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SUPREME COURT
STATE OF WASHINGTON
2007 FEB -9 P 4-20

NO. 78603-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CLERK *bjh*

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/Petitioners,

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,

Respondents,

and

THE SEATTLE TIMES COMPANY,

Respondent/Cross Appellant

**SUPPLEMENTAL BRIEF OF
PETITIONER SEATTLE JOHN DOE #9**

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
ISSUES FOR REVIEW	1
STATEMENT OF THE CASE (as to Seattle John Doe #9)	1
ARGUMENT	3

TABLE OF AUTHORITIES

Washington Cases

<u>Brouillet v. Cowles Publishing Company</u> , 114 Wn. 2d 788, 791 P. 2d 526 (1990)	5
<u>Dawson v. Daly</u> , 120 Wn. 2d 782, 845 P. 2d 995 (1993)	6
<u>In re Request of Rosier</u> , 105 Wn. 2d 606, 717 P. 2d 1353 (1986)	6
<u>King County v. Sheehan</u> , 114 Wn. App. 325, 57 P. 3d 307 (2002) . . .	6
<u>Tiberino v. Spokane County</u> , 103 Wn. App. 680, 13 P. 3d 1104	5-6
(2000)	

Other State Cases

<u>Booth Newspapers, Inc. v. Kalamazoo School District</u> , 181 Mich. App. 752, 450 N.W. 2d 286 (1989)	7
<u>Wakefield Teachers Association v. School Committee of Wakefield</u> , 47 Mass. App. 704, 716 N.E. 2d 121 (1999), rev'd on other grnds 431 Mass. 792, 731 N.E. 2d 63 (2000)	7

Washington Statutes

RCW 42.17.010	5
RCW 42.17.255	1
RCW 42.56.050	1, 6
RCW 42.56.230(2)	6

INTRODUCTION

By Order of this court dated January 3, 2007, review of the Court of Appeals' decision in these consolidated cases was granted, limited to the following issues:

- (1) Whether allegations of sexual misconduct that remain unsubstantiated are exempt from disclosure under the Public Disclosure Act;
- (2) Whether letters of direction and associated documents are exempt from disclosure; and
- (3) Whether former RCW 42.17.255 (recodified as RCW 42.56.050) is unconstitutional because it defines privacy more restrictively than the constitutional right to privacy.

ISSUES FOR REVIEW

The issues are those specified by the Supreme Court in its order, set out above.

STATEMENT OF THE CASE (as to Seattle John Doe #9)

On November 18, 2002 the Seattle Times (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 “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 initially appealed from the trial court’s decision on May 9, 2003 (CP 123). These appeals were consolidated with the Seattle Times’ appeal from the trial court’s decisions on other issues; and, although the case initially went to the Supreme Court on direct review, that court transferred the appeal to the Court of Appeals, which rendered its decision terminating review on October 3, 2005.

In his Motion for Reconsideration, Seattle John Doe #9 asked the

Court of Appeals to scrutinize the record and find that the trial court had, without justification, expanded the Seattle Times' request "for records identifying teachers accused of, investigated, or disciplined for sexual misconduct *within the previous ten years...*" to mistakenly include Seattle John Doe #9's record of an investigation that began long before such ten year period. The record in question is under seal in the court record. The Court of Appeals concluded that the claimed expansion of the ten-year request was not a basis for excluding Seattle John Doe #9 from the ruling.

ARGUMENT

Summary of Argument:

1. Seattle John Doe #9 adopts the constitutional arguments set forth in the Supplemental Brief of Bellevue John Does 1, 2, 3, 4, 6, 7, 9, Federal Way John Does 2, 3 and Seattle John Does 3, 5, 10.

2. As applied to Seattle John Doe #9's case, the teacher's constitutional right to privacy can be fully accommodated to the public's interest in disclosure of the sought records by allowing the simple act of deleting identifying information as to the teacher.

The facts involved in Seattle John Doe #9's case are somewhat different than others in the following particulars:

(a) the record sought involved a letter written by a school district official regarding inquiries as to restrictions on the teacher agreed to years earlier;

(b) the teacher was retired and no longer a public school teacher; and

(c) the record lacks information as to the investigative process leading to the restrictions.

Thus, Seattle John Doe #9's case does not easily fit into the categories of “substantiated,” “unsubstantiated,” or “false.” The trial court simply inferred that, since there appeared to have been some restrictions on a former teacher’s contacts with students, there must have been an earlier finding that misconduct had been substantiated.

This petitioner notes that The Seattle Times continually uses the term “public record” in its arguments and implies that the petitioning teachers are seeking to prevent the disclosure of such “public record.” But the petitioning teachers do not claim that there is no public interest in disclosure of information about how public schools handle allegations of sexual misconduct by teachers. It would be folly to make such an argument.

Additionally, that issue was well settled in Brouillet v. Cowles Publishing Company, 114 Wn. 2d 788, 791 P. 2d 526 (1990).

The real issue is whether the public's legitimate right to know how its officials handle these sensitive matters precludes any accommodation of protection to a former teacher who may agree to limit his contact with students in order to resolve an inquiry into his conduct. If such an accommodation is constitutionally required, all interests are vindicated.

The Declaration of Policy in RCW 42.17.010 contains the following statement:

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.” Tiberino v. Spokane County, 103 Wn. App. 680 at 690, 13 P. 3d 1104 at 1109 (2000).

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 42.56.050.

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

The following personal information is exempt from public inspection and copying under this Chapter:

...

(b) Personal information in files maintained for employees...of any public agency to the extent that disclosure would violate their right to privacy....RCW 42.56.230(2).

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 districts' 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].

CONCLUSION

The case of petitioner, Seattle John Doe #9 should be remanded back to the trial court for reconsideration in light of the petitioner's constitutional privacy rights and the clear ability of the court to accommodate both those rights and the public's legitimate right to disclosure of information as to how public school districts deal with allegations of sexual misconduct by teachers.
February 9, 2007.

Respectfully submitted,

SHAFER, MOEN & BRYAN, P.S.



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Seattle John Doe #9

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DECLARATION OF SERVICE

2007 FEB -9 P 4: 20

The undersigned declares, under penalty of perjury under the laws of the State of Washington, that service upon the below-listed counsel of record was effected this date by the methods indicated.

CLERK

<u>PARTY</u>	<u>ATTORNEYS</u>	<u>METHOD</u>
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Federal Way School Dist #210	Jeffrey Ganson	E-Mail & U. S. Mail
Seattle School Dist. #1	John Cerqui, Gen. Counsel	E-Mail & U. S. Mail
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Signed: February 9, 2007 at Seattle, Washington.



STEVE PAUL MOEN, Declarant