARGUMENT

Mr. Koenig is not entitled to reversal of the trial court's decision. The Washington Public Records Act, chapter 42.56 RCW provides for two forms of relief to an aggrieved requestor. The first form of relief is access to records wrongfully withheld. RCW 42.56.550(1). The second form of relief is fees, costs and penalties in conjunction with obtaining those records. RCW 42.56.550(4). Because there is no relief under the PRA which this Court can afford Mr. Koenig by a reversal of the trial court's decisions, there is no basis to reverse.

First, there are no more records which Mr. Koenig can receive by reversal. Mr. Koenig received all the records he requested and to which he was entitled. As to those documents the City made redactions under CRPA, Mr. Koenig waived any arguments to these exemption claims and there is no claim on appeal that the trial court incorrectly denied Mr. Koenig access to these records.

Second, there are no more attorney fees which Mr. Koenig can receive by a reversal of this Court for the simple reason that Mr. Koenig failed to make any claims for this time below.

This Court should affirm the decision of the Pierce County Superior Court in all respects.

A. The Relief Sought By Mr. Koenig Is Moot.

The relief sought by Mr. Koenig is moot. A party, such as Mr. Koenig, who is denied relief on one ground raised before the trial court but who obtains all the relief requested on an alternative ground is not an “aggrieved party” for purposes of appeal. *City of Tacoma v. Taxpayers*, 108 Wn.2d 679,685, 743 P.2d 793 (1988), *citing* RAP 3.1. This rationale rings true where an appellant merely objects to the reasoning by which the trial court reached its decision, but nevertheless received all relief so requested. *City of Tacoma*, 108 Wn.2d at 685, *citing*, *In Re The Estate of Lyman*, 7 Wn. App. 945, 953-54, 503 P.2d 1127 (1972), *aff’d*, 82 Wn.2d 693, 512 P.2d 1093 (1973). “A case is moot if a court can no longer provide effective relief and the issues it presents are ‘purely academic.’” *Kuehn v. Renton School District*, 103 Wn.2d 594, 597, 694 P.2d 1078 (1985)(*quoting In Re Cross*, 99 Wn.2d 373, 376-77, 662 P.2d 828 (1983); *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983)).

Where a requestor already received all documents to which they are entitled, whether from the governmental entity or other sources, an appeal may be technically moot. *Limstrom v. Ladenburg*, 110 Wn. App. 133, 139, 39 P.3d 351 (2002).

Mr. Koenig does not assign error to the trial court’s decision that the City was in full compliance with his December 2005 request as of

September 7, 2007. He does not seek reversal of any particular decision which would entitle him to more records. And, he voluntarily failed to request attorney time attributable to making CRPA-related arguments. This case presents an academic issue only.

1. All Responsive Records Have Been Produced.

Although Mr. Koenig spends much of his briefing before this Court touching on the addressing the interplay of CRPA and the PRA, as interpreted by *Hudgens*, it is important to disentangle the argument from the reality. Mr. Koenig does not claim on appeal that the trial court improperly upheld any exemptions or redactions made by the City of Lakewood. In fact, before the trial court, Mr. Koenig waived any right to present these claims.

The trial court found the City of Lakewood in compliance with Mr. Koenig's PRA request on September 7, 2007. (CP 455; CP 644 (FF 57)). As of this date, the City maintained a total of five redactions to portions of four pages of records under CRPA. (CP 392-394). Independent of any claims as to whether *Hudgens* was rightly decided, because these materials are either properly exempt or Mr. Koenig waived any challenges to the City's redactions under CRPA, there is no basis to reverse and remand this matter to the trial court for a review of additional records to produce.

In its final document disclosure log, the City redacted portions of four documents on CRPA grounds. These documents are as follows:

| <u>Document</u> | <u>City's Response</u> |
|---|---|
| LESA Criminal History Report – CHRI# (CP 404) | Redaction as Non-conviction Data – RCW 10.97 – A CHRI # is an individual identifier and therefore constitutes “Criminal History Record Information” pursuant to [RCW] 10.97.030(1). |
| LESA Criminal History Report – TPD # - Internal TPD assignment number for tracking. (CP 404) | Redaction as Non-conviction Data – RCW 10.97 – A TPD # is an individual identifier and therefore constitutes “Criminal History Record Information” pursuant to [RCW] 10.97.030(1). |
| Case History Reports – Charge/Finding (CP 406) | Redact as Non-Conviction Data pursuant to RCW 10.97. See also, RCW 46.12.380. |
| Defendant Case history Query Results (DCH) from AOC Database accessed by Lakewood Municipal Court Clerks Office. (CP 406) | Redact as Non-Conviction Data pursuant to RCW 10.97. See also, RCW 46.12.380. |
| Individual Information Request (PER) Query Results from AOC Database – Accessed by Lakewood Prosecutor's Office – FBI Number (CP 414) | Redaction as Non-conviction Data – RCW 10.97 – A FBI # is an individual identifier and therefore constitutes “Criminal History Record Information” pursuant to [RCW] 10.97.030(1). |

(CP 392-396; *see also* Appendix A).

