No. 48378-5-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

DONNA ZINK, et ux

v.

PIERCE COUNTY, et al

RESPONSE/REPLY BRIEF OF APPELLANT/CROSS RESPONDENT

DONNA ZINK

DONNA ZINK
Pro Se Appellant
P.O. Box 263
Mesa, WA 99343
(509) 265-4417
dlczink@outlook.com
jeffzink@outlook.com

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I. RESPONSE TO STATEMENTS OF THE FACTS

A. Response to Pierce County's Statement of Facts

In Pierce County's (PC) statement of the facts surrounding Zink's requests for access to public records, they cite to the findings of the trial court as evidence of the truth rather than to the evidence in the record showing their stated fact is true (PC, 6-13). Campaign

A review of the evidence provided to the court shows Zink made a request to PC on October 3, 2014 (CP 1614), and a second request on November 14, 2014 (CP 1705), requesting access to various criminal records associated with sex offenses. Zink provided an e-mail address and fax number for communication purposes Despite Zink's request to communicate via e-mail or fax, PC respond by U.S. Postal Service to the wrong U.S. postal address (CP 1709).

PC claims they responded to Zink's request with a request for clarification. But, as of January 9, 2015, PC did not receive a response from Zink (CP 2348)(PC pg. 10). Despite the lack of response from Zink, PC argues the fax communications of January 26, 2015 and January 31, 2015, clearly show Zink was receiving PC's correspondence citing to the affidavit of Theresa Brown as evidence of the truth (CP 2205; 2013-14)(PC pg. 9). No evidence that Zink received the responses sent to the wrong US postal address was provided and this fact is in dispute.

The evidence provided to the court shows that on January 26, 2015, Zink responded, by fax, to a letter received from PCPAO dated January 23, 2015

(CP 1725-27; 1729; 1731). On January 31, 2015, Zink responded to a letter from PC dated January 28, 2015 (CP 1733-1740; 1742)). Both of these events occurred after January 9, 2014. Both events happened months after Zink's initial request of October 3, 2014 (CP 1612-15) and second request of November 21, 2014 (1705). Brown's affidavit is nothing more than speculation and includes no evidence that any of PC response letters, prior to the January 23, 2015 letter (CP 1725), were received by Zink.

Pierce County claims that Zink narrowed her PRA request to PCSD in her filings with the court (PC pg. 19) is not supported by evidence. PC misrepresent the argument being made by Zink (CP 2069). In responding to PC's request for permanent injunction, Zink was arguing a position to the trial court concerning where registration records should be maintained, not narrowing her request to exclude a copy of the requested database. A simple reading of Zink's argument clearly shows that Zink stated that "registration records and database should be maintained separately since those records do not exist until after the juvenile or adult offender has been released from custody (CP 2069:14-23). PC has not identified or shown any statement made by Zink to support the trial courts finding and conclusion that Zink had withdrawn her request for a database.

PC's claims and statement of the facts are not supported by the record.

B. <u>Response to Classes of Level I and Level II/III Sex Offenders</u>

The statement of facts provided by the classes of Level and Level II and III sex offenders (Doe D) concern the history of the Special Sex Offender

Sentencing Alternative (SSOSA) from the perspective of treatment providers (Doe L, pgs. 4-8; Doe D, pg. 4-6) who have a stake in the outcome of this action. The statements of fact clearly show SSOSA eligibility is of great public importance to determine whether our judicial system is administering SSOSA sentences appropriately and in the public interest.

II. ARGUMENT

A. Overall Arguments Concerning All Consolidated Causes of Action

1. Standard of Review of a Trial Court's Decision Under the PRA

Respondents claim the standard of review is abuse of discretion citing to *Yousoufian v. King County Executive*, 152 Wn.2d 421, 98 P.3d 463 (2004)(Doe G, 7-8).[1] This is an incorrect reading of the Supreme Court mandate instructing courts to review a trial court's decision concerning per diem penalty provisions in the PRA under an abuse of discretion standard of review (*Id*, 431). Here the trial court dismissed Zink's counter claim and the issue of penalties was not addressed. To the extent per diem penalties need to be awarded, Zink requests this Court remand the issue back to the trial court for proper determination based on the actions of Pierce County (PC) and application of the *Yousoufian Factors (Yousoufian v. Office of Ron Sims, King County Executive*, 168 Wn.2d 444, 229 P.3d 735 (2010)).

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[1] Cited as *Yousoufian v. Office of Ron Sims*, 152 Wn.2d 421, 98 P.3d 463 (2004).

RCW 42.56.550(3) clearly mandates judicial review of agency actions RCW 42.56.030 through 42.56.520 is de novo. *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, ¶7, 327 P.3d 600 (2013). However, the standard of review of a trial court's decision to enjoin the records and the terms of that injunction is abuse of discretion. *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). Therefore, both standards apply depending on which issue is being analyzed.

2. Judicial Interpretation of Statutes Includes Determining Legislative Intent Based on All Provisions Contained in the Act

A Court's purpose in interpreting a statute is to determine and enforce our "Legislature's Intent" (*City of Spokane v. Spokane County*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006)). In construing a statute, the Courts are instructed to be vigilant that a statute is construed so as to carry out its purpose as determined by our Legislature. *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 498, 909 P.2d 1294 (1996).

Supreme Court decisions mandate that Legislative intent is primarily revealed by the statutory language. *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). The plain meaning controls if it is unambiguous. *Nissen v. Pierce County*, 183 Wn.2d 863, ¶27, 357 P.3d 45 (2015). However, if the Legislature omits language, whether intentionally or accidentally, courts "will not read into the statute the language that it believes was omitted." (*State v. Moses*, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002) citing to *Jenkins v. Bellingham Mun. Court*, 95 Wn.2d 574, 579, 627 P.2d 1316 (1981)).

Our Courts are required to look at the act in its entirety. *Ockerman v. King County Dep't of Developmental & Envtl. Servs.*, 102 Wn. App. 212, 217, 6 P.3d 1214 (2000). All provisions of an act must be considered, construed together (with all language used) and harmonized in relation to each provision of the act to assure proper construction of each provision. *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 459, 869 P.2d 56 (1994). "An interpretation that produces "absurd consequences" must be rejected, since such results would belie legislative intent. *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185 (1983)." *Troxell v. Rainier Pub. Sch. Dist.*, 154 Wn.2d 345, ¶7, 111 P.3d 1173 (2005).

The Court, in *Koenig v. Thurston County*, 175 Wn.2d 837, 287 P.3d 523 (2012), identified the Legislative intent in the creation of SSOSA evaluations as "sentencing" documents (*Id.* ¶26).

3. Interpretation of Legislative Intent of RCW 42.56.540 and Mandatory Requirements for Injunction of Public Records

The history of our Supreme Court's interpretation of the Legislative intend in enacting RCW 42.56.540 is to require a "court to find that a specific exemption applies <u>and</u> that disclosure would not be in the public interest <u>and</u> would substantially and irreparably damage a person *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, ¶64, 174 P.3d 60 (2007) (clarifying that a Court cannot merely determine an exemption applies)(see also: *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775, ¶78, 246 P.3d 768 (2011); *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, ¶36, 259 P.3d 190

(2011); and *Seattle Times Co. v. Serko*, 170 Wn.2d 581, ¶18, 243 P.3d 919 (2010)).

RCW 42.56.540 is not an exemption. It is a procedure set out by our Legislature requiring a court to make certain determinations in order to enjoin public records, or parts thereof, from production to the public *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775, ¶78 246 P.3d 768 (2011).

Here, the trial court determined that the records were exempt under specific statutes as discussed below, yet did not determine whether the records are of public interest. Instead the trial court merely stated that "the release of information would not be in the public interest" (CP 2666 FOF 6; 2692 COL 36; 2706 COL 33) since sex offenders would be deterred from seeking treatment in the community over prison time (Doe L, 26). The trial court's findings do not adequately address to the question of public interest in access to the records or any actual or substantial harm befalling sex offenders.

> The court must find that a specific exemption applies **and that disclosure would not be in the public interest and would substantially and irreparably damage a person.**" Yakima County v. Yakima Herald-Republic, 170 Wn.2d 775, 808, 246 P.3d 768 (2011) (citing Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 757, 174 P.3d 60 (2007)).

Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398, ¶36, 259 P.3d 190 (2011)(emphasis added). The trial court's order enjoining the records is error and must be reversed.

4. RCW 42.56.540 is the Sole Authority Governing Injunction of Public Records

Does argue a court is authorized to enjoin public records under RCW 7.40; citing to RCW 7.40.020. (Doe G, 15-16). RCW 42.56.540 is the sole means by which a third party can enjoin public records. *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, ¶12, *fn.* 2, 423, 259 P.3d 190 (2011) (Supreme Court finding RCW 42.56.540 specifically governs the court's power to enjoin the production of a record under the PRA and not Chapter 7.40 RCW).

Further, RCW 42.56.030 clarifies that in times of conflict, the PRA controls. Clearly, RCW 7.40.020 does not authorize a court to enjoin public records. In order to enjoin public records, for any amount of time, the court must apply the provisions of RCW 42.56.540. Otherwise a court is causing an unreasonable delay (RCW 42.56.520;.550).

5. Exemptions Must Be Narrowly Construed

Under the strict requirements of the PRA, release of public records must be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. RCW 42.56.030. Our Supreme Court has repeatedly instructed the courts concerning this Legislative mandate. *Wade's Eastside Gun Shop, Inc. v. Dep't of Labor & Indus.*, 185 Wn.2d 270, ¶10, 372 P.3d 97 (2016)(the legislature declared that the PRA "shall be liberally construed and its exemptions narrowly construed" (RCW 42.56.030) *City of Lakewood v. Koenig*, 182

Wn.2d 87, ¶8, 343 P.3d 335 (2014)(the legislature has crafted exemptions that are "narrowly tailored to specific situations in which privacy rights or vital governmental interests require protection); *John Doe v. WSP*, 185 Wn.2d 363, ¶43, 374 P.3d 63 (2016) (exemption must be explicit, [the] court may not imply one).

> The burden is on the agency to show a withheld record falls within an exemption, and the agency is required to identify the document itself and explain how the specific exemption applies in its response to the request.

Block v. City of Gold Bar, 189 Wn. App. 262, ¶17, 355 P.3d 266 (2015)(footnote omitted). In a recent decision, our Supreme Court made clear that it would not:

> [M]ake sense to imagine the legislature believed judges would be better custodians of open-ended exemptions because they lack the self-interest of agencies. The legislature's response to our opinion in Rosier makes clear that it does not want judges any more than agencies to be wielding broad and mal[l]eable exemptions. The legislature did not intend to entrust to … judges the [power to imply] extremely broad and protean exemptions ….

(Id. ¶43). That Court found that an "other statute" exemption must be explicit; a court may not imply one. (*Id.*). Here, the trial court has implied exemptions that are not clearly enunciated in the PRA; or other statutes.

6. The Requested Records are of Paramount Public Interest

Does note only 35% of convicted sex offenders meet the statutory criteria to receive SSOSA sentences (Doe L, 4; Doe D, 9) and that between

1986 and 2004, SSOSA offenders sentenced under the SSOSA program declined from 40% to 15%)(CP 823:24-824:4). Does argue that SSOSA sentences protect the community which is demonstrated by reduced recidivism rates and revocation frequency which significantly decreases the costs to the state (CP 824:5-20); claiming that without secrecy, law enforcement cannot adequately assess and respond to risks to community safety (CP 824:20-25). Not only are these statements unsupported by any evidence, this is not the intent of the "public interest" proclamation set out by our Legislature.

Our Supreme Court has clearly and unambiguously declared that the intent of the Legislature is that public records are of public interest.

> [T]he PRA reminds us "that free and open examination of public records is in the public interest…

Predisik v. Spokane Sch. Dist. No. 81, 182 Wn.2d 896, ¶8, 346 P.3d 737 (2015). With respect to those convicted of sex offenses, our Legislature has made clear that sex offender information is of paramount public interest.

> The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety.

