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COA No. 62938-7-I

COURT OF APPEALS OF WASHINGTON
DIVISION ONE

ALLAN PARMLEE

Appellant - Defendant - Counterclaim Plaintiff

vs.

KING COUNTY SHERIFF'S OFFICE

Appellant - Plaintiff - Counterclaim Defendant

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AMENDED OPENING BRIEF

Appeal From The Superior Court of King County

Honorable Palmer Robinson

No. 08-2-22251-9 SEA

Allan Parmelee
pro se Appellant
SCCC - 793782
191 Constantine Way
Aberdeen WA 98520

TABLE OF CONTENTS

I - Assignments of Error	1
A. Assigment of Error Questions	1
B. Issues Pertaining to Assigments of Error..	2
II -Statement of the Case	4
III - Argument	10
A. Summary Judgment Standards	10
1. The PRA Does Not Create a "Trash-Talk" Free-For-All to Attack a Records Requestor To Block Records Disclosure and Obscure Government Transparency Per RCW 42.56.080 Where the CR-12(f) Motion Required Striking.....	12
(i) The Trash-Talk Does Not Support the Alleged Factual Conclusions Nor Does It Meet The Required Applicable Legal Standards.....	14
2. The Trial Court Denied Itself Any Ability to Reliably Determine if the Records at Issue Were Properly Exempt From Disclosure In Full or Part When it Denied Parmelee's Motion for In-Camera Review per RCW 42.56.550(3)..	15
3. The Trial Court Denied Parmelee Due Process by Denying Him All Discovery and Time to Oppose Both Injunction Motions.....	17
4. The Trial Court Denied Parmelee Due Process by Sua Sponte Dismissing his Counter- Claim.....	20
5. The Statutory Exemptions were Wrongly Applied and Public Records Determined Non-Disclosable Were Incorrectly Construed Exempt.....	21
(i) The Sheriff's Office Fails to Meet the Burdens of RCW 42.56.540 to Justify Enjoinment and RCW 7.47, RCW 7.24 and CR-65 Don't Apply Being Only General Rules.....	23
(ii) The Court Erred by Concluding Records Maintained by Government, for Government, About Who and How Government Works, are Not Public Records.....	25
(iii) Exemption RCW 42.56.230 Does Not Apply Because None of the Information Sought is Otherwise Not Kept Secret and/or Not "Maintained" Only in Personnel Files.	28
(iv) RCW 42.56.240 Does Not Apply to Police Officers' Names Withheld.....	30
(v) Phone Numbers are Not Exempt per RCW 42.56.420 Because They are Not Exclusively Terrorist Prevention Used, But Are Routinely Disclosed to Strangers and Opponents.....	30

TABLE OF CONTENTS

6.	After Obtaining a Final Judgment Pending on Appeal Without Leave of This Court per RAP 7.2, the Sheriff's Filed a One-Page Insufficiently Pled Injunction Motion, Also Without Complying With CR-8 & KCLR-7(b)(5).....	31
7.	This Case Should Have Been Consolidated With the Other King County Cases Per CR-19 & CR-42(a) to Avoid Collateral Estoppel, Res Judicata and Standing Defects Barring This and Other Actions.	34
8.	The Second Injunction Lacked Sufficient Admissable Evidence, Denied Parmenee Due Process and Relying on RCW 42.56.565 Was Both Facially and As-Applied Unconstitutional	36
	(i) The Second Injunction Lacked Sufficient Admissable Non-Conclusory Real Facts Evidence Necessary To Support Its Harsh Result.....	36
	(ii) The New PRA Statute, RCW 42.56.565 Cannot Be Applied Retroactively Because it Stips Rights To Previous Transactions Without a Provision To Do So.....	43
	(iii) RCW 42.56.565's Subjective Standard of Proof by Allowing Speculation and Blind Accusations Constitute Proof by a Preponderance of Evidence Standard Denied Due Process...	44
	(iv) Equal Protection is Violated by RCW 42.56.565 Because it Permits Selective Prosecution and Discriminatory Effects Among Requestors of all Types, Similarly Situated.....	45
	(v) RCW 42.56.565 is Facially And As-Applied Unconstitutional on Over-Breadth, Vagueness and First Amendment Grounds.....	46
9.	Parmelee Should be Awarded PRA Penalties, Costs and Expenses For This Case and on Appeal	50
V -	Conclusion	50
	Certificate of Service	51
	Attachment - King County Local Rule (KCLR) 7.....	52

<u>State Cases Cited</u>	<u>Page(s)</u>
1000 Virginia Limited Partnership.v. Colasurdu, 120 Wn.2d 170, 685 P.2d 1074 (1984).....	44

TABLE OF CONTENTS

<u>State Cases Cited</u>	<u>Page(s)</u>
Abad v. Coza, 128 Wn.2d 575, 911 P.2d 376 (1996).....	19
Adrox v. Children's Hospital, 123 Wn.2d 15, 804 P.2d 921 (1993).....	44
Ashley v. Washington State Public Disclosure Comm'n., 16 Wn.App.830, 560 P.2d 1156 (1977).....	25
Byryan v. Joseph Tree, Inc. 119 Wn.2d 210, 829 P.2d 1099 (1999).....	13
Brouillet v. Cowles Publishing, 114 Wn.2d 788, 791 P.2d 426 (1990).....	19
Clarke v. State Attorney General's Office, 133 Wn.App. 767, 138 P.3d 144 (2006).....	17
Clawson . Longview Publishing Co., 91 Wn.2d 408, 589 P.2d 1223 (1979).....	29
Coalition on Government Spying v. King County, 114 Wn.App. 856, 801 P.2d 1009 (1990).....	19
Concerned Ratepayers Assoc. v. Public Utilities Dist., 138 Wn.2d 950, 983 P.2d 635 (1999).....	19
Cowles Publishing v. City of Spokane, 69 Wn.App. 678, 849 P.2d 1271 (1993).....	30
Davis v. Bendix, 82 Wn.App.267, 917 P.2d 586 (1996)...	33
Dawson v. Daly, 120 Wn.2d 782, 848 P.2d 995 (1993)...	29
DeYoung v. Providence Medical Center, 136 Wn.2d 136, 960 P.2d 919 (1998).....	46
DOE-I v. Washington State Patrol, 80 Wn.App. 296, 908 P.2d 914 (1996).....	13
Doyle v. Planned Parenthood, 31 Wn.App. 126, 639 P.2d 240 (1982).....	33
Harding v. Will, 81 Wn.2d 132, 500 P.2d 91 (1972).....	21
Havens v. C & D Plastics, Inc., 124 Wn.2d 158, 876 P.2d 435 (1994).....	10
Hearst v. Hoppe, 90 Wn.2d 123, 580 P.2d 246 (1978)....	29
Holland v. City of Tacoma, 90 Wn.App. 533, 954 P.2d 290 (1998).....	33
In Re Rosier, 105 WN.2d 606, 717 P.2d 1353 (1986).....	23
Jansen v. Nu-West, 102 Wn.App. 432, 6 P.3d 98 (2000).....	21

TABLE OF CONTENTS

<u>State Cases Cited</u>	<u>Page(s)</u>
King County v. Sheehan, 114 Wn.App.325, 59 P.3d 307 (2002).....	passim
King County Prosecuting Atty's Office, et al, King County Superior Ct. # 07-2-39332-3, Court of Appeals (COA) # 82669-8.....	5, 35
King County [Jail] Adult and Juvenile Detention Center v. Parmelee, King County # 08-2-22252-7 SEA, COA # 62937-9-I	5,18, 34, 35
Klevin v. City of DesMoines, 111 Wn.App. 284, 44 P.3d 887 (2002).....	13,22
Koenig v. City of DesMoines, 158 Wn.2d 173, 142 P.3d 162 (2006).....	27
Lean v. Demopolis, 62 Wn.App.173, 815 P.2d 269 (1991).	33
McNeal v. Allen, 95 Wn.2d 265, 621 P.2d 1285 (1980)...	14
Mieback v. Colasurdu, 120 Wn.2d 170, 685 P.2d 1074 (1984).....	44
Nelbro Packing v. Baypack Fisheries, 101 Wn.App. 517, 6 P.3d 22 (2000).....	31
Northwest Gas Assoc'n v. Washington Utilities, 141 Wn.App. 98, 168 P.3d 443 (2007)...	28,31,35
Ockerman v. King County, 102 Wn.App. 212, 6 P.3d 1214 (2000).....	23
O'Neill v. City of Shoreline, 145 Wn.App. 913, 187 P.3d 822 (2008).....	26
Prison Legal News v. Dept. of Corections, 154 Wn.2d 394, 54 P.3d 1186 (2005).....	11
Progressive Animal Welfare Soc'y v. University of Wash., 125 Wn2d 243, 884 P.2d 592 (1994).....	15,24
Reed v. Streib, 65 Wn.2d 700, 399 P.2d (1965).....	35
Reese v. Stroh, 128 Wn.2d 300, 907 P.2d 282 (1995)....	40
Seattle Firefighters Union v. Hollister, 48 Wn.App.129, 737 P.2d 1302 (1987).....	15,26
Seattle First National Bank v. Marshall, 16 Wn.App. 503, 557 P.2d 352 (1976).....	46
Soter v. Cowles Publishing, 162 Wn.2d 716, 174 P.3d 60 (2007).....	passim
Spokane Police Guild v. Liquor Control Board, 112 Wn.2d 30, 769 P.2d 283 (1989).....	15

TABLE OF CONTENTS

<u>State Cases Cited</u>	<u>Page(s)</u>
Spokane Research & Defense Fund v. City of Spokane, 95 Wn.App. 568, 983 P.2d 676 (1999).....	16,26
State v. J-R Distributors, 111 Wn.2d 764, 765 P.2d 281 (1988).....	36
State v. Kilburn, 151 Wn.2d 36, 84 P.3d 1215 (2005).....	39,47
Steel v. Queen City Broadcasting, 54 Wn.2d 402, 341 P.2d 499 (1959).....	38,39
Triplet v. Dairyland, Ins., 12 Wn.App. 912, 532 P.2d 1177 (1975).....	35
Tinsley v. Munson Sons Cattle Co., 2 Wn.App. 675, 472 P.2d 546 (1970).....	32
Topline Equipment v. Stan Witty Land, 31 Wn.App.86, 639 P.2d 825 (1982).....	20
Van Buren v. Miller, 22 Wn.App.836, 592 P.2d 671 (1979).....	25
W.R. Grace v. State Dept. of Revenue, 137 Wn.2d 580, 973 P.2d 1041 (1999).....	35
Yacobellis v. City of Bellingham, 55 Wn.App. 706, 780 P.2d 272 (1989).....	11
Yousoufian v. Office of Ron Sims, 165 Wn.2d 439, 200 P.3d 232 (2009).....	22
Zink v. City of Mesa, 140 Wn.App. 328, 166 P.3d 738 (2007).....	14,39
<u>Federal and U.S. Supreme Court Cases Cited</u>	<u>Page(s)</u>
Atchison, Topeka & Santa Fe Ry. v. Hercules, 146 F.3d 1011 (9th Cir. 1998).....	18
Bartnicki v. Vopper, 532 U.S. 514 (2001).....	47,48
Brandenburg v. Ohio, 395 U.S. 444 (1969).....	49
Broadrick v. Oklahoma, 413 U.S. 601 (1973).....	49
Daubert v. Merrel Dow Pharmaceuticals, 509 U.S. 579 (1993).....	40
Erie Railroad v. Tompkins, 304 U.S. 64 (1938).....	45
Erzonoznik v. City of Jacksonville, 422 U.S. 205 (1975).....	49