“The Public Records Act ‘is a strongly worded mandate for broad disclosure of public records.’” *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994), *quoting*, *Hearst*

Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). Unless the record falls within a specific exemption of the PRA, or other statute which exempts or prohibits disclosure of specific information or records, the agency must produce the record. *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 730, 174 P.3d 60 (2007), *citing* RCW 42.56.070(1). Materials protected under CRPA are exempted from production under the PRA. *Limstrom v. Ladenburg*, 136 Wn.2d 595, 615-16, 963 P.2d 869 (1998); *Hudgens*, 49 Wn. App. at 845, fn. 1; RCW 10.97.080.

Mr. Koenig does not dispute either before the trial court or on appeal that materials contained in “rap sheets,” are squarely within the ambit of CRPA, and hence exempt from his PRA request. (2 VRP 23: 10-15; Brief of Appellant at p. 18-19). The redactions in the City’s final disclosure are redactions of “rap sheets.” Mr. Koenig does not make any specific claims that the trial court erred in upholding the City’s exemption claims to these documents or that the City improperly made redactions to the above documents.

There is also no dispute that Mr. Koenig received all responsive documents on grounds independent from the City’s CRPA claims. Mr. Koenig received the police report months prior to making the request which forms the basis of this litigation. (CP 565-566; 2 VRP 27: 9-12). Although in response to his December 2005 PRA request, the City initially

withheld many additional prosecution documents under a claim of exemption per CRPA, once the City understood the nature of Mr. Koenig's request, save for these five redactions, the City abandoned reliance upon the CRPA. The only additional documents which he received as responsive to his December 2005 PRA request is the prosecution case files, which he received on July 23, 2007 (CP 641 (FF 36)). Consistent with the trial court's directives, he received these documents again, together with exemption logs dated August 10, 2007 (CP 291-329); and again received these documents with a revised exemption log on September 7, 2007. (CP 392).

In fact, before the trial court it appears that Mr. Koenig implicitly, if not expressly, waived any right to challenge the balance of the City's CRPA designations. After Mr. Koenig received the City's August 10, 2007 disclosure and exemption log, Mr. Koenig expressly disavowed seeking further documents which the City claimed to be exempt under CRPA. In an August 29, 2007 filing with the trial court, Mr. Koenig waived his right to challenge the City's CRPA exemptions. As stated in his brief to the trial court,

Plaintiff Koenig does not wish to challenge the City's compliance with the PRA with respect to the following issues:

* * *

B. CRPA

The City has redacted one document pursuant to CRPA. Crittenden Decl., Ex. P. at 25⁶. Because the City also cites RCW 42.56.230(4), “RCW 42.56.240(2) as defined by RCW 42.56.050,” a RCW 46.12.380 as additional exemptions applicable to that document it is not possible to determine whether the City’s redaction based on CRPA are appropriate.

(CP 347-48; Emphasis Added)).

While Mr. Koenig noted only one redaction, the City had, in fact, made redactions to three documents where CRPA was the exclusive ground – a Criminal History Report from the Law Enforcement Support Agency, a Defendant Case History and a Defendant Case History Report. (CP 357). These exemptions (with one exception) are identical to those which the City’s maintained its exemption claim through September 7, 2007. (*Compare* CP 375, 377, 378, and 381 with Appendix A). The only additional document which the city claimed exempt under CRPA after August 2007 was the redaction of Mr. Espinoza’s FBI number. But the City had previously sought to exempt it on other grounds, to which Mr. Koenig did not object. (CP 342-349). Nevertheless, by noting that he was not challenging the City’s redactions to these documents on CRPA grounds, Mr. Koenig should be estopped from claiming on appeal that

⁶ This document corresponds to CP 375.

somehow these documents should have been produced. *Mueller v. Garske*, 1 Wn.App. 406, 409, 461 P.2d 886 (1969).

The trial court upheld the City's redactions on CRPA grounds to these five redactions. Mr. Koenig fails make any individualized claims to address how error was made by the trial court in upholding these redactions. Having received all the relief which he requested before the trial court, there is no effective relief which this Court can grant to Mr. Koenig.

2. There Is No Basis For Any Further Attorney Fees.

The only other aspect of the trial court's decision which could arguably be affected by the trial court's decisions is Mr. Koenig's entitlement to reasonable attorney fees in pursuing claims based on CRPA-related arguments. By not requesting these fees before the trial court, Mr. Koenig has likewise waived his right to recover these fees and cannot obtain appellate relief in recouping these fees. *State v. O'Connell*, 83 Wn.2d 797, 821-22, 523 P.2d 872 (1974); *Bowman v. Webster*, 44 Wn.2d 667, 669, 269 P.2d 960 (1954) ("A waiver is the intentional and voluntary relinquishment of a known right.").

