

TABLE OF CONTENTS

I. INTRODUCTION	1- 2
II. ASSIGNMENTS OF ERROR	3
III. STATEMENT OF THE CASE.....	3- 4
A. WORTHINGTON'S REQUEST FOR RECORDS	4
B. WSP'S DENIAL OF WORTHINGTON'S REQUEST	4-5
C. PROCEDURAL HISTORY	5-7
IV. ARGUMENT.....	7
A. GRETCHEN DOLAN'S DECLARATION.....	7
1. DOLAN'S CLAIM THAT TNET IS A SEPARATE ENTITY.....	7-8
2. DOLAN'S CLAIM THAT WSP HAD NO TNET RECORDS.....	8- 9
B. BJORNBERG AND BRANIFF'S DECLARATION.....	9
1. WORTHINGTON'S CASE WAS A DEA INVESTIGATION AND ALL BJORNBERG'S RECORDS WERE IN THE POSSESSION OF THE DEA.....	9-11
C. RICH WILEY'S DECLARATION.....	11
1. WILEY'S CLAIM THAT WSP ONLY HAD ADMINISTRATIVE RECORDS, AND NO POLICE REPORTS.....	11
D. MORE CONTROVERSY.....	12
1. INTERLOCAL AGREEMENT.....	12
2. THE WSP PROCEDURE MANUAL, WSP INVESTIGATIVE REPORTING AND PROCEDURES.....	13-15
E. ANALYSIS OF THE TRIAL COURT'S DECISION.....	16-17
F. CLOSING.....	18-20
V. CONCLUSION.....	20-21
APPENDIX.....	22-28

TABLE OF AUTHORITIES

CASES

ADICKES v. S.H.KRESS & CO..... 398 U.S.144 (1970) P. 398 U. S. 158

ANDERSON v LIBERTY LOBBY INC.....477 U.S. 242,243 (1986)

CALDER v. JONES.....465 U.S. 783 (1984)

HEARST CORP v. HOPPE.....90 Wn.2d 123, 127, 580 P.2d 246 (1978))

HERVEY v. ESTES.....65 F.3d 784, 788 (9th Cir.1995).

PAWS v. UW.....125 Wn.2d 243, 251, 884 P.2d 592 (1995)

SMITH v. OKANOGAN COUNTY..... 100 Wn. App. 7, 10, 994 P.2d 857 (2000).

STATUTES

RCW 43.43.600.....	19
RCW 43.43.620.....	19
RCW 43.43.655.....	19
RCW 43.43.850.....	18
RCW 43.43.854.....	18-19
RCW 43.43.856.....	18
RCW 42.56.550 (3).....	7

I. INTRODUCTION

This case arises out of appellant John Worthington's request for public records from the Washington State Patrol. (Hereafter "WSP") pursuant to the Public Records Act, (Hereafter "PRA"), RCW Chapter 42.56. Worthington requested the records of WSP's Fred Bjornberg created on January 12, 2007, while assisting on a West Net Search warrant. The WSP public disclosure officer Gretchen Dolan claimed that Fred Bjornberg worked under a federal contract for TNET, and claimed that "WSP did not have any access to any TNET records", because TNET in her words was a "separate federal entity". Dolan did not ask for clarification or claim any exemptions for Worthington's records request, Dolan simply claimed WSP had "no records from a Separate federal entity to which Bjornberg was assigned. Worthington filed suit in Thurston County Superior Court in an effort to obtain WSP records of his arrest.

The Washington State Attorney General then filed Four Declarations in support of a Motion for Summary Judgment. Dolan declared under laws of perjury that WSP has "no TNET records". Bjornberg and Tim Braniff declare under laws of perjury that DEA has all TNET records and that Worthington was the target of a DEA investigation, and only the DEA had any records of Worthington's arrest. Worthington challenges the Declaration of Gretchen Dolan by submitting numerous exhibits as evidence of TNET administrative, grant monitoring, and criminal intelligence records found in WSP's possession. Worthington then uses numerous exhibits to challenge the Declarations of Fred Bjornberg, and Tim Braniff claiming that Worthington's case was a DEA case.

The Moving party provides another Declaration, by WSP's Rich Wiley which states that WSP does not have access to RISSNET or police records, and has TNET

administrative documents only. The Moving party again states that; WSP is not a one stop shopping center for police reports, Fred Bjornberg works for the DEA, WSP has no TNET records and that Worthington can not prove otherwise. The Thurston County Superior Court Judge Chris Wickham states that he is “satisfied” that WSP has no records responsive to Worthington’s request for public records, and grants a motion for Summary Judgment.

Worthington files a Motion to reconsider and submits more Exhibits as proof that; WSP has TNET records, WSP had records of Worthington’s arrest, and then argues that Four of the five Declarations used by the moving party contained false statements and were made in bad faith to avoid the Washington State PRA. Worthington also submits the TNET Executive Board meeting minutes from February 14, 2007 with Fred Bjornberg’s name at the top, showing details of Worthington’s arrest, and details that another Washington State Narcotics Task Force West Ne requested TNET to assist in the raid and warrant on Worthington. This document shows a West Net and Department of Defense investigation, not a DEA investigation as Declared by the WSP. Worthington also uses more Exhibits to discredit the Declarations of Fred Bjornberg, Tim Braniff, Rich Wiley, and Gretchen Dolan.