RCW 4.24.550 Laws of 1990 c 3 § 117. To make sure this mandate was adhered to, our Legislature stated that sex offender information is not confidential.

> Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

RCW 4.24.550(9). This Legislative intent was made crystal clear in *John Doe v. WSP*, 185 Wn.2d 363, ¶27, 374 P.3d 63; 2016).

Without access to SSOSA evaluations the public cannot scrutinize the effectiveness of the SSOSA and SSODA programs, sentencing decisions concerning the SSOSA and SSODA programs or any related studies. These issues, as determined by our Legislature and as interpreted by our Supreme Court are of paramount concern and interest to the public.

7. No Showing of Actual or Substantial Harm was Identified and the PRA Forbids Denials Due to Embarrassment or Inconvenience

The trial court did not specify how the "fear of potential harm" was in fact "actual or substantial harm." Rather the trial court found that the Does would suffer embarrassment (mental and emotional damages associated with the stigma of disclosure of their crimes)(CP 822:16-26) and "possible" harassment or physical violence (CP 2582; 2612; 2642-43; 2656-2657; 2689-2690; 2699-2702). The fear of **possible** harm is not the proper standard to be used by a trial court to enjoin public records.

> The court must find that ... **disclosure would ... substantially and irreparably damage a person.**" Yakima County v. Yakima Herald-Republic, 170 Wn.2d 775, 808, 246 P.3d 768 (2011) (citing Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 757, 174 P.3d 60 (2007)).

Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398, ¶36, 259 P.3d 190 (2011)(emphasis added). Does and PC have failed to show that

release of the records would cause any "**actual**" or "**substantial**" harm as required (CP 2649 COL 49; 2660 COL 40; 2692 COL 34; 2706-2707 COL 34).

Further, our Legislature has mandated that embarrassment and inconvenience is not a reason to enjoin public records.

> Similarly, the PRA reminds us "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."

Predisik v. Spokane Sch. Dist. No. 81, 182 Wn.2d 896, ¶8, 346 P.3d 737 (2015). Does and PC so not meet the standards for injunction of public records under RCW 42.56.540 whether an exemption applies or not.

8. Redaction of Public Records is Mandatory

The strongly worded PRA was enacted by our Legislature, at the behest of the public,[2] on order to assure an open and transparent government that reflects the belief that the public should have full access to information concerning the working of the government (*Amren v. City of Kalama*, 131 Wn.2d 25, 31, 929 P.2d 389 (1997)). The purpose of the PDA is to ensure the sovereignty of the people and the accountability of the government agencies that serve them (*Newman v. King* County, 133 Wn.2d 565, 570, 947 P.2d 712 (1997). If the SSOSA evaluations contain exempt material, PC is required to redact the exempt information and release the records (*Tacoma Pub. Library*

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[2] *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, ¶17, 261 P.3d 119 (2011).

v. Woessner, 90 Wn. App. 205, 224, 951 P.2d 357 (1998)). Agencies cannot withhold records simply by refusing to redact exempt information.

In *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 327 P.3d 600 (2013), the Court interpreted the PRA to require agencies to redact and disclose public records.

> [T]he PRA provides that exemptions "are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought." RCW 42.56.210(1); see also RCW 42.56.070."

(*Id.* ¶16). The Court based its opinion on *PAWS v. UW.*, 125 Wn.2d 243, 261, 884 P.2d 592 (1994) (portions of records which do not come under a specific exemption must be disclosed) and *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978) (exemptions are inapplicable to the extent that exempt materials in the record can be deleted).

> [T]he agency is required to identify the document itself and explain how the specific exemption applies in its response to the request.

Block v. City of Gold Bar, 189 Wn. App. 262, ¶17, 355 P.3d 266 (2015)(footnote omitted). Clearly, if SSOSA and SSODA evaluations contain exempt information, an agency is required to redact exempt information, release the records along with an exemption log clearly identifying the exemption and explain how the claimed exemption applies.

9. Courts May Not Distinguish Between Requesters RCW 42.56.080

The Supreme Court in *Koenig v. Thurston County* mandated that SSOSA evaluations are not exempt, redaction was not necessary and the SSOSA evaluations must be disclosed to Koenig (*Id.* ¶31-32). None the less, Does argue Zink is not entitled to even redacted SSOSA/SSODA evaluations. This would allow courts and agencies to distinguish between requesters, which is in conflict with Supreme Court decisions and violates the Legislative mandate that requesters be treated equally ("Agencies shall not distinguish among persons requesting records…") RCW 42.56.080; (identity of requester irrelevant since agencies shall not distinguish among requesters) *Cornu-Labat v. Hosp. Dist. No. 2 of Grant County*, 177 Wn.2d 221, ¶33, 298 P.3d 741 (2013); (inquiry into the legitimacy of the public's concern cannot take into account the identity of the requesting party or the purpose of the request) *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, ¶44, 189 P.3d 139 (2008); (agencies shall not distinguish among persons requesting records) *Koenig v. City of Des Moines*, 158 Wn.2d 173, ¶33, 142 P.3d 162 (2006).

10. Trial Courts Are Authorized to Release Exempt Information Under RCW 42.56.210(2) and RCW 42.56.540

Under RCW 42.56.210(2) a trial court may allow release of exempt public records if they are of public import and do not involve a privacy right.

> A court may even allow for the inspection and copying of exempt records if it finds "that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any

> vital government function." RCW 42.56.210(2); Oliver v. Harborview Med. Ctr., 94 Wn.2d 559, 567-68, 618 P.2d 76 (1980) (burden shifts to the party seeking disclosure to establish that the exemption is clearly unnecessary).

Ameriquest Mortgage Co. v. Washington State Office of Attorney General, 170 Wn.2d 418, ¶36, 241 P.3d 1245 (2010)(emphasis added). This harmonizes the requirement under RCW 42.56.540 that an agency or third party must prove the records are not of public interest and would cause actual and substantial harm. *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, ¶36, 259 P.3d 190 (2011).

11. A Trial Court Is Not Authorized to Enjoin Public Records That Do Not Exist

Doe G claims that he did not submit an SSOSA evaluation to the sentencing court (Doe G, ,17). Therefore, the sentencing court has no copy of the SSOSA evaluation in question. Doe G has been told that PC has no copy of a SSOSA evaluation concerning Doe G (*Id.* 18). Zink's request was made to PC and not Doe G's attorney (*Id.* 19).

The PRA only pertains to requests made to "government agencies" (RCW 42.56.010). The PRA requires a record be specific and identifiable in order to enjoin it under RCW 42.56.540. None the less, Doe G filed this action, forcing Zink into litigation to enjoin a SSOSA evaluation that does not exist at either the PCSD or PCPAO. A trial court has no authority to enjoin records that do not exist. This is a frivolous action and the idea that persons can enjoin records that do not exist "just in case" should not be allowed in our courts.

B. Summary Judgment Was Inappropriate and the Trial Court was Biased and Based Findings on Nonexistent Evidence

Although summary judgment is appropriate in some PRA cases, dismissal of Zink's action under summary judgment is not one of them. Our Supreme Court has instructed courts to grant summary judgment only if the court finds, weighing all facts and inferences from the facts in the light most favorable to the nonmoving party, that the moving party is entitled to judgment as a matter of law (*Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002)). The history of this instruction to the courts concerning summary judgment is well established.

> In reviewing an order of summary judgment, we engage in the same inquiry as the trial court. The motion for summary judgment should be granted only if the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. We consider the facts in a light most favorable to the nonmoving party. See Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

Reid v. Pierce County, 136 Wn.2d 195, 201, 961 P.2d 333 (1998)(see also: *W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000)). Zink is the non-moving party. All evidence and inferences made by PC were to be considered in the light most favorable to Zink.

1. Trial Court Findings and Conclusions are Not Evidence of Fact

Since review is de novo, PC is required to provide citation to the actual evidence submitted to the trial court for consideration. PC cites to CP 2340-2354 (PC, 6-13) as evidence of fact supporting the trial court's decisions and

orders. The cited clerk's papers are the findings of fact and conclusions entered by the trial court in granting PC's motion for summary judgment dismissal of Zink's counter claims. PC cites to CP 2300 and 2302 as evidence of fact (PC, 6-7). The cited clerk's papers are the trial court's findings, conclusions and order for permanent injunction of records pertaining to Doe G. This is error.

The trial court's findings of fact and conclusions of law are superfluous and are not to be considered as evidence. *Sherman v. Kissinger*, 146 Wn. App. 855, ¶13, *fn.* 4, 195 P.3d 539 (2008). Further, it has been a long-standing rule that factual statements in briefing to the Court must be supported by the record on review. *Newton v. Pac. Highway Transp. Co.*, 18 Wn.2d 507, 508, 139 P.2d 725 (1943)(finding factual statements in brief must be supported, especially when in cases of factual conflicts).

Here, as in *Newton*, the trial court's findings are in dispute and cannot be used as evidence of the truth. Although, the assigned rule number has changed, the Rule of Appellant Procedure (RAP) requiring parties to support claimed facts with citation to the record on review, remains a mandatory requirement of briefing. RAP 10.3(a)(5). *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, ¶3, *fn.* 1, 160 P.3d 31 (2007)(Supreme Court declining to consider facts recited in the briefs but not supported by the record. Cf. RAP 10.3(a)(5), 13.4(c)). See also *McKee v. American Home Prods. Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989). PC must identify the evidence

presented as fact to the trial court to determine whether PC met the requirements for summary judgment. PC has failed to do so.

PC claims, without supporting evidence, that records maintained in the registration file of juveniles included mental health records and a plethora of other records which should appropriately be maintained in the juvenile social file (RCW 13.50.010(1)(e))[3](CP 1607, 5:15-22). The evidence shows that the records requested from the registration file are registration forms and a database or list of sex offenders registered in PC, both adult and juvenile (CP 1144) and a request for the notification letters and the list of person's notified (CP 1988). PC provides no evidence that the extensive list of documents are included in a juvenile registration file, claiming they "may" be included, or that any of these documents were requested by Zink.

PC claims Zink narrowed her PRA request by her filings with the court: citing to the trial court's conclusion (CP 2352, COL 6) and based on the trial court's finding (CP 2346, FOF IV.6)(PC, 19-20). A simple reading of Zink's argument clearly shows, in responding to PC's request for permanent injunction, Zink was arguing a legal position based on where registration records should be maintained,[4] not narrowing her request to exclude a copy of the requested sex offender database (CP 2069 7:14-23)). According to the

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[3] Social file" means the juvenile court file containing the records and reports of the probation counselor. RCW 13.50.010(1)(e).

[4] Separately from the court files since those records do not exist until after the juvenile or adult offender has been released from custody (CP 2069).

unchallenged argument, the database should be found in the registration files (RCW 13.50.050(3)(5); 4.24.550). The trial court's findings are clearly in error as to what Zink's argument actually states. PC has not identified or shown any statement made by Zink to support the trial court's finding and conclusion that Zink had withdrawn her request for registration information or the database.

In providing a partial database, PC stated the databased contained all registration records of those with names ending in A or B that were not enjoined (CP 1991). At the time the partial database was provided to Zink on November 24, 2014, the juvenile offender registration records were not enjoined. PC could not have provided all records responsive to partial installment of all A and B offenders which were not enjoined on November 24, 2014, since no action was filed by PC to enjoin the juvenile records until January 29, 2015 (CP 3090-3094).

Further, the trial court enjoined juvenile records on January 16, 2005, approximately two weeks prior to PC filing an independent action to enjoin the release of juvenile sex offender records.