Mr. Koenig erroneously miscategorizes the trial court's decision as one in which the trial court "deducted 60 hours of attorney time attributable to the CRPA issues ..." (Brief of Appellant at p. 13). The

record is otherwise; Mr. Koenig withdrew his right to recover any additional fees in connection with his CRPA-related arguments and he did not request these fees. (CP 503-504 ¶¶ 7, 10-12; 4 VRP 112; CP 491 (“Koenig was not successful on those CRPA arguments so that attorney hours would not be included in an award of reasonable attorney’s fees.”)). Mr. Koenig cannot complain on appeal for his failure to request these fees before the trial court.

A prevailing requestor under the PRA is entitled to reasonable attorney fees when they are required to commence suit to obtain “the right to inspect or copy any public record.” RCW 42.56.550. Where fees which are otherwise potentially awardable are either incorrectly requested or not requested at all in the proceedings below, appellate relief to recover these fees will not be available. *See e.g., Marquez v. Cascade Residential Design*, 142 Wn. App. 187, 174 P.3d 151 (2007)(fee request directed to wrong forum); *Marriage of Williams*, 84 Wn. App. 263, 273, 927 P.2d 679 (1996)(trial court fee request omitted ground for fees).

Prevailing fee requests in the public records context are evaluated by the lodestar methodology. *ACLU v. Blaine School Dist.*, 95 Wn. App. 106, 118, 975 P.2d 536 (1999)(citing, *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983)). In a lodestar methodology, the court calculates attorney fees attributable to the claim by

establishing a “lodestar” fee by multiplying a reasonable hourly rate for the attorney by the number of hours reasonably spent on the theories necessary to establish the claim. *Mayer v. Sto Industries, Inc.*, 123 Wn. App. 443, 459, 98 P.3d 116 (2004), *citing*, *Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 334, 858 P.2d 1054 (1993).

But here, Mr. Koenig never asked the trial court to exercise its discretion and include in any lodestar calculations the time spent litigating the CRPA-related issues below. In fact, Mr. Koenig did the opposite, he voluntarily carved out this time and did not request it. (4 VRP 112). And, it is questionable as to whether he was required to separate this time as segregation is not required unless attorney fees are only allowed for certain causes of action, but not others. *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 672-73, 880 P.2d 988 (1994).

Mr. Koenig was awarded in the trial court’s lodestar determination those hours which he requested. Had Mr. Koenig made a request and the trial court discounted his time associated with litigating any CRPA arguments, he may have an argument that the trial court erred by not awarding this time. *See e.g., Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 100-102, 117 P.3d 1117 (2005) (prejudgment production of records to which a requestor may be entitled will not thwart

penalties and attorney fee award). But he failed to make any such request. “Relief which was not requested in the trial court cannot be requested for the first time on appeal.” *Shelton v. Frakas*, 30 Wn. App. 549, 558, 635 P.2d 1109 (1981), *citing*, *Hammond v. Hammond*, 26 Wn. App. 129, 133, 611 P.2d 1352 (1980). Mr. Koenig prevailed on all the claims which he made. There is no more relief that this Court can afford Mr. Koenig as it pertains to reasonable attorney fees.

B. The City’s Claims of Redaction Under CRPA Are Harmonized With the PRA.

What appears to be challenged by Mr. Koenig is a more academic question. Although Mr. Koenig spends much of his briefing challenging various aspects of this Court’s decision in *Hudgens*, but the *Hudgens* decision has very little to do with the redactions the trial court upheld.

The trial court noted that it would adhere to that portion of this Court’s decision in *Hudgens* to extend CRPA protections to materials other than those “rap sheet”-type of records, yet the trial court was not asked by the City to apply this approach to any of the City’s redactions. Instead, once the City understood Mr. Koenig’s request, the City produced the records requested by Mr. Koenig and the City made five redactions to “rap sheet”-like materials under CRPA which, as noted above, Mr. Koenig did not challenge, and the trial court upheld these redactions under CRPA.

Nevertheless, to the extent that Mr. Koenig attempts to make a claim that these five redactions are improperly upheld by the trial court, the City addresses the substance of these redactions against the backdrop of the academic questions posed by Mr. Koenig.

CRPA generally prohibits criminal justice agencies from disseminating materials identified as non-conviction data, and members of the public cannot mechanically reproduce such information unless they are the subjects of the information. *Beltran v. DSHS*, 98 Wn. App. 245, 259-60, 989 P.2d 604 (1999). It also authorizes persons, who believe themselves to be the subject of a criminal record to review and challenge criminal history record information. RCW 10.97.080. This is consistent with the statutory directive that certain criminal history is to be complete, accurate, confidential and secure. RCW 10.97.010.

CRPA prohibits the dissemination of non-conviction data. RCW 10.97.030(8); RCW 10.97.040. Non-conviction data is a statutorily-defined term,

[A]ll criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending.

RCW 10.97.030(2).

The materials redacted by the City of Lakewood are non-conviction data under CRPA. First, the information is criminal history record information. Second, the incident did not lead to a conviction or other disposition adverse to Mr. Espinosa, as contemplated by the CRPA. Finally, at the time of the December 2005 request, the criminal proceedings were no longer actively pending.

1. These Materials Are Criminal History Record Information.

The redacted materials are Criminal History Record Information.

