74354-6

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No. 94203-0

No. 74354-6-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

DEPARTMENT OF CORRECTS, et al

v.

JOHN DOE G, et al

BRIEF OF APPELLANTS DONNA AND JEFF ZINK

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Table of Contents

I. Introduction 1

1. Use of Pseudonym 1
2. Class Action Certification 2
3. Preliminary Injunction/Temporary Restraining Order 4
4. Permanent Injunction 6

II. Assignments of Error 10

1. Use of Pseudonym 10
2. Class Action Certification 10
3. Preliminary Injunction/Temporary Restraining Order 11
4. Permanent Injunction 13

III. Issues Related to the Assignments of Error 14

1. Use of Pseudonym 14
2. Class Action Certification 15
3. Preliminary Injunction/Temporary Restraining Order 15
4. Permanent Injunction 16

IV. Statement of the Facts 17

1. Public Record Request at Issue in This Cause of Action 17

V. Argument 26

1. Use of Pseudonym to Seal Court Records 26

2. Class Action Certification 29

3. Mandatory Requirements of the Public Records Act 31

4. Temporary and Preliminary Injunction of Public Records 34

5. Permanent Injunction 37

6. Supreme Court Decisions, Case Law Doctrine and the Weight of Stare Decisis 39

VI. Costs 43

VII. Publication 43

VIII. Conclusion 43

IX. Certification of Service 47

TABLE OF AUTHORITIES

Washington State Supreme Court

Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398, 259 P.3d 190 (2011) 36

Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, 150 P.3d 545 (2007) 40, 41

Hundtofte v. Encarnación, 181 Wn.2d 1, 330 P.3d 168 (2014) 22

John Doe A v. WSP, 185 Wn.2d 363 (2016) 21

Koenig v. Thurston County, 175 Wn.2d 837, 287 P.3d 523 (2012) 19, 33

Livingston v. Cedeno, 164 Wn.2d 46, 186 P.3d 1055 (2008) 32

Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 829 P.2d 746 (1992), cert denied, 506 U.S. 1079 (1993) 35

Mount Adams Sch. Dist. v. Cook, 150 Wn.2d 716, 81 P.3d 111 (2003) ... 43

O'Neill v. City of Shoreline, 170 Wn.2d 138, 240 P.3d 1149 (2010) 32

PAWS II, 125 Wn.2d 243, 884 P.2d 592 (1994) 34

Rental Hous. Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 199 P.3d 393 (2009) 31

Rufer v. Abbott Labs., 154 Wn.2d 530, 114 P.3d 1182 (2005) 26

Sanders v. State, 169 Wn.2d 827, 240 P.3d 120 (2010) 32, 33

Seattle Times v. Ishikawa, 97, Wn.2d 30, 640 P.2d 716 (1982) 22

Seattle Times v. Serko, 170 Wn.2d 581, 243 P.3d 919 (2010) 33

State v. Cann, 92 Wn.2d 193, 595 P.2d 912 (1979) 35

State v. Danforth, 97 Wn.2d 255, 643 P.2d 882 (1982)..... 36

State v. Ray, 130 Wn.2d 673, 926 P.2d 904 (1996)..... 42

State v. Richardson, 177 Wn.2d 351, 302 P.3d 156 (2013)..... 28

State v. Rohrich, 149 Wn.2d 647, 71 P.3d 638 (2003) 26

Washinton State Appellate Court

City of Lakewood v. Koenig, 160 Wn. App. 883, 250 P.3d 113 (Div. II, 2011) 32

Revised Code of Washington

RCW 4.24.550..... 21

RCW 42.56.010(1)..... 31

RCW 42.56.010(3)(4) 31

RCW 42.56.050..... 35

RCW 42.56.050 Notes on Legislative Intent – Session Laws of 1987 c 403 32

RCW 42.56.070(1)..... 35

RCW 42.56.210(2)..... 34

RCW 42.56.210(3)..... 35

RCW 42.56.520..... 34

RCW 42.56.550(3)..... 33

RCW 7.40..... 21

RCW 7.40.020..... 36

RCW 70.02..... 38, 39

RCW 70.02.230 37

RCW 71.05 21

RCW 71.05.445 24

RCW 9.94A.030(32) 39

RCW 9.94A.475 39

RCW 9.94A.480(1) 39

RCW 9.94A.507 38

RCW 9.94A.670 38

RCW 9.94A.670(13) 38

RCW 9.94A.670(3)(b) 38

Rules of Appellate Procedure

RAP 14 43

RAP 14.1 43

RAP 14.1(a) 43

RAP 14.1(b) 43

RAP 18.1 43

Rules of General Procedure

GR 15 ..... 21, 22, 23, 26

I. INTRODUCTION

The legal questions and issues in this appeal concern access to public records, sealing of court records without application of GR 15 and Ishikawa, preliminary injunction under the general rules of RCW 7.40.020 versus the more specific language in RCW 42.56.540 and class action certification under the Public Records Act (PRA)(RCW 42.56.540).

These issues are of great public importance as they have a huge impact on the public's access to public records. Agencies across the State of Washington are circumventing the mandatory requirements of the PRA to prevent the release of public records while avoiding litigation costs and penalties using third party notification provisions in RCW 42.56.540 without claim of exemption. This issue needs to be determined by a Court of Appeals so that future requesters, third parties named in the records as well as public agencies responsible for access to public records can benefit from the Court's interpretation of the interplay between the various subsections of the PRA demanding prompt response, identification and claim of exemption(s), mandatory release of public records, mandatory daily penalties and the role of third party notification without a claimed exception.

1. Use of Pseudonym

This case involves the informal motion practice chosen by the Superior Court in King County to seal court records through use of

pseudonym without following General Rule (GR) 15, application of the *Ishikawa Factor*s or allowing for public participation. The chosen practice of the court to make determination to seal court records without oral argument in an open court amounts to ex parte action which is not permitted by our Constitution, court rule or statute and has been determined to be inadequate by our Supreme Court.

The King County Superior Court's order allows Plaintiffs' attorneys representing those convicted of sex offenses in a civil action to obtain orders to secret their identity through secret proceeding where the public is entirely excluded and the court fails to make individualized findings required for an order to allow the sealing of court records.

2. Class Action Certification

This case concerns the legal question of whether a trial court has the discretion to appoint a handful of representatives to certify a class of individuals to prevent the release of public records under the mandatory requirements of RCW 42.56.540. If a public record is exempt from access by the public the exemption covers all similar classes of records. No class action is necessary since the exemption covers all of the records under that particular exemption. Here the agency refuses to claim and exemption applies yet they also refuse to release the requested records. Instead the agency chose to notify third parties to initiate litigation to prevent release of the requested records without claim of exemption. This is error and a

violation of the strict mandates of the PRA that an agency must have claim of exemption or provide access to the requested records (RCW 42.56.050 Intent (2)).

Because the agency refused to claim an exemption, the trial court certified a class of person to enjoin all of the requested records despite the fact that the language of RCW 42.56.540 clearly mandates that only a specifically identified public record may be enjoined only upon the motion and affidavit of a person who is specifically named in that specifically identified record or to whom that specifically identified record specifically pertains. Despite the language found in RCW 42.56.540, the trial court determined that a handful of unknown Level I sex offenders could enjoin the release of an entire class of public records they are not named in and that do not specifically pertain to the parties filing this action. This is error. If the records are exempt, the agency must claim the exemption. If the records are not exempt, under the strong language of the PRA, the agency must claim the exemption in denying release of the public records.