TABLE OF CONTENTS

<u>Federal and U.S. Supreme Court Cases Cited</u>	<u>Page(s)</u>
Florida Star v. B.J.F., 491 U.S. 524 (1989).....	38,47,49
Gertz v. Robert Welch Inc., 418 U.S. 323 (1974).....	29
Johnson v. California Dept. of Corrections, 543 U.S. 499 (2005).....	46
Landgraf v. USI Films, 511 U.S. 244 (1994).....	44
Lataille v. Ponte, 754 F.2d 33 (1st Cir. 1985).....	42
Los Angeles Police v. Finley, 528 U.S. 32 (1999).....	43,48
Mathews v. Eldridge, 424 U.S. 319 (1976).....	18
NARA v. Favish, 541 U.S. 157 (2004).....	43
New York Times v. Sullivan, 376 U.S. 254 (1964).....	37
Police Dept. v. Mosley, 408 U.S. 92 (1972).....	38
R.A.V. v. City of St. Paul, 505 U.S. 377 (1992)....	44,59
Reno v. ACLU, 521 U.S. 844 (1997).....	49
Sheehan v. Gregoire, 272 F.Supp.2d 1135 (W.D.Wash. 2003).	38,47 - 50
Simpson v. Thomas, 528 F.3d 685 (9th Cir. 2008).....	42

<u>Statutes Cited</u>	<u>Page(s)</u>
RCW 7.24., et seq.....	2,23
RCW 7.40., et seq.....	2,23
RCW 4.28.080(15).....	27,38
RCW 9A.76.180.....	39
RCW 42.56., et seq.,.....	passim
5 U.S.C. § 552 (FOIA).....	12
RCW 46.20.118.....	27

<u>Court Rules Cited</u>	<u>Page(s)</u>
CR-5.....	9,10,32,33,36,37
CR-7	33
King County Local Rule (KCLR)-7.....	1,3,10,32,33,36,37
CR-8.....	20,35
CR-10.....	35

TABLE OF CONTENTS

<u>Court Rules Cited</u>	<u>Page(s)</u>
CR-11(b).....	13
CR-12(f).....	1,2,6,12,13,20
CR-13.....	1,20
CR-17.....	35
CR-19.....	3,5,34,35
CR-20.....	35
CR-26.....	8,17,18,19,36
CR-42.....	34
CR-54.....	31,34
CR-59.....	8,9
CR-60.....	30,33
CR-65	30,33
Evidence Rule (ER)-401.....	41,44
ER-402.....	41,44
ER-403 404	41,44
ER-406.....	19,42
ER-602.....	41
ER-608.....	19,44
ER-613.....	19
ER-701.....	40
ER-702.....	40,44
ER-802.....	44
ER-806.....	19
RAP (Rules of Appellate Procedure)-6.1.....	32
RAP-7.2.....	1,3,9,32
RAP-7.3.....	32,33

<u>Constitutional Provisions Cited</u>	<u>Page(s)</u>
--	----------------

United States Constitution:

Amendment One.....	36,46
Amendment Five.....	44,46
Amendment Fourteen.....	36,45

TABLE OF CONTENTS

Constitutional Provisions Cited Page(s)

Washington Constitution:

Article I, § 3-5.....36,44,46
Article I, § 10.....38
Article I, § 12.....36,45
Article IV, § 1 & 6.....
Article VIII, § 5-7.....31
Article XI, § 14.....31

Washington Administrative Code Cited Page(s)

WAC-44-14-020(3).....13
WAC-44-14-040(1).....13
WAC-44-14-04003(1) & (2).....13
WAC-44-14-07001(1).....40
WAC-44-14-08004(6).....15

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WSBA's Public Records Act Deskbook: Washington's
Public Disclosure and Open Meetings Laws
(2006) ("PRA Deskbook").....passim
Washington Institute for Public Policy: New Risk
Instrument For Offenders: Improves Classification
Decisions, March 2009 (available at
WWW.WSIPP.WA.GOV).....42
House Bill (61st Legislature), HB-2259, HB-1253,
HB-1255, HB-2337.....27

* * * * *

I - ASSIGNMENTS OF ERROR:

A. Assignment of Error Questions:

1. Did the trial court error when RCW 42.56.080 prohibits consideration of the identity and opinions of others about a specific public records requestor, and RCW 42.56.100 requires the Agency to provide him or her the fullest timely assistance, allowing the Agency to "trash talk" the records requestor by denying Parmelee's CR-12(f) motion?
2. Did the trial court error in denying the records requestor's motion for an in-camera review of all the records at issue, per RCW 42.56.550(3) to determine if the records are as the agency describes and if exemptions were properly applied to them?
3. Did the trial court deny the records requestor due process when it denied him any ability to conduct discovery within the scope of CR-26(b) to probe, dispute and oppose the alleged facts made by the agency about Parmelee, risks involved in disclosure, and what their practices and policies are relating to disclosure?
4. Did the trial court deny the records requestor due process when it dismissed his counter-claim sua sponte, without any opposing motion or even an answer required by CR-12(a), contending any CR-13 claims are strictly limited to only the same records and legal theories presented by the Agency's original action under RCW 42.56.540?
5. Did the trial court error by agreeing that the requested records were exempt from disclosure under RCW 42.56.050, .230, .240 and .420, and that "metadata" is not a public record?
6. While this appeal was pending, did the trial court error by permitting the Agency to seek and obtain a second injunction in this case without leave of this court, in violation of RAP 7.2, and without complying with KCLR-7(b)(5) and with a single page motion that fails to indicate what evidence and theories it relies, and if

so, on a statute that is facially, and as applied unconstitutional on First Amendment, overbreadth and vagueness grounds, also denying due process to Parmelee, and are the alleged facts supported by real [admissable] evidence?

7. Did the trial court err by denying the records requestor's motion to compel records disclosure, costs and PRA penalties under RCW 42.56.550(4)?

B. Issues Pertaining to Assignments of Error:

1. True or not, a records requestor's [disputed] reputation, occupation, race, criminal history, political, journalistic, litigation or other history is not relevant per RCW 42.56.080, and should have been stricken per CR-12(f).
 - (i) Trash talk does not support alleged factual conclusions nor did it meet the required legal standards for admissability.
2. The trial court denied itself any ability to reliably determine if the records at issue were properly exempt from disclosure when it denied Parmelee's motion for an in-camera review per RCW 42.56.550(3).
3. The trial court denied Parmelee due process by denying him all discovery and time to probe the claims made by King County, both times.
4. The trial court denied Parmelee due process by sua sponte dismissing his counter claim.
5. The statutory exemptions were incorrectly applied in full or part, and no consideration was given to redaction per RCW 42.56.210.
 - (i) King County failed to meet the burden of RCW 42.56.540 to justify enjoinder and general statutes such as RCW 7.40, 7.24 and CR-65 don't apply when specific statutes exist in RCW 42.56.540.

- (ii) The court erred by concluding records maintained by government, for government, about who and how government works, are not public records.
 - (iii) The court erred by applying RCW 42.56.230 because none of the information sought is otherwise "kept secret" from the public or strangers and/or is not "maintained" only in personnel files.
 - (iv) RCW 42.56.240 does not apply to Police Officers' names and requested information, without violating **Sheehan**.
 - (v) Phone numbers are not exempt per RCW 42.56.420 and even the non-exempted numbers were not disclosed even after the court ruled, still requiring PRA penalties.
6. After obtaining a final judgment pending on appeal, without leave of this court per RAP 7.2, and without complying with KCLR-7(b)(5)(A) & (B), King County filed a one-page motion seeking a second injunction, and without a CR-60(b) request.
7. This case should have been consolidated with the other King County case(s) to avoid collateral estoppel, res judicata and standing defects, and resulting in un-named parties being added to the final order contrary to CR-19.
8. The second injunction lacked sufficient real [admissible] facts, and relied on RCW 42.56.565 which denied Parmelee due process, is facially and as-applied unconstitutional on overbreadth, vagueness and due process grounds, the trial court never ruled on Parmelee's related challenges.
- (i) The second injunction lacked sufficient admissible relevant real facts to support its harsh result.
 - (ii) RCW 42.56.565 cannot apply retroactively because it strips previous rights and transactions without a retroactivity clause.

- (iii) RCW 42.56.565's subjective standard of proof is self defeating by allowing speculation and blind accusations to constitute proof, denying due process.
- (iv) RCW 42.56.565 violates the equal protection rights of everyone because it invites selective, discriminatory and arbitrary application.
- (v) RCW 42.56.565 is facially and as-applied unconstitutional on overbreadth, vagueness and First Amendment grounds.

9. Parmelee should be awarded all fees, costs and PRA penalties per RCW 42.56.550(4) for the records denied and for the appeal, if having prevailed on any matter.

II - STATEMENT OF THE CASE:

Since April 2004, public records requestor, Allan Parmelee served Public Records Act *1 requests by letter(s) to various agencies within the King County Executive Branch, such as addressed in Parmelee's counter-claim, CP-1254-1278, they acknowledged, but never responded to nor addressed in any opposing injunction action. CP-1282, ¶ 4.1-4.2. His PRA requests continued to be submitted about topics such as who assaulted, mistreated, retaliated against him or others, or acted unlawfully, Parmelee

* Fn.1

The Public Records Act ("PRA") is codified at RCW 42.56 since 2006, formerly RCW 42.17, the more recent version is cited herein. Also see, WSBA's Public Records Act Deskbook: Washington's Public Disclosure and Open Meetings Laws (2006 (herein, "PRA Deskbook")).

inquired about who, did what, where, and if and how one person could be reliably identified and distinguished from another such as by providing pictures, staff rosters of who government officials are, and other relevant information. CP-1241, CP-1279, CP-1298, CP-1362, CP-1416.

King County filed their first PRA suit against Parmelee on July 24, 2007, in King County and King County Prosecuting Attorney's Office v. Parmelee, Superior Court # 07-2-39332-3, Supreme Ct. # 82669-8, seeking the same relief as King County Sheriff's Office ("Sheriff's") sought in this case. CP-75, ¶'s 3-8; CP-1376. They then filed their second PRA suit against Parmelee in this case on July 2, 2008. CP-1-12. They again filed their third PRA suit against Parmelee on the very same day using the same pleadings and making the same argument in King County [Jail] v. Parmelee, Superior Ct. # 08-2-22252-7 sea, COA # 62937-9-I. CP-37-40. Parmelee sought consolidation of these cases to avoid opposing party's problems with CR-19, res judicatta and collateral estoppel. Id. It was denied on December 30, 2008. CP-1326, ¶ 6.