CRPA defines “criminal history record information,” (CHRI) as,

[I]nformation contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual’s record of involvement in the criminal justice system as an alleged or convicted offender, ...”⁷

RCW 10.97.030(1). For example, at a minimum, CHRI would “include the combination of data typically contained in a person’s rap sheet: a

⁷ The statute goes on to provide for seven enumerated exceptions, none of which, it appears, either party believes is applicable in the case at bar.

name, contacts with law enforcement, and the disposition of such incidents.” Lynette Meachum, *Private Rap Sheet or Public Record? Reconciling the Disclosure of Nonconviction Information Under Washington’s Public Disclosure and Criminal Record Privacy Acts*, 79 Wash. L. Rev. 693, 700 (2004), citing RCW 10.97.030(1).

As alluded-to *supra*, and emphasized here, the five redactions are clearly protected by CRPA as they constitute non-disclosable CHRI. Four of the five redactions (CHRI #, TPD # and redactions from the Defendant Case History)(CP 404, 406, 408) appear on Mr. Espinoza’s “rap sheets.” The fifth, an FBI # appears on an Individual Information screen which is apparently maintained by the Administrative Office of the Courts. (CP 414). All such numbers, if disclosed, are clearly “information contained in records maintained by or obtained from criminal justice agencies, [which] provide individual identification of a person together with any portion of the individual’s record of involvement in the criminal justice system as an alleged or convicted offender,” as contemplated by RCW 10.97.030(1) (Emphasis Added). *Accord, Beltran*, 98 Wn. App. at 259-60. No claim has been made by Mr. Koenig on appeal that somehow the trial court erred in agreeing with the City that the information ultimately redacted by the City as of September 2007 is within the scope of CHRI as defined by CRPA, and that the CRPA applies to protect these five redactions.

Instead of addressing why the trial court potentially erred in upholding the City's redactions, the appellant engages in an academic argument to claim that *Hudgens* does not reach the sort of investigative materials which the City initially withheld under a claim of exemption per CRPA. But this reliance is inapposite for the simple reason that the trial court did not hold, nor was it asked to hold, to apply *Hudgens* to the limited redactions made by the City of Lakewood as of September 2007.

Although the City initially claimed reliance on CRPA in December 2005 which had the impact of denying Mr. Koenig's request, once the City understood Mr. Koenig's request following the commencement of litigation, its reliance on CRPA, and therefore *Hudgens*, was limited. In its July 23, 2007 disclosure, the City relied on CRPA as one of four general classes of exemptions/redactions, but, as the trial court found, the City erroneously did not identify which exemptions or redactions applied to which documents. (CP 186, 641 (FF 42)).⁸ Thus, by the time of the August 3, 2007 decision of the trial court to adhere to *Hudgens*, any claims that CRPA which could have extended to the sort of investigative materials originally claimed by the City were effectively mooted.

⁸ Recall, the month before, the City had attempted to send these materials to a "Daniel Koenig," to an earlier known address of the appellant. (CP 640-41 (FF 35); CP 186). The City's mailing predates Mr. Koenig's motion to compel. (CP 21, 186). But, Mr. Koenig did not receive these materials until after he submitted his motion to compel and these materials were attached to the City's responsive brief. (CP 21, CP 641 (FF 36)).

In response to the trial court's August 3, 2007 ruling to provide a more detailed exemption log, in its August 10, 2007 disclosures to Mr. Koenig, the City made its position clear:

You will also note that we are departing from established case law and the Court's holding regarding the applicable of the Criminal Records Privacy Act to documents that are not "rap sheets". You have repeatedly threatened to appeal on this issue and the City cannot afford the cost of defending the Court's ruling on this issue. We do not believe there is substantial risk in disclosure here since [Mr. Koenig] already reviewed the unredacted documents quite some time ago.

(CP 292).

By any measure, both before and after the trial court's August 3, 2007 decision to adhere to *Hudgens*, the City limited its reliance on CRPA to redact only limited portions of documents which are clearly CHRI and did not seek to extend it to investigative materials.

Both parties noted below that there are aspects of the *Hudgens* decision, which are subject to being revisited including those portions of the *Hudgens* opinion suggesting that police reports constitute CHRI and how to handle public access to CHRI vis-à-vis the PRA. The *Hudgens* court assumed, without analysis, that police reports constitute CHRI, and this portion of *Hudgens* very well may be dicta. However, limited to the facts of this case, because the balance of the redactions claimed under CRPA are proper, the City posits that this case is not necessarily the case

to revisit *Hudgens* and what constitutes CHRI. “Although we may be in a position to reject the reasoning of another Division of this court, until decisively rejected by our Supreme Court, we will reach similar results when presented with similar facts.” *City of Walla Walla v. Ashby*, 90 Wn. App. 560, 565, 952 P.2d 201 (1998), *overruled on other grounds*, *State v. Enstone*, 137 Wn.2d 675, 974 P.2d 828 (1999).

In this case, there is nothing more to disclose except “rap sheet,” information, which as discussed herein is clearly non-disclosable under CRPA. Mr. Koenig requested, received and reviewed the investigative reports, i.e., the police report, months before he filed the PRA request forming the basis of this litigation. There is no further CHRI at issue.