While a trial court can order the release of exempt records in certain cases (RCW 42.56.210(2)) where the agency determines release of exempt records would not harm any individual right to privacy or agency function, the trial court cannot enjoin records that are, in fact, not exempt and the agency claims no exemption, through class action certification to enjoin all requested records. The court is limited by the PRA to only enjoin public records wherein an exemption is claimed by the agency and

only for those person specifically identified in the requested records or to whom the records specifically pertain if the trial court determines the release would violate that particular person's right to privacy.

3. Preliminary Injunction/Temporary Restraining Order

This appeal concerns the legal question of whether a preliminary injunction can be ordered by a trial court pursuant to RCW 7.40.020 regardless of the strong language of the PRA Chapter 42.56 RCW, specifically RCW 42.56.540,[1] clearly identifying that public records can only be enjoined from release by a trial court if the merits of the case are determined at the time the records are enjoined. The exact opposite of RCW 7.40.020 which mandates that the merits of the case must not be decided when issuing a temporary injunction.

This issue is of great public importance. Through use of RCW 7.40.020 to temporarily enjoin public records, agencies can unreasonably withhold public records for extended periods of time without consequence. Our legislature specifically enacted RCW 42.56.540, 42.56.520 and 42.56.210(2) to deal with third party notification and the enjoining of public records. Our Supreme Court has repeatedly mandated that if two separate statutes address the same legal issues, the more specific statute applies over

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[1] See also RCW 42.56.030 stating the PRA controls in all questions of law.

the general statute. In this cause of action the more specific statutes is RCW 42.56.540, while the general statute for injunction is RCW 7.40.020. None the less, trial courts across the State of Washington, as this case demonstrates, are ignoring the language of RCW 42.56.540 and temporarily enjoining public records pursuant to RCW 7.40.020 claiming permanent injunction cannot issue because the motion was for temporary injunction. This is error of law and causes long delays in release of public records; the opposite of the strong mandate of the PRA that records be made promptly available. This issue is a paramount importance to the public and must be address by our Courts of Appeal.

Litigation is expensive, time consuming and our upper Courts have already determined requesters cannot recover expenses from a third party litigants. This mandate by our upper courts has inspired agencies across the State of Washington to contact third parties to prevent release of public records without a claim of exemption; allowing agencies to violate the PRA without consequence while causing economic loss or withdrawal of a request to avoid litigation costs.

Agencies should not be allowed to intimidate requesters into withdrawing a request simply because they would face expensive and time consuming litigation in or to maintain the right to access public records. While in this instant case, no action has as yet ensued against the DOC requesting per day penalties for unreasonable delay, the fact that the

requested records have been unreasonably delayed by the DOC by third party notification is an important factor. It is disingenuous and unreasonable for a public agency to initiate third party action to prevent release of public records the agency claims to be nonexempt and then argue the records are not exempt and must be released.

Numerous times Zink has attempted to have one of our Courts of Appeal to look at the decisions being made in the trial courts concerning temporary injunction under RCW 7.40.020 rather than injunction of public records pursuant to the specific requirements of RCW 42.56.540. All of the Appellate Courts thus far have refused to review the issue; claiming the determination of whether RCW 7.40.020 or RCW 42.56.540 controls the injunction of public records was not ripe for discretionary review and Zink could not appeal as a matter of right until a permanent injunction was issued. Further, once the permanent injunction is issued, they claim the issue of preliminary injunction is moot. This issue needs to be addressed by our Courts of Appeal. The legislative mandate is clear and unambiguous. Injunction of the "public's" records falls under the strongly worded mandates of the PRA; specifically, RCW 42.56.540.

4. Permanent Injunction

This appeal concerns whether Special Sex Offender Sentencing Alternative (SSOSA) evaluations are sentencing documents associated with the sentencing of those convicted of a sex offense and who qualify

under the Sentencing Reform Act of 1981 for said sentencing alternative, specifically RCW 9.94A.670 or whether the requested SSOSA evaluation are medical and mental health records which are exempt from release to the public.

It should be noted that the trial court only enjoined the release of the SSOSA evaluation of Level I sex offenders. None of the Level II, III or non Leveled sex offenders SSOSA evaluation were enjoined. This is obvious error of law. If the records are medical and/or mental health records rather than sentencing documents, the designated level of the offender should not matter. If the SSOSA evaluations are exempt for Level I offenders as medical and/or mental health records, they are exempt for all sex offenders as medical and/or mental health records. The fact that the trial court only enjoined the SSOSA evaluation of the Level I sex offenders clearly indicates that the court does not believe the records to be exempt.

Further, sex offenses are crimes against the people of the State of Washington; not a medical or mental health issues. None of the Respondents claim they were seeking medical or mental health treatment at the time the SSOSA evaluation was administered. None of the Respondents claim they went to a hospital or doctor seeking treatment. Rather all Respondents claim they requested an SSOSA evaluation in order to obtain a favorable sentence of little or no jail time for a sex crime they willingly committed using the alternative sentencing option of

therapy instead of prison. The actual treatment or therapy does not begin until after the convicted sex offender is sentence by a judge to either prison or treatment. Therefore, an SSOSA evaluation cannot be considered a part of the court ordered treatment as the treatment was not ordered at the time of the evaluation. Rather the evaluation is used by a judge to determine whether to court order treatment of the offender.

The SSOSA evaluation is used by a trial court judge, not a medical professional, to determine whether the criminal is amendable to treatment and can be returned to the community or not amendable and must be sent to prison. The actual treatment or therapy of any particular convicted sex offender does not start until after the convicted sex offender is sentence to either prison or treatment. Therefore, an SSOSA evaluation cannot be considered court ordered treatment because the court has not ordered treatment until after review of the SSOSA evaluation in an open court.

Access to these records is of great public concern. Without access to the SSOSA evaluations, the public cannot monitor our penal and judicial system in the sentencing of sex offenders. Without access to these records the public has no way of knowing whether our penal and judicial system are working for the people, whether the SSOSA program is working for the sex offender or whether the SSOSA program even works.

Finally, our Supreme Court has mandated that the SSOSA evaluations are sentencing documents as they are used to sentence a convicted sex offender into treatment rather than prison and are open for

public inspection in the court records as well as in the prosecutor's office. Respondents claim, and the trial court agreed, that our Supreme Court did not address the issue of exemption of SSOSA evaluations under a claim of medical and/or mental health records in *Koenig* 2012 because the issue was not brought forward at trial. This is demonstrably false.

First, the issue of medical and/or mental health records was briefed and argued before the Supreme Court in *Koenig* 2012 by the very experts providing declaration in this cause of action. Second it is highly unlikely that our Supreme Court would allow or sanction the release of exempt medical and/or mental health records simply because the issue was not brought forward at trial as it would violate a person's right to privacy. Third, and most importantly, review by our Courts of Appeal in all PRA actions are de novo. When as issue is reviewed de novo, the Appellate Court stands in the same position as the trial court as if no trial had previously been held. Therefore, the claim that our Supreme Court did not address the issue of whether SSOSA evaluations are medical and/or mental health records and are exempt from public disclose is patently false.

Respondents were not seeking medical treatment in applying for an SSOSA evaluation. Rather they were seeking a lighter sentence with the possibility of little or no jail time after willingly committing a heinous and most serious sex crime. All sentencing documents for those convicted of sex offenses must be maintained in the court record as well as in the

Prosecutors office as public records. These same records cannot be designated as medical and/or mental health records simply because they are also maintained by the Department of Corrections (DOC).