Prior to all the motion filings and PRA legal briefing when Parmelee was served the legal actions, he immediately offered to settle the cases by withdrawing the PRA requests, accepting no economic costs or PRA penalties otherwise available to him under RCW 42.56.550(4),

if the cases were dismissed. CP-1406-1415. Despite this offer, all the King County agencies refused, then later argued Parmelee's PRA requests were simply designed to unfairly capitalize on the County's tendencies towards non-disclosure and habitual resisting of government transparency, for economic penalty profit. CP-1386, ¶16; CP-1321, ¶ 12.

On July 17, 2008, Parmelee filed an answer and affirmative defense to the complaint. CP-1-12, CP-13-19. He also filed a motion to strike scandalous and inflammatory irrelevant "trash talk" about him, per CR-12(f). He contended that per RCW 42.56.080 & .100, any opinions or claims about his reputation, what he is or who he is as a records requestor, is immaterial and irrelevant to determining if a statutory exemption applied to specific identifiable public records. CP-20-29.

King County filed a response, CP-66-71, contending that "trash talk" is appropriate in a PRA case when the agency does not like the specific records requestor, and Parmelee replied that the PRA does not allow such rear-view-mirror considerations. CP-998-1001. On December 30, 2008, the trial court denied Parmelee's motion. CP-1325, ¶ 4. The trial court permitted the Agency to "trash talk" Parmelee with conclusory, disputed

and unsupportable accusations even discovery was denied necessary to oppose, many of which are Fistr Amendment protected conduct relied upon for the injunction. CP-1317-1326.

Parmelee filed a motion for an in-camera review on July 17, 2008, per RCW 42.56.550(3). CP-30-36. He claimed the review was necessary because the records consisted of how government works and who did what, when and the related applicable policies and procedures involved, and all were disclosable at least in part with partial redaction per RCW 42.56.210. He also claims the Sheriff's categorization, claims of threats and application of any claimed exemption required court review of the records to determine if correctly interpreted and applied. Id.

The Sheriff's agency responded claiming that no such in-camera request can occur because any such request was essentially the same as one for summary judgment under CR-56. CP-63-65. Parmelee explained to the court why an in-camera review was not akin to summary judgment and that it enabled the court to sufficiently determine if the records were correctly withheld. CP-993-997. Only on December 30, 2008, did the court deny Parmelee's motion with the exception of a single electronic picture to examine if metadat was a public record, it was determined it was not. CP-1325, ¶ 3, CP-1327, CP-1328-1329, and

related exhibit in Clerk's Papers on CD.

On July 21, 2008, the Sheriffs Office filed a motion for an injunction, CP-946-992, with a plethora of irrelevant declarations. CP-41-43, CP-44-62, CP-75-945. Parmelee opposed the motion and argued most of the content was irrelevant and should be stricken. He also asked that the injunction be stayed pending Parmelee's efforts to conduct discovery within the scope of CR-26(b) to oppose the many factual claims made by the agency. CP-1241-1263.

Parmelee also filed a cross-motion to show cause and to compel production of the requested public records along with two declarations in support. CP-1002-1240, CP-1416-1653. *2 The Sheriff's office did not oppose Parmelee's motion nor file any response, but Parmelee did file two supplemental declarations to the new accusations made by King County at oral argument. CP-1298-1308, CP-1406-1415. He also filed specific objections and a motion to reconsider under CR-59 to the Sheriff's proposed order. CP-1309-1316.

On December 30, 2008, the court granted the Sheriff's

* Fn.2

It appears that the Superior Court Clerks regularly did not actually file Parmelee's mailed pleadings to them that were served on the court and parties until a month or more later, if at all, causing inconsistent filing dates in the docket.

injunction as-requested, denying all of Parmelee's motions, dismissing sua sponte his counter-claim even though it sought relief from PRA requests not at issue in the Sheriff's case, "dismissing the case." CP-1317-1326.

Because of problems with the Clerk not timely filing Parmelee's pleadings per CR-5(e) he previously brought to the court's attention nothing was done about, Parmelee had pre-filed a CR-59 motion on December 17, 2008, CP-1309-1316, to the Sheriff's final order, CP-1317-1326. The trial court never ruled on that motion.

On January 28, 2009, Parmelee filed a timely notice of appeal. CP-1330-1340.

Six months later while this appeal was pending and without leave of this court required by RAP 7.2, the Sheriff's office filed a vague one-page motion seeking a second injunction on June 12, 2009. CP-1341. Parmelee objected on several grounds and again asked the court for time to conduct discovery into the many alleged facts and time to access the related files since he was a prisoner temporarily at the King County Jail from the Dept. of Corrections where the files were located. CP-1348-1351. The trial court denied Parmelee's objections and requests. CP-1342, 1343-1346, CP-1347, CP-1352, CP-1353-1354.

Parmelee filed his objections and a preliminary response, again explaining discovery was needed especially on the complex issues of fact. CP-1355-1361, CP-1362-1373. The Sheriff's replied, CP-1374-1377, again giving no clue as to the specific evidence relied upon for the relief they sought, filed in the record as required by CR-5, and still failing to file the required Note-For-Motion form required by KCLR-7(b)(5).

From the Sheriff's one-page motion, CP-1341, to their four-page reply, CP-1374-1377, and despite Parmelee's response and declaration supported objections, CP-1348, CP-1355, CP-1362, the trial court granted the Sheriff's motion resulting in another 12-page PRA injunction in this same case against Parmelee. CP-1390, CP-1378-1389.

III - ARGUMENT:

A. SUMMARY JUDGMENT STANDARDS:

Summary judgment may be appropriate even in PRA cases only when the pleadings, [admissable] evidence, and affidavits, relevant interrogatories and depositions demonstrate that no genuine issues of material fact in dispute exist, and as a matter of law judgment is appropriate. Havens v. C & D Plastics, Inc., 124 Wn.2d 158, 177,876 P.2d 435 (1994). PRA cases are still unique in that the agency always bears the burden of proving that it did not violate the PRA and a statutory exemption

narrowly applied, RCW 42.56.030, applies to specific public records. RCW 42.56.070(1), .210 & 550(1)-(3). Yacobellis v. City of Bellingham, 55 Wn.App.706,711,780 P.2d 272 (1989), rev. den., 114 Wn.2d 1002 (1990).

The standard of review by this court is de novo, viewing all facts in light most favorable to the non-moving party (Parmelee). RCW 42.56.550(3); Prison Legal News v. D.O.C., 154 Wn.2d 394,398,54 P.3d 1186 (2005). Courts must construe the PRA broadly favoring disclosure, and any properly applied exemptions narrowly. Id., RCW 42.56.030.

Although PRA cases are normally limited to an issue of law as applied to undisputed facts such as what is contained in a specific identified public record and how a statutory exemption applies, that is not what occurred in this case. The role of the courts is to determine if the specific records present a sufficient factual basis to properly apply a statutory exemption. RCW 42.56.550(1)-(3). Courts may not, however, look beyond the plain language of a statute if the plain language itself is unambiguous. State v. Armendarez, 160 Wn.2d 106,110,156 P.2d 201 (2007). Only if and when a statute is determined to be ambiguous are other tools used to discern its intent and meaning, including statutory construction and legislative intent. Id. at 110-111

Only if the issue is comparable, as some are here, to the Federal Freedom of Information Act (FOIA, 5 U.S.C. § 552) may the courts look to federal court decisions for guidance. King County v. Sheehan, 114 Wn.App.325,337-338, 57 P.3d 307 (2002).

1. The PRA Does Not Create A "Trash-Talk" Free For All To Attack A Public Records Requestor To Block Records Disclosure And Obscure Government Transparency Per RCW 42.56.080 Where The CR-12(f) Motion Required Striking.

Mr. Parmelee's records requests are governed by RCW 42.56.080 which prohibits and agency from considering the identity of a records requestor and the non-commercial purposes of the requests, and RCW 42.56.100 requires the agency to provide [Mr. Parmelee] the fullest prompt assistance in obtaining the records he seeks. Meaning, the Sheriff's trash-talk about Parmelee's character, reputation, religion, political, journalistic or legal related history, true or not, was irrelevant and should have been stricken under Parmelee's CR-12(f) motion. CP-20-29, CP-998-1001.

The controlling statutory language of RCW 42.56.080 is:

"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.... Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide

information as to the purpose for the request..."

Id., (emphasis added); WAC 44-14-04003(1).

The agency also must exercise due diligence in affirmative acts that "shall provide the fullest assistance to inquirers and the most timely possible action on requests for information." RCW 42.56.100 (emphasis added); WAC 44-14-020(3); WAC 44-14-040(1) & WAC 44-14-04003(2). DOE-I v. Washington State Patrol, 80 Wn.App.296,303-304, 908 P.2d 914 (1996)(agency has affirmative duty to assist records requestors regardless of who [s]he is).

The Sheriff's office's trash talk about Parmelee fails CR-11(b)(2) & (3), justifying sanctions Parmelee also sought in his motion. CP-20-29. Bryant v. Joseph Tree., Inc., 119 Wn.2d 210, 829 P.2d 1099 (1999). Parmelee could have hidden behind an agent such as a lawyer to make PRA requests, and the lawyer could not be compelled to identify hir or her cleint the PRA requests were being made on behalf of. Klevin v. City of Des Moines, 111 Wn.App.284,291,44 P.3d 887 (2002).

CR-12(f) provides a remedy to clean up such cases by striking and refocusing the case onto relevant facts gained by stripping away the sensational, distracting trash talk designed to sensationalize rehetoric with impertinent and immaterial claims like the Sheriff's office flooded their pleadings with. CP-20-29, CP-998-1001.

Such factual claims, true or not, should have been stricken because RCW 42.56.080 does not permit such rear-view-mirror driving, subjecting the Sheriff's office to CR-11(b) sanctions and CR-12(f). McNeal v. Allen, 95 Wn.2d 265, 267-68, 621 P.2d 1285 (1980). The trial court abused its discretion by denying Parmelee's motion. CP-1309-1316, CP-1317-1326.

(i) The Trash-Talk Does Not Support The Alleged Factual Conclusions Nor Does It Meet The Required Applicable Legal Standards.

For example, the Sheriff's office claimed Parmelee's PRA requests were part of a scheme to [unlawfully] "harass" the agency. They never cited nor attempted to meet any of the applicable definitions of RCW 10.14.020 defining unlawful harassment, assuming arguendo the PRA injunction is an available remedy for relief.