2. The Dismissal of Mr. Espinosa’s Criminal Case Was Not an “Adverse Disposition” Authorizing Disclosure Of Criminal History Records Information.

The second statutory definition under CRPA which Mr. Koenig invites an academic discussion, is whether the disposition of Mr. Espinoza’s criminal charge was adverse to him. RCW 10.97.030(4). CRPA defines an adverse disposition as follows:

[A]ny disposition of charges other than: (a) A decision not to prosecute; (b) a dismissal; or (c) acquittal; with the following exceptions, which shall be considered dispositions adverse to the subject: An acquittal due to a finding of not guilty by reason of insanity and a dismissal by reason of incompetency, pursuant to chapter 10.77

RCW; and a dismissal entered after a period of probation, suspension, or deferral of sentence.

RCW 10.97.030(4).

Mr. Espinoza's successful completion of the Stipulated Order of Continuance with Conditions, and the resulting dismissal of the charge against him with prejudice is not an adverse disposition, as contemplated by the CRPA, entitling public disclosure of CHRI. This is so for the simple reason that Mr. Espinoza was not found guilty, no finding of guilt was made, and the criminal charge against him was dismissed with prejudice.

The SOC at issue is a pretrial diversion agreement, akin to the one discussed at-length in this Court's recent decision in *State v. Ashue*, 145 Wn. App. 492, 188 P.3d 522 (2008). A pretrial diversion agreement is one by which the prosecuting authority agrees to dismiss the underlying charge, in exchange for a waiver of certain constitutional rights, including the right to a speedy trial, right to a jury trial, and a commitment to abide by certain conditions, and in the event of a violation of the agreement, a defendant agrees that a police report could be reviewed to determine their guilt or innocence. *See e.g., Ashue*, 145 Wn.App. at 501 (*citing State v. Kessler*, 75 Wn. App. 634, 636, 879 P.2d 333 (1994); *State v. Marino*, 100 Wn.2d 719, 720-21, 674 P.2d 171 (1984)).

The parties contractually agreed to divert the criminal charge and the case was diverted upon Mr. Espinoza maintaining law abiding behavior, paying of \$300 monitoring fees and obtaining an HIV test. The municipal court's role in this agreement was limited to ensuring procedural regularity throughout this process. *See Ashue*, 145 Wn.App. at 501, *citing Kessler*, 75 Wn.App. at 639. More accurately, the municipal court's role was limited to ensuring that the agreement (and the accompanying waiver of rights) was knowingly, voluntarily, and intelligently made, and in the event of a violation, that the prosecuting authority established a violation of the agreement by a preponderance of the evidence, that the decision to terminate the agreement was reasonable and that the stipulated facts supported a conviction. *See e.g., Marino*, 100 Wn.2d at 274-75.

When Mr. Espinoza successfully complied with the diversion agreement and the criminal case against him was dismissed with prejudice, this was not an adverse disposition as contemplated by CRPA and the examples noted by Mr. Koenig are distinguishable.

RCW 10.97.030(4)'s language pertaining to suspension or deferral, read in context, suggests that the Legislature was referencing the form of a criminal sentence. CRPA was originally enacted in 1977. At that time, and until the enactment of the Sentencing Reform Act in 1981, trial courts

could place a defendant on probation and suspend or defer imposition of their felony sentences. *State v. Breazeale*, 144 Wn.2d 829, 835, 31 P.3d 1155 (2001). Misdemeanor sentences continue to be classified as either a suspended sentence or a deferred sentence. *See e.g.*, RCW 3.66.067. There is a difference between a deferred sentence and a suspended sentence,

When a sentence has been “suspended,” the court has adjudged the accused guilty of the crime and has passed sentence upon him but has arrested the execution or operation of the sentence upon specified conditions. A sentence is “deferred” when the court adjudges the defendant guilty but stays or defers imposition of the sentence and places the person on probation.

State v. Carlyle, 19 Wn. App. 450, 454, 576 P.2d 408 (1978).

For those cases which are deferred, the defendant may be entitled to dismissal of the charge at the end of the deferral period. *See e.g.*, RCW 3.66.067.

It is owing, in part, to the collateral consequences following the dismissal of charges after the successful completion of a deferred or suspended sentence and acquittal by reason of insanity and dismissals for reasons of incompetency, as to why the termination of criminal proceedings in these circumstances remain adverse. Dismissals after completion of sentence may be considered in later sentencing decisions. *See e.g.*, *State v. Rawls*, 114 Wn. App. 719, 723, fn. 13, 60 P.3d 113 (2002). Those individuals acquitted by reason of insanity and dismissals

by reasons of incompetency under chapter 10.77 RCW may be referred for potential civil commitment proceedings, and subject to further confinement. RCW 10.77.110. These same individuals also lose their right to possess firearms. RCW 9A.41.047. If the crime for which the individual is acquitted is a sex offense, that individual may be required to register as a sex offender. RCW 9A.44.130.