The moving party states that the other public records request Worthington has found are irrelevant, and states that Fred Bjornberg worked for the DEA and that WSP had no records responsive to Worthington’s “narrow request”. Judge Chris Wickham states that he is “satisfied” that WSP has no records responsive to Worthington’s request for public records, and denies Worthington’s motion to reconsider

II. ASSIGNMENTS OF ERROR

Assignments of Error.

The trial court erred in granting the defendants Motion for Summary Judgment on December 5, 2008, and then erred again in the denial of Worthington's Motion to Reconsider on December 30, 2008.

Issues Pertaining To Assignments of Error

- A. Whether the Trial Court erred by; allowing a trial by false affidavit, to use four declarations with false statements to support a Motion for Summary Judgment. CP14-21, CP 24-26, CP 287-290**
- B. Whether the Trial Court erred by; not looking at the non moving parties' evidence in a more favorable light, not allowing a full trial to determine the accuracy of the Declarations and exhibits, and to rule which version of the truth was correct.**
- C. Whether the Trial Court erred when; deciding if WSP had the documents Worthington requested, rather than deciding if there were any controversies for a full trial. Page 11 RP 12/05/08, Page 10 RP 12/30/08**
- D. Whether the Trial Court erred by; ignoring hard factual evidence of Worthington's arrest, in the February 14, 2007 TNET Executive Board meeting minutes, with WSP's Fred Bjornberg, Tim Braniff, and Rich Wiley's name on the top of a document ,CP 429,that was admitted to be a record from an WSP IAD Organized Crime Intelligence Unit. CP 340**

III. STATEMENT OF THE CASE

The records at issue in this case relate to a civil case in Thurston County Superior Court, Worthington v. Washington State Patrol No.08-2-01410-7. Worthington complained of illegal medical marijuana plant limits and about the use of FLIR thermal imaging. The record shows that West Net, a Washington State Narcotics Task Force, and the Department of Defense began an investigation of Worthington and

Steve Sarich. On January 12, 2007 task forces attempted a knock and talk at Worthington's house, using Worthington's medical marijuana authorization that had been obtained in a raid of Steve Sarichs' house.

Worthington denied task forces entry and told them to get a search warrant. West Net and TNET then served a telephonic warrant on Worthington, and enter Worthington's home finding 6 medical marijuana plants. West Net detectives state that Worthington is a legal medical marijuana patient and say they are going to leave the plants. Fred Bjornberg steps forward, and states he is a DEA agent and says he will have to confiscate the plants. Worthington did not know that Fred Bjornberg was a WSP officer assigned to TNET. Worthington eventually finds out that Fred Bjornberg is a WSP employee assigned to TNET ,and files a PRA request with the WSP.

A. Worthington's Request for Records

On January 22, 2008, Worthington made a Public records request with the Washington State Patrol for the written records of Fred Bjornberg, created on January 12, 2007 in the process of Worthington's arrest. Worthington also asked for all written materials given to West Net Detective Roy Alloway, and for Worthington's medical records that were taken during Worthington's arrest.

B. WSP's Denial of Worthington's Request

On February 15, 2008 WSP public records officer Gretchen Dolan responded that WSP did not have any records and that Worthington was to contact the U.S. Department of Justice. On February 15, 2008 Worthington sends Dolan copies of Washington State

agency data found on two Washington State agencies websites, showing Fred Bjornberg listed as a WSP employee, and TNET as a Washington State Narcotics Task Force.

On February 19, 2008 Dolan responds by claiming that Fred Bjornberg; is contracted to TNET , that TNET is a separate federal entity, with “their own records” and states further “WSP doesn’t have anything” Dolan does not request clarification from Worthington or claim any exemptions. Since WSP claims to have “nothing”, Worthington does not clarify or change the request.

C. Procedural History

On June 11, 2008 Worthington filed a lawsuit in Thurston County Court to challenge WSP’s claim that WSP had no TNET records or records of Fred Bjornberg regarding Worthington’s arrest on January 12, 2007. On November 6, 2008 the Washington State Attorney General’s office filed a motion for Summary Judgment. The Moving party submitted four declarations to support the claim that WSP’s Fred Bjornberg worked for the DEA, and that WSP did not have any access to TNET records.

On November 17, 2008 Worthington responded to the motion for Summary Judgment with numerous exhibits showing WSP having possession of TNET records, and documents showing that WSP performs administrative duties, federal grant monitoring intelligence gathering, and sharing for Washington State drug task forces. Worthington also submits numerous other exhibits and uses them to challenge three of the Declarations line by line.

On November 26, 2008 the Washington State Attorney General submitted another declaration claiming that WSP only had administrative records, and no access to a RISSNET system or police records.