First, RCW 42.56.080 permits Parmelee to make the PRA requests he did, making it a "lawfull" action. The purpose of making the requests cannot be considered. Id. Therefore, it cannot amount to harassment. Zink v. City of Mesa, 140 Wn.App.328,333,337-38,343-44,166 P.3d 738 (2007) (citizen issued 172 PRA request the County called "harassment, the COA reversed because the PRA itself is a lawful process); King County v. Sheehan, 114 Wn.App. at 341. CP-146, CP-1420, ¶ 9.

2. The Trial Court Denied Itself Any Ability To Reliably Determine If The Records At Issue Were Properly Exempt From Disclosure In Full Or Part When It Denied Parmelee's Motion For In-Camera Review Per RCW 42.56.550(3).

The meaning of due process is trivialized when an agency is permitted to hide its records from judicial review in support of avoiding government transparency required by RCW 42.56.030. The Sheriff's office was allowed to hide the records' content to reliably determine if statutory exemptions were properly applied by the agency, avoiding any judicial and citizen scrutiny. This is why the legislature enacted RCW 42.56.550(3). An in-camera review is a critical phase in the PRA dispute resolution process. WAC 44-14-08004(6); PRA Deskbook, Ch.16.2(5). CP-30-36, CP-993-997.

The Sheriff's office contended various PRA statutory exemptions applied to all requested records despite prior holdings they were not in full or part, such as in Sheehan, 114 Wn.App. at 342-49; Spokane Police Guild v. Liquor Control Bd., 112 Wn.2d 30,38,769 P.2d 283 (1989); Progressive Animal Welfare Socy v. University of Wash., (PAWS-II), 125 Wn.2d 243,270,884 P.2d 592 (1994)(records must be redacted if disclosable in part); Seattle Firefighters Union v. Holister, 48 Wn.App.129,737 P.2d 1302 (1987)(medical disability records subject to PRA disclosure).

In contrast, the Sheriff's office frequently and routinely exposed, traded and disclosed the very same

information in various forms, RCW 42.56.010(2) & (3), about who government officials are, how they conduct themselves, and how to reliably identify and distinguish one from another such as on traffic tickets, in affidavits-of-probable cause (CrR 2.2(a)(2), CrR 2.3(c)) including video (in court or of crime scene processing) and pictures as well as related metadata (data about data) violated the Sheriff's right to privacy per RCW 42.56.050. The trial court erroneously compared a non-public individuals' right to privacy to be the same as public or government officials' rights to privacy, which are clearly distinguishable. PRA Deskbook, Ch.13. The Sheriffs failed to establish that any "specific" identifiable records were limited to, being in and not just related to , personal files such as necessary to apply RCW 42.56.230(2). PRA Deskbook, Ch.11.

While similar problems exist to the application of other exemptions, trial courts are normally strongly urged to conduct in-camera reviews when asked to do so. Spokane Research & Defense Fund v. City of Spokane, 95 Wn.App.568,577,983 P.2d 676 (1999)("the better practice is to ... conduct an in-camera inspection. In-camera inspection enhances the trial court's ability to assess the nature of the documents, decide applicable exemptions, and perform necessary redaction.").

Parmelee contends that the existing record is insufficient to justify the trial court's denial of Parmelee's motion per RCW 42.56.550(3) and the application of the statutory exemptions sought by the Sheriff's Office.

3. The Trial Court Denied Parmelee Due Process By Denying Him All Discovery And Time To Oppose Both Injunction Motions.

Related to both injunction motions brought by the Sheriffs office, CP-1317 & CP-1392, Parmelee sought additional time to marshal facts to present his defenses and obtain evidence that would impeach the claims by the Sheriff's office, narrow the issues for the trier of fact and avoid being blindsided with accusations and claims from the opponent with no way to probe or attack the veracity and reliability of those claims, most of which were conclusory. CP-1002-1240, CP-1309, CP-1348-1351. Parmelee's requests submitted on October 11, 2008, were stricken by the court every turn even without the agency ever complying with CR-26(i) at the Sheriff's request. Id., CP-1390, CP-1405, ¶ 3, CP-13-26, CP-1325, ¶ 5-6, CP-1342, CP-1343-1346, CP-1347, CP-1353-1354.

The trial court lacked jurisdiction to hear or grant the Sheriff's motion to quash discovery because they never held a discovery conference per CR-26(i). Clarke v. State Attorney General's Office, 133 Wn.App.767,138

P.3d 144 (2006).

Parmelee believed the common cases had been consolidated, CP-37-40, with King County [Jail] v. Parmelee, COA #62937-9-I, also including the same discovery efforts. (ss COA # 62937-9-I, CP-1002-1005(motion to quash disc.), CP-1006-1020 (decl. in support of motion to quash), CP-1025-1028 (Parmelee's response to motion to quash) and order quashing all discovery, CP-1025-1028. In other words, Parmelee was denied due process.

To ensure any process available under the Court's rules, provides meaningful due process equally available to all that may lead to admissible evidence under CR-26(b) requires a flexible approach. Mathews v. Eldridge, 424 U.S. 319,333 (1976).

Parmelee should not have to bear any initial burden based on some unestablished standard to justify that and why he needs discovery under CR-26(b), contrary to the Sheriff's claims and the court's holding. Every litigant should have equal access to the court's rules, and it is an abuse of discretion by the court to selectively deny Parmelee discovery under the rules. Atchison, Topeka & Fe Ry Co. v. Hercules Inc., 146 F.3d 1071,1074 (9th Cir. 1998).

A court has the authority to provide the due process requested by Parmelee to protect his interests and

due process. It is codified at RCW 2.28.150; Abad v. Coza, 128 Wn.2d 575, 588, 911 P.2d 376 (1996).

This case presented many disputed facts both about the records and how the agency treated the records, and about any lacked risks the agency claimed justifying non-disclosure. Parmelee also disputed what the agency was saying about him, and what it meant as applied to PRA records requests. CR-26(b); ER-406, ER-608, ER-613, ER-806.

Although PRA cases frequently only involve specific public records the court examines in-camera per RCW 42.56.550(3) to decide if a statutory exemption applies or if parts could be redacted per RCW 42.56.070(1) and .210, disclosing the rest. This case is not one of them under the circumstances requiring discovery. PRA Deskbook, Ch. 16.2(4)-(5). In Brouillet v. Cowles Publ'g, 114 Wn.2d 788, 801, 791 P.2d 426(1990) the Supreme Court noted that the agency could have conducted discovery to dispute the factual contentions of the records requestor. In Coalition on Gov't Spying v. King County, 59 Wn.App. 856, 859, 801 P.2d 1009 (1990) the court noted that the records requestor conducted discovery. In Concerned Ratepayers Assoc'n. v. Public Utility Dist., 138 Wn.2d 950, 956, 983 P.2d 635 (1999) the court notes a deposition was taken in the PRA case. Because the case against Parmelee

was unusually highly fact intensive, it was an abuse of discretion that denied Parmelee due process by denying him all discovery.

4. The Trial Court Denied Parmelee Due Process By Sua Sponte Dismissing His Counter-Claim.

Parmelee's CR-13 counter-claim immediately filed and served on the Sheriff's Office. CP-1264-1295, CP-1296-1297. The counter-claim sought relief relating to PRA requests including those at issue in the Sheriff's case, but also ones against the same agency not at issue in their case. Id.

The Sheriff's office never filed an answer required by CR-12(a)(4). Parmelee sought related relief. CP-1002-1240. The trial court sua sponte dismissed all Parmelee's claims, alleging his claims were limited to the basis for relief presented by the Sheriff's Office under RCW 42.56.540 and Parmelee was not allowed to allege counter-claims as he did despite CR-13 providing for it. CP-1280, ¶ 2.1; CP-1326, ¶ 5.

The right to litigate all claims between parties in a single action is not unlimited, yet failing to counter-claim may trigger estoppel. Topline Equip. v. Stan Witty Land, Inc., 31 Wn.App.86,95,639 P.2d 825 (1982). CR-8(c) permits a court to treat a counterclaim as a defense and or as counterclaims, not limited to the issues or relief

sought by the original party. CR-19 & CR-20; Harding v. Will, 81 Wn.2d 132,135,n.1,500 P.2d 91 (1972).

Because dismissal of Parmelee's counterclaim was with prejudice, it terminated all claims, even those beyond the scope of the Sheriff's and should not have been so limited by the trial court. CR-54(b). The Sheriff's failure to file an answer per CR-12(a)(4) to Parmelee's counterclaim, should have survived and acted as "an admission" in opposition to their claims against Parmelee. Jansen v. Nu-West, 102 Wn.App.432, 438, 6 P.3d 98 (2000).

5. The Statutory Exemptions Were Wrongly Applied And Public Records Determined Non-Disclosable Were Incorrectly Construed Exempt.

The PRA specifies three times that courts must construe it liberally in favor of disclosure. King County v. Sheehan, 114 Wn.App. at 338. Virtually no other legislation repeats three times how it should be interpreted. PRA Deskbook, Ch. 2 thru 6. Courts should never ignore this thrice repeated demand:

"... The people insist on remaining informed so that they may maintain control over the instruments they have created. This chapter **shall be liberally construed** and its **exemptions narrowly construed** to promote this public policy and to assure that the public interest will be fully protected. In the event of **any conflict between provisions** of this chapter and any other act, **the provisions of this chapter shall govern.**

RCW 42.56.030 (emphasis added) (formerly RCW 42.17.251).

Accountability of public officials and government transparency, even to unpopular requestors where the primary objective of the PRA is to provide full access to the workings of government regardless of the motive for the requests. Sheehan, 114 Wn.App. at 335-36. Caution must be exercised by courts that might frustrate the purpose of liberally promoting complete disclosure. Klevin v. City of Des Moines, 111 Wn.App.284,44 P.3d 887 (2002).

Parmelee asks this court to hold that the Sheriff's action was not promoted in "good faith" at all, contrary to their prior assertions, CP-1322, ¶ 16, but designed and organized to retaliate and harass Parmelee for daring to attempt to exercise prior First amendment and state-created-rights with the intent to deter opinions, thoughts and ideas critical of the Sheriff's Office. Yousoufian v. Office of Ron Sims, 165 Wn.2d 439, 200 P.3d 232 (recalled and re-issued, Slip Op. # 80081-2, 3/25/10)(factors to determine PRA penalties).

However unpopular or controversial a records requestor may be such as Parmelee, Prison Legal News, Tim Eyman, Washington Coalition for Open Government, Green Peace, ACLU, or these types of inquirers, these deserve the most judicial protection under the PRA. RCW 42.56.080, PRA Deskbook, Ch.4, pg.6, Commentary box.

(i) The Sheriff's Office Fails To Meet The Burdens Of RCW 42.56.540 To Justify Enjoinment And RCW 7.40, RCW 7.24 And CR-65 Don't Apply Being Only General Rules.