> **MR. SOMMERFELD**: We were in front of Judge Martin on an extension of the original TRO in this case. Judge Nevin's case, the Plaintiffs did not ask to prohibit release of the Judgment and Sentence records so Judge Nevin said, well, that matter is not before me. You are not enjoined. So there would just be that issue, so I would want to clarify that. And I would also want to clarify with the Court: **Is the Court also then, under the juvenile record portion of the Court's order, saying that the Sheriff should not be releasing any juvenile adjudicative**

> **Judgment and Sentence records**? Just so I can inform the Sheriff.
>
> **THE COURT**: **The answer would be yes to both.** I have not heard any contention or opposition to adult Judgment and Sentence records. They may be released. **The juvenile records, on the other hand, it appears to me the County has conceded the point.** I don't want to misstate what the Plaintiff's position is.
>
> **MR. WILLIAMS**: We do not have any position on the J&S.
>
> **MS. MUTH**: No.
>
> **THE COURT**: Even the adjudications?
>
> **MR. WILLIAMS**: The juvenile?
>
> **THE COURT**: Yeah.
>
> **MR. WILLIAMS**: **Yeah, the juvenile, we think, are protected under -- exactly**.
>
> **THE COURT**: It seems the parties are in agreement.

RP (January 16, 2015) 19:18-20:20 (emphasis added).

If the juvenile records were not enjoined on November 24, 2014, PC was not truthful when they claimed all responsive records had been released. If the records of all juvenile offenders were enjoined on January 16, 2015, PC had no reason to file another action in the court to enjoin juvenile records, their action is frivolous; meant only to harass, cause harm through economic loss and/or cause Zink to withdraw her requests.

> **THE COURT**: … And I think, **frankly, it's amazing to me that she's done a relatively good job, from a tracking standpoint, of replying to everybody as they come in**. You may or may not agree that those replies are terribly persuasive, but **I was kind of impressed that she was able to keep track of things the way that she was**.

RP (September 25, 2015) 5:21-6:1).[5]

All of these material facts are in dispute and summary judgment is not appropriate. Furthermore, the trial court did not consider the facts presented in the light most favorable to Zink, the nonmoving party, as required. Instead the trial court simply agreed without evidence. Summary judgment was not appropriate in these circumstances.

2. The Trial Court Showed Favoritism Towards Pierce County

On March 27, 2015, the trial court put on the record that he was associated with and had worked with the PCPAO less than a year ago, stating:

> Just as a threshold matter, I want to let the parties know, up until April of last year, so almost a year ago, I was in the Pierce County Prosecutor's Office. At times I have been, and now as a Superior Court judge probably will be, represented by the Civil Division of the Prosecutor's Office in a variety of matters. Nothing about this case has ever been discussed, nor would it be, nor would any other pending case be discussed. I don't believe there is any basis for me to recuse myself. I wanted to give the parties the opportunity to weigh in, if there was any kind of conflict that anyone wanted to avert.

(RP (March 27, 2015) 3:22-4:8).

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[5] In all there were four consolidated cases (CP 2598-2600; 2602-04; 2617-19) and one intervenor (CP 1192-94)(Doe C was allowed to withdraw on appeal), filed against Zink at various times even though the original cases were filed as class action and the trial court found "other statute" exemptions existed (CP 2576-79; 2581-86; 2588-90; 2592-96); which could have been used by PC rather than to initiate other causes of action. Despite consolidation, all parties provided separate argument to the trial court and entered five separate orders enjoining the requested records (CP 2638-51; 2653-62; 2664-68; 2686-95; 2697-2711).

> What I said was that, up until April of last year, April 2nd of last year, I was a Pierce County Prosecutor. I worked in the Pierce County Prosecutor's Office, which is the defendant, Pierce County being the defendant in this case. The Civil Division of the Prosecutor's Office, I have never worked in. I have worked with Ms. Luna-Green and Mr. Sommerfeld in the past, and the Civil Division has at times, probably will in the future, represented me in my role as a deputy prosecutor. They also provide legal services to Pierce County Superior Court. Nothing about this case has ever been discussed with me, nor would it be, other than now in this courtroom this morning. Nothing about any other case in which the Civil Division of the Prosecutor's Office provides services would be discussed with me, unless it was some sort of matter that I was being represented in. I wanted to make all the parties aware of my former role so that if anybody had any objection to that, they could make it now before I make some sort of a ruling in this case. The parties present in court -- and I apologize, not having you standing in front of me, I forgot to call on you. With you on the phone, I am asking if you have any objection, and if so, what would it be? (RP

(March 27, 2015) 4:19-5:19).

> MS. ZINK: I guess, at this time, Your Honor, I don't. I don't know what my objection would be. If you feel you are unbiased, I don't have an objection.

(RP (March 27, 2015) 5:20-22).

> THE COURT: Okay. Well, I feel like I am unbiased. I am advising the parties that I used to work for the same law firm that is defending this, is all I am doing. It is an appearance of fairness issue rather than an actual conflict that I think I have. I wanted to make the parties aware.

(RP (March 27, 2015) 5:23-6:3). Despite the trial court's assertion that the court was unbiased, findings of fact were entered with no evidence provided to support those facts and did not infer PC's facts in the light most favorable to Zink as the non-moving party. Summary judgment was not appropriate and the trial court's decision should be reversed and remanded to determine the

facts based on actual evidence of fact in the light most favorable to Zink or the case must proceed to trial.

C. Pierce County Is Required to Identify an Exemption and Provide an Exemption Log Identifying all Records Not Produced

PC argues that they are not required to claim an exemption in order to withhold the requested records (PC, 27). Despite these strongly worded mandates in the PRA, PC claims the Pierce County Code (PCC) 2.4(D) allows PC to notify third parties without a claim of exemption if there "may" be an exemption (PC, 29-31). PC states the language in PCC 2.04.040(D) is identical to that contained in the Washington Administrative Code (WAC) model rules (WAC 284-03-025(4); 44-14-04003(11)(PC, 30, *fn.* 9). While this may be true, PC misunderstands the purpose of RCW 42.56.540 which is only procedural and does not infer an exemption. Furthermore, PC misunderstands the requirements under RCW 42.56.100.

Using PC's interpretation of RCW 42.56.540, the provisions RCW 42.56.050;[6] .070(1);[7] .210(3));[8] and .520[9] are read into obscurity producing absurd results. Three times our Legislature mandates an agency must have an identified exemption in order to deny the production of public records. RCW 42.56.520 requires that an agency have a "need" to notify third parties under RCW 42.56.540. Reading these provisions of the PRA as a whole and in harmony this interpretation is consistent with all provisions of the PRA including RCW 42.56.540 since PC would have the option to notify if an exemption existed. This interpretation is also in harmony with the strict mandate that records be released promptly (RCW 42.56.520) in the most

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[6] (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records. RCW 42.56.050 (Legislative Intent).

[7] Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of *subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing. RCW 42.56.070(1)

[8] Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. RCW 42.56.210(3).

[9] Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; ... (3) acknowledging that the agency, ...has received the request and providing a reasonable estimate of the time the agency, ... will require to respond to the request; or (4) denying the public record request. Additional time required to respond to a request may be based upon the **need** to clarify the intent of the request, to locate and assemble the information requested, **to notify third persons** or agencies **affected by the request** RCW 42.56.520(emphasis added).

timely possible action on requests for information (RCW 42.56.100) and is reflected in the WAC codes (PC, 30, *fn.* 9).

> Before sending a notice, an agency should have a reasonable belief that the record is arguably exempt. **Notices to affected third parties when the records could not reasonably be considered exempt might have the effect of unreasonably delaying the requestor's access to a disclosable record**.

WAC 44-14-04003(11)(emphasis added). Despite WAC 44-14-04003, PC notified third parties without an identified exemption and then argued to the trial court that the records are not exempt and must be disclosed (CP 711-724; RP (January 16, 2015) 11:11-13:12). There can be no reasonable explanation for PC's actions except to deny the release of the records by forcing Zink to participate in litigation or withdraw the request. At the very least PC's actions were an unreasonable delay in production (RCW 42.56.550(2)(4)).

But the evidence shows that PC was acting in bad faith. Despite obtaining restraining orders and temporary injunctions (CP 2023), PC continued to notify third parties to initiate further actions in the court making this case nearly impossible to adjudicate (RP (January 16, 2015) 19:18-20:10).

PC claims other trial courts were enjoining release of documents pertaining to similar requests (PC, 31). A trial court's erroneous injunction is not an identified exemption enumerated in the PRA (RCW 42.56.050, 42.56.070(1) and 42.56.210(3)). If PC felt the records were exempt based on "other trial court" decisions, PC was required to provide Zink with an exemption log under the strict requirements of the PRA. Plus Zink provided

the trial court and PC with evidence that other law enforcement agencies were complying with Zink's request and did not notify third parties of the request for SSOSA evaluations (CP 1945). Clearly PC could not have an arguable belief that the requested records were exempt and PC acted in bad faith when they denied release of records they knew were not exempt through third party notification and expensive litigation without an identified exemption allowing for a delay in release to notify third parties.

Although agencies are required to adopt rules and regulations concerning how they will meet the requirements of the PRA in responding to requests for public records, the rules and regulations must adhere to Legislative provisions of the PRA. "Agencies shall adopt and enforce reasonable rules and regulations… consonant with the intent of [the PRA] to provide full public access to public records" RCW 42.56.100. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information (*Id.*). Any rules or regulations promulgated by PC must comply with the strict mandates of the PRA. PC cannot use Municipal Codes in violation of the PRA to show compliance.

D. <u>Records Pertaining to Juvenile Sex Offenders</u>

1. History of Legislative Provisions Clearly Shows Sex Offender Records of Juveniles Must Be Open to Public Inspection

Washington State is "one of only eight states that has all juvenile arrest and conviction records public." *State v. S.J.C.*, 183 Wn.2d 408, ¶39, 52 P.3d 749 (2015). RCW 13.50.010(1) defines a "juvenile justice or care agency" to

include the court, prosecuting attorney and sheriff and "records" to mean the "official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case" (RCW 13.50.010(1)(d)).

Juvenile registration records are clearly not exempt and must be produced upon request. *John Doe v. WSP*, 185 Wn.2d 363, 374 P.3d 63 (2016)). A SSODA evaluation and sentencing and judgment documents is created as a sentencing document and are used by a juvenile court to sentence a convicted juvenile sex offender to either juvenile detention or community supervision with treatment and to memorialize the trial courts sentencing determinations.

As a document used for sentencing, a SSODA evaluation is found in the "official juvenile court file" (RCW 13.50.010(c)). The Superior Court in which the juvenile is sentenced is required to maintain an "official juvenile court file" that is open to public inspection (RCW 13.50.050(2)). All juvenile criminal records are open and subject to mandatory disclosure unless sealed (RCW 13.50.260). Sealing of juvenile sex offender records is prohibited by our Legislature as discussed below.

2. Legislative Intend Unambiguously Mandates Disclosure of Juvenile Sex Offender Records

PC argues that the Court in A.G.S. instructed that juvenile records are exempt and release of the records would violate the confidentiality provisions under RCW 13.50.010(1)(b)(PC, 27). By enacting specific statutory provisions in RCW 13.50.050(2)(3)(5), the Legislature intended conviction records of juvenile sex offenders to be open to the public.

First, RCW 13.50.010(1)(b) is merely a definition and does not contain any confidentiality provisions. It merely defines what is considered a "juvenile justice or care agency;" which includes the court, prosecuting attorney and sheriff. It is RCW 13.50.050 which confers confidentiality on juvenile records other than records found in the "court file"[10] or "sex offender registration record" as previously discussed.

Second, an SSODA is the equivalent of an adult SSOSA, and is used by the sentencing court to sentence a juvenile offender and is maintained in the court file with a copy to the prosecuting attorney. SSOSA and SSODA are available to both juveniles and adults and contain identical wording. "When compared, both statutes direct a trial court to order a SSOSA/SSODA evaluation to determine amenability to treatment if the offender qualifies for alternative sentencing after conviction.".

> A SSOSA is a special procedure authorized by the Sentencing Reform Act of 1981, chapter 9.94A RCW, whereby a sentencing judge may suspend a sex offender's felony sentence if the offender meets certain eligibility criteria defined in the statute. RCW 9.94A.670(2). As part of the SSOSA, the trial court may order sexual deviancy evaluation and treatment. RCW 9.94A.670(3).

State v. Canfield, 154 Wn.2d 698, ¶2, *fn.* 1, 116 P.3d 391 (2005).