On December 5, 2008 Thurston County Superior Court Judge Chris Wickham heard testimony from WSP counsel Shannon Inglis that claimed Fred Bjornberg worked for the DEA and Worthington could not prove otherwise. Worthington's testimony attacked the declarations of Gretchen Dolan, Tim Braniff, Fred Bjornberg, and Rich Wiley, claiming that they were false statements made in bad faith, and asked the Judge to throw four of the five declarations out of court. Worthington states that there is too much controversy here to be settled in a Summary Judgment, then asks the Judge not to create an extra step in the process and deny a motion for Summary Judgment. On December 5, 2008 Thurston County Superior Court Judge Chris Wickham granted the moving parties motion for Summary Judgment.

On December 11, 2008 Worthington filed a motion to reconsider with the Thurston County Superior Court. Worthington submits as evidence additional exhibits showing; a TNET Executive Board meeting with criminal intelligence reports, Dolan claiming an organized crime criminal investigation exemption for a document that had been declared to be an administrative document, WSP having access to TNET arrest records, Fred Bjornberg's individual duties in the Investigative Assistance Division (IAD), and a TNET Executive Board meeting from February 14, 2007, with Fred Bjornberg's name on the top of the document. The TNET Executive Board meeting on February 14, 2007 shows details of Worthington's arrest, and shows a direct connection to Fred Bjornberg, Tim Braniff, and Rich Wiley of the WSP. The Moving party claims that other public disclosure requests are not relevant, states again that Fred Bjornberg works for the DEA and Worthington can not prove otherwise.

On December 30, 2008 Thurston County Superior Court Judge Chris Wickham

denied Worthington's motion to reconsider. On January 2, 2009 Worthington filed an appeal to the Washington State Court of Appeals for Division II.

IV. ARGUMENT

The Public Records Act “is a strongly worded mandate for broad disclosure of public records.” (Progressive Animal Welfare Society v. UW (PAWS II)), 125 Wn.2d 243, 251, 884 P.2d 592 (1995) (quoting Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978)). ‘The Act’s disclosure provisions must be liberally construed and its exemptions narrowly construed’. PAWS II, 125 Wn.2d at 251. Courts are to take into account the Act’s policy “that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.” RCW 42.56.550 (3). This Court’s review of the trial court’s ruling on summary judgment is de novo. Smith v. Okanogan County, 100 Wn. App. 7, 10, 994 P.2d 857 (2000). In the argument sections that follow; Worthington addresses Gretchen Dolan’s response to Worthington’s Public records request, the moving parties Declarations used in support for Motion for Summary Judgment, and explains why the trial court’s decision to grant a Summary Judgment in favor of the moving party (WSP) was incorrect.

A. GRETCHEN DOLAN’S DECLARATION

1. DOLAN’S CLAIM THAT TNET IS A SEPARATE FEDERAL ENTITY: CP 24-26

In Hervey v. Estes 65 F.3d 784, 788 (9th Cir.1995), the U.S. NINTH CIRCUIT

COURT OF APPEALS ruled that TNET was not subject to suit because it was merely an intergovernmental association, and not a separate legal entity. (Hervey ,supra 65 f 3d at p.792 CP 238-242

Hervey also ruled that TNET's member agencies were responsible for employment of all employee's whom were continuing under the employment of member entities. CP 241
Worthington asserts that Dolan's claim that TNET was a separate federal entity was a false claim made in bad faith in order to skirt the PRA.

2. DOLAN'S CLAIM THAT WSP HAD NO TNET RECORDS:
CP 24-26

Worthington was able to request and obtain TNET administration documents from WSP, in a separate PRA request. CP 310-334 Worthington was also able to obtain from the Washington State Department of Community Trade and Economic Development (CTED) more TNET administration documents and grant monitoring documents WSP was tasked to submit to CTED. CP 85-220 Worthington was able to obtain TNET Executive Board meeting minutes from January 3, 2007 from Dolan in another PRA request. CP 177 Worthington also found WSP records responsibilities for TNET in the Interagency Agreement between WSP, and TNET. CP 188 Worthington also found TNET records responsibilities in the TNET Interlocal Agreement, which required the TNET Executive Board to send copies of monthly reports to each participating agency including the WSP. CP 156 Worthington also found WSP records responsibilities for TNET in the TNET Regional Task Force agreement. CP 194

Worthington also finds a Narcotics Task Force Policy and Procedure manual, and a WSP Investigative Assistance Division (IAD) Division manual showing WSP employee and Commissioned IAD employee's records responsibilities for Narcotics Drug Task Forces. CP 347-420

Worthington then finds TNET Executive Board meeting minutes from February 14, 2007 with Fred Bjornberg's name on top, showing details of Worthington's arrest. CP 429
Worthington feels that Dolan's statements made both in her reply to Worthington's PRA request, and also in her Declaration, were blatant false statements made in bad faith, and should not have been considered truthful enough to support the moving parties Motion for Summary Judgment. Dolan's Declaration should have been dismissed as evidence to support the motion granting Summary Judgment.

