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NO. 73939-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BELLEVUE JOHN DOES 1-11, FEDERAL WAY JOHN DOES 1-5.
AND JANE DOES 1-2, and SEATTLE JOHN DOES 1-13 and JOHN
DOE,

Appellants,

v.

BELLEVUE SCHOOL DISTRICT #405, a municipal corporation and a
Subdivision of the state of Washington; FEDERAL WAY SCHOOL
DISTRICT #210, a municipal corporation and a subdivision of the state of
Washington; and SEATTLE SCHOOL DISTRICT #1, a municipal
corporation and a subdivision of the state of Washington, and

THE SEATTLE TIMES COMPANY,

Respondents.

Amended BRIEF OF APPELLANT SEATTLE JOHN DOE #9

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TABLE OF CONTENTS

A. Assignments of Error	1
Assignments of Error	1
Issues Pertaining to Assignments of Error	1
B. Statement of the Case	2
C. Argument	3
D. Conclusion	10

TABLE OF AUTHORITIES

Table of Cases

<u>Brouillet v. Cowles Publishing Co.</u> , 114 Wn. 2d 788, 791 P. 2d 526 (1990)	6
<u>Dawson v. Daly</u> , 120 Wn. 2d 782, 845 P. 2d 995 (1993)	4, 7
<u>King County v. Sheehan</u> , 114 Wn. App. 325, 57 P. 3d 307 (2002)	7
<u>In re Request of Rosier</u> , 105 Wn. 2d 606, 717 P. 2d 1353 (1986)	6
<u>State v. J. P.</u> , 149 Wn. 2d 444, 69 P. 3d 318 (2003)	9
<u>Tiberino v. Spokane County</u> , 103 Wn. App. 680, 13 P. 3d 1104 (2000)	6
<u>Booth Newspapers, Inc. v. Kalamazoo School District</u> , 181 Mich. App. 752, 450 N.W. 2d 286 (1989)	8
<u>Wakefield Teachers Association v. School Committee of Wakfield</u> , 47 Mass. App. 704, 716 N.E. 2d 121 (1999), reversed on other grounds, 431 Mass. 792, 731 N.E. 2d 63 (2000)	8

Statutes

RCW 42.17.010	5
RCW 42.17.250-348	2
RCW 42.17.255	6-7, 9
RCW 42.17.260(1)	8
RCW 42.17.310	7
RCW 42.17.340(3)	4, 5

ASSIGNMENTS OF ERROR

1. The trial court erred in entering Finding of Fact No. 38, which mistakenly purported to establish that “[T]he investigation revealed that the allegations as to John Doe #9 were well-founded...” and which directed that “Records should be released to the Seattle Times with only student names and their parents’ names redacted.”

2. The trial court erred in assuming that the Seattle School District records regarding Seattle John Doe #9 met the terms of the November 18, 2002 Seattle Times’ public disclosure request for school district records of investigations of alleged teachers’ sexual misconduct in the last ten years.

3. The trial court erred in entering Conclusion of Law No. 12, stating “[T]he identity of the accused teacher is a matter of legitimate public concern when the investigation of the allegations are [sic] inadequate, the allegations are deemed substantiated, or the employee is disciplined with what amounts to more than a letter of direction.”

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether, upon the Supreme Court’s de novo review of the Seattle School District’s records (under seal) regarding Seattle John Doe #9, the

trial court 's ruling directing disclosure of the records to the Seattle Times newspaper was correct under the terms of the public records request. (Assignment of Error 1 and 2)

2. Whether release of a public record of a school administration's investigation of alleged teacher sexual misconduct toward students may properly redact information identifying the teacher and be in compliance with the public disclosure act (RCW 42.17.250-348). (Assignment of Error 3)

