

FILED

SEP 13 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 27908-1-III  
COURT OF APPEALS OF WASHINGTON  
DIVISION TWO

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FRANKLIN COUNTY SHERIFF'S OFFICE, et al,  
Appellants - Plaintiffs - Crossclaim Defendants

vs.

ALLAN PARMELEE, and the  
COMMITTEE FOR GOVERNMENT ACCOUNTABILITY  
Appellees - Defendants - Crossclaim Plaintiffs

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**Respondent's Brief**

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From The Franklin County Superior Court

No. 08-2-05600-5

(Consolidated with No. 08-2-50902-1)

Honorable Cameron Mitchell

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Allan Parmelee  
pro se Appellee  
SCCC - 793782  
191 Constantine Way  
Aberdeen WA 98520  
(360) 794-1976

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**I - INTRODUCTION:**

Appellees, Allan Parmelee and the Committee for Government Accountability, an unincorporated political action committee (CFGa) are public requestors in this case under the Public Records Act <sup>\*1</sup> where Franklin County's trial strategy was to "trash talk" the records requestors as their rationale for denying the requested records, when not denied others. They argue that RCW 42.56.080 and RCW 42.56.550 may be circumvented by asking the court do do something the Agency is not allowed to do under the PRA.

**II - ASSIGNMENTS OF ERROR:**

The plain language and legislative intent of the PRA and RCW 42.56.030 and .080 does not allow an agency to circumvent the intent of the PRA by asking the Court to consider "trash talk" about a records request when the agency is not allowed to consider it. Parmelee's CR-12(f) motion was properly granted under RCW 42.56.080 and no error exists.

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\* Fn.1

The Public Records Act ("PRA") is codified at RCW 42.56, recodified in 2006 from RCW 42.17, herein the most recent version are cited unless quoted. Also see, WSBA's Public Records Act Deskbook: Washington's Public Disclosure and Open Meetings Laws (2006), herein "PRA Deskbook."

**III - ISSUES RELATED TO ASSIGNMENTS OF ERROR:**

1. The Statutory Construction Argument Franklin Franklin County Presents Is Sufficiently Flawed To Not Merit Further Consideration.
2. Franklin County Fails To Show How The Court Abused It Discretion By Granting Parmelee's CR-12(f) Motion And Why RCW 42.56.080 Should Be Circumvented By Trickery.
3. Franklin County Fails To Establish That Discretionary Review Is Required To Resolve These Issues And That The Courts Are Not Bound By The Same Statutory Construction And Intent As The Agency Under RCW 42.56.030, RCW 42.56.080 and RCW 42.56.550(1)-(3).

**IV - COUNTERSTATEMENT OF THE CASE:**

Mr. Parmelee, as a freelance journalist and incarcerated person involved in political and government reform activities issued eighty one (81) public records requests to Franklin County. CP-49-60, CP-10-19 and RP-14-22, RP-32:16-22. \*2 Franklin County chose to rely on "trash talk" about Parmelee, their records requestor contact, such as what others thought about him; his religion, race, gender, personal preferences, prior suspected or claimed exercises of free speech they thought critical despite being true and lawful, and that such reasons should be relied upon, presented by the Agency, to deny Parmelee public records while allowing those same records to their friends. Id., CP-64-69.

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\* Fn.2 "RP" refers to the October 3, 2008 hearing transcript filed in this court by Appellee.

Parmelee sought records from Franklin County after learning from several sources of abuses and cover-ups occurring at the Franklin County Jail. CP-49-60, RP-14-22, RP-32:23-25 = 33:1-4. As soon as Franklin County noticed a pattern and subject matter type inquiry that if disclosed would expose the County's human rights abuses and patterns of official corruption, they filed suit against Parmelee in a pre-emptive attack filled with trash-talk, having nothing to do with the records sought nor if any PRA statutory exemption applied. Id. Similar to the recent attacks on the WWW.WIKILEAKS.COM.

The trial court agreed and granted Parmelee's motion to strike under CR-12(f) because who, what and what others think of Parmelee as applied to PRA requests and exemption application in this case per RCW 42.56.030 and RCW 42.56.080 is irrelevant, immaterial, impertinent and scandalous matter. CP-40-41.