B. BJORNBERG AND BRANIFF'S DECLARATION

1. WORTHINGTON'S CASE WAS A DEA INVESTIGATION, AND ALL BJORNBERG'S RECORDS WERE IN THE POSSESSION OF THE DEA:

CP 14-21

The affidavit used to acquire the search warrant for Worthington's house clearly shows that West Net Task Force officer and Bremerton police Detective Roy Alloway, decided to investigate Worthington for helping a man change his federal plea in a West Net case. The Affidavit also claims that Worthington complained about illegal plant limits and State Drug Task Forces enforcing Federal drug laws over the Washington State medical marijuana laws. CP 46-63

Worthington made a separate PRA request from WSP, and obtained a TNET monthly arrest report showing that TNET had listed Worthington's case as a state investigation. CP 181 or CP 346

Worthington made another PRA request from another TNET participating agency and received TNET Executive Board meeting minutes showing a West Net, and Department of Defense investigation in which TNET assisted in the raid on Worthington. CP 429
The Narcotics Task Force Policy and Procedure manual, and a WSP Investigative

Assistance Division (IAD) Division manual showing WSP employee, and Commissioned IAD employee's records responsibilities show; the IAD would have Bjornberg's individual records, and his records as IAD commissioned Group supervisor, which were all used to generate the TNET Executive Board meeting minutes from February 14, 2007. The Narcotics Task Force Policy and Procedure manual, and a WSP Investigative Assistance Division (IAD) Division manual showing WSP employee, and Commissioned IAD employee's records responsibilities, also shows that the WSP IAD officers assigned to state drug task forces will keep their own records no matter which participating agency instigates the case, so WSP can enter the information into a state criminal data base.

The Narcotics Task Force Policy and Procedure manual, and a WSP Investigative Assistance Division (IAD) Division manual showing WSP employee, and Commissioned IAD officers' records responsibilities, also show that the IAD generated federal grant monitoring documents, and administration documents for submission to the SAA.

(CTED) CP 347-420 These manuals show all criminal intelligence information procedures for all commissioned IAD personnel. Fred Bjornberg is a commissioned IAD employee, as verified in the Declaration of Mark Lamoreaux. CP 22-23

Worthington feels that Bjornberg and Braniff knew that WSP had records of his arrest and made false statements to hide controversial documents from being disclosed. WSP still has not provided their copy of the February 14, 2007 TNET Executive Board meeting minutes which were required to be sent to them by the TNET Executive board, as per the TNET Interlocal Agreement. CP 156

WSP only sent the TNET January Monthly arrest record showing Worthington's arrest, which was created on February 13, 2007 for the TNET Executive Board meeting on February 14, 2007. Both Bjornberg and Braniff are listed on the top of the February 14, 2007 TNET Document showing details of Worthington's arrest. CP 429

Bjornberg and Braniff's Declarations should have been dismissed as evidence to support the motion granting Summary Judgment.

C. RICH WILEY'S DECLARATION

1. WILEY'S CLAIM THAT WSP ONLY HAD ADMINISTRATIVE RECORDS FOR TNET AND NO POLICE REPORTS: CP 287-290

Worthington obtained a copy of a TNET Executive Board meeting from another TNET participating agency, which was not redacted in its entirety, clearly showing criminal investigation reports of TNET cases. CP 421 Dolan also claims an organized crime criminal investigation exemption on that same (January 3, 2007) TNET Executive board meeting CP 340 Worthington made a PRA request to the WSP and obtained The Narcotics Task Force Policy and Procedure manual, and a WSP Investigative Assistance Division (IAD) Division manual. CP 347-420 These manuals show all criminal intelligence information procedures for all commissioned IAD personnel.

Worthington obtained thru the PRA, the February 14, 2007 TNET Executive Board meeting minutes that clearly show detail of Worthington's arrest. This document is prepared by the WSP IAD using a summary of records and reports CP 363-420 Rich Wiley's name is also listed on the February 14, 2007 TNET Executive Board meeting minutes. Rich Wiley knew that WSP had records of Worthington's arrest on TNET Executive board meeting minutes and on a statewide data base operated by the WSP. Worthington feels that Rich Wiley made false claims in bad faith to help the WSP skirt the PRA, and feels that Rich Wiley's Declaration should have been dismissed as evidence to support the motion granting Summary Judgment.

D. MORE CONTROVERSY

1. INTERLOCAL AGREEMENT

CP 156-158

Gretchen Dolan's response to Worthington's PRA request was proven to be a false statement, when Worthington found WSP in possession of TNET records thru separate PRA requests. Worthington finds out by reading the TNET interlocal agreement, that TNET Executive board meeting minutes are required to be sent to all participating agencies including the WSP. Worthington then starts making PRA requests for specific documents listed on the TNET interlocal agreement. Dolan responds to the PRA Request, and redacts nearly all of the January 3, 2007 TNET Executive board meeting and withholds the February 14, 2007 TNET Executive Board meeting.