For these reasons Zink brings forward this appeal and respectfully requests this court to review the finding of the trial court and definitively determine the four issues address herein as they are all of paramount public importance.

II. ASSIGNMENTS OF ERROR

1. Use of Pseudonym

a. The trial court erred in entering the order of October 3, 2010, sealing court records by allowing Plaintiffs to proceed in pseudonym without doing so in open court, proper application of GR 15 and proper application of the Ishikawa Factors; including input from any person attending the open hearing to voice their opinion as to whether the records should be sealed. Findings of Fact (FOF) 1, 2, 3, 4, 5 and 6 (CP 762).

2. Class Action Certification

a. The trial court erred in entering the order certifying a class of Level I sex offenders to enjoin the requested SSOSA evaluation pursuant to RCW 42.56.540. (FOF and COL 4) (CP 774).

b. The trial court further erred in certifying a class of Level I sex offenders under Civil Rule 23 as they do not meet the qualifications for class certification (FOF and COL 1-3 and 5-10) (CP 775-776).

c. The trial court further erred in assigning John Doe G, I and J as class representatives. Order 12 (CP 776).

3. Preliminary Injunction/Temporary Restraining Order

a. The trial court erred in issuing a temporary injunction as well as a preliminary injunction under the general rules for injunctions found in RCW 7.40.020 and CR 65 (FOF 4) (CP 766).

b. The trial court erred in finding the SSOSA evaluations are medical and/or mental health records; WAC 246-930-320 (FOF 5) (CP 766) and are specialize mental health treatment (FOF 11) (CP 767) because our legislature recognized that mental or behavior health treatment is appropriate for sex offenders (FOF 11 and 11(a)) (CP 767).

c. The trial court erred in finding that the evidence provided showed that DOC did not notify individuals notified of Zinks' request (FOF 8) (CP 767).

d. The trial court erred in finding that the unsigned declarations of unknown Plaintiffs, John Does G, I and J, were credible and compelling evidence attesting to the "potential" harm, rather than actual harm, that might result from blanket or generalized disclosure of the SSOSA evaluations (FOF 9) (CP 767).

e. The trial court erred in determining that the declarations of those providing legal defense and after sentencing treatment to sex offenders, attesting to the harm from disclosure were credible and compelling evidence of "potential harm" as opposed to actual harm, and that injunction was appropriate under the potential harm standard rather than the actual harm standard (FOF 10) (CP 767).

f. The trial court erred in finding that the evidence supported the sex offenders' claims that they would fact physical violence, stigmatization,

mental and emotional distress and loss of economic opportunities, harm the victims and undermine the legislature's purpose in crating the SSOSA and jeopardize the success of those who receive SSOSA's (FOF 12) (CP 768).

g. The trial court erred in finding that a preliminary injunction against release of public records is dependent on the John Doe G, I and J risk level of reoffending (FOF6) (CP 766-767) a specific threat to Zink (FOF 7) (CP 767).

h. The trial court erred in concluding that RCW 42.56.540 applied to this cause of action but refusing to follow the strict and more specific rules for enjoining the "public's" records under RCW 42.56.540 (COL 13-15) (CP 768).

i. The trial court erred in concluding that Plaintiffs have a clear and equitable right to enjoin the release of the requested SSOSA evaluation as it would cause immediate and irreparable harm and would not be in the public interest since disclosure of the SSOSA evaluations or governed by RCW 71.05.445, 72.09.585 and 72.09.585 which do not permit generalized disclosure of the requested SSOSA evaluations (COL16, 16(a) and 16(b) (CP 769)

j. The trial court erred in determining that the evidence provided supported the conclusions that Plaintiffs showed a likelihood of prevailing on their claim that generalized or blanket disclosure of Level I SSOSA evaluations would not be in the public interest, would undermine the public policy of confidentiality in mental health records, would fail to comport the balancing test established the our legislature for the disclosure of sex offender registration information, would dilute the value of the classification system and Plaintiffs would face increased risk of mental, emotional, and economic harm from homelessness and

attacks on their persons following public release of the information (COL 17-18) (CP 769-770).

k. The trial court erred in concluding that the Plaintiffs have a clear and equitable right to have DOC recognize an exemption claimed in the statute, have a well-grounded fear of immediate invasion of their rights, injunction would be meaningless if the records were released prior to determination on the merits and would result in substantial injury (COL 19-22) (CP 770).

l. The trial court erred in ordering the injunction of only the SSOSA evaluation of Level I sex offenders as well as only enjoining the records from Zink (Order) (CP 770).

4. Permanent Injunction

a. The trial court erred in concluding RCW 71.05.445 is an "other statue" prohibiting disclosure of SSOSA evaluations (COL 12-13) (CP 781).

b. The trial court erred in concluding RCW 70.02.250 is an "other statue" prohibiting disclosure of SSOSA evaluations (COL 14-15) (CP 781).

c. The trial court erred in concluding that the SSSA evaluation maintained by the DOC are exempted from disclosure under the PRA (COL 16) (CP 781).

d. The trial court erred in finding that Plaintiffs, including the members of the certified class, are all level I offenders (FOF 18), the SSOSA evaluation of Plaintiffs name and pertain to Plaintiffs (FOF 19) (CP 782).

e. The trial court erred in finding that disclosing the SSOSA evaluations would not be in the public interest because it would harm victims, discourage sex offenders from seeking an SSOSA sentence, discourage sex offenders from being candid during evaluation, more reintegration

more difficult and disclose sensitive health care information (FOF 22) (CP 782-783).

f. The trial court erred in finding the disclosure of SSOSA evaluations would substantially injure public safety by undermining the SSOSA system and discouraging reintegration of Level I offenders who have the lowest recidivism rates for any type of crime, including sex offenses (FOF 23) (CP 783).

g. The trial court erred in finding the disclosure of SSOSA evaluations would substantially injure Plaintiffs by reducing their housing and employment opportunities and crating the risk that their evaluation could be accessed in a centralized location on a public web site (FOF 24) (CP 783).

h. The trial court erred in finding the SSOSA evaluation would irreparably harm both the Plaintiffs and the Plaintiffs victims (FOF 25) (CP 783).

i. The trial court erred in ordering the injunction of the SSOSA evaluation of Level I sex offenders compliant with registration requirements as of the date of the request because they are exempt from disclosure under RCW 71.05.445 and RCW 70.02.250 (Order) (CP 783).

III. ISSUES RELATED TO THE ASSIGNMENTS OF ERROR

1. Use of Pseudonym

a. Did the trial court err in allowing Plaintiffs to an action to seal all court records showing their true identity?

b. Did the trial court err in sealing court records outside an open public hearing?

c. Did the trial court err in no following the strict mandates of GR 15 and the Ishikawa Factors in issuing orders sealing court records?

d. Does the evidence provided support the facts and conclusion of the trial court that absent sealing of court records to obscure the identity of Plaintiffs, John Does, actual and substantial harm would occur?

2. Class Action Certification

a. Did the trial court err in certifying a class of Level I sex offenders?
b. Did the trial court err in refusing to apply RCW 42.56.540 to the issue of class certification?
c. Is class certification allowable under the strict mandatory requirements of the PRA?
d. Do Plaintiffs meet the requirements for certification of a class pursuant to CR 23?