During this time, Franklin County filed a second similar lawsuit against Parmelee that he moved to consolidate with this case. That motion was granted on October 20, 2008 before the order was entered striking Franklin County's "trash-talk" about Parmelee. e.g., CP-10-19.

Franklin County's matter fails to present meritorious issues for discretionary, or any, review without being

frivolous and warranting them to RAP 18.7 & RAP 18.9 sanctions.

**V - LEGAL ARGUMENT:**

- 1. If Agencies Are Not Allowed To Consider The Identity Or Purpose Of A Public Records Requestor, It Would Reach An Absurd Result To Permit The Same Agency To Ask The Court To Do So.**

Franklin County's argument hardly presents sufficient reasoning to merit further consideration. If, under RCW 42.56.080, and agency may not consider the identity or purpose of a records requestor to grant or deny public records access within RCW 42.56.030 and .550(1)-(3), it would be an absurd result to allow the same agency to gather these prohibited considerations and ask the court to consider what the agency is not allowed. Even in presenting the issues to the court as Franklin County asks to do, is evidence they considered denying public records because of who and for what purpose a public record is sought in violation of RCW 42.56.080.

The intent and legislative history of the PRA is to promote open and transparent government to all. PRA Deskbook, Ch. 1 thru 6. More specifically, it says:

"The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so

they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions construed to promote this public policy and to assure that the public interest will be fully protected. In the event of a conflict between the provisions of this chapter and any other act, the provision of this chapter shall govern."

RCW 42.56.030 (emphasis added)

The PRA "is a strongly worded mandate for broad disclosure of public records." Burt v. Wash. Dept. of Corrections, 168 Wn.2d 828, 83\_, 231 P.3d 191 (2010), citing, Soter v. Cowles Publ'g, 162 Wn.2d 716, 731, 174 P.3d 60 (2007).

"The stated purpose of the Public Records Act is nothing less than the preservation of the most central tenants of representative government, namely, the sovereignty of the people and the accountability to the public officials and institutions." Id, citing, Progressive Animal Welfare Soc'y v. Univ. of Washington, 125 Wn.2d 243, 251, 884 P.2d 592 (1994). Franklin County's argument fails for several reasons by examining the statutory language and legislative intent of the PRA. RCW 42.56.550(2) and (3) are clear and unambiguous.

The statutory language of the PRA is clear. It is the agency's burden to justify their actions and to establish that its denial of public records is reasonable. RCW 42.56.550(1) & (2). Koenig v. City of Des Moines, 158 Wn.2d 173, 183-84, 142 P.3d 162 (2006). When

interpreting RCW 42.56.080 that says:

"Public records shall be available for inspection ... make them promptly available to any person.... Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose of the request..."

Id.(emphasis added).

Koenig v. City of Des Moines, 158 Wn.2d at 183-84;

Zink v. City of Mesa, 140 Wn.App. 328, 744-45, 166 P.3d 738 (2007)(citing to former pre-2006 version of the PRA, RCW 42.17.270[now RCW 42.56.080] does not allow disparate treatment of records requestors). Because agencies bear the burden of proof based on statutory exemptions, to allow them to submit "trash talk" about a records requestor for the court to consider, would then require the records requestor to defend "why" [s]he is seeking public records prohibited by RCW 42.56.080, and shift the burden away from the agency to establish if and how specific statutory exemptions apply to specific public records as intended by RCW 42.56.540 [formerly RCW 42.17.330].

"When interpreting any statute [the Court's] primary objective is to 'ascertain and give effect to the intent of the Legislature.'" Koenig, 158 Wn.2d at 181, citing, Nat'l Elec. Contractors Ass'n v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). "In order to determine legislative intent, [the Courts] begin with the statute's plain

language and the meaning." Id. "Plain language does not require construction." Id., citing, State v. Thornton, 119 Wn.2d 578, 580, 835 P.2d 216 (1992). "A court cannot read into a statute that which does not appear." State v. Malone, 106 Wn.2d 607, 610, 724 P.2d 364 (1986). "Any statutory interpretation which would render an unreasonable and illogical consequence should be avoided." Puyallup v. Pacific NW Bell, 98 Wn.2d 443, 450, 956 P.2d 1035 (1982). "An act must be construed as a whole, considering all provisions in relation to each other and, if possible, harmonizing all to insure proper construction of each provision." In Re Piercy, 101 Wn.2d 490, 492, 681 P.2d 223 (1984).