Worthington see's personal written notes containing the word West Net, and requests that Dolan resend the document with more reasonable redactions. Dolan then claimed an organized crime criminal intelligence exemption for a document ,CP 340, that was supposedly an administrative document. Rich Wiley had claimed the WSP had no police reports or records, and only administration records, CP 287-290, which contradicted Dolan when she claimed an organized crime criminal investigation exemption on an "administration record" that was redacted in its entirety to conceal an organized crime criminal investigation document.

Dolan was trying to hide a document showing a record of Worthington's arrest, which was required by the TNET interlocal agreement to be sent to all TNET participating agencies including WSP. Dolan was caught trying to have it both ways, claiming on one hand Bjornberg worked for the DEA for a reason to deny a PRA request, and then on the other hand claiming a Washington State organized crime criminal investigation law also applied to TNET , and Bjornberg to deny another PRA request. CP 340

2. THE WSP NARCOTIC ENFORCEMENT TASK FORCE POLICY AND PROCEDURE MANUAL, WSP INVESTIGATIVE REPORTING AND PROCEDURES.

CP 347-420

Bjornberg and Braniff claimed the DEA had all Worthington's records and all TNET'S records. Their Declarations were proven to be false by Worthington's Exhibits showing WSP in possession of TNET documents that were declared to not be in WSP'S possession. The CTED documents, WSP IAD website, WSP Narcotics Task Force Policy and Procedure manual and a WSP Investigative Assistance Division (IAD) Division manual, all tell a different story than that of Dolan ,Bjornberg ,Braniff ,and Wiley.

In Exhibit 8 CP 347-362, CP 348 of the Administrative Section, it spells out the chain of command proving that this was a state drug task force. CP 350, outlines the duty of the group supervisor, (the record has established on Fred Bjornberg's card, and on all TNET Executive Board meeting minutes, as the group supervisor) to prepare monthly activity reports for presentation and review by the executive board. CP 253-254 shows the duties of the task force office manager, whom has to fill out monthly and quarterly task force reports, and track statistical data needed by federal and state agencies, and also the Task Force Executive Board. The office manager also drafts quarterly and year –end Task Force reports to CTED for federal grant monitoring. CP 356 shows the listed duties of the Office Assistant, to enter and track investigation records into computer data bases, and assist the office manager in maintaining computer arrest records, seized property and evidence, as well as retrieve records from police, agency, and public sources and enter follow up reports, files and maintaining tracking system in intelligence files. CP 358 describes criminal intelligence files, which refer to both the classified file system, and computerized index system cataloging stored

criminal intelligence information. The criminal intelligence file description are describes as follows. Criminal intelligence reports, Law Enforcement intelligence unit (leiu) files, field information report, working files, and a 90 day suspense file. The Criminal intelligence file objectives are to provide the Task Force with a data base as specified by RCW 43.43.854. The criminal intelligence file content is materials stored such as information from informants, confidential field reports, intelligence analysis, and other materials directly related to the criminal intelligence being collected. CP 359 talks about specific criminal intelligence information relating to individuals, and organizations that have or have not committed criminal acts. CP 360 covers file indexing, and a computerized master posting screen, which can be searched via the computerized master index by name, file number, or records number. CP 362 covers investigative reports which are required when an event occurs that will result in an arrest, charging a crime , leads to a probable cause for an arrest, or search warrant, and when requested by the prosecuting attorney.

In Exhibit 9 CP 363 chapter 1, section 1-1 titled investigative reporting describes the reports that are to be submitted. The case initiation report, the case summary report, investigative summary report officer's investigative report, and informant briefing report are all required to be submitted to the investigative report. CP 365, Section 02 titled case initiation covers case initiation procedures, and refers to Exhibit 8 an authority for procedures. CP 366-367, Section 03 titled Request for Assistance show a case number will be assigned upon approval by the supervisor, when requests for assistance are received by local and federal agencies. The supervisor conducts a pre investigation, and all records and information gathered in the pre-investigation shall be maintained in an investigative file. Then a case initiation report is prepared, followed by a summary report. CP 368, Section 04 titled self initiated case procedures details more case procedures. CP

369, Section 05 titled summary report contents shows a case number and file will be established for each incident. CP 370, Section 06 titled case titles shows that case file numbers are obtained by the initiating case officer through any Washington State Patrol Communications center and Division officers will utilize the individual task force case numbering system. The case number consists of a two digit calendar year designation followed by a six –digit computer generated sequential number.

A level of violator code is assigned to any investigation, for which a case file number is assigned, only intelligence probes that will not result in prosecution are not assigned a violator code. CP 371, Section 7 titled file numbers show the make up of a six digit computer generated sequential number. CP 372-375 Sections 8-9 show a level violator code guideline. CP 376 Section 10 titled file ledger shows that a master ledger will be kept identifying a list of headings. CP 376, Section 11 titled file status says cases are kept in case the investigation obtains new evidence. CP 377, Section 13 titled retention and storage of case files shows files shall be retained at division headquarters retained in accordance with the state retention schedule. CP 380-381, Section 17 Outlines in the responsibilities of the immediate supervisor, whose participation in non Washington State controlled cases is continued. CP 382, Section 18 Division Commander, shows the section commander shall prepare reports as requested by the division commander. CP 384, Section 22 shows that there will be a letter from the agency requesting assistance on a raid/ warrant, or the letter will be written by the respective section commander prepared for the division commander addressed to the requesting agency. The rest of this manual contains other evidence that Worthington's records would be in the possession of the WSP, stored at division headquarters, and then sent to archives after three years. All this information is backed by the agency specific records retention schedule for the WSP on file with the Washington State Secretary of State's office.