3. Preliminary Injunction/Temporary Restraining Order

a. Did the trial court err in applying the wrong standard of review in issuing a temporary and preliminary injunction under RCW 7.40.020 and CR 65 rather than the more specific standard of review under RCW 42.56.540 (see also 42.56.030)?
b. Does RCW 7.40.020 or RCW 42.56.540 control the issue of injunction of public records?
c. Are unsigned declarations of unknown parties credible compelling evidence?
d. Did Plaintiffs clearly show that any actual and substantial harm would occur if the requested records were accessible to the public?
e. Are the declarations of defense attorneys and treatment providers of sex offenders credible compelling evidence of any potential or actual harm if the requested records were accessible to the public?

f. Does the public have an interest in knowing how sex offenders are convicted and sentenced in our judicial and penal system?

g. Does the public's interest in monitoring our judicial and penal system concerning those who commit sex offenses outweigh the right of Level I sex offenders to enjoin the requested SSOSA evaluations?

h. Did the trial court err in finding that the decision in *Koenig 2012,* by our Supreme Court was not the controlling legal authority concerning controlling the issue of whether SSOSA evaluations are sentencing documents and are not exempt from access by the public?

4. Permanent Injunction

a. Did the trial court err in permanently enjoining the requested records for a class of Level I sex offenders compliant with registration requirements on the date of the request under RCW 71.05.445 and 70.02.250?

b. Did the trial court err in finding that access to the SSOSA evaluations by the public would harm victims as well as the sex offender program?

c. Did the trial court err in finding any member of a class can enjoin the records of another under the strict mandates of RCW 42.56.540?

d. Did Plaintiffs' meet their burden of proof that the SSOSA evaluation are exempt and that they will suffer any actual substantial harm if the public has access to the records?

e. Did the trial court err in finding that the decision in *Koenig 2012,* by our Supreme Court was not the controlling legal authority concerning controlling the issue of whether SSOSA evaluations are sentencing documents and are not exempt from access by the public?

IV. STATEMENT OF THE FACTS

1. Public Record Request at Issue in This Cause of Action

The Zinks agree and incorporate the Statement of Fact submitted by the Department of Corrections (DOC) in their opening briefing, except to the extent DOC claims no notification was submitted to the sex offenders notifying them of Zinks request. It is impossible for the DOC to not have notified someone of Zink's request and to claim otherwise is duplicitous. Zink adds the following statement of facts to that provided by the DOC.

On July 28, 2014, Zink submitted a public records request to the Department of Corrections (DOC) for all SSOSA evaluations related to those convicted of sex offenses held, maintained, in the possession of, or owned by the DOC between dates certain (CP 33). On August 6, 2014, the DOC responded to Zink's request stating:

1) The request had been assigned tracking number PDU-30475;
2) Restating what records were requested for clarification;
3) Requesting clarification of portions of the request; and
4) The release of the requested records was delayed until September 18, 2014.

(CP 192). On September 13, 2014, Ms. Hernandez with the American Civil Liberties Union (ACLU) contacted Zink to inform her that a lawsuit was being commenced in the King County Superior Court to enjoin the release of SSOSA evaluations of all Level I sex offenders and individuals

relieved of the duty to register whose records are the subject of the request to DOC for SSOSA evaluations (CP 39).

On September 16, 2016, Respondents filed a Class Action Complaint for Declaratory and Injunctive Relief using the pseudonym designations of John Doe I and J to hide their true identity from the public and the Zinks (CP 1-17). A motion to proceed in pseudonym was noted without oral argument (CP 786-795) along with a declaration from Ms. Hernandez showing three other trial court justices in King County allowing use of pseudonym to secret the identity of the sex offenders in similar causes of action (CP 841-857). A motion for a temporary restraining order (TRO) to enjoin the requested SSOSA evaluations for Level I sex offenders was submitted to be heard the next day (CP 18-29). Respondents provided declarations from John Does G (CP 40-44), John Doe I (CP 45-49) and John Doe J (CP 50-54) as required by RCW 42.56.540 and as evidence of the need for secrecy during this cause of action.

Respondents also submitted declarations from a defense attorney (CP 55-66), the Washington Association for the Treatment of Sexual Abusers (WATSA)(CP 67-85) and a declaration from the Washington Association of Criminal Defense Lawyers (WACD) and Washington Defender Association (WDA) (CP 86-94). Each of these declarations discussed the **possible harm** to the convicted sex offenders as well as the

possible harm to the SSOSA program should the requested records be released. None of the declarations claim any actual harm had occurred.

On September 16, 2016, Appellant, Zink, filed a response to the TRO requesting the trial court dismiss the action since a recent decision by our Supreme Court in *Koenig v. Thurston County*, 175 Wn.2d 175, 287 P.3d 523 (2012) (*Koenig* 2012) had definitively determined that the SSOSA evaluation were sentencing documents (CP 862-868) and are not exempt from public access. Zink provided copies of the decision of the Supreme Court for the trial courts review (CP 869-909).

The TRO was heard by the Honorable Judge Carlos Velategui of the King County Superior Court on September 17, 2014 (RP - September 17, 2014). Zink attended the hearing telephonically (RP (September 17, 2014) 1:19-20). At the hearing, Zink argued that the Supreme Court had already heard these same arguments and determined the records are sentencing documents and are not exempt from disclosure and must be released upon request as sentencing documents (RP (September 17, 2014) 5:15-7:17).

Respondents argued that the Supreme Court was only looking at one aspect of the SSOSA evaluations and the Supreme Court refused to make a determination as to whether the SSOSA evaluations were medical records since that argument was not brought forward at trial (RP (September 17, 2014) 8:5-10). Further, Respondents argued that while the documents may be non-exempt if held by the prosecutor's office,

Respondents were requesting records maintained by the DOC be enjoined, and the claim of exemption was therefore under a different statute (RP (September 17, 2014) 8:11-21).

Based on these declarations of possible harm to the sex offenders and the sex offender program and the argument that *Koenig 2012* was not the controlling authority, the King County Superior Court issued an order temporarily enjoining the DOC from releasing the SSOSA evaluations of Level I sex offenders until a hearing could be had on October 3, 2014 (CP 97-99). Sex Offenders of Level II and III as well as non-leveled sex offender SSOSA evaluations were not enjoined from release by the DOC to Zink. (CP 97-99).

On September 25, 2014, Respondents filed a motion for preliminary injunction (CP 100-112; 113-177) as well as a motion for class certification to certify a class of Level I sex offenders to enjoin the requested SSOSA evaluations for all Level I sex offenders (CP 910-919; 920-925). Only the motion for Class Certification was noted for oral argument (CP 910)

In their motion for use of pseudonym, Respondents claimed Federal Law allowed for the sealing of court records when the need for privacy outweighed that of the public (CP 786-795). Respondents, using the same declarations used in their request for TRO, argued that the "possibility" of harm outweighed any public interest in knowing the identity of litigants (CP 791-795). Respondents did not make mention of

GR 15 or the *Ishikawa Factors*. Respondents noted the motion without oral argument or public presentment.

In their motion for preliminary injunction, Respondents argued that RCW 7.40 was the controlling statute allowing a court to enjoin the "public's" records (CP 104-105) and barely mention RCW 42.56.540 or its application to this PRA of action. Respondents, using the same declarations and argument used to obtain a TRO (CP 109; 113-177), argued that RCW 71.05, 72.02, HIPPA and RCW 4.24.550[2] controlled the issues of whether the records were exempt or must be released to members of the public CP 106-108. Respondents again argued that blanket release of the SSOSA evaluations of Level I offenders would cause harm even though individual SSOSA evaluations are filed with the courts (CP 110). Further, Respondents again argued that *Koenig* 2012 was not the controlling authority because the Supreme Court refused to review the issue of medical records and mental health evaluations in *Koenig* 2012 since the issue was not brought before the trial court (CP 111).