The Sheriff's action should have failed because as only general statutes of RCW 7.40, RCW 7.24 and CR-65 are general provisions, because a specific statute exists under RCW 42.56.540 and these cases do not involve issues of equity, the trial court erred by granting relief as it did. CP-1322, ¶ 11. Also, the agency failed to meet its burden under RCW 42.56.540. In Re Rosier, 105 Wn.^{2d} 606, 717 P.2d 1353 (1986).

Mere "concerns" as the Sheriff's presented are not sufficient facts to meet their burdens of proof under the more specific statute, RCW 42.56.540. PRA Deskbook, Ch.18; Soter v. Cowles Publ'g, 162 Wn.2d 716, 749-57, 174 P.3d 60 (2007).

The trial court's findings, CP-1322, are conclusory and based on conclusory claims and lack sufficient real facts necessary to support the harsh result of an injunction. Soter, 162 Wn.2d @ 756-57. The clear and unambiguous terms of the PRA must be applied. Ockerman v. King County Dept.of Dev.& Envt'l Svcs, 102 Wn.App.212, 216, 6 P.3d 1214 (2000). The court must give a statutory term its plain meaning and assume that the legislature intended what it says, reading the statute as a whole,

giving effect to all the language in the statute and harmonize all its provisions. Id. The Court must not render other language in the statute superfluous. PAWS-II, 125 Wn.2d @ 260.

The use of words "or" and "and" must be applied conjunctively, disjunctively or as inclusions or exclusions of meaning like other pertinent words in the statutory construction. Sheehan, 114 Wn.App. @ 337.

Here, the trial court's order fails the required conclusions of law by failing to include the necessary language. CP-1322, ¶ 2. The plain language of the statute permitting enjoinder may only be allowed if the court finds in pertinent part:

"... [court] 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 [distinguished from merely 'important'] government functions."

RCW 42.56.542 (emphasis added)

The trial court's ruling is deficient and failed to find each and every element or required alternative element of the statute, improperly omitting out necessary findings such as:

"RCW 42.56.540 provided that examination of public records may be enjoined if such examination would [~~clearly~~] not be in the public interest and would substantially [~~and irreparably~~] damage any person or vital government function."

CP-1322, ¶ 2 (in brackets missing from order)

Leaving out the required factors such as "clearly" "and

irreparably" makes all other reasoning applied amount to a flawed and deficient analysis requiring reversal. Soter, 162 Wn.2d @ 756-57.

Furthermore, having no "vital" identifiable government function also leaves the lower court's reasoning conclusory. Both the agency and the court must actually identify specific "vital" government functions as opposed to merely "important" government functions, also leaves the trial court's order deficient. Van Buren v. Miller, 22 Wn.App.836,841-46,592 P.2d 671 (1979)(a vital gov'm't function must be specifically identified, not left to conclusory speculation); Ashley v. Wash. State Public Disclosure Comm'n, 16 Wn.App.830,560 P.2d 1156 (1977) (similar).

(ii) The Court Erred By Concluding Records Maintained By Government, For Government, About Who And How Government Works, Are Not Public Records.

Parmelee contends that the trial court erred by concluding pictures of who in government does what, to whom, and the related metadata, that enables citizens to reliably identify public officials, distinguish one from another such as with similar names, race, gender, age and similar publically disclosed information, are not public records. e.g. CP-1323, ¶'s 7-11, 13.

The same principals applied by this court in Sheehan held that names and similar information is disclosable.

Records that contain information that discloses government officials face (pictures), dates-of-birth, gender, race, height and weight should be similarly disclosable under Sheehan. Spokane Research & Defense Fund v. City of Spokane, 99 Wn.App.452,994 P.2d 267 (2000)(job performance records of public officials are disclosable); Tacoma Public Library v. Woessner, 90 Wn.App.205,951 P.2d 357 (1998)(names, salaries and benefits subject to disclosure); Seattle Firefighters Union v. Hollister, 48 Wn.App.129, 737 P.2d 1302 (1987)(medical disability records of retired firefighters subject to disclosure); Lindeman v. Kelso School Dist., 162 Wn.2d 196, 172 P.3d 329 (2007) (school video tape of childrens' altercation on school bus is disclosable public record).

Furthermore, the trial court's ruling the the "metadata" is not a public record nor disclosable has already been ruled incorrect by this court. CP-1327, CP-1328-1329, Exhibit-CD; O'Neill v. City of Shoreline, 145 Wn.App.913,187 P.3d822 (2008), rev. granted, argued March 2010, WWW.TVW.ORG (Supreme Court's oral argument of case. Metadata is data about data, and is a public disclosable record. Id., PRA Deskbook,Ch.3.2; RCW 42.56.010(2); WAC 44-20-118.

The trial court incorrectly compared inapplicable public policy contrary to RCW 42.56.030, and statutes

such as RCW 46.20.118(drivers license negatives are exempt from disclosure, because they include private and non-government persons) while contending being able to reliably identify public officials and distinguish one from another visually, would invade their right to privacy as defined by RCW 42.56.050. It would reduce confusion and misidentification in dealings with the government and smooth the service-of-process under RCW 4.28.080(15) and reduce "John or Jane Doe" complaints and reducing misidentification of government employees.

The Legislature considered exempting photographs as disclosable public records and rejected the idea. See 2010 sessions, HB-2259, 1253, 1255 & 2337. The attempt to ammend RCW 42.56.250 that would include pictures as exempt before our 61st Legislature, would not have otherwise failed, if properly exempt.

The trial court's holding that the PRA does not allow disclosure of records that would allow or enhance "the ability to identify" government employees is contrary to the PRA's intent. CP-1321, ¶ 10; RCW 42.56.030. This reasoning was rejected in both Sheehan, supra, and Koenig v. City of DesMoines, 158 Wn.2d 173,183,187, 142 P.3d 162 (2006).

Likewise, phone numbers should also be disclosable.

Parmelee sought phone numbers to determine if excessive billing and needless numbers existed or government employees were running up excessive bills for personal profit or use. Despite the agency publishing an internal phone book Parmelee sought, and the trial court ordered some numbers produced, they never were. CP-1323, ¶ 11, CP-1241-1263, CP-1002-1240. Soter, 162 Wn.2d at 756; RCW 42.56.550(4)(penalties for still failing to disclose numbers ordered disclosed and the respective delay).

When a party discloses their direct-dial numbers, pager numbers, text-messaging and cell-phone numbers are on personal business cards, legal pleadings, investigation reports, and provides them to victims, informants, private investigators, opposing counsels and others they should not be deemed confidential or non-disclosable. Northwest Gas Assoc. v. Washington Utilities, 141 Wn.App. 98, 168 P.3d 447 (2007).

(iii) Exemption RCW 42.56.230 Does Not Apply Because None of The Information Sought Is Otherwise Not Kept Secret And/Or Not "Maintained" Only In Personnel Files.

The trial court failed to apply RCW 42.56.030 when it held records Parmelee requested were exempt under RCW 42.56.230 (personal information exempt) without consideration of redaction per RCW 42.56.070(1) and .210. The Sheriff's also failed to produce the respective records

for in-camera review necessary to establish their burdens under RCW 42.56.550(1)-(3). Dawson v. Daly, 120 Wn.2d 782,798,848 P.2d 995 (1993). The court erred by applying a narrowing approach.

In Clawson v. Longview Publ'g, 91 Wn.2d 408,415-16, 589 P.2d 1223 (1979) the court explained that "[a]n individual who decides government office must accept certain necessary consequences of that involvement in public affairs. [S]he runs the risk of closer public scrutiny that might otherwise be the case. And society's interest in the officers of government is not strictly limited to formal discharge of official duties... [T]he public's interest extends to 'anything which might touch on an official's fitness for office...' " Id., citing, Gertz v. Robert Welch, Inc., 418 U.S.323,344-45 (1974). The trial court's ruling, CP-1320, ¶ 3 & CP-1321, ¶ 5, about government employee's privacy rights compared to non-governmental employees, contravenes the intent of the PRA at RCW 42.56.030 and .550(3). The trial court's ruling, CP-1320, ¶ 4, about alternate public or government sources for the same information has no bearing on if public records should be disclosed consisting of the same information contravenes Sheehan, supra, and the meaning of RCW 42.56.050. CP-1323, ¶ 9. PRA Deskbook, Ch.11 & 13; Hearst v. Hoppe, 90 Wn.2d 123, 135-36, 580 P.2d 246

(1978).

(iv) RCW 42.56.240 Does Not Apply To Police Officer's Names Withheld.

The trial court concluded that Parmelee's request for the agencies staff's names were exempt from disclosure per RCW 42.56.240 that were compiled for administrative purposes, not for any specific criminal investigation. Parmelee did not even ask for specific event-related names, just a roster just like in Sheehan, supra. CP-1324, ¶ 17.

This court already determined that the lists of staff names are not exempt from disclosure in King County v. Sheehan, 114 Wn.App at 336-37. Because the records do not focus on any special or particular criminal investigation or party, they are not exempt. Id.; Cowles Publ'g v. City of Spokane, 69 Wn.App.678,683,849 P.2d 1271, rev. den., 122 Wn.2d 1013 (1993).

(v) Phone Numbers Are Not Exempt Per RCW 42.56.420 Because They Are Not Exclusively Terrorist Prevention Used, But Routinely Disclosed To Strangers And Opponents.

As discussed in part in sub-section (iii) above as applied to RCW 42.56.230 to phone numbers (see pg. 28) likewise RCW 42.56.420 also does not apply. The phone numbers are disclosed on personal business cards, to opposing investigators and lawyers, to witnesses or

relatives of crimes, and strangers such as at professional associations or organizations. However, these same phone, pager, text messaging and fax numbers may also be used presently in violation of the Washington Constitution, Article VIII, §§ 5 & 7 and Art. XI, § 14, when used for personal use of profit. They may also be excessive and unnecessary when provided and audited from the requested public records, and it would identify who is abusing the public trust. The trial court denied Parmelee's request, claiming they were exempt. CP-1323, ¶ 11, CP-1324, ¶ 16. Even the ones ordered disclosed remain undisclosed, and in any event, PRA penalties must be awarded for the numbers ordered disclosed, for the delay in disclosing them. Soter, 162 Wn.2d at 756.

Because the agency failed to present sufficient or any evidence, that RCW 42.56.420 applied to the phone number request, it should be rejected. Northwest Gas Assoc'n. v. Washington Utilities, 141 Wn.App.98,168 P.3d 443 (2007).

6. After Obtaining A Final Judgment Pending On Appeal, Without Leave Of This Court Per RAP 7.2, The Sheriffs Filed A One-Page Insufficiently Pled Injunction Motion, Also Without Complying With CR-8 & KCLR-7(b)(5).

For CR-54 purposes, as final judgment was entered on December 30, 2008. CP-1317-1329. Nelbro Packing Co. v. Baypack Fisheries, 101 Wn.App.517,523,6 P.3d 22 (2000).