E. ANALYSIS OF THE TRIAL COURT'S DECISION

Four of the five Declarations used to support the Motion for Summary Judgment were challenged by numerous exhibits and oral testimony which revealed major discrepancies in those four Declarations. These discrepancies were never adequately addressed by the moving party or the trial court Judge. The trial court Judge not only allowed these four witnesses for WSP, to get caught in the act of making false statements without suffering the normal consequences of perjury in court, their false testimony was allowed to be used to support a Motion for Summary Judgment in favor of the moving party. Without these four Declarations the only Declaration left to support the Motion for Summary Judgment would have been the Declaration of Mark Lamoreaux.

CP 22-23

However, a Declaration regarding the employment status of Fred Bjornberg would not have been sufficient enough to support a Motion for Summary Judgment for the moving party. Therefore, the trial court Judge erred in granting a Motion for Summary Judgment, because it was not properly supported.

Worthington's Oral testimony backed by numerous Exhibits, when viewed in a more favorable light should have prevailed against this Motion for Summary Judgment. The inferences to be drawn from the underlying facts contained in (the moving party's) materials must be viewed in the light most favorable to the party opposing the motion. (See Anderson v. Liberty Lobby Inc., 477 U.S. 242 (1986)¹ (Quoting Adickes v. S.H. Kress & Co., 398 U.S. 144 1970)² (Calder v. Jones, 465 U.S. 783 (1984)³

The Trial Judge erred when he attempted to decide the truth in the matter, ruling that he was satisfied that WSP had no records of Worthington's arrest, Page 11 RP 12/05/08,

¹ See #1 in Appendix

² See #2 in Appendix

³ See #3 in Appendix

page 10 RP 12/30/08, despite the February 14, 2007 TNET Executive Board meeting minutes showing a record of Worthington's arrest ,and other contradicting evidence Worthington had presented, which tied that document to WSP. CP 340 In the Summary Judgment stage the Judge's function is not himself to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial.

(See Anderson v. Liberty Lobby Inc., 477 U.S. 242 (1986) Page 477 U. S. 249)⁴

Worthington had obviously met the burden of making a case to support a factual dispute requiring a jury or judge to resolve the differing versions of the truth between the two parties. **(See Anderson v. Liberty Lobby Inc., 477 U.S. 242 (1986)⁵**

In fact, Exhibits proved WSP had access to TNET records, and also proved that WSP IAD employees generated TNET Executive Board meeting minutes using information from all Task Force records, which would have included Fred Bjornberg's individual records, and a summary report filled out by the commissioned IAD employee WSP group supervisor, Fred Bjornberg. Worthington was able to obtain a TNET document showing a record of his arrest with Fred Bjornberg's name on the top of the TNET document dated February 14, 2007. Worthington was able to obtain a Narcotics Task Force Policy and Procedure manual, and a WSP Investigative Assistance Division (IAD) Division manual, showing criminal intelligence records Procedures of the WSP. These documents show that there was multi level written and computer record keeping, which was to be performed by WSP IAD employee's working under the orders of a Washington State legislative mandate. (HB 1219) ⁶

⁴ See #4 in Appendix

⁵ See #5 in Appendix

⁶ See #6 in Appendix

F. CLOSING

Dolan should have claimed an organized crime exemption from the start, Instead of attempting to skirt the PRA by portraying TNET as a “separate federal entity”, which the WSP did not control of or have access to. Three other WSP employees’ joined the process to support Dolan’s story, and offered Declarations in support. This story never held water as Worthington found documents that ate holes in their Declarations, and eventually found a TNET record of his arrest with Fred Bjornberg, Tim Braniff, and Rich Wiley’s name at the top of the document. The Attorney for the moving party has not addressed Worthington’s numerous Exhibits with anything other than vague claims that these documents are not authentic, or not relevant. The only evidence the moving party is able to present in support of the Summary Judgment, is in the form of Declarations which were proven by Worthington to be contradicted by the available state agency website data ,PRA request documents, and Dolan’s reference to organized crime statutes.

In this case it is critical for the Appellant Court to understand the role of the WSP Investigative Assistance Division. They are the administrative arm of the Washington State Narcotics Task forces and the DEA agents that are assigned to them.