On September 26, 2014, the Washington State Attorney General's Office (AG), representing Appellant DOC, responded to Respondents motion for preliminary injunction (CP 178-248) and the motion for

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[2] The issue of whether RCW 4.24.550 was an "other statute" exemption under the PRA has since been determined by our Supreme Court in *John Doe A v. WSP*, 185 Wn.2d 363 (2016). The Supreme Court has determined that

pseudonym use. In their response to use of pseudonym, DOC stated that they did not oppose the request but that the trial court may need to conduct an analysis under GR 15 and *Seattle Times v. Ishikawa*, 97, Wn.2d 30, 640 P.2d 716 (1982) referencing the Supreme Court decision in *Hundtofte v. Encarnancion*, 330 P.3d 168 (2014)(CP 926-928).

On September 29, 2014, Appellant DOC filed a response to Respondents motion for class certification (CP 929-933). DOC did not oppose the certification of a class of Level I sex offenders (CP 930:14-17).

On September 30, 2014, Zink submitted a response in opposition to sealing of court records through use of pseudonym (CP 934-942). Zink argued that allowing use of pseudonym was sealing of court records and that Washington State law and constitution was the controlling authority rather than Federal Law (*Id.*).

On October 1, 2014, Zink submitted a response to Respondents motion for preliminary injunction (CP 943-953). Zink specifically argued that RCW 7.40.020 does not control the issue of enjoining public records, rather the enjoining of public records was controlled by RCW 42.56.540 (CP 944-945). Zink also submitted a response to Respondents request for class certification (CP 954-957). Specifically, Zink argued that RCW 42.56.540 mandates that only a person named in the record or to whom the record pertains can enjoin the release of that specific record and class certification is inappropriate under the mandatory provision of the PRA (CP 955-56).

All three motions were set to be heard on October 3, 2014 by the Honorable Judge Linde of the King County Superior Court (RP (October 3, 2014) 3:1-3). Zink again attended the hearing telephonically (*Id.* 3:821). At the hearing, the trial court stated that the issue of sealing the records was noted without oral argument and permitted Respondents to proceed in pseudonym without application of GR 15 or the *Ishikawa Factors* (*Id.* 4:11-23). Zink objected to the courts order to seal court records without oral argument in open court (*Id.* 14:18-24).

Zink also put forth the argument that RCW 42.56.540 was the sole means of enjoining records under the PRA (RP (October 3, 2014) 15:1-11) and requested the court issue a permanent injunction, if an injunction was to be issued, so that the case could be appealed (*Id.* 15:11-13; 20:24-21:4). Zink specifically argued that the strong language of the PRA states that public records are to be released as quickly as possible and forcing requesters back into court to reargue the same argument over and over was not in keeping with the strong mandates of the PRA (*Id.* 15:17-20). Zink argued that once a preliminary injunction was issued in all other cases in King County, the actions stopped further delaying release of the records (*Id.* 15:21-16:2).

Zink put forth the argument that the SSOSA evaluation are part of the sentencing documents and are of great public importance (RP (October 3, 2014) 16:22-17:15) as well as reiterating that the decision by our Supreme Court in *Koenig* 2012 was binding legal authority and that court

clearly stated that the SSOSA evaluations are sentencing documents used to sentence those convicted of sex offense and are not exempt under the PRA (*Id.* 17:24-19:11).

The trial court determined that since Zink had not specifically requested oral argument in her response to Respondents motion for use of pseudonym, (RP (October 3, 2014) 21:5-22:5), the court had considered the Ishikawa and Bone-Club factors (*Id.* 22:10-11) and had indicated some findings that balanced the public interest in knowing the names against the privacy interests of Plaintiffs, the order sealing the court records stood (*Id.* 22:18-24).

The trial court stated that nothing in the record was provided indicating that a permanent injunction should be issued rather than a preliminary injunction (RP (October 3, 2014) 26:19-27:2). Further the trial court determined that SSOSA evaluations were not exempt under RCW 4.24.550 (*Id.* 29:23-30:6), but they are exempt under RCW 71.05.445 and 70.02 as medical records and enjoined the Department from releasing any SSOSA evaluations of Level I sex offenders under a class action (*Id.* 30:7-15).[3]

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[3] It should be noted that the transcripts of this hearing suddenly stop and the end of the hearing has not been transcribed. It is unknown why the remainder of the hearing was not on the recording.

On November 10, 2014, Respondents moved to amend their class action complaint to include John Doe K (CP 986-990) submitting the declaration of John Doe K as evidence of "possible" with not substantiating proof that any harm would actually occur (CP 999-102). Zink objected to the amendment (CP 1019-1038) based on the fact that all of John Doe K's evidence of need was unsubstantiated and that John Doe K failed to show any actual harm if his SSOSA evaluation was released (*Id*). The motion was granted on November 18, 2014 (CP 1039-1041; 1042-1057).

On October 2, 2015, approximately one year after preliminary injunction was granted, Respondents filed a motion for summary judgment seeking a permanent injunction (CP 268-292). The motion for permanent injunction was heard on November 6, 2015 by the Honorable Judge Chun of the King County Superior Court (CP 783). After hearing similar argument by all parties concerning the Level I sex offenders, the court ordered the SSOSA evaluations of all Level I offenders to be enjoined from release by the DOC. The trial court did not conduct any test or enter any findings and conclusions that the court applied RCW 42.56.540 to this cause of action in deciding whether the records should be enjoined. None of the SSOSA evaluations of the Level II, II or non-Leveled sex offenders were enjoined from release by the DOC.

It is from these trial court decisions that the Zinks filed this appeal (CP 757-85).

V. ARGUMENT

1. Use of Pseudonym to Seal Court Records

Redaction of a court record through pseudonym use is treated as an order to seal (GR 15(b)(4). A trial court's decision to seal court records is reviewed for abuse of discretion. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005). A trial court abuses its discretion when its decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

In this cause of action, the trial court allowed Plaintiffs to file under pseudonym outside an open court, without application of the Ishikawa Factors or application of GR 15 as required (CP 761-763). The trial court stated that the sealing of the records was to be considered without oral argument or participation by any person attending the hearing (RP (October 3, 2014) 4:20-23). Zink objected to the order based on the fact that sealing of the records was done behind closed doors (*Id.* 14:18-24). The trial court responded that it is appropriate for the trial court to consider the open court's and public access to information cases in determining the ability to go forward and that since some findings of the court do balance the public interest in knowing their names against the Plaintiffs interest in privacy of their identity as a convicted sex offender, the court was not going to do anything further on the issue of pseudonym use (*Id.* 22:13-24). This is error and the trial court order sealing court

records must be vacated and remanded for proper application of GR 15 and the Ishikawa Factors.

> We review both the interpretation and the application of court rules de novo. State v. McEnroe, 174 Wn.2d 795, 800, 279 P.3d 861 (2012); Hundtofte, 181 Wn.2d at 13. Thus, we review de novo whether the trial court's ex parte sealing practice can be reconciled with GR 15. The constitutionality of court rules is likewise a question of law subject to de novo review. In re Det. of D.F.F., 172 Wn.2d 37, 41, 256 P.3d 357 (2011).

In re Dependency of M.H.P., 184 Wn.2d 741, ¶12, 364 P.3d 94 (2015). In keeping with our State Constitution, Art. 1, sec. 10, for open justice, a hearing in open court must be had prior to any sealing or redactions of court records.