STATEMENT OF THE CASE

On November 18, 2002 the Seattle Times newspaper (intervenor/defendant below) initiated a public records request to Seattle School District #1 (one of three school district defendants below) for "logs and/or indexes of sexual misconduct allegations against Seattle Public Schools employees" for the previous ten years (CP 339-40; Finding of Fact #2 [CP 98]). The school district responded on January 30, 2003 with two logs regarding "certificated staff," one log listing thirteen instances of discipline against teachers and a second log listing nineteen instances of "no discipline imposed" (including several instances of teachers who were classified as "retired"); both lists omitting the identifying name, certificate number and

school of the teacher (CP 348-54). Several teachers (plaintiffs below) sought and obtained a Temporary Restraining Order (CP 22); the Seattle Times was allowed to intervene (CP 49); and a trial was held, primarily on documentary evidence and a limited amount of testimony affecting certain teachers' factual situations, before King County Superior Court Judge Douglass A. North, who entered Findings of Fact and Conclusions of Law (CP 97-115) and an Order for Injunction and Protective Order (CP 116-19) on April 25, 2003.

Seattle John Doe #9 is one of four teachers who appealed from the trial court's decision on May 9, 2003 (CP 123). These appeals were transferred from the Court of Appeals to the Supreme Court and consolidated with the Seattle Times' appeal from the trial court's decisions on other issues; all issues thus being heard by the Supreme Court on direct review.

ARGUMENT

The trial court mistakenly treated Seattle John Doe #9's matter as being within the terms of the public disclosure request.

Where the trial court decides a public disclosure act case on the basis of affidavits, legal memoranda and other documentary evidence, the appellate

court reviews the decision de novo. RCW 42.17.340(3); Dawson v. Daly, 120 Wn. 2d 782, 845 P. 2d 995 (1993)

The trial court reviewed un-redacted records regarding Seattle John Doe #9 and concluded that his matter met the terms of the Seattle Times' request. This appellant requests that the Supreme Court examine his record under seal and conclude that such record lacks a factual basis for the trial court's decision that this is a record of a teacher's alleged sexual misconduct allegation within the past ten years, i.e. 1992 to 2002.

If the court agrees that Seattle John Doe #9's matter is outside the scope of the public record request, then there is no basis for ordering any disclosure. Additionally, there is no basis in the record for finding that sexual misconduct allegations against this teacher were "well-founded."

Therefore, the trial court's Finding of Fact #38 (CP 108), which states:

Records should be released to the Seattle Times with only student names and their parents' names redacted. The investigation revealed that the allegations as to John Doe #9 were well-founded and a disciplinary letter dated July 6, 1995 was issued to him.

should be reversed by the Supreme Court.

If this court agrees with this portion of Seattle John Doe #9's argument, there is no need to consider additional argument. However, if this

court does not so agree, then this appellant asks the Supreme Court to consider his next argument: that redaction of teacher-identifying information from the released records is appropriate and consistent with the public records act.

2. Even if Seattle John Doe #9's records are covered by the public disclosure request, the court should order the deletion/redaction of information solely identifying the teacher.

RCW 42.17.340(3) states that “[c]ourts shall take into account the policy of this chapter 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.” The public records portion of RCW 42.17.010 contains the following legislative policy directive:

It is hereby declared by the sovereign people to be the public policy of the state of Washington:

...

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the **conduct of government** on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society. (Emphasis added).

Thus, it is the conduct of government, in this case public school districts, that is the object of public scrutiny in the public records act, not the conduct of an

individual over whom the school district has authority as employer. As stated by Division Three of the Court of Appeals:

The purpose of the Act is to keep the public informed so it can control and monitor government's functioning. See RCW 42.17.251. Tiberino v. Spokane County, 103 Wn. App. 680 at 690, 13 P. 3d 1104 at 1109 (2000).

This appellant has no dispute whatsoever with the proposition that the public has a legitimate concern with how school districts handle issues of claimed sexual misconduct by teachers against students, and the trial court's Finding of Fact #11 (CP 100) is justified in this case as well as being settled by this court in Brouillet v. Cowles Publishing Company, 114 Wn. 2d 788, 791 P. 2d 526 (1990). This important public concern, however, can be accommodated in a case such as this by providing the substantive information about how the school district handles the issue, without requiring disclosure of the identity of the teacher.