When Dolan claimed an organized crime exemption under **RCW 43.43.856**,⁷CP 340, it exposed the true identity of the entity under which Fred Bjornberg was actually employed . Fred Bjornberg was more likely to have been conducting operations outlined in **RCW 43.43.850**⁸-**organized crime intelligence unit** subject to **RCW 43.43.854**⁹ **Powers and duties of organized crime intelligence unit:**

The organized crime intelligence unit shall collect, evaluate, collate, and analyze data and specific investigative information concerning the existence, structure, activities and operations of organized crime and the participants involved therein; coordinate such

⁷ See #7 in Appendix

⁸ See #8 in Appendix

⁹ See #9 in Appendix

intelligence data into a centralized system of intelligence information; furnish and exchange pertinent intelligence data with law enforcement agencies and prosecutors with such security and confidentiality as the chief of the Washington state patrol may determine; develop intelligence data concerning the infiltration of organized crime into legitimate businesses within the state of Washington and furnish pertinent intelligence information thereon to law enforcement agencies and prosecutors in affected jurisdictions; and may assist law enforcement agencies and prosecutors in developing evidence for purposes of criminal prosecution of organized crime activities upon request.

Or: **RCW 43.43.600¹⁰-the drug control assistance unit, RCW 43.43.655¹¹- Drug control assistance unit -- Special narcotics enforcement unit:**

A special narcotics enforcement unit is established within the Washington state patrol drug control assistance unit. The unit shall be coordinated between the Washington state patrol, the attorney general *, and the Washington association of sheriffs and police chiefs. The initial unit shall consist of attorneys, investigators, and the necessary accountants and support staff. It is the responsibility of the unit to: (1) Conduct criminal narcotic profiteering investigations and assist with prosecutions, (2) train local undercover narcotic agents, and (3) coordinate federal, state, and local inter jurisdictional narcotic investigations.

Or: **43.43.620¹² -Drug control assistance unit – Additional duties -- Information system on violations -- Inter-unit communications network. The drug control assistance unit shall :**

1. Establish a record system to coordinate with all law enforcement agencies in the state a comprehensive system of information concerning violations of the narcotic and drug laws.
2. Provide a communications network capable of interconnecting all offices and investigators of the unit.

*The Washington State Attorney General has a conflict of interest in this case.

¹⁰ See #10 in Appendix

¹¹ See #11 in Appendix

¹² See #12 in Appendix

WSP's claim that Worthington's case was a DEA case and the DEA had all Worthington's records was a blatant false statement. WSP has Worthington's records, and is refusing to abide by the Washington State PRA. All of these controversies should have been settled at a full trial and not in a Summary Judgment trial by false affidavit.

V. CONCLUSION

The Washington State Court of Appeals Division II should reverse the trial courts decision to grant a motion for Summary Judgment. This case must be remanded to the trial court with instructions to restore the original trial Date of April 3, 2009 @ 1:30 PM, to allow a trial judge to determine which two versions of the facts are correct in this PRA Records request case. Worthington is also requesting proper reimbursement for the filing of this unnecessary extra step in this litigation process.

Respectfully submitted this 13TH day of February 2009

By: John Worthington

JOHN WORTHINGTON,
PLAINTIFF, PRO SE
4500 SE 2ND PL
RENTON WA.98059
425-917-2235

CERTIFICATE OF SERVICE

Case No. 38697-6-II

Case No. 08-2-01410-7

FILED
COURT OF APPEALS
DIVISION II
09 FEB 13 PM 2:58
STATE OF WASHINGTON
BY AW
DEPUTY

I declare under Laws of Perjury that on this 13th day of February, 2009, I have sent a copy of the Plaintiff's Opening Brief to the Washington State Attorney General's office located at 800 Fifth Avenue, Suite 2000, SEATTLE WASHINGTON 98104-3188, via U.S. Mail

I, declare under Laws of perjury that the statements above are true.

Signature John Worthington . Dated 2/13/09

APPENDIX

#1

U.S. Supreme Court

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)

Anderson v. Liberty Lobby, Inc.

No. 84-1602

Argued December 3, 1985

Decided June 25, 1986

Page 477 U. S. 255

benchmark as to what standards govern its deliberations and within what boundaries its ultimate decision must fall, and these standards and boundaries are in fact provided by the applicable evidentiary standards.

Our holding that the clear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions does not denigrate the role of the jury. It by no means authorizes trial on affidavits. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. **The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor**

#2

U.S. Supreme Court

Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970)

Adickes v. S. H. Kress & Co.

No. 79

Argued November 12, 1969

Decided June 1, 1970

398 U.S. 144

CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Page 398 U. S. 159

"most favorable to the party opposing the motion,"

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

#3

U.S. Supreme Court

Calder v. Jones, 465 U.S. 783 (1984)

Calder v. Jones,

No. 82-1401

Argued November 8, 1983

Decided March 20, 1984

465 U.S. 783

APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA,
SECOND APPELLATE DISTRICT

Id. at 465 U. S. 790-791.

"Credibility determinations are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. **The evidence of the non movant is to be believed, and all justifiable inferences are to be drawn in his favor.**"

#4

U.S. Supreme Court

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)

Anderson v. Liberty Lobby, Inc.