Parmelee timely appealed on January 28, 2009. CP-1330. As a result, jurisdiction of the case transferred to the Court of Appeals on the same date. RAP 6.1. The Sheriff's office did not obtain leave of this court to seek a second injunction in the trial court in this case per RAP 7.2 & 7.3, yet did so anyway on June 12, 2009. CP-1341.

Parmelee objected to the Sheriff's motion and argued that the trial court lost jurisdiction because an appeal was pending. CP-1348-1351. He also argued that the one-page motion, CP-1341, was not sufficiently clear to adequately respond to and failed to comply with CR-5(e) by referancing pleadings not filed in this case, and King County Local Rule (attached) KCLR-7(b)(5). No Note-For-Motion was filed and no evidence or legal argument was provided as required by KCLR-7(b)(5)(A) & (B).

The trial court lacked jurisdiction per RAP 7.2 to grant the second injunction. CP-1392-1405. Absent one of the exceptions that don't exist here, the trial court lacked the ability to hear and grant anything the agency requested because of the pending appeal. State v. J-R Distributers, 111 Wn.2d 764, 769, 765 P.2d 281 (1988).

The effect of any such unauthorized trial court action should be taken as void or be voided as if it never occurred in the first place. Tinsley v. Monson

Sons Cattle Co., 2 Wn.App.675,472 P.2d 546, rev.den., 78 Wn.2d 993 (1970); RAP 7.3. In other words, the agency should not benefit for an abusive use of process against Parmelee for an injunction, CP-1392, that should have never been considered, much less entered, in the first place such as through RCW 42.56.565(4).

The Sheriff's office never filed a CR-60(b) motion action failed to comply with CR-7 and KCLR-7(b)(5) and failed to comply with the rules that require specific facts and evidence specifically identified in the court file per CR-5(e), and with particularity, the legal grounds for which relief may be granted. Doyle v. Planned Parenthood, 31 Wn.App.126,639 P.2d 240 (1982); CR-7(b)(1); Lean v. Demopolis, 62 Wn.App.173,815 P.2d 269 (1991). Their failure to state with any particularity the grounds the motion was brought violates CR-7(b)(1) as well. Davis v. Bendix, 82 Wn.App.267,917 P.2d 586 (1996).

The one-page motion hardly supported the 12-page order that resulted. CP-1348-1351, CP-1355-1361, CP-1362-1373. A party cannot rely on records from another case for its argument in this case, without filing with the Clerk per CR-5(e) and KCLR-7(b). Holland v. City of Tacoma, 90 Wn.App.533,954 P.2d 290, rev.den., 136 Wn.2d 1015 (1998).

In any event, the Sheriff's claims should have been

barred because their claims had previously been dismissed in their entirety on August 24, 2009. CP-1389, ¶ 5 ("This case is dismissed.") CR-54(e).

The Sheriff's included this language in their order that their case be dismissed, and it was. Id. This dismissal, over Parmelee's objection, CP-1315, ¶ 16, terminated all the Sheriff's claims per CR-54, barring their second injunction request. Seattle-First Nat'l Bank v. Marshall, 16 Wn.App.503,557 P.2d 352 (1976).

7. This Case Should Have Been Consolidated With The Other King County Cases Per CR-19 And CR-42(a) To Avoid Collateral Estoppel, Res Judicata And Standing Defects Barring This And Other Actions.

Initially Parmelee objected to the Sheriff's failure to join indispensable parties in his answer under CR-19. He sought to consolidate this case with the other pending cases involving the exact same issues (Parmelee's PRA requests to King County agencies) with the exact same parties (King County and its Executive branch). CP-13-19, CP-37-40. In this case, they objected, CP-72-74, yet in another case also before this court, they agreed that consolidation was in the best interests of all. (see King County [Jail] v. Parmelee, #08-2-22252-7, COA # 62937-9-I, CP-22-25). It was denied in both cases twice. CP-1326, ¶ 6 & CP-1389, ¶'s 3-4.

It was an abuse of discretion to deny Parmelee's

motion to consolidate. W.R. Grace & Co. v. State Dept. of Revenue, 137 Wn.2d 580,590,973 P.2d 1011 (1999). Compounding the error, the trial court included "any King County Agency, division, department or employee...", CP-1388, ¶'s 1316, in the order, despite never being pled in the complaint under CR-10(a), triggering equitable and collateral estoppel. CR-17; CR-19; Triplett v. Daryland Ins. Co., 12 Wn.App.912,532 P.2d 1177 (1975); Rains v. State, 100 Wn.2d 660,674 P.2d 165 (1983). CP-1341 & CP-1378-1379.

The inclusion by the trial court of such broad application, should act to bar this, and/or other PRA cases brought by any branch or subdivision of King County, such as King County [Jail] v. Parmelee, Superior Ct. # 08-2-22252-7 sea, COA # 62937-9-I, and King County Prosecuting Attorney's Office, et al, v Parmelee, Superior Ct. # 07-2-39332-3 sea, Supreme Ct. # 83669-8. This failure by King County creates a CR-8 and CR-10 defect and under CR-17, CR-19 & CR-20. Northwest Indep. Forest Mfrs. v. Dept. of Labor & Indus., 78 Wn.App.707,716, 899 P.2d 6 (1995). Pyramiding and piling on case after case seeking the same relief involving the same parties was a harassment oriented scheme by King County they have no reasonable expectation to prevail on here.

8. The Second Injunction Lacked Sufficient Admissable Evidence, Denied Parmelee Due Process And Relying On RCW 42.56.565 Was Both Facially And As-Applied Unconstitutional.

The Agency's claims in the second injunction effort presumably based on RCW 42.56.565, lacked sufficient properly admissable evidence based on real facts, and the statute is overly broad, vague and is unconstitutional on First Amendment and equal protection grounds. CP-1391, CP-1392-1405, CP-1343-1346, CP-1347, CP-1348-1351, CP-1390, CP-1392-1405. Likewise, Id. presumptively denying a litigent any ability to conduct discovery under CR-26(b) and probe the many factual allegations made by the agency, presumptively denies due process under the state and federal constitution. Id.

Furthermore, RCW 42.56.565 cannot be applied retroactively as it was here. CP-1355-1361, CP-1362-1373.

(i) The Second Injunction Lacked Sufficient Admissable Non-Conclusory Real Facts Evidence Necessary To Support Its Harsh Result.

The Sheriff's office fails entirely to identify in their motion, CP-1341, with any particularity required by CR-7(b)(1) & (4), KCLR-7(b)(5)(B) and filed per CR-5(e) what law and facts they rely upon justifying the harsh result. CP-1392-1405. Assuming arguendo the facts found were sufficiently existing, they were not admissable, relevant nor supporting the draconian result. CP-1355-1361,

CP-1362-1373, CP-1378-1389.

None of the pleadings and declarations mentioned in the order, CP-1378-'79, were filed in this case's record as required by CR-5(e) and KCLR-7(b)(5)(B). No certificate of service exists in the record as well, as required. Id.

The findings do not support any "focus on persons or agencies having a role in Parmelee's incarceration" especially since King County Sheriff's Office never had anything to do with any incarceration of Parmelee. CP-1379, ¶ 1(a); CP-1367, ¶ 14; CP-168, ¶ 15(a). It also has nothing to do with any "false claims of government officials being sexual predators," CP-1379, ¶ 1(b); CP-1363-'64, ¶ 4-11; CP-1368, ¶ 15(b), especially since no one has ever submitted any declarations or evidence establishing the "falsity" of any claims under the New York Times v. Sullivan, 376 U.S.254,283 (1964) standard required.

This New York Times standard also applies to the claims that Parmelee would use apparently truthfull government records that "may malign and slander" public employees subject to Parmelee's PRA requests. CP-1379, ¶ 1(d), CP-1368, ¶ 15(d). Id. No one has ever met, nor tried to meet the standard, yet blindly claims [truthful, but unfavorable] statements about government

employees is presumptively libel or slander. Furthermore, a PRA injunction cannot be used to block libel or slander because alternative remedies at law, such as a tort, exists. Steel v. Queen City Broadcasting, 54 Wn.2d 402, 341 P.2d 499 (1959).

Findings that Parmelee may post public records he obtains on the internet, while may be true in some instances, is protected by the First Amendment such as that may enable or facilitate serving of lawsuits per CR-4 and RCW 4.28.080(15), at the employee's homes. The same argument by King County was rejected by this court in King County v. Sheehan, 114 Wn.App. at 341 and in Sheehan v. Gregoire, 274 F.Supp.2d 1135 (W.D.Wash.2003). Also see, Florida Star v. B.J.F., 491 U.S.524,533-35 (1989). This cannot be a basis to deny Parmelee public records.

Likewise, finding that Parmelee may have participated in organizing picketing of public officials' homes, may be true, but also First Amendment protected activities and not a proper basis to deny him public records. Police Dept. v. Mosley, 408 U.S. 92 (1972).

Also, denying Parmelee public records because he obtained courtroom security video (Washington Constitution, Article I, § 10) and security video of public building, allegedly to obtain images of public employees, CP-1380,

¶ 1(f) is arbitrary and capricious reasoning in violation of Parmelee's well founded constitutional rights to obtain courtroom records, lacks any legitimate basis to selectively deny him records. CP-1369, ¶ 15(f).

Finding that County employees feel [unlawfully, as opposed to lawfully] "harassed" and "intimidated" by Parmelee's PRA requests is not supported by any evidence or even any related legal analysis such as under RCW 10.14.020. Zink v. City of Mesa, 140 Wn.App.328,333-44, 166 P.3d 738 (2007)(PRA requests are in themselves a lawful activity, therefore cannot constitute unlawful harassment). Indeed, not all intimidation is unlawful, nor all all threats. e.g., State v. Kilburn, 151 Wn.2d 36, 84 P.3d 1215 (2004); R.A.V. V. City of St. Paul, 505 U.S. 377, 382 (1992). Even if unlawful harassment or intimidation existed, because alternative remedies at law exists such as under RCW 10.14.020 or RCW 9A.76.180, the appropriate remedy is not one under the PRA. e.g. see, Steel v. Queen City Broadcasting Co., 54 Wn.2d 402,34100 P.2d4499 (1959)(injunction not remedy for prospective defamation claims because alternative at law exists).

Finding that County employees are "fearful of Parmelee" and "concerned" is not supported by declarations from all or even most County employees and any "concern" about conclusory claims of retaliation, stalking or other

violent action, CP-1380, ¶ 1(h) and is not "reasonable" but is speculative dramatizing argument, having absolutely no relationship to being affected by, if or if not PRA requested records are provided or not. CP-1369, ¶ 15(h).

Alleging that Parmelee "submitted continuous streams of requests to public agencies," CP-1380, ¶ 1(i), is not accurate nor candidly representative, CP-1369, ¶ 15(I) especially when Parmelee offered to withdraw all his requests to avoid litigation the County refused. CP-1406-1415.