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[10] "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, notices of hearing or appearance, service documents, witness and exhibit lists, findings of the court and court orders, agreements, judgments, decrees, notices of appeal, as well as documents prepared by the clerk, including court minutes, letters, warrants, waivers, affidavits, declarations, invoices, and the index to clerk papers. RCW 13.50.010(1)(c).

> If a juvenile is SSODA eligible, the court may order an evaluation to determine the offender's amenability to treatment. Id. At a minimum, this evaluation must include a description of the juvenile's offense history, psychological evaluation, social and educational history, employment situation, his or her version of the facts in the case, and proposed treatment terms. RCW 13.40.162(2)(a)(i)-(v), (b)(i)-(v). **The court then considers whether this alternative sentence will benefit the offender and the community**. RCW 13.40.162(3). The typical SSODA sentence includes two years of outpatient treatment under a probation officer's supervision.

State v. Sanchez, 177 Wn.2d 835, ¶4, 306 P.3d 935 (2013). The language of RCW 13.40.162(3) and RCW 13.40.140(3) is the same as that found in RCW 9.94A.670(4) and RCW 9.94A.500(1) respectively and RCW 9.94A.670 incorporates juvenile sex offenders into its provisions.

> If the offender is less than eighteen years of age when the charge is filed, **the state shall pay** for the cost of initial evaluation and treatment.

RCW 9.94A.670(14). Just as SSOSA evaluations were found in *Koenig v. Thurston County,* 175 Wn.2d 837, ¶31, 287 P.3d 523 (2012) to be sentencing documents, so too is a SSODA evaluation. Further, the exemptions claimed do not cover the records requested as discussed herein.

> An "other statute" exemption must be explicit, this court may not imply one. Because the legislature did not make it explicit, we hold that RCW 4.24.550 is not an "other statute" under the PRA and reverse the trial court.

John Doe v. Washington State Patrol, 185 Wn.2d 363, ¶43, 374 P.3d 63 (2016). Zink requested conviction records and registration documents of convicted sex offenders required to be maintained in both the Superior Court, associated Prosecuting Attorney's Office (RCW 9.94A.480) and the Sheriff's

Department (RCW 4.24.550(6)) and open to public inspection (RCW 9.94A.475).

> The legislature's response to our opinion in Rosier makes clear that it does not want judges any more than agencies to be wielding broad and mal[l]eable exemptions. The legislature did not intend to entrust to … judges the [power to imply] extremely broad and protean exemptions … .

John Doe v. WSP, ¶10, 374 P.3d 63 (2016). Based on the clear provisions set out by statute and established case law, our Legislature did not limit access to conviction records of juvenile sex offenders under Chapter 13.50 RCW.

3. Sex Offender Records Are of Paramount Public Interest

PC cites to RCW 13.50.050(3) for their argument that juvenile records are exempt from production, erroneously claiming that PCSD does not control or maintain the court file (PC, 27, *fn.* 5). PC misunderstands the purpose of Chapter 13.50 RCW, the mandatory requirements of RCW 9.94A.480 and the PRA. Respondents claim our legislature mandated that release of juvenile conviction records is not in the public interest (PC, 28); stating Chapter 13.50 RCW is an "other statute" that exempts records so it does not conflict with the PRA (PC, 26).

In analyzing Legislative provisions concerning juvenile sex offender records under Chapter 13.50 RCW and "other" applicable statutory provisions, it is clear that our Legislature intended all arrest and conviction records of sex offenders to be available to the public. While portions of RCW 13.50 exempt some juvenile records from production other provisions

mandate disclosure; specifically those records related to juvenile sex offenses.

RCW 13.50.050(3) mandates that records made in conjunction with the provisions of RCW 4.24.550 are not confidential and RCW 13.50.050(5) mandates that RCW 4.24.550 controls the release of juvenile sex offender information not in an official juvenile court file. RCW 4.24.550(9) unambiguous mandates juvenile sex offender records are not confidential.

> Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(*Id*). In fact, our Legislature has been very clear that sex offenders are a high risk for re-offense and protection of the public is of paramount public concern stating:

> The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

RCW 4.24.550: Finding—Policy—1990 c 3 § 117.

Unlike other juvenile criminal offenses, a court cannot enter an order sealing a juvenile record if the conviction and disposition was a most serious offense as defined in RCW 9.94A.030(33) or a sex offense under Chapter 9A.44 RCW.

> A court shall enter a written order sealing an individual's juvenile court record pursuant to this subsection if:
>
> (i) One of the offenses for which the court has entered a disposition <u>is not at the time of commission of the offense</u>:
>
> (A) A most serious offense, as defined in RCW 9.94A.030;
>
> (B) A sex offense under chapter 9A.44 RCW; ...

RCW 13.50.260(1)(c)(i)(A)(B)(emphasis added). In enacting this provision, our Legislature prohibited the sealing of juvenile sex offender conviction records maintained in the "official juvenile court file" or maintained in PCSD and PCPAO. Clearly, our Legislature wanted juvenile sex offenders conviction records to remain open to the public at all times.

RCW 9.94A.475 requires all sentencing documents of sex offenders to be maintained and open to the public. RCW 9.94A.480(1) requires sentencing documents to be maintained in the Prosecuting Attorney's office and in the official court file. As noted by PC (PC, 25), our Supreme Court determined "RCW 4.24.550(6) requires a "juvenile court" to "<u>provide local law enforcement officials with all relevant information of offender</u>," which includes SSODA evaluations, so that local officials can make an accurate risk assessment (*State v. Sanchez*, 177 Wn.2d 835, ¶29, 306 P.3d 935 (2013)) (emphasis added). The Pierce County Superior Court must provide copies of the SSODA evaluation to the PCSD. Therefore, the PCSD maintains a copy

of SSODA evaluations. The records used and maintained by a sheriff's department are subject to disclosure and production pursuant to the PRA.[11]

The trial court's determination that Legislative intent under Chapter 13.50 RCW was to conceal juvenile sex offender records is in error and must be reversed.

4. Pierce County Cannot Deny Access Because the Records Are Also Available in the Trial Court Files

Despite the clear Legislative mandate that sex offender sentencing records of both juveniles and adults must be maintained and open to the public, PC claims they do not control or maintain the court file and Zink must obtain the records from the trial court (PC, 27, *fn.* 5); citing to *State v. A.G.S.*, 182 Wn.2d 273, 340 P.3d 830 (2014). While Zink has every right to request records that are part of the "official court file" from the Clerk's office, under the strict mandates of the PRA, an agency cannot deny a request based on the fact that the records can be obtained at another public agency.

> The fact that the material may be available in other records is not a reason stated in the act for failure to disclose.

Hearst v. Hoppe," 90 Wn.2d 123, 132, 580 P.2d 246 (1978).

> The disclosure request could not be denied based only on the fact that they are available through other public agencies.

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[11] RCW 42.56.010(3)(4); .030; .050; .070(1); .210; .520); RCW 4.24.550 and 13.50.050(2)(3)(5)

Tacoma Public Library v. Woessner, 90 Wn. App. 205, 214, 951 P.2d 357 (Div. II, 1998). Zink has the right to request and obtain copies of the requested records from the PCSD and PCPAO.

5. Supreme Court Decision in State v. A.G.S.

PC argues that the Supreme Court decision in *State v. A.G.S.*, 182 Wn.2d 273, 340 P.3d 830 (2014) prevents release of all juveniles records (PC, 27). In *State v. A.G.S.*, our Supreme Court opined that the files maintained by a prosecutor are of great importance in determining whether juvenile conviction records are exempt.

> This division is significant because the official juvenile court file is "open to public inspection, unless sealed," but "[a]ll records other than the official juvenile court file are confidential" and <u>may be released only pursuant to a few specific statutory provisions. RCW 13.50.050(2), (3)</u>.

(*Id.* ¶8)(emphasis added). Here, it is the provisions of the other statutes identified by the Supreme Court in *A.G.S.* (RCW 13.50.050(2)(3)) as well as RCW 13.50.050(5)(Except as provided in RCW 4.24.550) that are on review.

In *A.G.S.*, the Court clearly identified that two separate SSODA evaluations were at issue. "In this case, <u>both</u> the State and A.G.S. <u>ordered separate SSODA evaluations</u>." *State v. A.G.S.*, 182 Wn.2d 273, ¶2, 340 P.3d 830 (2014)(emphasis added). The Supreme Court specifically identified that there were two SSODA evaluations when it clarified that:

> The State provided a copy of its SSODA evaluation to the parents of the victims, but the parents also requested a copy of the SSODA evaluation conducted at the request of the defendant.

State v. A.G.S., 182 Wn.2d 273, ¶4, 340 P.3d 830 (2014). Acknowledging that the State's SSODA evaluation was not at issue in the review the Supreme Court identified the question before the court as:

> Should a juvenile offender's SSODA evaluation be filed in the official juvenile court file and thus be available to the public?

State v. A.G.S., 182 Wn.2d 273, ¶, 340 P.3d 830 (2014). In making the determination that the "Defenses" SSODA evaluation should not be maintained in the official "court file" the Court noted that:

> The trial court ordered the release of the portion of the **defense's SSODA evaluation** that it considered in making its disposition.

State v. A.G.S., 182 Wn.2d 273, ¶5, 340 P.3d 830 (2014)(emphasis added). To read the Supreme Court's ruling to include all SSODA evaluations, even those paid for by the State, is an erroneous interpretation of the decision and the PRA; especially in light of the fact that the State's SSODA evaluation was already released making the issue moot.

E. Pierce County had No Reasonable Belief an Exemption Applied to the Requested Records and Zink's Information Is Protected

Again, citing to the trial court's finding and conclusions, PC claims the trial court properly concluded third party notification was legally appropriate" in order for third parties to come forward to seek protection as contemplated by RCW 42.56.540 (PC, 32-33). PC claims that sending Zink's request to sex offenders was permissible under PCC 2.04.040(D) and failure

to do so would render the notification of third parties useless since the party notified would have no means to contact the requester (CP 1988)(PC, 32; 30). PC argues that ironically Zink's request is a public record and that not providing contact information for the requester defeats the purpose of notification (PC, 32).

First, as discussed above, PC had no claim of exemption and no "need" to notify third parties under RCW 42.56.520. Without a reason to notify, providing any person with an unsolicited copy of Zink's record requests is not authorized. If PC felt the trial court identified an exemption requiring notification, PC was required to provide Zink with an exemption log identifying all records being withheld at the time the records were denied (RCW 42.56.050; .070(1), .210(3); and .520).

Second, pursuant to RCW 42.56.540, PC was not obligated to notify third parties and was free to release the records at any point in time. The "delay" in order to notify third parties without an identified exemption is an unreasonable denial forcing a requestor into litigation without a justifiable basis (WAC 44-14-04003(11)) and affording a requester no opportunity to decide whether the records are exempt prior to entering into litigation (*State v. Sanders*, 169 Wn.2d 827, 946, 240 P.3d 120 (2010)). This is especially important when coupled with the fact that, with the exception of juvenile records, PC always argued the records were not exempt and should be released. PC's actions clearly indicate they had no reasonable belief the records were in fact exempt and therefore had no need to notify anyone or

provide a copy of Zink's request (RCW 42.56.520) and only did so to initiate litigation to permanently prevent release.

Third, even after class action injunction prevented the release of sex offender records, PC continued to notify third parties of Zink's request in rolling notification installments to continue the harassment (CP 1937; 1939-40; 1985)(RP (March 27, 2015) 13:4-6) and initiate further legal action.[12] There is no provision in the PRA allowing for rolling notification.

Fourth, not all requesters represent themselves in litigation and Zink could have remained a Jane Doe as the offenders were allowed to do with only PC knowing her identity. (Both parties to a PRA action filed as Doe) *Doe I v. WSP*, 80 Wn. App. 296, 298, 908 P.2d 914 (1996).

Finally, Zink's request was confidential under RCW 42.56.240(8) because it is information submitted to a statewide unified sex offender notification and registration program (RCW 36.28A.040(6)). So, while it is true that a request for information concerning whether a person is registered through the statewide registration program is a public record, RCW 42.56.240(8) prevents PC from releasing the record in response to a public record request. Specifically, Zink's name, residential address and e-mail address are not to be released.