> In order to make such a closure, the trial court was required to engage in an <u>on-the-record analysis</u> of the factors outlined in Ishikawa and to set forth findings supporting a determination "that there is a compelling interest which overrides the public's right to the open administration of justice." Id. 6 The June 9 order lacks any discussion of Ishikawa. Accordingly, it must be vacated.

Seattle Times v. Serko, 170 Wn.2d 581, ¶32, 243 P.3d 919 (2010) (emphasis added). Furthermore, the public must have a voice in any sealing of court records.

> The second Ishikawa factor requires that "'[a]nyone present … must be given an opportunity to object to the [suggested restriction].'" Ishikawa, 97 Wn.2d at 38 (last alteration in original) (quoting Federated Publ'ns, Inc. v. Kurtz, 94 Wn.2d 51, 62, 615 P.2d 440 (1980)). In Ishikawa, we explained:
>
> For this opportunity to have meaning, the proponent must have stated the grounds for the motion with reasonable specificity, consistent with the protection of the right sought to be protected. <u>At a minimum, potential objectors should have sufficient information to be able to appreciate the damages which would result from free access to the proceeding and/or records</u>. This knowledge would enable the potential objector to better evaluate whether or not to object and on what grounds to base its opposition. Ishikawa, 97 Wn.2d at 38.

State v. Richardson, 177 Wn.2d 351, ¶15, 302 P.3d 156 (2013) (emphasis added). In this cause of action, the trial court determined that oral argument in open court was not necessary, did not allow any persons present to voice objections and sealed the records based on the fact that the court's order did indicate some findings that balanced the public interest against that of the Plaintiffs. This is not adequate.

Washington's Constitution mandates that "[j]ustice in all cases shall be administered openly" (Art. 1, sex. 10) and guarantees the public's right to access court records. This provision of openness in our judicial system is mandatory in order to assure fair trials. Secrecy in our justice system fosters misunderstanding and mistrust in the judicial system as it

lacks the check of public scrutiny that our judicial system is following the rules, laws, statutes and our constitution. The trial court abused its discretion by using an incorrect legal standard and an improper legal rule in the sealing of court records.

Because the trial court failed to follow the well-established procedure for sealing court records, the courts order must be vacated and the issue of the sealing of court records remanded back to the trial court for proper application of GR 15 and the Ishikawa Factors using an on the record analysis in open court.

2. Class Action Certification

The trial court's findings, conclusions, and orders do not address the issue of whether the legislative scheme outlined under RCW 42.56.540 allows a court to certify a class of persons and thereby exempt all records pertaining to that class from production to a requester. This is error and an abuse of the Courts discretion.

The PRA controls in all questions of law.[4] The correct standard of review requires an analysis of RCW 42.56.540 to determine whether a person can form a Class and motion the court for exemption of an entire set of public records (blanket exemption of public records through class

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[4] 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.

action), in this case SSOSA evaluations under the strict requirements of RCW 42.56.540. RCW 42.56.540 states:

> The examination of any specific public record may be enjoined if, upon **motion and affidavit by** an agency or its representative or **a person who is named in the record or to whom the record specifically pertains**, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

(*Id.*)(emphasis added). Assuming for the sake of this legal argument, Respondents are Level I sex offenders who are named in at least one of the requested records, respondents are not named in all of the records requested. RCW 42.56.540 is specific to a "**person** who is **named in the record** or to whom **the record specifically pertains**." RCW 42.56.540 specifically requires the person named in the record or to whom the record pertains **must file a motion and affidavit** to the court. Class action certification would make this requirement superfluous, creating a judicial exemption of all records.

Under the plain meaning of the legislative intent in RCW 42.56.540, the trial court erred in not identifying which records at issue in this cause of action contain the name(s) of the parties filing motion and affidavit. Instead the trial court determined that it has the authority to create a judicial exemption through class certification; exempting all Level I sex offenders SSOSA evaluation under the guise of a class action. This is an absurd reading of the plain meaning of RCW 42.56.540. The trial court abused its discretion when it determined and ordered that two anonymous persons could enjoin the records of other persons under the strict requirements of RCW 42.56.540 and the trial court's order certifying a class of sex offenders whose identities are protected from disclosure to the public must be reversed.

3. Mandatory Requirements of the Public Records Act

The Washington Public Records Act is a powerful tool of the people to maintain control of all branches and agencies of government[5] through access to public records.[6] In order for the people to maintain control over government conduct, production of public records must be liberally

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5 RCW 42.56.010(1); RCW 42.56.070; King County v. Sheehan, 114 Wn. App. 325 57 P.3d 301(Div. I, 2002); Rental Hous. Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 527, 199 P.3d 393 (2009).

6 RCW 42.56.010(3)(4); O'Neill v. City of Shoreline, 170 Wn.2d 138, ¶14-15, 240 P.3d 1149 (2010).

construed and exemptions to production must be narrowly construed.[7] Our broad PRA exists to ensure that the public maintains control over their government, and the Courts will not deny the citizenry access to a whole class of possibly important government information.[8]

Public agencies are required to release all records created, owned, used, and/or retained by their respective agencies as expeditiously as possible.[9] Public agencies are not to distinguish amongst requesters.[10] Public agencies cannot exempt records from production based on the identity of the requester.[11] Public agencies in responding to a request for records cannot inquire as to the motivation of the requester.[12]

All public records created, owned, used and/or retained by public agencies are public and must be disclosed.[13] All non-exempt public

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7 RCW 42.56.030; Livingston v. Cedeno, 164 Wn.2d 46, ¶6, 186 P.3d 1055 (2008).

8 O'Neill v. City of Shoreline, 170 Wn.2d 138, ¶15, 240 P.3d 1149 (2010).

9 RCW 42.56.100.

10 Zink v. City of Mesa, 140 Wn. App. 328, ¶24, 166 P.3d 738 (Div. III, 2007).

[11] **The intent of this legislation is to make clear that**: (1) Absent statutory provisions to the contrary, **agencies** possessing records **should** in responding to requests for disclosure **not make any distinctions in releasing or not releasing <u>records based upon the identity</u> of the person or agency which requested the records**, and (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records. RCW 42.56.050 Notes on Legislative Intent – Session Laws of 1987 c 403. (emphasis added).

[12] RCW 42.56.080. *City of Lakewood v. Koenig*, 160 Wn. App. 883, ¶16, 250 P.3d 113 (Div. II, 2011)

[13] *Sanders v. State*, 169 Wn.2d 827, ¶3, 240 P.3d 120 (2010).

records must be produced.[14] All exemptions claimed by public agencies resulting in non-production of public records, in whole or in part, must be justified, in writing, identifying the document withheld, the exemption allowing the withholding of the record, and an explanation of how that exemption applies to the withheld document or portion of the document.[15]

A claimed exemption is invalid if it does not in fact cover the requested document.[16] Agencies are under no obligation to claim exemption.[17] Conflict between the Washington State Public Records Act and any other statute, rule or law shall be decided under the statutory requirements of the Public Records Act.[18] Courts are to take into account that examination of public records is in the public interest, even though such examination my cause embarrassment to others.[19] Agencies are not to make privacy interest determinations on the basis that it identifies a person or a particular class of persons.

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[14] *Sanders v. State*, 169 Wn.2d 827, ¶4, 240 P.3d 120 (2010).

[15] RCW 42.56.210(3); RCW 42.56.520.

[16] *Sanders v. State*, 169 Wn.2d 827, ¶5, 240 P.3d 120 (2010).

[17] *Seattle Times v. Serko*, 170 Wn.2d 581, ¶29, 243 P.3d 919 (2010).