Like the PRA, the purpose of the Freedom of Information Act ("FOIA" 5 U.S.C. § 552) is open access to information to keep public agencies accountable. "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." N.L.R.B. v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978). The PRA "requires all state and local agencies to disclose any public record upon request unless the [specific] record falls within certain very specific exemptions." O'Conner v. State Dept. of Soc. & Health Servs, 143 Wn.2d 895, 905, 25 P.3d 426

(2001)(emphasis added); PRA Deskbook, Ch.19. This accountability and transparency is the very thing Franklin County opposes by attacking the records requestor with "trash-talk."

The FOIA closely parallels the PRA with regards to not allowing disparate treatment of records requestors because of who a records requestor is. King County v. Sheehan, 114 Wn.App. 325, 336-344, 57 P.3d 307 (2002) (Court compares FOIA to PRA and meaning of PRA when agency opposed disclosure because of who and why the records were being requested, to post on internet); National Archives & Records Admin. v. Favish, 541 U.S. 157, 170-72, 124 S.Ct. 1570, 158 L.Ed.2d 319 (2004)(withholding records may not be predicated on who is requesting them). Any "trash-talk" about a records requestor is irrelevant and subject to CR-12(f) striking and sanctions under CR-11(b). McNeal v. Allen, 95 Wn.2d 265, 267-68, 621 P.2d 1285 (1980).

Franklin County asks the court to construe the PRA in a way that would "yield unlikely, strange or absurd consequences," as it would allow the court to consider "trash-talk" the agency is not allowed to rely on to deny records to a requestor, in an attempt to make RCW 42.56.030, with .080 and .550 superfluous. State v.

Contreras, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994).

If an agency is not allowed to "consider the identity" of a records requestor per RCW 42.56.080 to deny public records, it would be self defeating and an absurd result to allow the same agency to rely on, by presenting to a court, "trash-talk" about the identity of a records requestor in support of their motion to oppose disclosure.

Franklin County presents neither any argument warranting further consideration, and is hardly sufficient to justify discretionary review under RAP 2.3. It is patently meritless.

2. Franklin County Fails To Demonstrate That The Trial Court Abused Its Discretion By Granting Parmelee's CR-12(f) Motion Per RCW 42.56.080.

Parmelee timely filed a CR-12(f) motion to strike Franklin County's immaterial, impertinent and scandalous "trash-talk" about Parmelee, the records requestor. CP-49-60, RP-14-32. The court heard argument and considered briefing, and properly interpreted RCW 42.56.080 as prohibiting an agency from presenting factors in opposition of records disclosure focusing on the records requestor, while ignoring any "specific" record and any applicable "specific" exemption RCW 42.56.540 requires.

Koenig v. City of Des Moines, 158 Wn.2d at 183-84. CP-40-41, CP-10-19, CP-9, RP-14-32.

Any party may move under CR-12(f) for an order striking "redundant, immaterial, impertinent, or scandalous matter" from any pleading, motion or their papers before a responsive pleadings is filed or at any time thereafter as the court deems appropriate. 14 Tegland, Washington Practice, § 12.31 (2008-09). The procedure is a legitimate counterpart to a defendant's motion to dismiss for failure to state a claim and is subject to the same standards. Id.

In a comparable case, McNeal v. Allen, 95 Wn.2d 265, 267-68, 621 P.2d 1285 (1980) the defendant in a medical malpractice case filed a CR-12(f) motion to strike and for CR-11 sanctions because the Plaintiff included a sum certain in his lawsuit against the doctor. By statute, Plaintiff's are prohibited from seeking a sum certain to avoid inflaming the media and contaminating the jury pool. The motion was granted, like Parmelee's was, and the Plaintiff appealed, being affirmed.