Contending that Parmelee submitted records requests he "may never submit payment" for, is prohibited from consideration per RCW 42.56.120, and is inconsistent with the evidence. WAC 44-14-07001(1). Similarly, contending that Parmelee's requests require "an extraordinary amount of time... Parmelee is unlikely to pay for...", CP-1380, ¶ 1(j) cannot be considered by the court per RCW 42.56.120 because inspection is allowed without requiring any purchase of anything. Furthermore, under ER-701 or ER-702, the County failed to present any statistical, empirical or other data to establish any baseline standards for "extraordinary." Reese . Stroh, 128 Wn.2d 300, 907 P.2d 282 (1995)(expert's opinion is inadmissible and lacked reasonable basis test); Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993).

Just like the previous defects, finding that Parmelee "inundates agencies with [PRA] requests hoping... he can benefit financially", CP-1380, ¶ 1(k) is also contrary to the evidence and plainly untrue by the record. CP-1369, ¶ 15(k); CP-1410-1643. Now the County is liable to Parmelee after refusing his prior offers, and Soter, 162 Wn.2d at 756, requires them to pay. RCW 42.56.550(4).

Finding that Parmelee is "aware of the 'concern' his [PRA] requests cause public employees...", CP-1380, ¶ 1(l), is also not supported by any evidence in the record, admissible or otherwise, and contradicts Parmelee's declaration. CP-1370, ¶15(1). Furthermore, RCW 42.56.550(3) permits this alleged "concern" if real at all, in any event, not a basis to deny Parmelee public records.

Furthermore, the remaining sections of the order, CP-1355 & CP-1362, were not properly considered by the court. There is absolutely no relationship between any such findings and any PRA requests, and is contrary to RCW 42.56.030 and .550, urging government transparency. Under ER-401 thru ER-404 and ER-602, the Agency's claims about Parmelee's prison infraction record, political, race, religion, gender, claimed criminal history or other reputation claims are irrelevant and should have been

disregarded. e.g., Lataille v. Ponte, 754 F.2d 33, 37 (1st. Cir.1985)(prisoner's infraction record inadmissible in §1983 suit against prison guards); Simpson v. Thomas, 528 F.3d 685 (9th Cir2008)(similar).

Claiming Parmelee's PRA requests "would likely threaten public safety or others," CP-1380-81, ¶ 2, is improper speculation, hearsay, and lacks any personal knowledge under ER-602, while Parmelee disputed the claims, no experts testified or provided credible or any evidence supporting the claim. CP-1370-71, ¶ 16.

Speculation about Parmelee's PRA requests "may assist in criminal activity" CP-1381-82, ¶ 3, has no relationship with any past, present or future PRA requests of anyone, and has never been shown to occur. CP-1371-72, ¶ 17. (e.g. see, Washington State Institute for Public Policy, New Risk Instrument For Offenders: Improves Classification Decisions, March 2009 (available online at WWW.WSIPP.WA.GOV) no reference whatsoever to PRA requests and criminal activity or recidivism).

The court's findings in the order, CP-1384-1386, ¶'s 5-21, are in further dispute. The County's case was not brought in good faith, but a harass, censure and suppress critical review, opposing opinions and inquiries into who in government does what, when, why and how. An apt comparison with respect to the state's PRA

statutes with the FOIA, "[a]s a general rule, if the information is subject to disclosure, it belongs to all." National Archives v. Favish, 541 U.S.157,172 (2004); Los Angeles Police Dept. v. Finley, 528 U.S.32,43,45 (1999) (a state cannot refuse to release public records to others because their political views are not in line with those in power).

(ii) The New PRA Statute, RCW 42.56.565 Cannot Be Applied Retroactively Because It Strips Rights To Previous Transactions Without A Provision To Do So.

The County seeks to apply the new PRA statute enacted in 2009 to records pre-dating the statute, RCW 42.56.565. The statute does not contain any retroactivity provision. Because all Parmelee's records requests predate March 20, 2009 when the statute was enacted, the statute cannot be applied to this case. CP-1348-1351, CP-1355-1361, CP-1362-1373.

Because the statute affects prior substantive or vested rights of arbitrarily selected PRA records requestors by invalidating RCW 42.56.030, .050, .070, .080, .120, .210, .520 and even .550 even if an injunction is found by this court to have been wrongfully entered, it impairs the rights of a party previously possessed and increases liability for past conduct and imposes new duties with respect to past or completed transactions,

only be applied prospectively. 1000 Virginia Limited Partnership v. Verteas, 158 Wn.2d 566,146 P.3d 423 (2006); Mieback v. Colasurdu, 120 Wn.2d 170,181,685 P.2d 1074 (1984); Landgraf v. USI Film Products, 511 U.S.244 (1994). This same reasoning was applied in Adrox v. Children's Orthepedec Hosp & Med. Center, 123 Wn.2d 15,30,864 P.2d 921 (1993) where a new statute created additional burdens on previous and completed prior transactions, held the statute could not be applied retroactively.

Because RCW 42.56.565 changes the legal effects of prior completed transactions, it is reversable error to apply it retroactively to PRA requests made prior to the statute's effective date.

(iii) RCW 42.56.565's Subjective Standard Of Proof By Allowing Speculation And Blind Accusations Constitute Proof By A Preponderance Of Evidence Standard Denies Due Process.

While RCW 42.56.565 states the "preponderance of evidence" is the standard, it is not. By its own language, the statute permits speculation, hearsay, conjecture and blind accusations to constitute a prima facie case without any right to discovery or probing of these claims against the records requestor, creating an "anything or nothing" evidentiary baseline. It contradicts the principal of preponderance of evidence and ER-401 - 404, ER-602, ER-702, ER-802, as well as basis constitutional due

process. Erie Railroad Co. v. Tompkins, 304 U.S.64 (1938).

The terms "may," "would likely" and "not limited to ... other requests, purpose, type, number..." of records requested permits such unlimited arbitrary broad subjective speculation without even having to be qualified under any scientific or actuarial or defined criteria, leaves the door wide open for records requestors to be harassed by agencies with a vendetta and endless deep pockets to oppress a records requestor the statute even penalizes the records requestor for wrongfully entered injunctions against him or her, contrary to any civilized standard of judicial proceedings and minimal due process standards.

(iv) Equal Protection Is Violated By RCW 42.56.565 Because It Permits Selective Prosecution And Discriminatory Effects Among Requestors Of All Types, Similarly Situated.

RCW 42.56.565 permits an agency to arbitrarily select a records requestor because [s]he is alleged to be a prisoner or affiliated with a prisoner in any way including but not limited to being a stockholder or journalist for any public or private corporation and even if a prisoner's lawyer, family affected by the agency. Even prisoners similarly situated, may not be treated equally if they have not been outspoken about political or government issues or the agency has not

added the prisoner to their "black-list,"

The statute violates Parmelee's, others like him, and non-prisoner's and organization's rights under the equal protection clause, greater than its federal counter-part rights to equal treatment. Washington Constitution, Article I, § 12, and the United States Constitution, Amendment Fourteen. Johnson v. California DOC, 543 U.S. 499 (2005); DeYoung v. Providence Med. Center, 136 Wn.2d 136 (1998); Seeley v. State, 132 Wn.2d 776, 791-92 (1997). CP-1387, ¶ 11-12, CP-1388, ¶ 13-16.

(v) RCW 42.56.565 Is Facially And As-Applied Unconstitutional On Over-breadth, Vagueness And First Amendment Grounds.

This court is also asked to declare RCW 42.56.565 both facially and as-applied unconstitutional on overbreadth, vagueness and First Amendment grounds. CP-1355-1361, CP-1361, CP-1362-1373, CP-1392-1405. In this case, the trial court permitted the agency to rely on First Amendment protected conduct such as Parmelee's journalistic, litigation related and seeking of redress of government, to deny him public records. Id. It also allowed the agency to rely on anything, nothing and gross speculation to support an injunction without any baseline identifiable criteria or limits on what can be relied upon. Id., also see RCW 42.56.550(3).

While RCW 42.56.550(3) permits a records requestor

to cause "inconvenience or embarrassment to public officials or others" along with RCW 42.56.030 .070, .080, .100, .120, 520, & 550 creates an inconsistent and selectively arbitrary standard for selected "black-listed" unpopular records requestors. It doesn't even exclude "true threats" within a first amendment context. e.g. see, State v. Kilburn, 151 Wn.2d 36, 84 P.3d 1215 (2004); Sheehan v. Gregoire, 272 F.Supp.2d 1135, 1141-43 (W.D.Wash.2003), citing, Brandenburg v. Ohio, 395 U.S.444,447 (1969). The statute fails to draw a distinction without impermissibly intruding on freedoms guaranteed by the First and Fourteenth Amendments.

The PRA statute, RCW 42.56.565 statute lacks any objective as opposed to subjective criteria amounting to any [unlawful] harassment or intimidation. As reasonable person could not foresee that identifiable conduct such as applied in this case could or would be interpreted or applied to support a basis for an injunction. Id. Bartnicki v. Vopper, 532 U.S.514,527 (2001).

The statute further chills and deters publication, seeking and inquiries about who, what, how and when government does, serving no state interest of the highest order. Sheehan v. Gregoire, 272 F.Supp.2d at 1143-1145, citing, Florida Star v. B.J.F., 491 U.S.524, 533 (1989). Because the intent of the PRA is to make

government records available, containing truthful information, it may not be denied absent a need to further a state interest of the highest order. Id.; Bartnicki, 532 U.S. @ 527. Also see, Los Angeles Police Dept. v. United Reporting, 528 U.S.32,43-45 (1999).

The statute further acts as a content-based restriction on free speech. It permits types of records sought, not limited to topics of inquiry, and any other purpose the agency alleges, to be a basis to deny a records requestor public records. CP-1362-1373. Blind claims about "impact" such as "cleaning up government abuses and corruption" may be a basis to deny records. The statute is therefore presumptively invalid. Sheehan v. Gregoire, 272 F.Supp.2d @ 1146, citing, R.A.V. v. City of St. Paul, 505 U.S.377,382 (1992). Allowing an agency to deny records based in subjective disapproval of the records requestor's character, ideas, race, gender, religion, political preferences or unlimited other criteria, is content-based restrictions.

The statute is not content-neutral because it is not justified without reference to protected free speech. Id. It limits revealing truthful information, learning truthful information, and participating in idea exchanges involving government and its people without being limited to restricting only "true threats" it is not a content-

neutral prohibition. Id.

The statute does not serve any compelling state interest because the state cannot claim any interest served by focusing on the intent of the speaker. Sheehan v. Gregoire, 272 F.Supp.2d @ 1146-1147. This analysis overlaps that above, citing Florida Star, involving a requirement for a state interest of the highest order. No compelling interest can exist when allowed to hinge solely or even in part on the subjective intent of a records requestor. Id. When any third party may freely accomplish the same result the statute selectively blocks Parmelee from doing and arbitrarily selected others in any number of ways, fails constitutional muster. CP-1384, ¶ 7. Though policing is not a compelling state interest recognized by the First Amendment. Id.