Nor is this a case which is the functional equivalent of a dismissal entered after a period of probation. RCW 10.97.040(4). Probation ordinarily refers to the monitoring of a criminal defendant post-conviction. Bryan A. Garner, *Black's Law Dictionary* (8th Ed, 2004) (defining probation as “a court-imposed criminal sentence that, subject to stated conditions, releases a convicted person into the community instead of sending the criminal to jail or prison”); *see also*, RCW 3.66.067-.069,

A limited exception to this rule in which probation is incurred pre-conviction, and apparently misinterpreted by Mr. Koenig, applies in the case of deferred prosecutions. Washington law recognizes under chapter 10.05 RCW that certain criminal misconduct may be prompted by certain disabilities and in exchange for treatment, a defendant may procure the dismissal of their charges. A defendant seeking a deferred prosecution under chapter 10.05 RCW must allege that the wrongful conduct is the result of alcoholism, drug abuse or mental problems and the conditions of

the deferral of their criminal charges may be monitored by a probation department. RCW 10.05.170.

A deferred prosecution agreement and a pretrial diversion agreement share a number of similarities, but are distinctly different forms of diverting offenders. *Ashue*, 145 Wn.App. at 499. The former is statutory, the latter is not. *Id.* This distinction is important because in the deferred prosecution context, a defendant is ineligible for diversion if they believe that they are innocent of the offense charged. *See* RCW 10.05.020(3)(i). This diversion agreement contains no such stipulation. In the deferred prosecution context, the defendant is required to obtain a treatment commitment from a provider and undergo such treatment before entry into the deferred prosecution program. RCW 10.05.060. No such treatment requirements are mandated, unless the parties so agree, in a diversion agreement.

A trial court, in the event of a violation of a diversion agreement must nevertheless conclude that the stipulated facts support a finding of guilt. *See e.g., Marino*, 100 Wn.2d at 724 (“Following diversion termination, the accused still has the opportunity to clear him or herself of the charges at trial.”). By stipulating to a police report, without more, should a stipulated facts trial become necessary is not the functional equivalent of a guilty determination. *See e.g., State v. Johnson*, 104

Wn.2d 338, 705 P.2d 773 (1985). There are occasions where a defendant has been acquitted following termination of the diversion program because the stipulated facts do not support a finding of guilt. (CP 214).

By contrast, the dismissal of the case against Mr. Espinosa was not a disposition adverse to him for a simple reason and for which adverse dispositions are recorded and maintained: he was not convicted. At all times, Mr. Espinoza retained the presumption of innocence. No court made a finding of guilt. Mr. Espinoza did not receive a suspended or deferred sentence in this matter. He was not placed on probation. He did not suffer any recognized legal disability as a result of this incident. The charge against him was simply continued, and in exchange for both his waiver of rights and compliance with the terms of the diversion, he received a dismissal of the charges against him with prejudice. This dismissal is not a disposition adverse to him as contemplated by CRPA.

3. The Proceedings Were Not Actively Pending At The Time of the December 2005 Request.

The final academic discussion invited by Mr. Koenig involving the interpretation of CRPA is whether the proceedings were actively pending as contemplated by RCW 10.97.030(2). At the time that Mr. Koenig had made his December 2005 request (i.e., the one which forms the basis of this litigation), the criminal charge against Mr. Espinoza had since been

dismissed and, thus, was “no longer actively pending,” as contemplated by RCW 10.97.030(2).

Recall that there were two PRA requests by Mr. Koenig. The first, dated November 11, 2004 came while the criminal case was open and Mr. Koenig acknowledged before the trial court that any claims stemming from any alleged mishandling of this request were not the basis of any cause of action in this litigation. 2 VRP 27. However, the request forming the basis of this litigation, dated December 2005 came several weeks after the criminal case was dismissed on November 10, 2005. (CP 293). Because the criminal case, at the time of the December 2005 request, was dismissed with prejudice at the request of both the City of Lakewood and Mr. Espinoza pursuant to the successful completion of the SOC, this proceeding could not have been actively pending at the time of this December 2005 request.

////

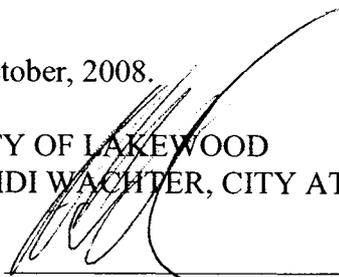
////

CONCLUSION

For the foregoing reasons, the City of Lakewood requests that this Court affirm the decision of the Pierce County Superior Court in all respects.

DATED this 8th day of October, 2008.

CITY OF LAKEWOOD
HEIDI WACHTER, CITY ATTORNEY

By: 
MATTHEW S. KASER, WSBA#32239
Associate City Attorney
City of Lakewood

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2008, I served the Brief of Respondent on:

William John Crittenden
Attorney at Law
927 N. Northlake Way, Ste 301
Seattle, WA 98103

By the following indicated methods:

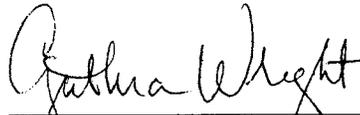
E-Mail to wjcrittenden@comcast.net, delivery confirmation requested

and

by delivery to, ABC Legal Messenger Service, delivery confirmation requested

The undersigned hereby declares, under penalty of perjury, that the foregoing statements are true and correct.