No. 84-1602

Argued December 3, 1985

Decided June 25, 1986

Page 477 U. S. 249

Our prior decisions may not have uniformly recited the same language in describing genuine factual issues under Rule 56, but it is clear enough from our recent cases that at the summary judgment stage **the judge's function is not himself to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial.**

#5

U.S. Supreme Court

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)

Anderson v. Liberty Lobby, Inc.

No. 84-1602

Argued December 3, 1985

Decided June 25, 1986

Page 477 U. S. 249

trial is not required to be resolved conclusively in favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial."

#6

HOUSE BILL 1219

State of Washington 60th Legislature 2007 Regular Session
By Representatives Campbell, Lovick, McCune, Green, Ericks,
Barlow, Lantz and Kelley
Read first time 01/15/2007. Referred to Committee on Public
Safety & Emergency Preparedness.

AN ACT Relating to the creation of an office of
investigative assistance within the Washington state
patrol; and adding a new section to chapter 43.43 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
WASHINGTON:

**NEW SECTION. Sec. 1. A new section is added to chapter
43.43 RCW to read as follows : (1) An office of
investigative assistance is created in the Washington state
patrol, which shall be under the direction of the chief of
the Washington state patrol. (2) The office of
investigative assistance shall investigate cyber crimes,
identity theft, drug trafficking law violations, organized
crime activity, gang-related criminal activity, and missing
and exploited children. The office of investigative
assistance shall direct the use of computer forensics,
laboratory forensics, drug control, and special weapons and
tactics by the Washington state patrol.**

**The office of investigative assistance shall be organized
at the discretion of the chief of the Washington state
patrol. In addition to any newly created units by the chief
of the Washington state patrol, the office of investigative
assistance shall be comprised of the organized crime
intelligence unit, RCW 43.43.850, the drug control
assistance unit, RCW 43.43.600, the special narcotics
enforcement unit, RCW 43.43.655, the bureau of forensic
laboratory services, RCW 43.43.670, and the missing
children clearinghouse, RCW 43.43.870.**

**The office of investigative assistance will assist local
jurisdictions in the investigation of crimes described in
subsection(2) of this section that cross existing
jurisdictional lines or that require specialized technical
skills.**

#7

RCW 43.43.856

Divulging investigative information prohibited — Confidentiality — Security of records and files.

(1)(a) On and after April 26, 1973, it shall be unlawful for any person to divulge specific investigative information pertaining to activities related to organized crime which he or she has obtained by reason of public employment with the state of Washington or its political subdivisions unless such person is authorized or required to do so by operation of state or federal law.

(b) Any person violating (a) of this subsection is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Except as provided in RCW 43.43.854, or pursuant to the rules of the supreme court of Washington, all of the information and data collected and processed by the organized crime intelligence unit shall be confidential and not subject to examination or publication pursuant to chapter 42.56 RCW.

(3) The chief of the Washington state patrol shall prescribe such standards and procedures relating to the security of the records and files of the organized crime intelligence unit, as he or she deems to be in the public interest with the advice of the governor and the board.

#8

RCW 43.43.850

Organized crime intelligence unit — Created.

There is hereby created in the Washington state patrol an organized crime intelligence unit which shall be under the direction of the chief of the Washington state patrol.

#9

RCW 43.43.854

Powers and duties of organized crime intelligence unit.

The organized crime intelligence unit shall collect, evaluate, collate, and analyze data and specific investigative information concerning the existence, structure, activities and operations of organized crime and the participants involved therein; coordinate such intelligence data into a centralized system of intelligence information; furnish and exchange pertinent intelligence data with law enforcement agencies and prosecutors with such security and confidentiality as the chief of the Washington state patrol may determine; develop intelligence data concerning the infiltration of organized crime into legitimate businesses within the state of Washington and furnish pertinent intelligence information thereon to law enforcement agencies and prosecutors in affected jurisdictions; and may assist law enforcement agencies and prosecutors in developing evidence for purposes of criminal prosecution of organized crime activities upon request.

[1973 1st ex.s. c 202 § 3.]

#10

RCW 43.43.600

Drug control assistance unit — Created.

There is hereby created in the Washington state patrol a drug control assistance unit.

#11

RCW 43.43.655

Drug control assistance unit — Special narcotics enforcement unit.

A special narcotics enforcement unit is established within the Washington state patrol drug control assistance unit. The unit shall be coordinated between the Washington state patrol, the attorney general, and the Washington association of sheriffs and police chiefs. The initial unit shall consist of attorneys, investigators, and the necessary accountants and support staff. It is the responsibility of the unit to: (1) Conduct criminal narcotic profiteering investigations and assist with prosecutions, (2) train local undercover narcotic agents, and (3) coordinate federal, state, and local interjurisdictional narcotic investigations.

#12

RCW 43.43.620

Drug control assistance unit — Additional duties — Information system on violations — Inter-unit communications network.

The drug control assistance unit shall:

(1) Establish a record system to coordinate with all law enforcement agencies in the state a comprehensive system of information concerning violations of the narcotic and drug laws.

(2) Provide a communications network capable of interconnecting all offices and investigators of the unit.