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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 311767

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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

ANTHONY PREDISIK and CHRISTOPHER KATKE

Petitioners

v.

SPOKANE SCHOOL DISTRICT NO. 81

Respondent

PETITION FOR REVIEW

FILED
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STATE OF WASHINGTON
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A. IDENTITY OF PETITIONERS

Anthony Predisik and Christopher Katke ask this Court to accept review of the Court of Appeals' Decision Terminating Review designated in Part B of this Petition.

B. COURT OF APPEALS' DECISION

Mr. Predisik and Mr. Katke request that the Supreme Court review the published decision of the Court of Appeals, Division III, filed February 27, 2014, in case No. 31176-7-III.¹ Copies of the decision and order publishing the opinion are attached in the Appendix, at A-1 - A-12.

C. ISSUES PRESENTED FOR REVIEW

1. Do Mr. Predisik and Mr. Katke have a right to privacy in their identities and in the requested records the Spokane School District (hereinafter, "District") created as a result of the unsubstantiated allegations of highly offensive misconduct against them?

2. Do a public employee's privacy rights allow a public employee accused of highly offensive misconduct to prevent disclosure of public records when the employer has not completed its investigation and when the employee has not been allowed his statutory right to a hearing?

3. Would a reasonable person be highly offended by the

¹ The Court of Appeals originally filed the decision as an unpublished opinion, on January 23, 2014. On February 27, 2014, the Court of Appeals granted the parties' motions to publish and filed the published opinion.

disclosure of records created as a result of highly offensive, unsubstantiated allegations of misconduct against him when his employer is still investigating the allegations and the employee has a right to a hearing on his employer's adverse probable cause determination?

4. Does redacting a teacher's name from records created as a result of allegations of highly offensive misconduct against the teacher render disclosure any less offensive when a public employer is still investigating the allegations against the teacher and he has a right to a hearing on his employer's adverse probable cause determination?

5. Does the public have a legitimate concern in records concerning highly offensive, unsubstantiated allegations of misconduct against a teacher when his employer is still investigating the allegations and when he has statutory and contract rights to a hearing on any adverse probable cause determination by his employer?

6. Are the administrative leave letter a spreadsheets the District intends to disclose "personal information" that are "maintained in files for employees" under RCW 42.56.230(3) when the records concern Mr. Predisik and Mr. Katke and are in the District's possession?

7. Are the administrative leave letter a spreadsheets the District intends to disclose "specific investigative records", and is the District an "investigative agency", under RCW 42.56.240(1), when the

District created and compiled the records during a specific investigation focusing with special intensity on a particular person?

8. Is disclosing records concerning highly offensive, unsubstantiated allegations of misconduct against Mr. Predisik and Mr. Katke clearly not in the public interest when the District is investigating the allegations and Mr. Predisik and Mr. Katke have not been able to exhaust or waive their statutory and contractual rights to a hearing?

9. Would disclosing records concerning highly offensive, unsubstantiated allegations of misconduct against Mr. Predisik and Mr. Katke substantially and irreparably damage Mr. Predisik and Mr. Katke when the District is investigating the allegations and Mr. Predisik and Mr. Katke have a right to a hearing on an adverse District determination?

10. Does redacting Mr. Predisik's name from his administrative leave letter protect his right to privacy or render disclosure any less highly offensive when the District has not finished its investigation and Mr. Predisik has not been able to have a hearing on the allegations, and the fact of disclosure alone would identify Mr. Predisik?

D. STATEMENT OF THE CASE

1. Facts related to Anthony Predisik.

Anthony Predisik is a certificated employee in the District (CP 10-

11). He has never been disciplined in his nearly 40-year career. (CP 11). On November 18, 2011 the District placed Mr. Predisik on administrative leave pending an investigation into allegations of misconduct that Mr. Predisik vehemently denies. (CP 12). The District's investigation is still pending, 28 months after it began. (CP 12). When the District placed him on administrative leave, the District ordered Mr. Predisik not to discuss his leave or the investigation with any staff, students, or parents. (Exhibit 1).

2. Facts related to Christopher Katke.

Christopher Katke is a certificated middle school teacher in the District. (CP 279). He has never been disciplined in his 12-year teaching career. (CP 279-80). The District placed Mr. Katke on paid administrative leave on January 11, 2012, pending an investigation into allegations of misconduct that allegedly occurred when Mr. Katke was a teenager, over 15 years ago. (CP 280). Mr. Katke vehemently denies the allegations. (CP 280). Mr. Katke is still on administrative leave, 26 months later. The District ordered Mr. Katke not to discuss anything related to the allegations or being placed on leave with anyone in the District. (CP 280).