[18] RCW 42.56.030.

[19] RCW 42.56.550(3). *Koenig v. Thurston County*, 175 Wn.2d 837, ¶9, 287 P.3d 523 (2012); *King County v. Sheehan*, 114 Wn. App. 325, 336, 57 P.3d 307 (Div I, 2002).

4. Temporary and Preliminary Injunction of Public Records

Agency action taken or challenged under the PRA is reviewed de novo. RCW 42.56.550(3); PAWS II, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). The Court of Appeals stands in the same position as the trial court as if the trial court had never happened.

Three statutes contained within the PRA deal with enjoining the "public's records and third parties: RCW 42.56.210(2), RCW 42.56.520 and RCW 42.56.540. It becomes clear the intent of the legislature in enacting these three separate, yet connected statutes, when read they are read together as they complement each other. RCW 42.56.520 clearly states "[a]dditional time required to respond to a request may be based upon the **need to notify third parties**" (emphasis added). RCW 42.56.540 states that "an agency **has the option** of notifying persons named in the record or to whom a record specifically pertains" (emphasis added) unless required by law. Finally, RCW 42.56.210(2) clearly states inspection or copying of any specific exempt record(s) may be permitted if the superior court in the county in which the record is maintained finds, **after a hearing with notice thereof to every person in interest and the agency**, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function." If the Court does not read together these subsections in this manner, then the need to notify in section 520 would be rendered superfluous by the agencies "option" to notify under

section .540. Furthermore, the language of .210(2), giving a trial court the right to allow access to exempt records would be superfluous, a result we avoid when interpreting a statute. PAWS II at 260

> We will not interpret statutes in a manner that renders portions of the statute superfluous.

Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 829 P.2d 746 (1992), cert denied, 506 U.S. 1079 (1993)).

Under the PRA, the "public's" records are to be made promptly available upon request and all denials must be accompanied by an exemption log clearly outlining what records were being withheld, the number of records withheld, the author, as well as the claimed exemption and a brief explanation of how the claimed exemption applies to the requested record. Our legislature states three time that this is to be the case in all denials of public records. RCW 42.56.050, 42.56.070(1), and 42.56.210(3).

Specifically, at issue in this cause of action is the decision of the trial court to apply the general statute for injunctions RCW 7.40.020 rather than the statute specific to injunction of public records under RCW 42.56.540. The trial court's decision was error and an abused its discretion.

Our Supreme Court has consistently applied the rule that the more specific statute prevails over the more general when two statutes are concurrent. In *State v. Cann*, 92 Wn.2d 193, 197, 595 P.2d 912 (1979).

> The rule is that where general and special laws are concurrent, the special law applies to the subject matter contemplated by it to the exclusion of the general. State v. Walls, 81 Wn.2d 618, 503 P.2d 1068 (1972); State v. Davis, 48 Wn.2d 513, 294 P.2d 934 (1956); State v. Becker, 39 Wn.2d 94, 234 P.2d 897 (1951). 2A C. Sands, Sutherland's Statutory Construction § 51.05 (1973).
>
> As these cases hold, where a special statute punishes the same conduct which is punished under a general statute, the special statute applies and the accused can be charged only under that statute.
>
> This rule is consistent with general principles of statutory construction. See 2A C. Sands, Statutory Construction § 51.05 (4th ed. 1973).

State v. Danforth, 97 Wn.2d 255, 643 P.2d 882 (1982) RCW 42.56.540 is the controlling legal authority allowing a trial court to enjoin public records.

> Because RCW 42.56.540 is specific to injunctions against production under the PRA, it is the governing injunction statute …

Bainbridge Island Police Guild v. City of Puyallup, 172 Wn.2d 398, ¶12, *fn.* 2, 423, 259 P.3d 190 (2011)(emphasis added). In this case of action, the trial court used the wrong standard under RCW 7.40.020 to enjoin public records which has prolonged the release of the requested records without just cause.

The issuance of an injunction, whether temporary, preliminary or permanent, is enjoining public records under RCW 42.56.540. To find otherwise is not in keeping with the Supreme Court's decision in *Bainbridge Island* clearly stating that RCW 42.56.540 controls all injunctions of public records and not RCW 7.040. Under the strict requirements of the PRA any delay in access to public records by a trial court should trigger review by an appellate court because it is a final decision under RCW 42.56.540.

Once preliminary injunction issues no further action is taken and no resolution can be had. This allows an agency to withhold public records indefinitely without a claim of exemption or providing an exemption log identifying the records being withheld. The trial court's decision that permanent injunction was not allowable under RCW 7.40 was error of law and an abuse of discretion.

5. Permanent Injunction

The Zinks accept and agree with Appellant, DOC's argument in their opening brief and add the following argument.

RCW 70.02.230 pertains to mental health services. Respondent have not lost their right to privacy in their actual treatment as a convicted offender under a SSOSA sentence. However, convicted sex offenders have no privacy in documents related to how and why they received any particular sentence in our judicial system for crimes they willingly

committed against another person. To find otherwise is to allow secrecy in our judicial system which fosters mistrust.

Respondents claimed SSOSA evaluations must contain a proposed treatment plan (RCW 9.94A.670(3)(b)) they are most certainly health records. While it is true that a proposed treatment plan must be included in a SSOSA evaluation in order for a court to consider alternative sentencing, the proposed treatment plan is merely a proposal for the trial court to consider in deciding whether to sentence the convicted sex offender under RCW 9.94A.507 or 9.94A.670 and is not the final treatment plan as established by the assigned treatment provider.

This is evidenced by the fact that the treatment provider cannot be the same person who administers the SSOSA evaluation and proposed treatment plan for the trial courts use during sentencing. (RCW 9.94A.670(13). The treatment provider providing psychosexual therapy under a SSOSA sentence must perform a new evaluation and finalize a treatment plan at the time treatment begins and does not rely on the "proposed" treatment plan reviewed by the trial court.

While all evaluations performed by the treatment provider assigned to any particular sex offender would arguably fall under RCW 70.02 as mental health treatment, the SSOSA evaluation and proposed treatment plan submitted to a trial court for a decision on sentencing of a convicted sex offender is a public record, is required to be maintained as a public record in the official court of record and in the Prosecuting Attorney's

Office for public access. RCW 9.94A.475 and .480(1). See RCW 9.94A.030(32) for a definition of a "most serious offense." SSOSA evaluations required to be open and available to the public in one agency do not become exempt simply because they are also held by another agency; in this case the DOC

The trial courts decision otherwise is error of law and must be reversed.

6. Supreme Court Decisions, Case Law Doctrine and the Weight of Stare Decisis

Zink made a request for non-exempt criminal sentencing documents (RCW 9.94A.475). Respondents argued that numerous trial courts across the State of Washington have enjoined the release of SSOSA evaluation in response to a request for access by Zink. Whether every trial court in the State of Washington finds SSOSA evaluations private and exempt pursuant to RCW 70.02, our Supreme Court has determined SSOSA evaluations are sentencing documents, are not exempt and must be released to a requesting member of the public. This mandate by our Supreme Court cannot be ignored by this Court.

Review under the PRA as previously discussed is de novo. Meaning that whether the issue of an SSOSA being a mental health record was brought up at the trial level or on appeal is irrelevant as the issue could have been brought before the Supreme Court without having gone through the trial court. In fact, the issue of whether SSOSA evaluations were

medical and/or mental health records was thoroughly briefed and argued before the Supreme Court (CP 535-716) and Zink has been receiving SSOSA evaluations from other agencies (CP 717-718).