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[12] Third Party Notification sent: October 30, 2014, (CP 1634-35); November, 2014 (CP 1985-86; January 12, 2015 (CP 2010-11); February 11, 2015 (CP 1656-57); March 19, 2015 (CP 1674-75); May 21, 2015 (CP 1636-37); May 28, 2015 (CP 1640-41); June 4, 2015 (CP 1638-39); June 11, 2015 (CP 1642-43); Finished with request #1410029 August 12, 2015 (CP 1693)

> The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:
>
> Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and email address

RCW 42.56.240(8). Additionally, the PRA does not allow for agencies to release unsolicited public records and the release was an intentional act. RCW 42.56.240(8) specifically prohibits PC from disclosing Zink's name and e-mail address. Most likely due to the fact that it leads to harassment of the requester (RP (March 27, 2015) 13:4-6).

The trial court's determination that PC was acting in good faith when they provided convicted sex offenders with Zink's contact information was error and must be reversed and remanded for proper determination based on the actual evidence and established facts.

F. <u>While Pierce County May Have the Option to Notify Under RCW 42.56.540, Zink Has the Option to File For Judicial Review of the Denial Caused by Notification Under RCW 42.56.550</u>

PC claims that Zink's initiation of legal action was not ripe since the requests were not completed; citing to *Hobbs v. State*, 183 Wn. App. 925, ¶23, 335 P.3d 1004 (2014)(PC, 33-34). Therefore, the trial court did not err in dismissing Zink's claim with prejudice. As identified by PC, the Court in Hobbs mandated:

> [B]efore a requester initiates a PRA lawsuit against an agency, there must be some agency action, or inaction, indicating that the agency will not be providing responsive records.

Id. Notably absent from the Court's mandate is the word "final" associated with action. Rather, the Court in Hobbs clearly mandated that some type of action needed to be had by the agency indicating the records would not be produced in response to a request. Even inaction is considered an "action." Here, PC acted when Zink was informed the records were not going to be released until third parties had opportunity to litigate effectively denying Zink access to the requested records.

> Under RCW 42.56.550(1), the superior court may hear a motion to show cause when a person has "**been denied an opportunity to inspect or copy a public record by an agency**." Therefore, being denied a requested record is a prerequisite for filing an action for judicial review of an agency decision under the PRA. Although the statute does not specifically define "denial" of a public record, considering the PRA as a whole, we conclude that **a denial of public records occurs when it reasonably appears that an agency will not or will no longer provide responsive records**.

Hobbs v. State, 183 Wn. App. 925, ¶22, 335 P.3d 1004 (2014)(emphasis added). Zink filed suit once it appeared that PC was not going to provide any of the records.

While Zink strenuously objected to all denials of access long before filing litigation under RCW 42.56.550(1)(2)(3) and (4)(CP 1615-16), Zink did not initiate action until after PC filed for injunction to stop production of the juvenile records. Clearly filing an action to enjoin under RCW 42.56.540 is an action indicating an agency is not going to provide the requested records as required by the Court in *Hobbs*.

PC's action in denying release of all juvenile sex offender records and notifying adult sex offenders without an identified exemption to enjoin records under RCW 42.56.540 were most certainly actions indicating that Zink would not be receiving the requested records (CP 1095-1102). PC's argument that Zink cannot bring a PRA action until after her requests is finalized is a ridiculous reading of the Court's decision in Hobbs (PC, 34) and in conflict with the strict mandates of the PRA.

> Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

RCW 42.56.550(1). Clearly, PC took actions which prevented the release of the requested records and Zink's request for judicial review of PC's action are ripe under RCW 42.56.550.

> In sum, we hold that the plain language of RCW 42.56.540 allows agencies to seek judicial determination regarding the validity of a public record. We emphasize that the agency remains subject to per diem penalties for each day that it has improperly denied access to a public record.

Soter v. Cowles Publ'g Co., 162 Wn.2d 716, ¶64-65, 174 P.3d 60 (2007). While PC may have continued to produce records requested after notification of third parties(PC, 36), the sentencing and judgment documents were not produced in response to Zink's initial requests for access to registration

information and SSOSA/SSODA evaluations (1980; 1991; 1995). The trial court's decision ordering summary judgment dismissal is error and must be reversed and remanded for proper application of the PRA to Zink's requests and PC's actions in denying those requests.

G. Enjoining Records Not Requested is Beyond the Legal Authority of the Trial Court Pursuant to Provisions of RCW 42.56.540

PC argues that the trial court properly granted the injunction prohibiting carte blanche release of juvenile criminal records where such records are confidential under RCW 13.50.050(3)(PC, 25). A blanket approach to exemption of public records is disfavored in the courts as it conflicts with the requirement to construe exemptions narrowly (*Prison Legal News, Inc. v. Dep't of Corr.*, 154 Wn.2d 628, ¶42, 115 P.3d 316 (2005)).

PC argues the trial court correctly found there are numerous juvenile records maintained by PC that are not otherwise found in court records (PC, 26)(CP 1607; 2336-37)(FOF 5). While this may be a true, it is irrelevant. The procedure for enjoining records is clear. "The examination of any specific public record may be enjoined" RCW 42.56.540. Zink did not ask for copies of all of the records identified by PC [13] as being maintained in the registration

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[13] PC identified the records not otherwise found as Residential Admission Summary from JRA, to include summary of mental health referral, JRA intake interview with mental health/physical information, JRA client history review, which details offense, medical diagnosis, special education history and family's chemical dependency history, CPS referrals, Disclosure Summary of Child Victim Interview, JRA integrated treatment program, UA Lab reports from probation, Psycho Sexual Polygraph Examination, Juvenile Detention Reports, Presdisposition Diagnosis Report, Memorandum from Juvenile Detention Probation to Court,

file and the trial court lacks the authority to enjoin records in this cause of action which were never requested. The trial court's decision must be reversed to exclude any documents not requested by Zink.

Further, the issue of which records were requested, which were withheld and which were released has been made that much harder by a lack of exemption log specifying which records are being withheld and why (PC, 72-74). The trial court's order enjoining records identified by PC but not requested by Zink must be reversed.

H. Charges for Copy Costs Must Be Justified by a Statement of Factors Used to Determine Costs and Cannot be Arbitraty

PC claims that the trial court did not err in finding the costs were reasonable. Citing to *Benton County v. Zink*, 191 Wn. App. 269, ¶26, 361 P.3d 801 (2015), PC clarifies that a requestor may elect to inspect records rather than request copies and that a reasonable charge may be imposed which charges shall not exceed the amount needed to reimburse the agency (PC, 48). While this is true, it has no bearing on the trial court's decision concerning the copy costs charged by PC. Zink is arguing that PC's charges are not reasonable and PC did not properly calculate costs as instructed under the PRA or the PCC. To charge more than the cost of the media an agency is required to justify its copy costs.

Preteen Health Social Services Report, which contains the names of other juvenile offenders (CP 1578; 1607; PC, 26-17).

> Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a **statement of the factors and manner used to determine the actual** per page cost or other **costs**, if any.

RCW 42.56.070(7)(emphasis added). The PCC mirror the requirements of the PRA.

> The cost of electronic copies of records shall be the amount per hour for copying information on a CD-ROM or other media, plus the listed cost for each CD-ROM or other media **as set forth in the <u>statement of the factors and manner used</u> to determine this charge available from the applicable public records officer**. The Department of Budget and Finance shall assist agencies in determining the factors and manner of calculating the actual cost of copying.

PCC 2.04.070(C)(emphasis added). The requirement that an agency provide a statement of factors and manner used to calculate copy costs was address in *Zink v. City of Mesa*, 140 Wn. App. 328, 166 P.3d 738 (2007). The Court opined:

> Former RCW 42.17.260(7) also provides that "[e]ach agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and **a <u>statement of the factors and manner used</u> to determine the actual** per page cost or other **costs, if any**."

Id. ¶35. (Emphasis added)(recodified at 42.56.070(7)). When Zink requested a copy of the statement showing the manner used to calculate the costs (CP 1731), PC responded by producing a vague and arbitrary statement making it difficult to determine what factors were involved if any (CP 1734; 1740). Furthermore, PCC 2.04.070(C) requires the Department of Budget and

Finance to assist the PCPAO in determining the factors and manner used to calculate actual cost of providing electronic copies.

> The Department of Budget and Finance **shall** assist agencies in determining the factors and manner of calculating the actual cost of copying.

PCC 2.04.070(C)(emphasis added). PCPAO's charges are not only excessive, but they are arbitrarily calculated in violation of the strict mandates of the PRA as well as the PCC. The conclusion that the costs are reasonable is not supported by the evidence in the record. The trial court's determination that PC's costs are reasonable must be reversed.

I. Communication By E-mail

PC argues that they only accept public record requested via personal delivery, U.S. mail or fax but not by e-mail claiming RCW 42.56.080 does not require and agency to receive requests in any other method than by US mail (PC, 50). This is false. By PC's interpretation of RCW 42.56.080 even requests made in person could be ignored.

In the first sentence of RCW 42.56.080 requires an agency to respond to any form of request for an identifiable record and does not limit requests to mail or fax only. Further, in the last sentence of RCW 42.56.080 the provisions refer to "mail" and do not distinguish between e-mail or US mail. It simply contains the word "mail." There is nothing in RCW 42.56.080 allowing an agency to refuse to receive a request or respond to a request to produce identifiable records under the PRA if the agency does not like the format used by the requester. The language is simply not there.

Zink's initial request was via fax (CP 1611). While PCSD initially decided to only communicate via US mail (CP 1619), sending the request to the correct US mailing address on the day it was due to be delivered to Zink, PCSD eventually decided to honor Zink's request and communicate via e-mail (CP 1615). While PCPAO did not initially respond to Zink's request refusing to respond via fax or e-mail. Instead, PCPAO sent their late response letters to the wrong US mailing address, well after the request was initially made, and claim they know for sure that Zink received the letters without providing any evidence to prove Zink did in fact receive the letters (CP 1709-11)(PC, 46, *fn.* 15).

While agencies are required to adopt rules and regulations for responding to requests for public records, those rules and regulations must not be in conflict with the PRA.

> Agencies shall adopt and enforce reasonable rules and regulations... consonant with the intent of this chapter to provide full public access to public records ...

RCW 42.56.100. PCPAO's refusal to acknowledge Zink's fax request and refusal to communicate via e-mail was error. Clearly the trial court felt the issue was included in Zink's claims when it entered findings and Zink has a right to assign error to the findings of the trial court (PC, 51).

J. <u>Agencies are Required to Provide Records in the Format Requested Unless Unreasonable or Infeasible To Do So</u>

PC, with no citation to the evidence presented to the trial court, states that they have no legal obligation to release records in the format requested.

Instead, PC argues the trial court did not err in determining an agency can decide how to produce records (PC, 45-46). This issue is ripe for review. As noted by PC, the Court in *Mitchell* determined if it is reasonable and feasible for an agency to produce records in the format requested they must do so (PC, 45).

> WAC 44-14-05001 suggests that agencies should provide records in electronic format when requested in that format. It further provides that agencies need not provide records electronically if it is not technically feasible to do so. WAC 44-14-05001. And WAC 44-14-07003 provides guidance for when agencies may charge a fee for electronic disclosure of records.

Mitchell v. DOC, 164 Wn. App. 597, ¶19, 277 P.3d 670 (2011). The evidence shows that PC has the capabilities and it is therefore reasonable and technically feasible to communicate via e-mail and to provide the records via e-mail and file share ((CP 1604:14-1607:14; 1654). Our Supreme Court in *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 327 P.3d 600 (2013), mandated that a trial court does not abuse it's discretion when it orders electronic production (*Id.* ¶8; ¶25; ¶43; ¶45; ¶49). The same is true in this case. Furthermore, RCW 42.56.080 prohibits agencies and courts from distinguishing among persons requesting records… . Allowing some agencies to provide records in paper copy even though they have the capability of providing the records in the requested format allows agencies and courts to distinguish between requester.