Franklin County's argument fails both any standard under RAP 2.3(b) and under any conceivable good faith contention. They fail to show as a matter of law the trial court abused its discretion in granting Parmelee's CR-12(f) motion striking their trash-talk about him prohibited by RCW 42.56.080.

3. Franklin County Fails To Establish Discretionary Review Was Required To Resolve A Meritless Issue By Twisting Into A Pretzel Statutory Intent Of RCW 42.56.080 And The PRA.

Franklin County seeks to convolute the distinction of "the courts" as applied to PRA requests to them for public records, as opposed to PRA cases before the courts per RCW 42.56.550(3). Such a meritless presentation and attempt to twist the statutory construction of the PRA into a pretzel would make the PRA meaningless.

Parmelee admits that both Nast v. Michels, 107 Wn.2d 300, 730 P.2d 54 (1986) and Spokane & Eastern Lawyer, 136 Wn.App. 616, 150 P.3d 158 (2007) have held that the courts are not an agency as defined by RCW 42.56.010(1), and the Washington Constitution, Article I, § 10 governs records requests to courts. But this is not the holding as Franklin County seeks to apply it that the courts are not bound to applying the PRA as it is written and intended by the Legislature. The courts are bound by statutory construction and meaning, and must apply the PRA accordingly despite how badly Franklin County seeks to avoid it. Koenig v. City of Des Moines, 158 Wn.2d at 181; Burt v. Wash. DOC, 168 Wn.2d 828, 231 P.3d 191 (2010).

Franklin County's statutory definition attack was neither argued in the trial court, nor is Parmelee the

proper party to be suing to declare a statute such as RCW 42.56.080 unconstitutional as they suggest they seek. Neither the Attorney General's Office has been served as required. Kreidler v. Eikenberry, 111 Wn.2d 828, 766 P.2d 438 (1989); RCW 7.24.110.

While Franklin County argues equity issues in favor of their effort to "trash talk" the records requestors, this argument also easily fails because RCW 42.56.030 states that open government is the primary objective, and if any conflict exists, the PRA shall govern. Furthermore, RCW 42.56.100 requires that all agencies "...shall provide the fullest assistance to requestors" which by "trash talking" a records requestor, is not complying with the statute of "fullest assistance." WAC 44-14-040(1); DOE v. Washington State Patrol, 80 Wn.App. 296, 303-04, 908, P.2d 914 (1996). An agency may not participate in "trash talking" a records requestor because it is not providing the fullest assistance, nor is it treating all records requestors equally without regards to who or what they are. RCW 42.56.080; WAC 44-14-04003 (responsibilities of agencies in processing requests).

Franklin County fails to cite any cases on point with their equity arguments that would overturn PRA statutory construction. For example, equity arguments in

PRA cases were rejected by the Supreme Court in Confederated Tribes v. Johnson, 135 Wn.2d 734, 958 P.2d 260 (1998) where attorney fees were denied under equity principles. Similar equity arguments were rejected in Triberino v. Spokane County, 103 Wn.App. 680, 13 P.3d 1104 (2000). RCW 42.56.030 requires the PRA to control if a dispute exists between any other statute and the PRA.

While Franklin County argues RCW 42.56.540 provides for the relief they seek, it must not be construed in the way they seek to apply it. The statute requires a focus on "specific" statutory exemptions, applied to "specific records," without regard for "trash talk" and who the records requestor is. Progressive Animal Welfare Soc'y., 125 Wn.2d at 257-61, 270; Soter v. Cowles Publ'g., 162 Wn.2d 716, 740, 749-50, 754-57, 174 P.3d 60 (2007).

More than conclusory claims of "vital" as opposed to merely "important" government interests must be identified. Franklin County fails to establish in any event any "vital" government interest justifying "trash talking" a records requestor because of his or her reputation, political, religious, ideological or other beliefs, just like the Dept. of Corrections claimed and failed in Prison Legal News v. DOC, 154 Wn.2d 628, 639-40,

115 P.3d 316 (2005); Police Guild v. Liquor Control Bd., 112 Wn.2d 30, 36-39, 769 P.2d 283 (1989)(specific exemptions are required for an injunction, and the occupation of persons who are targets of PRA requests is irrelevant.).