3. Facts related to the Public Records Act (PRA) requests.

On March 23, 2012, Jody Lawrence-Turner, a reporter for The Spokesman-Review (hereinafter, "The Spokesman"), a Spokane newspaper, requested a copy of Mr. Predisik's administrative leave letter

from the District. (CP 12, 47). The administrative leave letter identifies Mr. Predisik and the nature of his alleged misconduct. (CP 12, Exhibit 1). The District informed Mr. Predisik that it intended to disclose the administrative leave letter to Ms. Lawrence-Turner. (CP 36).

On May 8, 2012, the District informed Mr. Predisik and Mr. Katke that it received a records request from Ashley Korslien, a reporter for KREM 2, a Spokane television station, seeking: “[i]nformation on all district employees on paid administrative leave, how many people there are, who they are, what reason they are on leave, how long they have been on leave, if they are being paid and the disposition.” (CP 281-82, 325).

On May 9, 2012, Ms. Lawrence-Turner, The Spokesman reporter, requested from the District “any documents related to the investigation [into the allegations against Christopher Katke], his resignation and/or any determination on the investigation.” (CP 282).²

The District identified three documents that it intends to disclose in response to requests. (CP 401; Exhibits 1-3). Exhibit 1 is Mr. Predisik’s administrative leave letter. (CP 401; Exhibit 1). Exhibits 2 and 3 are spreadsheets that the District created in response to KREM 2’s request. (CP 401; Exhibits 2-3). The Exhibits were reviewed *in camera* at the trial

² The records responsive to Ms. Lawrence-Turner’s May 9, 2012 request were not provided to Mr. Katke and were not a part of the record before the trial court or the Court of Appeals.

court, and were sealed for the Court of Appeals' review.

4. Procedural facts.

Mr. Predisik filed separate lawsuits seeking to enjoin disclosure in response to The Spokesman's and KREM 2's requests. (CP 4-6, 36, 152-57). Mr. Katke filed a lawsuit seeking to enjoin disclosure in response to the KREM 2 request. (CP 162-66). The trial court consolidated Mr. Predisik's and Mr. Katke's cases. (CP 277-78, 398-99).

Mr. Predisik and Mr. Katke moved for summary judgment, seeking to prevent the District from disclosing the requested records. (CP 292-338; 339-41; 388-397). The court ruled that Mr. Predisik and Mr. Katke had a right to privacy in their respective identities in connection with the allegations against them. (CP 401). The court also determined, however, that the public had a legitimate concern "in the procedural steps being taken by the School District in its investigations into the allegations against [them]." (CP 401). Accordingly, the trial court ordered the District to disclose the records, but ordered the District to redact Mr. Predisik's and Mr. Katke's names from the records. (CP 401-02).

The Court of Appeals affirmed, holding that teachers have a right to privacy when a complaint involves unsubstantiated allegations because the allegations are matters involving the teachers' private lives. (Appendix, A-6, A-7). The court held that disclosing Mr. Predisik's and

Mr. Katke's identities in connection with unsubstantiated allegations could be highly offensive and was not of public concern and that, therefore, disclosing the records without redacting Mr. Predisik's and Mr. Katke's names would violate their rights to privacy. (A-7). Accordingly, the court required the District to produce the records, but to redact Mr. Predisik's and Mr. Katke's names from the records. (A-8, A-10).

Because the Court of Appeals determined that the *redacted* records did not implicate Mr. Predisik's or Mr. Katke's rights to privacy, the Court declined to address the parties' arguments regarding the remaining elements of the personal information (RCW 42.56.230(3)) and investigative records (RCW 42.56.240(1)) PRA exemptions. (A-10).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

1. The Court of Appeals' decision that the District must disclose public records before the District has determined whether highly offensive allegations against Mr. Predisik and Mr. Katke are substantiated presents an issue of substantial public interest to thousands of teachers and public employees in Washington, and involves significant questions of law under article I, section 3 and article I, section 7 of Washington's Constitution.