The evidence shows that, not only did PC have the capabilities to communicate and provide the records in the format request, PCSD did

communicate and provide some, but not all, of the records in the format requested while PCPAO refused to do either without justifiable cause. The trial court's decision that PC was justified in refusing to communicate or provide records in the requested format must be reversed. PC must be required to communicate in the preferred format as well as provide all records in the format request (via e-mail or file-share).

K. No Privacy or Confidentiality in Sex Offender Conviction Records

No privacy or confidentiality interest was identified other than RCW 4.24.550; specifically found to not be a privacy or confidentiality exemption (*Doe v. WSP*, 185 Wn.2d 363, ¶10-11; ¶20, 374 P.3d 63 (2016)). [14]

L. RCW 42.56.230 is Specific to A Record Used to Prove Identity in Obtaining a Driver's License or Indenticard

The trial court concluded that information contained in the requested records was exempt under RCW 42.56.230(7)(a) and ordered the requested records be redacted of specific identifying information prior to release to Zink (Doe G, 20-21). The PRA requires broad disclosure and narrow interpretation of statutory exemptions with the party seeking injunction bearing the burden of proof that the documents requested are within the scope of the claimed exemption. *Sargent v. Seattle Police Dep't*, 179 Wn.2d 376,

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[14] Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. RCW 4.24.550 Laws of 1990 c 3 § 117.

¶11, 314 P.3d 1093 (2013) citing to *Newman v. King County*, 133 Wn.2d 565, 571, 947 P.2d 712 (1997).

Doe G's claimed exemption is RCW 42.56.230(7)(a) which states:

> Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

Id. As specified by our Legislature, records which can be used as "identifying records" to obtain a driver's license or identicard are:

> (a) A valid or recently expired driver's license or instruction permit that includes the date of birth of the applicant; (b) A Washington state identicard or an identification card issued by another state; (c) An identification card issued by the United States, a state, or an agency of either the United States or a state, of a kind commonly used to identify the members or employees of the government agency; (d) A military identification card; (e) A United States passport; or (f) An immigration and naturalization service form.

RCW 46.20.035(1)(2)(3). None of the records requested by Zink can be used to obtain a driver's license or identicard.

Courts are not to "imply" an exemption where an exemption clearly does not exist (*Doe v. WSP*, 185 Wn.2d 363, ¶9, 374 P.3d 63 (2016)). The requested records do not fall within the scope of the claimed exemption and RCW 42.56.230 cannot be used by the trial court to enjoin any portion of the requested records and the trial court's decision must be reversed.

M. The Request Is a Public Record Request to a Public Agency for Public Sentencing Documents and Not Medical Records From a Medical Provider

The Court, in *Koenig v. Thurston County*, 175 Wn.2d 837, 287 P.3d 523 (2012), identified the Legislative intent in the creation of SSOSA evaluations as "sentencing" documents (*Id.* ¶26). Pursuant to the Court's decision in *Koenig*, convicted sex offenders are not patients seeking treatment when they receive an SSOSA evaluation and PC is not a "health care provider" under RCW 42.56.360(2). Chapter 70.02 RCW applies to public inspection and copying of health care information of patients maintained by a health care provider. To conclude that SSOSA evaluations are medical records of patients requires the court to add words the "act" simply does not contain.

Does claim the Supreme Court's decision in *Koenig v. Thurston County*, 175 Wn.2d 837, 287 P.3d 523 (2012) does not dispose of Doe's medical exemption argument since the issue of exemption as medical records was not properly raised. Does argue that SSOSA evaluations are medical records and this Court should ignore the fact that the Supreme Court determined SSOSA evaluations to be sentencing documents. This is an erroneous interpretation of Chapter 70.02 RCW, the Public Records Act (Chapter 42.56 RCW) as well as the Sentencing Reform Act of 1981 (Chapter 9.94A RCW).

Zink's request is for the purpose of obtaining public criminal sentencing records (RCW 42.56.010(3)) maintained by a penal agency (RCW 42.56.010(1)). The same records found by the *Koenig* Court to be sentencing

documents used by a sentencing court to sentence a convicted sex offender. [15] The same records required to be maintained by the trial court and the prosecuting attorney[16] and open to public inspection.[17] Zink's request was not made to a "health care provider" for medical records; public or private.[18] Only records maintained by a health care provider are exempt. [19] The decision made in *Koenig v. Thurston County,* by our Supreme Court mandates SSOSA evaluations are sentencing documents. Zink requested these specific sentencing documents.

Does argue RCW 10.97.030(3) does not allow unrestricted access to "conviction records" as the Criminal Records Privacy Act's "name suggests. The act was enacted with the express policy of providing for the "completeness, accuracy, confidentiality and security of criminal history

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[15] [T]he SSOSA evaluation principally provides a basis for the court to impose sentencing alternatives. *Koenig v. Thurston County,* 175 Wn.2d 837, ¶30, 287 P.3d 523 (2012). It is used by a sentencing court to determine whether a defendant charged with a sex offense is amenable to treatment (*Id.*¶26). Because the PRA requires that exemptions be narrowly construed, we decline to protect documents that are created to aid a court in its sentencing decision (*Id.* ¶31).

[16] Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records. RCW 9.94A.480.

[17] Any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes **shall be made and retained as public records** if the felony crime involves: (2) Any most serious offense as defined in this chapter...RCW 9.94A.475(2)(emphasis added).

[18] "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state **to provide health care** in the ordinary course of business or practice of a profession. (RCW 70.02.010(18)(emphasis added)

[19] Except as authorized elsewhere in this chapter, **a health care provider**, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider **may not disclose health care information about a patient** to any other person without the patient's written authorization. RCW 70.02.020(1)(emphasis added)

record information" (Doe L, 39-40). While the name of the "act" may be confusing, an "act" is not interpreted based solely on its name (see Interpretation of Statutes above).

Does argue that a SSOSA evaluation is not a disposition of a criminal history (RCW 10.97.030(3)(*Id.* 40). Our Legislature in enacting the "Criminal Records Privacy Act" mandated that "conviction records may be disseminated without restriction." RCW 10.97.050(1). Our Legislature defined "convictions records" to mean "criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject" RCW 10.97.030(3). Disposition refers to a court's final determination of a case or issue. A SSOSA/SSODA evaluation is a sentencing document used by a sentencing court for final disposition of a case (jail or community placement with treatment). Our Legislature also defined "conviction or other disposition adverse to the subject" to mean "any 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(2). The SSOSA evaluations fall within the category of disposition of charges as they are used to sentence a convicted sex offender.

N. Definition of Patient and Health Care Provider Under RCW 70.02.020(1)

The language of the UHCIA clearly limits disclosure of medical records to those records maintained by a health care provider without the consent of the provider's patient. In order to find SSOSA/SSODA evaluations exempt from disclosure the agency must be defined as a "health care provider."

> Except as authorized elsewhere in this chapter, a **health care provider**, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a **patient** to any other person without the **patient's** written authorization.

RCW 70.02.020(1). "Health care provider" is defined as "a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession" RCW 70.02.010(18)). No evidence was provided demonstrating PC uses SSOSA/SSODA evaluations to provide health care or that PC is "authorized" to provide health care to sex offenders as part of their job. Clearly, when read in conjunction with other provisions of Chapter 70.02 RCW, the Legislative intent in defining a "patient" does not to include "offenders" as "patients" or PC as a "health care provider."

PC simply does not meet the statutory definition a "health care provider" under RCW 70.020.010(18). PCPAO receives a copy of a SSOSA/SSODA evaluation to recommend sentencing and, by law, maintains a copy for public inspection (RCW 9.94A.478; .480). A sentencing court receives a copy of the SSOSA/SSODA evaluation to determine whether an offender meets the

qualifications for a suspended sentence (*Koenig v. Thurston County*, 175 Wn.2d 837, 287 P.3d 523 (2012)). PCSD receives SSOSA/SSODA evaluations to determine an offenders risk to the public (RCW 4.24.550). None of these duties are related to "health care" and none of the participants in the sentencing of sex offenders are authorized to provide health care as defined by RCW 70.02.010(18).

The Court in *John Doe v. WSP*, 185 Wn.2d 363, 374 P.3d 63 (2016) clarified that an exemption must be explicit, and the Court may not imply one mandating that it did not:

> [M]ake sense to imagine the legislature believed judges would be better custodians of open-ended exemptions because they lack the self-interest of agencies. The legislature's response to our opinion in Rosier makes clear that it does not want judges any more than agencies to be wielding broad and mal[l]eable exemptions. The legislature did not intend to entrust to ... judges the [power to imply] extremely broad and protean exemptions ... .

(*Id.* ¶43). That Court found that an "other statute" exemption must be explicit; a court may not imply one. (*Id.*). Does ask this Court to insert language into Chapter 70.02 RCW that is not there and implies an exemption where no exemption exists.

O. <u>SSOSA and SSODA Evaluations are Required to Be Available to the Public Under the Sentencing Reform Act of 1981 and Are of Great Public Importance</u>

Under the Sentencing Reform Act of 1981, the "Sentencing Court" and "Prosecutor's Office" must each retain a copy of each SSOSA/SSODA evaluation in their official record (RCW 9.94A.480(1)) open to public

inspection (RCW 9.94A.475(2)). When these provisions of the Sentencing Reform Act are read together and harmonized, our Legislature clearly intended A SSOSA/SSODA evaluations, to be sentencing document; available for public inspection in the court of sentencing and associated prosecutor's office. Obviously our Legislature has determined sex offender records are of public importance and must be available to the public.

Does cite to a twelve-year-old study measuring recidivism rates for any new felony convictions within five years of release (Doe L, pg. 4-Doe D, pg. 4), noting only 35% of offenders meet the statutory criteria to receive SSOSA sentences. Without access to SSOSA evaluations the public cannot scrutinize sentencing decisions concerning the SSOSA program or related studies. These issues are of paramount concern to public safely.[20]

6. Requested Records Do Not Meet the Requirements of Prison Legal News Inc. v. Dep't of Corr., 154 Wn.2d 624, 644, 155 P.3d 316 (2005)

The Court in *Prison Legal News Inc. v. Dep't of Corr.*, 154 Wn.2d 624, 644, 155 P.3d 316 (2005), mandated two requirements must be met to

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[20] The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. *Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.* Laws of 1990 c 3 § 117 (emphasis added).

determine whether records are "health care information" and exempt under RCW 70.02.020(1);" "patient identifiability" and "information about patient health care." The records at issue in *Prison Legal News*, were clearly related to "medical care" and were requested from "medical providers." The Court found an agency must prove that each patient's health care information would readily be identifiable with that specific patient in order to withhold the requested medical records (*Id.* ¶48).

In this case, the requested documents identify convicted criminals and do not identify a patient or contain information about a patient's health care. Sex offenders are not seeking treatment. They are seeking a reduced sentence and release back into the community at large. The records and any diagnostic tools used to determine amenability are not performed in conjunction with treatment and an offender is not diagnosed with a health condition. Rather they are used by a sentencing court to determine "whether the **community** will benefit from use of the SSOSA or SSODA alternative sentencing, which requires future treatment in exchange for reduced prison time. RCW 9.94A.670(4)(5)" *Koenig v. Thurston County*, 175 Wn.2d 837, ¶26, 287 P.3d 523 (2012)(emphasis added).

7. Pierce County is Not Defined As a Health Care Provider Pursuant to the Supreme Court Decision in Hines v. Todd Pac. Shipyards Corp., 127 Wn. App. 356, 112 P.3d 522 (2005).

While it is debatable that when read in conjunction with other provisions of Chapter 70.02 RCW SSOSA/SSODA evaluations do not meet the definition in RCW 70.02.010(14), the legal question here is not whether the

records meet the definition. RCW 70.02.010(14) is merely a defining statute and does not confer an exemption to disclosure under the PRA.