Executed at Lakewood, Washington this 8th day of October, 2008.



CYNTHIA WRIGHT, Paralegal
Lakewood City Attorney's Office

FILED
COURT OF APPEALS
DIVISION II
03 OCT -9 PM 1:55
STATE OF WASHINGTON
BY _____
DEPUTY

APPENDIX A

| | | SPECIFIC ISSUE | PAGE | DISPOSITION / LEGAL AUTHORITY |
|---|------------------------------|--|------|--|
| 1 | Police Report | | | |
| | | DOB | 5 | COL Agrees to Disclose |
| | | License Number of Vehicle | 7 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| | | VIN # of Vehicle | 7 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| 2 | LESA Criminal History Report | | | |
| | | Requestor # | 33 | COL Agrees to Disclose |
| | | DOB | 33 | COL Agrees to Disclose |
| | | CHRI # | 33 | Redact as Non-conviction Data - RCW 10.97 - A CHRI # is an individual identifier and therefore constitutes "Criminal History Record Information" pursuant to 10.97.030(1). |
| | | SSN# | 33 | Plaintiff agreed to redaction |
| | | TPD# - Internal TPD assignment number for tracking | 33 | Redact as Non-conviction Data - RCW 10.97 - A TPD # is an individual identifier and therefore constitutes "Criminal History Record Information" pursuant to 10.97.030(1). |
| | | Licenses | 33 | Redact pursuant to RCW 9.41.129 and RCW 42.56.240(4) |

392

| | | | |
|---|--|----|--|
| 3 | Case History Reports | | |
| | SID # (same as Driver's License #) | 23 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & Reno v. Condon, 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Charge/Finding | 23 | Redact as Non-Conviction Data pursuant to RCW 10.97 |
| | Defendant Case History Query Results (DCH) from AOC Database accessed by Lakewood Municipal Court Clerk's Office | 24 | Redact as Non-Conviction Data pursuant to RCW 10.97, See also RCW 46.12.380 |
| 4 | Abstracts of Driving Record . 10-21-04 and 11-04-04 | | |
| | Driver's License # | 25 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & Reno v. Condon, 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Social Security Number | 25 | Plaintiff agreed to redaction |
| | DOB | 25 | COL Agrees to Disclose |
| | Date License Issued | 25 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & Reno v. Condon, 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Date License Expired | 25 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & Reno v. Condon, 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Endorsements | 25 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & Reno v. Condon, 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Abstract of 10-21-04 | 25 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & Reno v. Condon, 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Driver's License # | 26 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & Reno v. Condon, 528 U.S. 141, 120 S.Ct.666 (2000). |

| | | | |
|---|---|----|--|
| | Social Security Number | 26 | Plaintiff agreed to redaction |
| | DOB | 26 | COL Agrees to Disclose |
| | Date License Issued | 26 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Date License Expired | 26 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Endorsements | 26 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Abstract of 11-04-04 | 26 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| 5 | Individual Information Request (PER) Query Results from AOC Database - Accessed by Lakewood Prosecutor's Office | | |
| | StID (Driver's License Number) | 27 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Driver's License Number | 27 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| | Expiration of Driver's License | 27 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| | WA State ID # | 27 | Redact pursuant to Federal Driver's Privacy Protection Act 18 U.S.C. Section 2721, WAC 308-56A-090, RCW 46.12.390 & <u>Reno v. Condon</u> , 528 U.S. 141, 120 S.Ct.666 (2000). |
| | DOB | 27 | COL Agrees to Disclose |
| | Social Security Number | 27 | Plaintiff agreed to redaction |

345



LAW ENFORCEMENT SUPPORT AGENCY
930 Tacoma Avenue South, Room 239
Tacoma, Washington 98402



CRIMINAL HISTORY REPORT

Requestor - 2004289002/LKM

10/15/2004

Agency - TACSO

ESPINOZA, DANIEL NMN JR

| | | | | | |
|-------------------------|----------------|-----------------|-------------------|------------------|---------------|
| Name | Race | Sex | DOB | Applicant | CHRI # |
| ESPINOZA, DANIEL NMN JR | White | Male | 9/29/1966 | | [REDACTED] |
| Place of Birth | SSN | Deceased | Death Date | | |
| ORANGE,CA | [REDACTED] | | | | |
| FBI # | STATE # | TPD # | SO # | | |
| | | [REDACTED] | | | |

Alias/Location Information

| | | | | | | | |
|-------------------------|-------------|---------------|--------------------------------|-------------|-------------|-----------------------|--------------------|
| Alias Names | DOB | SSN | Address | | | | |
| ESPINOZA, DANIEL NMN JR | | | 1834 E 32ND ST,TACOMA,WA,98404 | | | | |
| ESPINOZA, DANIEL JR | | | | | | | |
| ESPINOZA, DANIEL | | | 1834 E 32ND ST TACOMA WA 98404 | | | | |
| Sex | Race | Height | Weight | Eyes | Hair | Place of Birth | Citizenship |
| Male | White | 505 | 160 | Brown | Black | ORANGE,CA | |
| | | | 180 | | Brown | ORANGECA | |