The statute is not readily susceptible to a narrowing construction, making it unconstitutionally overbroad. Its deterrent effect on legitimate expression is both real and substantial. Sheehan v. Gregoire, 272 F.Supp.2d @ 1147-1148, citing, Erznoznik v. City of Jacksonville, 422 U.S. 205, 218 (1975); Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973). The court may not rescue a statute from a facial challenge by rewriting the statute with missing terms or words. Id., Reno v. ACLU, 521 U.S. 844, 884-85 (1997).

The statute is also void for vagueness because an

ordinary person exercising ordinary common sense cannot sufficiently understand and comply without risks and sacrifice to public interests. Sheehan v. Gregoire, 272 F.Supp.2d @ 1148-49.

RCW 42.56.565 should be declared unconstitutional for these reasons.

9. Parmelee Should Be Awarded PRA Penalties, Costs And Expenses For This Case And On Appeal.

If having prevailed on anything on appeal, Parmelee requests any and all fees, costs, expenses and PRA penalties due for any record or part of record, per request, subject to disclosure. RCW 42.56.550(4); Soter. 162 Wn.2s at 757.

V - CONCLUSION:

For these reasons and the record, Mr. Parmelee respectfully asks this court to overturn all aspects of the lower court's orders as applied to Parmelee, and affirm "dismissal of all [the County's claims] claims," CP-1389, ¶ 25, and declaring RCW 42.56.565 both facially and as-applied, unconstitutional and cannot be applied retroactively and to this case. Parmelee also seeks an order PRA penalties, fees and costs must be awarded, even despite RCW 42.56.565, for a wrongfully issued injunction.

Respectfully submitted on June 30, 2010.


Allan Parmelee
pro se appellant

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CERTIFICATE OF SERVICE

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

Signed at Aberdeen WA on 6 /30/10.


Allan Parmelee

Attachment A



LCR 7. CIVIL MOTIONS

(b) Motions and Other Documents.

(1) Scope of Rules. Except when specifically provided in another rule, this rule governs all motions in civil cases. See, for example, LCR26, LCR 40, LCR 56, and the LFLR's.

(2) Hearing Times and Places. Hearing times and places will also be available from the Clerk's Office/Department of Judicial Administration (E609 King County Courthouse, Seattle, WA 98104 or 401 Fourth Avenue North, Room 2C, Maleng Regional Justice Center, Kent WA 98032; or for Juvenile Court at 1211 East Alder, Room 307, Seattle, WA 98122) by telephone at (206) 296-9300 or by accessing http://www.kingcounty.gov/kcsc/. Schedules for all regular calendars (family law motions, ex parte, chief civil, etc.) will be available at the information desk in the King County Courthouse and the Court Administration Office in Room 2D of the Regional Justice Center.

(3) Argument. All nondispositive motions and motions for orders of default and default judgment shall be ruled on without oral argument, except for the following:

- (A) Motions for revision of Commissioners' rulings;
(B) Motions for temporary restraining orders and preliminary injunctions;
(C) Family Law motions under LFLR 5;
(D) Motions before Ex Parte Commissioners;
(E) Motions for which the Court allows oral argument.

(4) Dates of Filing, Hearing and Consideration.

(A) Filing and Scheduling of Motion. The moving party shall serve and file all motion documents no later than six court days before the date the party wishes the motion to be considered. A motion must be scheduled by a party for hearing on a judicial day. For cases assigned to a judge, if the motion is set for oral argument on a non-judicial day, the moving party must reschedule it with the judge's staff; for motions without oral argument, the assigned judge will consider the motion on the next judicial day.

(B) Scheduling Oral Argument on Dispositive Motions. The time and date for hearing shall be scheduled in advance by contacting the staff of the hearing judge.

(C) Oral Argument Requested on All Other Motions. Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" on the upper right hand corner of the first page of the motion or opposition.

(D) Opposing Documents. Any party opposing a motion shall file and serve the original responsive papers in opposition to a motion, serve copies on parties and deliver copies to the hearing judge via the judges' mailroom in the courthouse in which the judge is located, no later than 12:00 noon two court days before the date the motion is to be

considered.

(E) Reply. Any documents in strict reply shall be filed and served no later than 12:00 noon on the court day before the hearing.

(F) Working Copies. Working copies of the motion and all documents in support or opposition shall be delivered to the hearing judge no later than on the day they are to be served on all parties. The working copies shall be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the hearing judge and shall be delivered to the judges' mailroom in the courthouse in which the judge is located.

(G) Terms. Any material offered at a time later than required by this rule, and any reply material which is not in strict reply, will not be considered by the court over objection of counsel except upon the imposition of appropriate terms, unless the court orders otherwise.

(H) Confirmation and Cancellation. Confirmation is not necessary, but if the motion is stricken, the parties shall immediately notify the opposing parties and notify the staff of the hearing judge.

(5) Form of Motion and Responsive Pleadings.

(A) Note for Motion. A Note for Motion shall be filed with the motion. The Note shall identify the moving party, the title of the motion, the name of the hearing judge, the trial date, the date for hearing, and the time of the hearing if it is a motion for which oral argument will be held. A Note for Motion form is available from the Clerk's Office.

(B) Form of Motion and of Responsive Pleadings. The motion shall be combined with the memorandum of authorities into a single document, and shall conform to the following format:

(i) Relief Requested. The specific relief the court is requested to grant or deny.

(ii) Statement of Facts. A succinct statement of the facts contended to be material.

(iii) Statement of Issues. A concise statement of the issue or issues of law upon which the Court is requested to rule.

(iv) Evidence Relied Upon. The evidence on which the motion or opposition is based must be specified with particularity. Deposition testimony, discovery pleadings, and documentary evidence relied upon must be quoted verbatim or a photocopy of relevant pages must be attached to an affidavit identifying the documents. Parties should highlight those parts upon which they place substantial reliance. Copies of cases shall not be attached to original pleadings. Responsive pleadings shall conform to this format.

(v) Authority. Any legal authority relied upon must be cited. Copies of all cited non-Washington authorities upon which parties place substantial reliance shall be provided to the hearing judge and to counsel or parties, but shall not be filed with the Clerk.

(vi) Page Limits. The initial motion and opposing memorandum shall not exceed 12 pages without authority of the court; reply memoranda shall not exceed five pages without the authority of the court.

(C) Form of Proposed Orders; Mailing Envelopes. The moving party and any party opposing the motion shall attach to their documents a proposed order. The original of each proposed order shall be delivered to the hearing judge but

Attached-A
Pg. 1

shall not be filed with the Clerk. For motions without oral argument, the moving party shall also provide the court with pre-addressed stamped envelopes addressed to each party/counsel.

(D) Presentation by Mail. Counsel may present agreed orders and ex parte orders based upon the record in the file, addressed either to the court or to the Clerk. When signed, the judge/commissioner will file such order with the Clerk. When rejected, the judge/commissioner may return the papers to the counsel. An addressed stamped envelope shall be provided for return of any conformed materials and/or rejected orders.

(6) Motions to Reconsider. See LCR 59.

(7) Reopening Motions. No party shall remake the same motion to a different judge without showing by affidavit what motion was previously made, when and to which judge, what the order or decision was, and any new facts or other circumstances that would justify seeking a different ruling from another judge.

(8) Motions for Revision of a Commissioner's Order. For all cases except juvenile and mental illness proceedings:

(A) A motion for revision of a commissioner's order shall be served and filed within 10 days of entry of the written order, as provided in RCW 2.24.050, along with a written notice of hearing that gives the other parties at least six days notice of the time, date and place of the hearing on the motion for revision. The motion shall identify the error claimed.

(B) A hearing on a motion for revision of a commissioner's order shall be scheduled within 21 days of entry of the commissioner's order, unless the assigned Judge or, for unassigned cases, the Chief Civil Judge, orders otherwise.

(i) For cases assigned to an individual Judge, the time and date for the hearing shall be scheduled in advance with the staff of the assigned Judge.

(ii) For cases not assigned to an individual Judge, the hearing shall be scheduled by the Chief Civil Department for Seattle case assignment area cases. For Kent case assignment area cases, the hearing shall be scheduled by the Maleng Regional Justice Center Chief Judge. For family law cases involving children the hearing shall be scheduled by the Chief Unified Family Court Judge.

(iii) All motions for revision of a commissioner's order shall be based on the written materials and evidence submitted to the commissioner, including documents and pleadings in the court file. The moving party shall provide the assigned judge a working copy of all materials submitted to the commissioner in support of and in opposition to the motion, as well as a copy of the electronic recording, if the motion before the commissioner was recorded. Oral arguments on motions to revise shall be limited to 10 minutes per side.

(iv) The commissioner's written order shall remain in effect pending the hearing on revision unless ordered otherwise by the assigned Judge, or, for unassigned cases, the Chief Judge.

(v) The party seeking revision shall, at least 5 days before the hearing, deliver to the Judges' mailroom, for the assigned judge or Chief Judge, the motion, notice of hearing and copies of all documents submitted by all parties to the commissioner.

(vi) For cases in which a timely motion for

reconsideration of the commissioner's order has been filed, the time for filing a motion for revision of the commissioner's order shall commence on the date of the filing of the commissioner's written order of judgment on reconsideration.

(9) Motion for Order to Show Cause. Motions for Order to Show Cause may be heard in the ex parte department. For cases where the return on the order to show cause is before the hearing judge, the moving party shall obtain a date for such hearing from the staff of the assigned judge before appearing in the ex parte department.

(10) Motion Shortening Time.

(A) The time for notice and hearing of a motion may be shortened only for good cause upon written application to the court in conformance with this rule.

(B) A motion for order shortening time may not be incorporated into any other pleading.

(C) As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must contact the opposing party to give notice in the form most likely to result in actual notice of the pending motion to shorten time. The declaration in support of the motion must indicate what efforts have been made to notify the other side.

(D) Except for emergency situations, the court will not rule on a motion to shorten time until the close of the next business day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response. If the moving party asserts that exigent circumstances make it impossible to comply with this requirement, the moving party shall contact the bailiff of the judge assigned the case for trial to arrange for a conference call, so that the opposing party may respond orally and the court can make an immediate decision.

(E) Proposed agreed orders to shorten time: if the parties agree to a briefing schedule on motion to be heard on shortened time, the order may be presented by way of a proposed stipulated order, which may be granted, denied or modified at the discretion of the court.

(F) The court may deny or grant the motion and impose such conditions as the court deems reasonable. All other rules pertaining to confirmation, notice and working papers for the hearing on the motion for which time was shortened remain in effect, except to the extent that they are specifically dispensed with by the court.

[Amended effective September 1, 1984; May 1, 1988; September 1, 1992; September 1, 1993; September 1, 1994, March 1, 1996; September 1, 1996; April 14, 1997; September 1, 1997; September 1, 1999; September 1, 2001; September 1, 2002; September 1, 2004; September 1, 2006; September 1, 2007; September 1, 2008.]

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Attachment-19
492

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