> As the Court of Last Resort, Supreme Court decisions are binding on all lower courts; including the Court of Appeals. It is a generally understood, that when a point has been settled by a decision of a higher court, it forms a precedent which is not afterwards to be departed from. The trial court must abide or adhere to decisions made by our Supreme Court in this case and not on other trial court decisions. It is not within this court's discretion under the doctrine of stare decisis to second guess or disregard a Supreme Court mandate.
>
> Stare decisis means, literally, "[t]o stand by things decided." BLACK'S LAW DICTIONARY 1443 (8th ed. 2004). <u>It involves following rules laid down in previous judicial decisions</u> unless they are found to contravene the ordinary principles of justice.

Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, ¶22, 150 P.3d 545 (2007). [T]he decisions of the courts of last resort are held to be binding on all others. *State v. Ray*, 130 Wn.2d 673, 677, 926 P.2d 904 (1996).

> Stare decisis furthers unity in the system of justice, <u>assuring that decisions by courts of last resort are reliably binding</u>. State v. Ray , 130 Wn.2d 673 , 677, 926 P.2d 904

> (1996); State ex rel. Wash. State Fin. Comm. v. Martin , 62 Wn.2d 645 , 665, 384 P.2d 833 (1963).
>
> We have recognized that without the stabilizing effect of stare decisis, "law could become subject to . . . the whims of current holders of judicial office." In re Rights to Waters of Stranger Creek , 77 Wn.2d 649 , 653, 466 P.2d 508 (1970). ...
>
> Continued adherence to precedent also reflects the important consideration that when a legal principle has been long established, it allows citizens to choose their courses of action with a reasonable expectation of future legal consequences. Crown Controls, Inc. v. Smiley , 110 Wn.2d 695 , 704-05, 756 P.2d 717 (1988). See also Stephen Markman, Precedent: Tension Between Continuity in the Law and the Perpetuation of Wrong Decisions , 8 TEX. REV. L. & POL. 283, 284 (2004) (suggesting factors for determining when the presumption favoring precedent may be overcome, including "consideration of the reliance interests of the people, all of whom must carry out their personal and business affairs within the constraints of the legal system").

Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, ¶24-25, 150 P.3d 545 (2007)(emphasis added).

> Through stare decisis, the law has become a disciplined art--perhaps even a science--deriving balance, form and symmetry from this force which holds the components together. <u>It makes for stability and permanence, and these, in turn, imply that a rule once declared is and shall be the law.</u>

> Stare decisis likewise holds the courts of the land together, making them a system of justice, giving them unity and purpose, so that the decisions of the courts of last resort are held to be binding on all others.
>
> Without stare decisis, the law ceases to be a system; it becomes instead a formless mass of unrelated rules, policies, declarations and assertions--a kind of amorphous creed yielding to and wielded by them who administer it. Take away stare decisis, and what is left may have force, but it will not be law.

State v. Ray, 130 Wn.2d 673, 677, 926 P.2d 904 (1996)(quoting opinion given by Justice Hale in *State ex rel. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 665-66, 384 P.2d 833 (1963)(emphasis added). The relevant facts of this case are that Ms. Zink requested sentencing documents (SSOSA evaluations); records of conviction required to be freely disseminated (RCW 10.97.050(1). See also the Sentencing Reform Act of 1981 Chapter 9.94A RCW.

Clearly the trial court's decision that *Koenig* 2012 was not dispositive of this cause of action because they Court failed to address the issue of SSOSA evaluations under all possible exemptions is error and must be reversed.

VI. COSTS

The Zink's request this Court to award them fees and costs under RAP 14. Pursuant to RAP 14.1 the appellate court which accepts review and makes final determination (RAP 14.1(b)) decides costs in all cases (RAP 14.1(a)). As the substantially prevailing party in this cause of action, the Zinks respectfully request this Court to award them fees and costs for this appeal. See *Mount Adams Sch. Dist. v. Cook*, 150 Wn.2d 716, 727, 81 P.3d 111 (2003).

VII. PUBLICATION

The Zink's respectfully request the court to publish its decision on this matter as the issues addressed herein are all of great public importance.

VIII. CONCLUSION

RCW 42.56.540 is the specific statute governing the injunction of public records whether it is a TRO, preliminary injunction or permanent injunction. Allowing our courts to enjoin records under RCW 7.40.020 instead of RCW 42.56.540 merely prolongs litigation and prevents prompt and expeditious review of public records. That is the opposite of the stated intent of the PRA.

RCW 42.56.540 specifically mandates that only a party named in the record or to which the record pertains can enjoin the release of a specific

record. Allowing a class to be certified in order to exempt public records rather than simply claiming exemption is an absurd and strained reading of our laws under the PRA.

Records of conviction and sentencing are of great public importance and must be freely available to the public. The trial courts determination that compliant Level I sex offenders should be shielded through injunction of their SSOSA evaluation violates our strongly worded PRA and is in opposition to an established Supreme Court case. Blanket exemptions are not allowed. Blanket disclosure is allowed.

While the SSOSA program helps to keep sex offenders out of our prison system the publics need to scrutinize the program is of the greatest public concern. Without the ability to access these records how does the public monitor our judicial and penal system to determine if it is working for both the good of the community as well as the good of the offenders and their victims.

Further, it is nonsensical to find the SSOSA evaluations of Level I sex offenders are exempt if they remain compliant, while all other SSOSA evaluations are to be accessible to the public. Either the SSOSA evaluation are exempt or they are not exempt. For this reason, the Zinks respectfully request this court to find these records are not exempt and must be made accessible to the public.

Allowing civil parties to file suit anonymously is in direct conflict with well-established rules of the court requiring a party to file both a summons and a complaint in their true legal names. Furthermore, a party must show they have interest in the legal action in order to file legal action. Without knowing the identity of the individuals filing suit, the trial court has no way of verifying whether the plaintiffs have interest or this cause of action and the trial court erroneously relied on anonymous declarations of convicted criminals as credible. Allowing parties to file anonymously without providing the court with some reference to their identity is a violation of our Washington Constitution.

Judicial proceedings associated with secrecy in our justice system are of great public importance and must be open to the public in order for the public to have confidence in our judicial system. The trial court erred in not sealing court records in open court, not allowing participation by those attending the hearings and not following the mandatory requirements of GR 15 and the Ishikawa Factors. Finally, the trial court erred in not providing findings and conclusions specifically identifying the actual harm, rather than potential harm with specificity allowing for secrecy in our judicial system. For these reasons the Zinks respectfully request this court to remand this issue back to the trial court for proper legal consideration and entry of finding, conclusions and orders.

For all of the reasons stated herein Appellants respectfully request this Court to make determination as to whether the trial court used the proper standard of review in issuing a TRO and preliminary injunction, reverse the trial court and allow the DOC to provide the requested records, order the trial court to properly assess whether the parties have right to secret their identity using GR 15 and the Ishikawa Factors, dissolve the class of compliant Level I sex offenders certified by the trial court and award costs to the Zinks as the prevailing party.

RESPECTFULLY SUBMITTED this 6th day of June 2016

By _____

Donna Zink
Pro se

IX. CERTIFICATION OF SERVICE

I declare that on the 6th day of June, 2016, I did send a true and correct copy of appellant's "BRIEF OF APPELLANTS DONNA AND JEFF ZINK" via e-mail service to the following addresses as agreed upon by all parties to this matter:

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Dated this 6th day of June, 2016

By Donna M. Zink
Donna Zink
Pro se