Licenses

| | | |
|--------------------------|--------------|--------------------------|
| License Type | Value | Registration Date |
| Concealed Pistol License | [REDACTED] | [REDACTED] |
| Concealed Pistol License | [REDACTED] | [REDACTED] |
| DLN No | [REDACTED] | |

History Details

**** THIS RECORD IS FURNISHED BY LESA FOR OFFICIAL USE ONLY, SECONDARY

**** DISSEMINATION IS PROHIBITED UNLESS IN COMPLIANCE WITH RCW 10.97.050

Open this Record

404

Page: 1 Document Name: untitled

0911 Top of list

DN2000SX

10/21/04 16:15:56

DN2001MI Defendant Case History (DCH)

LAKWOOD MUNICIPAL

PUB 1 of 1

Case: _____ Csh: _____ Pty: _____ StId: _____ WA

Name: ESPINOZA, DANIEL JR NmCd: IN 785 34641

CONFIDENTIAL--NOT FOR RELEASE

More>

True Name: ESPINOZA, DANIEL JR

IN 785 34641

2 Cases

AKA's:

| S | N | Case | LEA | Ty | Crt | Violation | | --- Status --- | | | | | | |
|-----|-----|-----------|-----|----|-----|-----------|-------------------------------|----------------|----|----|---|---|---|---|
| | | | | | | Date | Short Title | DV | Jg | CD | W | F | O | |
| --- | --- | L42881091 | LKM | CN | LKM | 10/14/04 | BAIL PENDING FILING OF CHARGE | N | | | | | | |
| --- | --- | 947074 | TAP | CT | TMC | | 05/31/92 NEGLIGENT DRIVING | | | | | | | G |

| | | | | | | | | | | |
|------|-----|-----|-----|-----|-----|-----|-----|------|------|------|
| PF1 | PF2 | PF4 | PF5 | PF6 | PF7 | PF8 | PF9 | PF10 | PF11 | PF12 |
| HELP | PER | CDK | PLS | CDT | BWD | FWD | DOL | COS | CFHS | EXIT |

DN7002PX EHL
11/04/2004 08:40 AM

LAKWOOD MUNICIPAL COURT
DEFENDANT CASE HISTORY REPORT

PAGE: 2

BEFORE JUDGE: ERNEST HELLER

ROOM: Courtroom

FOR CALENDAR ARR

11/09/2004 8:30 AM

Case: 4-0001241 LKM CN

Name: ESPINOZA, DANIEL JR

785 34641

2 Cases

| Case | LEA | Ty | Crt | Loc | Hearing | Balance | C | CD | W | F | O | | | |
|----------------------|----------|--------------------------|-----|------------|----------|---------|---|----|---|---|---|----|---|---|
| ----- | | | | | | | | | | | | | | |
| Via Date Short Title | | | | | | | | | | | | | | |
| ----- | | | | | | | | | | | | | | |
| 4-0001241 | LKM | CN | LKM | | 11/09/04 | | | | | | | | | |
| | 10/14/04 | PATRONIZING A PROSTITUTE | | | | | | | | | N | | | |
| 947074 | TOP | CT | TMC | [REDACTED] | | | | | | | | CL | * | * |
| | 05/31/92 | NEGLIGENT DRIVING | | | | | | | | | 6 | | | |

CONFIDENTIAL--NOT FOR RELEASE

01347W Middle name code on Dr Lic No does not match middle initial. DG0363SX

10/21/04 16:16:23

DG1000MU Individual Information (PER) LAKEWOOD MUNICIPAL PUB 1 of 2

Case: _____ Csh: _____ Pty: _____ StID: _____

Name: ESPINOZA, DANIEL JR NmCd: IN 785 34641

CONFIDENTIAL--NOT FOR RELEASE

NmCd: IN 785 34641 Name Updated on _____ By _____ from Court

Name: ESPINOZA, DANIEL JR

Addr: 310 16TH ST NW

City: PUYALLUP St: WA Zip: 98371 Cy: US Co: 27

Hm Ph: 253 272 5964 Wk Ph: _____ Resides With: _____

Race: W Ethnicity: U ICWA: _____ Sex: M DOB: 09 29 1966 Age: 38 DOD: _____

Dr Lic No: _____ St: WA Expires: _____

Address Last Updated on 10/20/2004 by WLG From Court LKM SC

More addresses (PF4)

---- Identifying Information Updated on 10/20/2004 By WLG from Court LKM ----

Wash St Id: _____ Height: 5 5 Weight: 160 JUV #:

Eyes: BRO Hair: BRO True Name: _____ DOC Number: _____

SSN : _____ FBI Nu: _____ Emp Name: SEATTLE PD

Interpretr: _____

Phy Desc : _____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
Help ADH Rfsh AKA BWD FWD Exit