RCW 70.02.020(1) specifically applies to "health care providers" and not to the King County Prosecutor's Office or Sheriff's Office. The Court addressed this issue in *Hines v. Todd Pac. Shipyards Corp.*, 127 Wn. App. 356, 112 P.3d 522 (2005). The issue in *Hines* is analogous to this case. After mandatory drug testing came back positive, Hines' employment with Todd was contingent on obtaining a drug evaluation and successfully completing any recommended treatment (*Id.* ¶4). The Court found "Todd was not a "health care provider" and the drug screening test was administered as a condition to employment and not related to health care or medical treatment" (*Id.* ¶19)(emphasis added).

This is the exact same circumstances surrounding a SSOSA/SSODA evaluation. PC is not a "health care provider" and a SSOSA/SSODA is sought by a convicted sex offender seeking a suspended sentence through a treatment option.[21] As in *Hines*, the SSOSA/SSODA evaluation is ordered and administered prior to the start of mandatory treatment imposed by a sentencing court if certain conditions are met; including sex offender treatment and a term of community custody (RCW 9.94A.670(5)(a-d).

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[21] Hines successfully completed the 28-day in-patient treatment program on May 31, 1999. Todd allowed Hines to return to work after completing in-patient treatment on condition that he agreed to enter into an Agreement for Continuation of Employment *Hines v. Todd Pac. Shipyards Corp.*, 127 Wn. App. 356, 112 P.3d 522 (2005).

Clearly, as in *Hines v. Todd*, a SSOSA/SSODA evaluation is not a medical records.

P. Washington State Constitution Article 1, §10 Mandates Open Justice in All Cases Absent Statutory Provisions Otherwise

1. Court Rules Require Courts Know the Identity of All Parties

Does claim a trial court is not required to know the identities of parties in order for justice to be served in our judicial system (Doe L, 29-30; Doe G, 10-11). Does claim the records are not sealed as long as the trial court has no idea who the party is since the identity of the party is not used by the court and the public has access to everything that passes before the court (*Id.*). Does disregard court rules which clearly and unambiguously state that:

> Every action shall be prosecuted in the name of the real party in interest.

Civil Rule (CR) 17(a). The court is required to know the identity of each party in order to ensure that the action is prosecuted in the name of the real party with interest.

> [T]he title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and **the names of the parties to the action, plaintiff and defendant**.

(CR 4(b)(1)(i))(emphasis added). In order to summon Zink into this action, the summons was required to provide the true name and identity of the party(ies) summoning her into court in the caption of the summons.

> In the complaint the title of the action shall include the names of all the parties…

CR 10(a)(1) The complaint filed by the court clerk was required to contain the true names and identities of the Does in order for the complaint to be filed. Does made clear at trial the importance of application of court rules and that court rules cannot be ignored.

> **MR. MICHELMAN**: I had one other thing with regard to Ms. Zink's pleadings. I believe **Local Rule 11(a) requires that a party appearing pro se indicate on their pleadings their** name, mailing address, telephone number, and a **physical address** where service can be had. I don't believe that there is a physical address on Ms. Zink's pleadings. I think there should be. **The rule requires it.**
>
> **MS. ZINK**: I believe I have already been served. I don't have to get personal service. My mailing address, according to the rules, is fine. It is down at the bottom of each of my pleadings.
>
> **THE COURT**: Is there a physical address you can provide us?
>
> **MS. ZINK**: I have provided that to the court. I get a lot of threatening phone calls and stuff. Like I said, they have already served me. Every party has served me. They know my physical address because they had me physically served. According to the court rules, what I read, I have to provide them with my address, my P.O. box address, which I have done at the bottom of each of those documents, where I will receive future service. The only service that needed to be done in person was the actual service to join me into the suit, the Complaint and the Summons.
>
> **THE COURT**: Is the answer yes or no?
>
> **MS. ZINK**: I don't want to provide my physical address. It is in the court. It is on the court e-file. It has been provided to each of the parties. They have already served me. They already have my physical address.
>
> **THE COURT**: We are in open court. **Mr. Michelman, <u>as an officer of the court</u>, he's asking for you to comply with the rule. I guess so am I, if you would <u>provide us your physical address</u>.**
>
> **MS. ZINK**: I have complied with the rule. The rule says I have to provide an address for service. 12:1-25 My address for service,

other than the personal service to join me in the suit, is P.O. Box 263, Mesa, Washington 99343. He has already served me. Therefore, he has to have my physical address. I don't think I should have to put it out in front of the court when I am getting threatening calls as it is.

THE COURT: Mr. Michelman, do you have her physical address?

MR. MICHELMAN: Here is the problem: **The rule requires the physical address be on the pleadings in addition to a mailing address**. I think it is a little ironic that Ms. Zink wants to expose all of these – all of these registered sex offenders, including their personal address, but despite the fact that the local rule requires she put it on her pleadings, she doesn't want to do it. What she's done is she's forcing everybody to deliver documents to her by mail. It is not up to her. I think each attorney has the option as to how they choose to deliver documents. I may want to deliver documents personally. There has to be a physical location to do that. Under the rule, if you deliver by mail, you have to add three days. The service or delivery isn't deemed to have been made until three days after the postmark on the mailing. **That give -- that puts her in a different situation than all of the other parties in this case. The rule requires -- I mean, <u>it is not my rule. It is the court's rule</u>**.

MS. ZINK: Your Honor, first off, I am not a criminal. I didn't commit any crime. Number two, the rule, I have not seen a rule. He's not quoting one that says I have to provide my physical address to be personally served after I have been joined as a party. It says I have to provide my service address, which is P.O. Box 263, Mesa, Washington. Three days is not going to be alleviated by that.

MR. MICHELMAN: **It is Local Rule 11(a), Judge**.

MS. ZINK: I am the one at a disadvantage here. I am the one that has to answer these, and I have to have it done two days before the court. He can go with the e-mail service, which is what everyone else has done.

MR. MICHELMAN: My response to that is it is my option. I don't have to do that. I have chosen not to.

THE COURT: **Local Rule 11 does tell us you need to provide the physical street address**.

> MS. ZINK: On every pleading?
>
> **THE COURT**: On the pleadings, Notice of Appearance, and other documents filed, the person's telephone number, mailing address, and street address where service of process and other papers may be served, unless that information is made confidential by statute.
>
> **MS. ZINK: 109 North Rowell Avenue, R-O-W-E-L-L.** Let's hope that other people don't start coming there.

(RP (March 27, 2015) 11:14-15:6)(emphasis added).[22] Clearly both the trial court and Does understand the importance of court rules. CR 4 and 10 require the identity of Does be on the complaint and summons and CR 17 mandates that the trial court must know the identity of the parties in order to determine standing.

The trial court erred in allowing Does to file anonymously through redaction of their true names without application of General Rule (GR) 15 and *Ishikawa* to the court records (see also GR 31(c)(4) and GR 15(b)(4)(5)).

2. No Statutory Privacy Interest Has Been Identified and The Identity of Convicted Sex Offenders Is Public Not Private.

Does filed suit to enjoin public records they are supposedly named in. They argue, without citation to any legal authority, that their identity is protected while they seek to enjoin the records because their identity is

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[22] Zink filed her pleadings using the general court rule CR 11(a) which states: A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and **state the party's address**.CR 11(a)(emphasis added).

Mr. Michelman was demanding Zink follow the requirements of LCR 11(a) which states: A self-represented party shall state on the pleadings, notice of appearance, and other documents filed, the person's telephone number, **mailing address and street address** where service of process and other papers may be served unless that information is made confidential by statute. LCR 11(a)(emphasis added).

inherently at issue (Doe G, 8). Zink's request was for identifiable public records and not just the identity of those named in the records. Further, the identities of those convicted of a crime against the people are already in the Public Domain and Does have no privacy or confidentiality by virtue of their public conviction. Open courts jurisprudence stresses transparency and access to court records. *Hundtofte v. Encarnación*, 181 Wn.2d 1, ¶17, 330 P.3d 168 (2014).

Next, Does claim no harm to Zink (Doe G, 9). Zink, and the people, are harmed by the court allowing secrecy in the judicial system; a violation of the Washington State Constitution, Art. 1 §10.

Does did not identify a privacy interest or show a serious and imminent threat to a privacy interest (*Hundtofte*, ¶17) and have not identified a provision allowing for use of redaction to conceal the identity of a party without use of GR 15 and the *Ishikawa Factors* (*State v. S.J.C.*, 183 Wn.2d 408, ¶50, *fn.* 6, 352 P.3d 749 (2015)).

Does argument that they have right to secrecy of their identity while they seek injunction under RCW 42.56.540 is not supportable (Doe L, 32). RCW 42.56.540 is a procedural statute only and does not confer privacy or confidentiality. RCW 42.56.540 clearly states that a party can enjoin specific records if they are named in or the record pertains to that party. RCW 42.56.540 contains no language allowing parties to file suit anonymously or any provisions allowing for secrecy while parties seek to enjoin public

records. Courts "will not read into the statute the language that it believes was omitted" (*State v. Moses*, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002).

The trial court's refusal to apply General Court Rule 15 and the *Ishikawa Factors* is error and the issue must be remanded back to the trial court for proper application of GR 15 and the *Ishikawa Factors* to determine whether the Does have a privacy right and whether their privacy right outweighs the public's right to openness in our courts (*Hundtofte*, ¶50)(see also *Doe v. WSP*, 185 Wn.2d 363, ¶36, *fn.* 6, 374 P.3d 63 (2016).

3. To Determine Whether Article I, Section 10 Applies Is Dependent on the Experience and Logic Test

Our Supreme Court in *State v. S.J.C.*, 183 Wn.2d 408, 352 P.3d 749 (2015), opined that filing suit under pseudonym without application of GR 15 and the *Ishikawa Factors* is dependent on whether there are other statutory provisions for sealing court records and whether the Washington State Constitution, Article 1, §10 applies (*Id.* ¶6). "Whether article I, §10 applies depends on application of the experience and logic test. *In re Det. of Morgan*, 180 Wn.2d 312, 325, 330 P.3d 774 (2014)" (*Id.*).[23]

4. Logic Prong

In analyzing the logic prong to determine whether Article 1, §10 applies to the sealing of court records in these cases, it is not logical that the court

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[23] Where an individual seeks to seal a … court record but does not meet the statutory requirements, the Ishikawa Factors may still guide the court's decision (*State v. S.J.C.*, ¶50, *fn.* 6).

would allow secrecy when three separate court rules require a trial court to know the identity of all parties (CR 4, 10 and 17) and no statutory provisions for sealing has been identified.

Does cite to our Supreme Court's ruling in *N. Am. Council on Adoptable Children v. Dept. of Soc. & Health Servs.*, 180 Wn.2d 433, 440, 739 P.2d 677 (1987) claiming that the Court determined a party may proceed in pseudonym to protect a privacy issue. The Court in *N. Am Council v. DSHS*, was not discussing use of pseudonym to seal court records, no privacy interest has been identified and the decision is not analogous to the question of sealing presented in these causes.

Does argue that a trial court did not need to apply GR 15 and the *Ishikawa Factors* in these cases since "the names of the individual [parties] have little bearing on the public's interest in the dispute or its resolution" … "where a lawsuit is brought solely against a government …" (Doe L, 34-35). Zink is not a government agency, she is a private party necessary to this action. Requester is a mandatory and necessary party to an action to enjoin records under RCW 42.56.540. *Burt v. Dep't of Corr.*, 168 Wn.2d 828, ¶24, 231 P.3d 191 (2010). None of Does cited cases can logically be applied to the circumstance of this case and Does fail to meet the logic test.

a) Experience Prong

Historically, a party's real name is required by court rules to be known to the trial court and is open to the press and general public (CR 4(b)(1)(i), 10(a)(1) and 17(a)). The identities of the parties must be identified in the

summons and complaint at the time the action is filed in the court. Further, our Supreme Court has instructed that open justice is of paramount public concern and secrecy must only be allowed in exceptional cases.

> Article I, section 10 of our constitution states that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." Const. art. I, § 10. **The openness of our courts "is of utmost public importance" and helps "foster the public's understanding and trust in our judicial system.**" Dreiling v. Jain, 151 Wn.2d 900, 903, 93 P.3d 861 (2004).