An individual, such as this appellant, has a privacy interest against disclosure if information reveals facts linked to an identifiable individual.

In re Request of Rosier, 105 Wn. 2d 606 at 613, 717 P. 2d 1353 at 1358

(1986). The public records act, defines this right as follows:

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of

information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public....” RCW 42.17.255.

The statute then provides an exemption from public disclosure as follows:

The following are exempt from public inspection and copying:

...

(b) Personal information in files maintained for employees...of any public agency to the extent that disclosure would violate their right to privacy....RCW 47.17.310(1).

This disclosure exemption for public employees’ personal information applies to such information that an employee would not normally share with strangers. Dawson v. Daly, 120 Wn. 2d at 796, 845 P. 2d at 1003; King County v. Sheehan, 114 Wn. App. 325 at 342, 57 P. 3d 307 at 316 (2002).

The Seattle Times’ disclosure request does not assume that the school district’s investigations were all found to involve true allegations of teacher misconduct. In fact, many of the matters disclosed involved investigations that cleared the teacher of wrongdoing. This is just as important to the public’s scrutiny of the school districts as is the public’s knowing what happened in cases where the allegations were deemed true. But, if a teacher is on the receiving end of a sexual abuse allegation, he or she certainly does

not talk about this with strangers; and public disclosure of a named, exonerated teacher still subjects that teacher to harm to his or her reputation.

Public disclosure laws can accommodate the competing legitimate concerns of both the public and the teacher in this situation. Recognizing the strong public policy in Washington toward disclosure, and the fact that different “freedom of information” statutes have different definitions and details, it has nonetheless been demonstrated in other jurisdictions that both the public interest and the individual’s interest can be supported in these sensitive matters. See e.g. Wakefield Teachers Association v. School Committee of Wakefield, 47 Mass. App. 704, 716 N.E. 2d 121 (1999), reversed on other grounds, 431 Mass. 792, 731 N.E. 2d 63 (2000) [redacting name of teacher disciplined by school superintendent]; Booth Newspapers, Inc. v. Kalamazoo School District, 181 Mich. App. 752, 450 N.W. 2d 286 (1989) [name of teacher and student redacted].

A provision of the Washington public records act, RCW 47.17.260(1), provides that, in responding to a public records request:

...To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW 42.17.310 and 42.17.315, an agency shall delete identifying details in a manner consistent with RCW 42.17.310 and 42.17.315 when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

Here the legislature directed public agencies to delete information upon the showing of an “unreasonable” invasion of personal privacy interests. This language is not used in the statutory definition of the privacy exemption, RCW 42.17.255. Placing this directive in a different section, supports the proposition that “unreasonable” privacy violations can be given consideration by means of deletion even if the privacy claims do not meet the stringent requirements of RCW 42.17.255. The legislature is assumed to have intended to accomplish something when it enacted specific legislation, and courts must construe statutes in a manner that harmonizes and gives effect to each part of them. Statutes are interpreted so that all language used is given effect, with no portion rendered meaningless or superfluous; and, between seemingly conflicting provisions, the provision which comes later in the chapter prevails if it is more specific than an earlier provision. State v. J.P., 149 Wn. 2d 444, 69 P. 3d 318 (2003).

The accommodating of both the public interest and the individual’s privacy interest in these sensitive cases can be accomplished without doing a disservice to the public policy reflected in the public records act. Proven or not proven, no teacher wants to be at risk of having an accusation of sexual misconduct made public. Of course, if the misconduct reaches the level of a

crime, the teacher's identity will be disclosed to the public if charges are filed. But the public can still be well served by scrutinizing the conduct of its officials in the review of how school districts handle "John Does" or "a teacher." The name is not critical to the scrutinizing process.

CONCLUSION

Based upon the arguments presented, Seattle John Doe #9 requests that the Supreme Court rule that his records are not covered by the Seattle Times' public disclosure request; or, in the alternative, that disclosure of any such records delete information which identifies Seattle John Doe #9.

January 23, 2004.

Respectfully submitted,

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