Only in rare circumstances which Franklin County does not meet, may an agency or court consider, only the identity of the records requestor. Never may the agency or court consider the reputation, opinions of others about the records requestor or other information, to determine if to withhold records. The only question that may be asked is if privacy exemptions are waived by the records subject, for their disclosure. Oliver v. Harborview Med. Center, 94 Wn.2d 559, 565, 618 P.2d 76 (1980)(limited waiver of confidentiality waived when requesting records about ones self); NARA v. Favish, 541 U.S. at 170-172.

Franklin County's request that an agency may initiate a fishing expedition into a records requestor's personality, reputation, political, religious, marital or even sexual preferances as the basis they seek to present to a court to deny a records requestor public records is unsupported by any authority, lawful application of applications of the PRA and common sense. Id., King County v. Sheehan, 114 Wn.App. at 341; RCW 42.56.550(3); Koenig v. City of Des Moines, 158 Wn.2d at 183 (a court cannot

look beyond the four corners of specific records to determined if specific statutory exemption applies); Los Angeles Police Dept. v. United Reporting Publishing Corp., 528 U.S. 32, 43-45, 120 S.Ct. 469, 45 L.Ed.2d 451 (1999)(distinguishing government limits on public records discrimination or restrictions).

The result Franklin County seeks with their fishing expedition on trash talk is desparate treatment of all records requestors in comparaisn (e.g. see, Zink v. City of Mesa, 140 Wn.App. at 744-46 (also, same counsel as in this case was involved)). It in no way impairs the trial court's ability to provide relief on a case-by-case basis or to fashion a properly available equitable result, if equity applies as they claim at al, applicable to PRA cases. Thus the trial court's ruling in no way is erroneous and should be affirmed, nor is it obvious or reversable error, nor does it deprive any court of its constitutional powers to dispense equity issues. It also does not improperly limit the agency's ability to seek relief. (e.g. see, RCW 9.94A.537 (2007), overturning, State v. Phillatos, 159 Wn.2d 459, 465, 150 P.3d 1130 (2007) where Legislature changed Court decision of criminal rights and due process due) In RCW 42.56.030 the Legislature held that if any conflicts existed with other statutes, the PRA shall govern, such as by prohibiting the identity

the identity of the records requestor be considered, and requiring the fullest assistance by the agency to the records requestor, RCW 42.56.100, and requiring only statutory exemptions be relied upon. RCW 42.56.550.

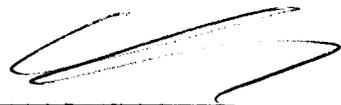
4. Parmelee Should Be Awarded Any And All Fees, Costs And PRA Penalties For This Appeal.

If, after having prevailed in this appeal, Mr. Parmelee seeks any and all fees and costs on appeal per RAP Title 14 and RAP 18.1, and on the principals of the "equity" Franklin County claims apply, and RCW 42.56.550(4) he also seeks an order that he shall be awarded PRA penalties for all 81 PRA requests for every day he has been denied the records requested, on a per request basis. Soter v. Cowles Publ'g, 162 Wn.2d at 756; Yousoufian v. Office of Ron Sims, 168 Wn.2d 444, \_\_\_P.3d\_\_\_ (2010).

VI - CONCLUSION:

For these reasons and the record, Mr. Parmelee respectfully asks this court to deny Franklin County's motion, deem it frivolous, and affirm the trial court's order in all respects. He also asks for fees, costs and PRA penalties be awarded on appeal.

Respectfully submitted on August 28, 2010.

  
Allan Parmelee  
SCCC - 793782  
191 Constantine Way  
Aberdeen WA 98520

CERTIFICATE OF SERVICE

I hereby certify that in accordance with RAP 18.5 and DOC practice and policy, a copy of this pleading on the court and all required parties on or before the date below.VIA U.S. Mail.

Signed at Aberdeen WA on 09 / <sup>09</sup>~~02~~ / 10.

  
Allan Parmelee