

**FILED**

**DEC 23 2010**

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

**NO. 27908-1-III**

**STATE OF WASHINGTON**

**COURT OF APPEALS - DIVISION III**

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**FRANKLIN COUNTY SHERIFF'S OFFICE;**

**FRANKLIN COUNTY CORRECTIONAL CENTER; and**

**FRANKLIN COUNTY PROSECUTING ATTORNEY'S OFFICE,**

**Appellants,**

**vs.**

**ALLAN PARMELEE,**

**Respondent.**

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**APPEAL FROM THE SUPERIOR COURT FOR**

**FRANKLIN COUNTY**

**REPLY BRIEF OF APPELLANT**

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## ARGUMENT

**I. NO LAW PROHIBITS AGENCIES FROM ASKING THE COURTS TO CONSIDER THE IDENTITY OF THE REQUESTOR IN AN ACTION TO ENJOIN RELEASE OF RECORDS PER RCW 42.56.540.**

The Respondent claims that since RCW 42.56.080 prohibits agencies from distinguishing among persons requesting records that it is absurd to allow the same agency to gather considerations about requestors and ask the court to consider them. (Response Brief 4). Granted RCW 42.56.080 does prohibit agencies from considering requestors identities, but it does so in the context of when agencies are making records available for inspection and copying. As RCW 42.56.080 states in part:

“Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person...”

In contrast, Franklin County’s action is per RCW 42.56.540 asking the court, not an agency, to enjoin release of records and not make them available for inspection and copying. Such exemplifies that the process through RCW 42.56.540 of asking records be enjoined, including through use of statutory exemptions, is a distinct process from making records available, and one in which neither the agency or court is prohibited from considering requestor identities.

In addition, the Respondent claims Franklin County's action opposes the intent and legislative history of the Public Records Act (PRA) to promote open and transparent government and the legal requirement that agencies disclose records unless they fall within specific exemptions. (Response Brief 4, 7). RCW 42.56.540 states in part:

"The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency..."

Franklin County has merely exercised its right to bring an action per RCW 42.56.540 asking that records be enjoined which is specifically permitted by the PRA and not contrary to its terms or intent. The Franklin County Superior Court has yet to rule whether said records may be permanently enjoined or not based upon RCW 42.56.540 or specific statutory exemptions, therefore the Respondent's claim the action is contrary to the PRA or applicable law is premature. Franklin County merely asks that the identity of the requestor and any other factors not be excluded from the trial court's review of its action.

Further, the Respondent submits that since the Freedom of Information Act (FOIA) does not allow agencies to predicate the withholding of records on who is requesting them and such Act

parallels the PRA, that to allow a court to do so creates an absurd result contrary to law. (Response Brief 8). Notwithstanding that the FOIA does not apply to this action before the Court, the FOIA limitation on agencies considering requestor's identities is no different than the PRA's limitation on agencies, and in no way limits a **court's** review from including such. (emphasis added). The Respondent's argument results in courts being treated like agencies with no authority to consider a requestor's identity which is clearly contrary to how the PRA sets forth the court's role in reviewing records.

**II. APPLICATION OF RCW 42.56.080, NAST V. MICHAELS, AND THE WASHINGTON CONSTITUTION ALONE SUPPORT FRANKLIN COUNTY'S CLAIM THAT THE TRIAL COURT RULING WAS IN ERROR.**

The Respondent claims that Franklin County has not demonstrated that the trial court's ruling was an abuse of discretion (Response Brief 9). As referenced in Franklin County's Brief and this Reply Brief there is no PRA provision, caselaw, or other law that specifically prohibits a court from considering the identity of the requestor in an RCW 42.56.540 action. Rather, what law exists on the issue states "agencies" may not consider the identity of the requestor, that "courts" are not "agencies," and that the court's

power of review and to grant equity may be not limited. RCW 42.56.080; Nast v. Michels, 107 Wn.2d 300 (1986); Washington Constitution, Article 4, §§ 1, 6. This law itself demonstrates a ruling otherwise is an error of law and/or abuse of discretion.

**III. ANY ISSUE REGARDING WHETHER DISCRETIONARY REVIEW WAS PROPERLY GRANTED IS MOOT, AND THE ADDITIONAL ISSUES RAISED BY THE RESPONDENT ARE SUBJECT TO DISMISSAL AS HEREAFTER EXPLAINED.**

The Respondent claims Franklin County fails to establish that discretionary review was required (Response Brief 11). The Appellant's Motion for Discretionary Review was granted by the Division III Court of Appeals Commissioner, then affirmed by the Justices of the Court of Appeals, then affirmed by the Supreme Court Commissioner, and finally affirmed by the Supreme Court Justices. Subsequently, further review of said issue has been exhausted and has expired, therefore the issue is moot.

Additionally, the Respondent claims that Franklin County's argument is that since the courts are not an "agency" under the PRA that they are not bound to apply the PRA as it is written or intended. (Response Brief 11). Yet, the Respondent misstates Franklin County's argument as rather the County is merely asking

the PRA be applied as it is written in that only “agencies” per RCW 42.56.080, and not also the courts, be prohibited from considering the identity of the requestor.

Further, the Respondent states Franklin County’s equity argument fails because even if such argument is valid RCW 42.56.030 states in the event of conflict between the PRA and “...any other act,” the PRA shall govern. (Response Brief 12). Yet there is no conflict between the PRA and the equitable powers of the court **unless** the PRA is interpreted as limiting the powers of the court by prohibiting them from considering the identity of the requestor. (emphasis added). Judicial power over equity cases is vested in the courts by Article 4, §§ 1, 6, of the Washington Constitution and **cannot be** abrogated or **restricted** by the legislative department, in the absence of contrary constitutional provisions. Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 418, 63 P.2d 397 (1936). (emphasis added). Therefore, if per RCW 42.56.080 only “agencies” and not courts are prohibited from considering the identity of the requestor no conflict arises between the PRA and the judicial powers of the court.

Finally, the Respondent claims error in Franklin County’s action in that Soter v. Cowles Pub. Co. requires that in order for an

agency to prevail in an action pursuant to RCW 42.56.540 it must show statutory exemptions apply. (Response Brief 13); 162 Wash.2d 716, 755 (2007). It is agreed that is the ruling of Soter. Id. Yet, despite Soter requiring statutory exemptions apply in an RCW 42.56.540 action, said RCW **also requires** the superior court find that examination of the records would not be in the public interest and would cause substantial and irreparable damage to person or vital government functions. Id. (emphasis added). Therefore, if a trial court's review of whether disclosure of records are in the public interest or of harm to persons or government functions is limited by the inability to consider the identity of the requestor Franklin County's RCW 42.56.540 is prejudiced.

#### **IV. COSTS AND FEES ARE NOT WARRANTED.**

The Respondent's claim for appeals cost and fees and PRA penalties is entirely premature and should be denied as the trial court has only issued a preliminary injunction to preserve the status quo regarding inspection of records and neither Franklin County, nor the Respondent, has yet had a subsequent hearing or opportunity to claim or refute statutory exemptions or have a final decision on the merits of the action issued. (Response Brief 16)



Shelton WA 98584, address verified through the Department of Correction's inmate locator website on December 22, 2010, by depositing in the mail of the United States of America a properly stamped and addressed envelope.

Carri J. Dumas

Signed and sworn to before me this 22 day of December, 2010.

Neil Johnston  
Notary Public in and for  
the State of Washington,  
residing at Lasco  
My appointment expires:  
9/9/2014

cld