Hundtofte v. Encarnación, 181 Wn.2d 1, ¶10, 330 P.3d 168 (2014)(emphasis added). The Court in *Hundtofte* made clear: through use of GR 15 and *Ishikawa Factors*, a party seeking secrecy must show a compelling privacy interest enough to override the constitutional presumption of openness. (*Id.* 12-15). Does have also failed to prove that our courts allow use of pseudonym simply because a party does not want their identity known. Furthermore, the press routinely reports on the arrest and conviction of sex offenders; both adults (CP 1808-1882; 1890-1933) and juveniles (CP 1886-1888).

The Washington State Constitution, Art. 1, §10 clearly applies to these causes of action. The documents filed under redaction are clearly court records used by the trial court and the trial court was clearly required to apply the provision of GR 15 and Ishikawa and failed to do so. The decision of the trial court must be reversed and remanded for proper application of GR 15 and the Ishikawa Factors.

5. Class Action Suit Under RCW 42.56.540

Does argue that the trial court properly certified classes of sex offenders to enjoin public records under RCW 42.56.540. While Does, citing to *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, ¶20, 261 P.3d 119 (2011), are correct that RCW 42.56.540 is not a special proceeding, they misunderstand the legal issue. In *Neighborhood Alliance*, our Supreme Court, relying on their decision in *Spokane Research v. City of Spokane*, 155 Wn.2d 89, 117 P.3d 1117 (2005) found that "unless express procedural rules have been adopted by statute or otherwise, the general civil rules control (*Id.*). RCW 42.56.540 is an express procedural rule that has been adopted by statute setting out the provisions that must be followed in order for a trial court to grant a party's motion to enjoin public records.

Does argue that Zink does not understand the civil rules and binding precedent in interpreting those rules or the nature of class actions. (Doe L, 36; Doe D, 20). Without discussing the mandatory provisions of RCW 42.56.540 as they apply to the authority of the trial court to enjoin the requested records, Does claim that if one sex offender is named in the records, they are named in all of the records. Therefore only one representative is needed to bind all unnamed parties and enjoin all records of a certain class(s)(Doe L, 37). Interpreting RCW 42.56.540 as Does do here, renders a significant portion of RCW 42.56.540 superfluous. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

RCW 42.56.540 is a provisional statute providing authority to our courts to enjoin public records if a party meets specific criteria. The plain language of RCW 42.56.540 only allows "**a person who is named in the record or to whom the record specifically pertains**" to file a motion asking the superior court to enjoin disclosure of a specific public record. *Ameriquest Mortgage Co. v. Washington State Office of Attorney General*, 170 Wn.2d 418, ¶58, 241 P.3d 1245 (2010)(emphasis added). This language is more than a statute merely referring to an" individual" (Doe L, 37). The language is unambiguous and controls over all other civil rules and statutes: In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern - RCW 42.56.030.

Only a party named in a specific record can enjoin that specific record. Class action assumes all persons, named in a certain type of record, are requesting injunction of the records through another party. This is analogous to *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 189 P.3d 139 (2008)

> In 2002, the Times filed public disclosure requests with the Seattle, Bellevue, and Federal Way school districts seeking copies of all records relating to allegations of teacher sexual misconduct in the last 10 years. T**he school districts notified 55 current and former teachers** that their records were gathered in response to the Times' requests. **Thirty-seven of the teachers filed a lawsuit to enjoin** the school districts from releasing their records, arguing that disclosure of records identifying them as subjects of sexual misconduct allegations violated their right to privacy.

Id. ¶5 (emphasis added)(footnote omitted). As in *Bellevue John Does*, of the thousands of persons notified, only some sought to enjoin the records. RCW

42.56.540 only authorizes a person who is named in the record to enjoin the record that person is named in. Does can only enjoin the record that pertains to each of them after proving they are in fact named in the record and have a right under RCW 42.56.540 to enjoin that specific record. *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775, ¶78, 246 P.3d 768 (2011)(emphasis added). Class action is not authorized under RCW 42.56.540 and the trial court's order certifying classes of person to enjoin all of the records must be reversed.

RCW 42.56.540 requires a party seeking injunction to prove a specific record is not of public interest. This must be done on an individual case-by-case bases which cannot be accomplished through class action. While it may be determined that the representative's record is or is not of public interest, under the clear language of RCW 42.56.540, each party would need to prove the public had no interest in a particular record pertaining to them. For instance, in *Bellevue John Does*, at ¶4, the Court determined that the identities of teachers accused of substantiated sexual misconduct is of legitimate public concern and must be disclosed, while those whose sexual misconduct was unsubstantiated is not of legitimate public interest and must be redacted from the records prior to production (*Id.* ¶35).

Further, each party must prove disclosure would cause irreparable harm to that specific person. This provision necessitates an individual assessment on a case-by-case basis to determine whether any specific sex offender has or will suffered any actual irreparable harm. Whether a categorical exemption applies to all sex offender records or not, PC did not name an exemption and

withhold the records. They notified third parties to initiate these causes of action and pursuant to RCW 42.56.540 a court cannot simply find the records are exempt, the court is required to make sure each party meets the criteria set out in by our legislature to enjoin the public records. *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, ¶64, 174 P.3d 60 (2007).

Finally, even if a categorical exemption applies, under RCW 42.56.210(2) a trial court may allow release of exempt public records if they are of public import and do not involve a privacy right.

> A court may even allow for the inspection and copying of exempt records if it finds "that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital government function." RCW 42.56.210(2); Oliver v. Harborview Med. Ctr., 94 Wn.2d 559, 567-68, 618 P.2d 76 (1980) (burden shifts to the party seeking disclosure to establish that the exemption is clearly unnecessary).

Ameriquest Mortgage Co. v. Washington State Office of Attorney General, 170 Wn.2d 418, ¶36, 241 P.3d 1245 (2010)(emphasis added). Clearly RCW 42.56.540 prohibits class action to enjoin the release of all records of a certain type and the classes must be decertified on remand.

III. FEES AND COSTS

Without citation to any evidence PC argues that Zink narrowed her requests (PC 73) and is not entitled to penalties, costs and fees (PC, 72-73). PC is incorrect in both cases. First PC has not provided any evidence that Zink narrowed her requests and without proper exemption logs it is difficult to determine which records have been released and which have not.

Second, in *Doe v. WSP*, 185 Wn.2d 363, ¶5, 374 P.3d 63 (2016), the Court determined that attorney fees, costs, and per diem penalties were not appropriate since the action did not include a complaint filed against the agency by the requester or a complaint filed by agency against the requester (*Id.* ¶40). In *Doe v. WSP*, both the agency and requester were at all times a "Defendant." In this case, when PC filed a complaint to enjoin the juvenile records under RCW 42.56.540 they became a "Plaintiff." When Zink filed a complaint against PC alleging violations of the PRA under RCW 42.56.550 for wrongful delay and withholding, she became a "Plaintiff." Here, both the requester and the agency filed for judicial intervention and both became a "Plaintiff" against each other as well as being a defendant against the Does. This cause of action is not just between a requester/agency and third party and per diem penalties, costs and fees must be awarded for any and all violations of the PRA by PC.

> Per Diem Penalties. We take this opportunity to clarify our holdings with regard to per diem penalties. The Court of Appeals implied that the agency can be spared per diem penalties if it initiates an action in superior court. Soter, 131 Wn. App. at 907. That reasoning does not coincide with our holding that once a court determines that a requester was entitled to inspect public records, the trial court is required to impose a penalty within the statutory range for each day records were withheld. Koenig v. City of Des Moines, 158 Wn.2d 173, 189, 142 P.3d 162 (2006). The trial court may not reduce the penalty period, even if the requester could have filed suit against the agency sooner than it did. Yousoufian, 152 Wn.2d at 438. As amici explain, the advantage to going to court is that the agency can obtain quick judicial review, curbing, but not eliminating, the accumulation of the per diem penalties.

Soter v. Cowles Publ'g Co., 162 Wn.2d 716, ¶63, 174 P.3d 60 (2007). Our Supreme Court clarified that under RCW 42.56.540 an agency is to be assess mandatory per diem penalties under RCW 42.56.550(4) for violations of the PRA.

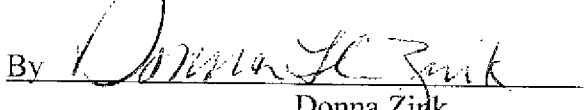
> In sum, we hold that the plain language of RCW 42.56.540 allows agencies to seek judicial determination regarding the validity of a public record. **We emphasize that the agency remains subject to per diem penalties for each day that it has improperly denied access to a public record**.

Id. ¶65. This cause is not similar to *Doe v. WSP*. The trial court's decision not to award penalties, costs and fees is error and must be reversed and remanded to determine the appropriate legal remedy.

IV. CONCLUSION

For all of the reasons stated herein, as well as in opening briefing, Zink respectfully requests this Court to reverse the findings. conclusions and orders of the trial court and remand for proper application of the strict requirements of the PRA and the Washington State Constitution, Art. 1 §10.

RESPECTFULLY SUBMITTED this 13th day of March, 2017.

By 

Donna Zink
Pro se

V. CERTIFICATION OF SERVICE

I declare that on the 13th day of March, 2017, I sent a true and correct copy of appellant's "RESPONSE/REPLY BRIEF OF APPELLANT DONNA ZINK" via e-mail service to the following addresses:

MICHELLE LUNA-GREEN
WSBA #27088
MICHAEL SOMMERFELD
WSBA #24009
Pierce County Prosecutor/Civil
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Phone:253-798-6380/Fax:253-798-6713
E-mail: mluna@co.pierce.wa.us
E-mail: msommer@co.pierce.wa.us;

REUBEN SCHUTZ
WSBA #44767
SALVADOR A. MUNGIA
WSBA #14807
Gordon Thomas Honeywell LLP
1201 Pacific Ave, STE 2100
PO Box 1157
Tacoma, WA 98401-1157
Phone: 253-620-6500/Fax: 253-620-6565
Email: rschutz@gth-law.com
Email: smungia@gth-law.com
Email: pquantz@gth-law.com;

AMY MUTH
WSBA #31862
Attorney at Law
1111 3rd Ave, STE 2220
Seattle, WA 98101
Phone: 206-682-3053/Fax: 206-624-2190
Email: amy@amymuthlaw.com;

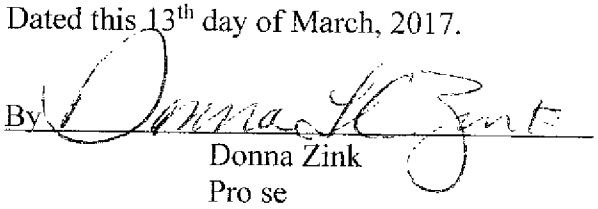
HARRY WILLIAMS, IV
WSBA #41020
Law Office of Harry Williams LLC
1433 12th Avenue, Suite A1
Seattle, WA 98122
Phone: 206-769-1772
Email: harry@harrywilliamslaw.com;

WILLIAM R. MICHELMAN
WSBA #6803
William R. Michelman, Inc., P.S.
7512 Bridgeport Way West Suite B
Lakewood, Washington 98499-8377
Phone: 253-582-3387
E-mail: michelman@wa.net;

BARRY WALLIS
WSBA #37425
Wallis Law Firm, PLLC
1101 Fawcett Ave Suite 300
Tacoma, WA 98402-2015
Phone:253-272-1245/Fax:253-572-6662
E-mail: barry@wallislawfirm.com;

PRACHI V. DAVE
WSBA #50498
ACLU of Washington Foundation
901 5th Ave, Suite 630
Seattle, WA 98164
Phone: 206-624-2184/Fax:
Email: pdave@aclu-wa.org.

Dated this 13th day of March, 2017.

By 
Donna Zink
Pro se

DONNA ZINK
March 13, 2017 - 3:31 PM
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Case Name: Zink v. Pierce County v. John Doe

Court of Appeals Case Number: 48378-5

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mluna@co.pierce.wa.us
msommer@co.pierce.wa.us
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