The Court of Appeals' decision that the District must disclose records concerning public school employees who are on administrative leave pending an investigation into highly offensive allegations of misconduct, before the District has completed its investigation or taken

adverse action against the employees, presents an issue of substantial public interest. The Court of Appeals' decision requires a public employer to disclose redacted records when the person who is the subject of the record is a public employee under investigation into highly offensive allegations of misconduct against the employee. The rule that redaction negates any privacy right intrusion and allows a school district to disclose records, regardless of whether the school district has completed its investigation into alleged employee wrongdoing, potentially affects every public employee in Washington.

The Court of Appeals' decision and has a disproportionately harmful impact on Washington's approximately 150,000 public school employees.³ Public school employees hold unique positions in which they are entrusted to care for and teach children. A negative public perception or community disapproval of a public school employee—regardless of the truth of any allegations against him—may cause the employee to lose community trust or his job. *See Potter v. Kalama Public School District No. 402*, 31 Wn. App. 838, 840-41, 644 P.2d 1229 (1982). And “[w]here

³ According to the Office of the Superintendent for Public Instruction, there were 159,582 public K-12 school employees in Washington during the 2012-2013 school year. State of Washington Office of Superintendent of Public Instruction, *School District Personnel Summary Reports 2012-2013 School Year*, at 21 (2013), available at <https://www.k12.wa.us/safs/PUB/PER/1213/All.pdf>. (A copy of page 21 of the Personnel Summary Report for the 2012-2013 school year is attached in the Appendix at A-13.)

a teacher is discharged . . . the consequences are severe. Chances of other employment in the profession are diminished, if not eliminated.” *Hoagland v. Mount Vernon Sch. Dist. No. 320*, 95 Wn.2d 424, 430, 623 P.2d 1156 (1981) (quoting *Wojt v. Chimacum School Dist. 49*, 9 Wn. App. 857, 862, 516 P.2d 1099 (1973)). Releasing records concerning allegations of misconduct against a teacher before a school district’s investigation is complete increases the potential for public opinion and community influence—as opposed to a finding that the alleged misconduct actually occurred—to guide a school district’s disciplinary action.

As this Court acknowledged in *Bellevue John Does 1-11 v. Bellevue School District No. 405*, 164 Wn.2d 199, 215, 189 P.3d 139 (2008), a mere allegation against a teacher “may hold the teacher up to hatred and ridicule in the community, without any evidence that such misconduct ever occurred.” “In essence, disclosure of the identities of teachers who are the subject of unsubstantiated allegations ‘serves no interest other than gossip and sensation.’” *Bellevue John Does*, 164 Wn.2d at 221 (quoting *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 129 Wn. App. 832, 854, 120 P.3d 616 (2005)). Moreover, because school districts typically impose a requirement that a teacher may not talk to anyone about the allegations, the teacher cannot defend himself against the allegations once they are made public without risking discipline or

discharge for failing to follow the school district's orders not to discuss the allegations or the investigation. (*See* Ex. 1; CP 280).

Washington courts have recognized that teachers hold a unique position in which negative community opinion may affect a teacher's employment. A teacher's conduct outside of school may constitute 'sufficient cause' for discharge if it adversely affects the teacher's effectiveness,' 'performance,' or 'efficiency.'" *Simmons v. Vancouver School District No. 37*, 41 Wn. App. 365, 376, 704 P.2d 648 (1985). Teaching efficiency is determined by, among other things, the teacher's relationship with parents. *Simmons*, 41 Wn. App. at 378. In *Potter*, the court held that negative reaction by parents and negative community sentiment toward a teacher, in part, provided sufficient cause for the teacher's discharge. *Potter*, 31 Wn. App. at 840-41. In *Potter*, a principal and superintendent testified regarding negative reaction from students' parents and community members and opined that the teacher's ability to perform his teaching assignment was substantially impaired. *Potter*, 31 Wn. App. at 840. In *Gaylord v. Tacoma School Dist. No. 10*, 88 Wn.2d 286, 298, 559 P.2d 1340 (1977), the court held that a teacher's efficiency was sufficiently impaired by public knowledge of, and objection to, his homosexuality.

Because a school district may use negative community sentiment

or public perception as a basis for discipline apart from the allegations of misconduct for which it placed an employee on administrative leave, disclosing records—including redacted records relating to the employee—before the school district completes its investigation is improper. Accordingly, the Court of Appeals’ decision potentially affects every public employee in Washington, and is of particular substantial interest to Washington’s approximately 150,000 public school employees working in Washington’s 295 public school districts.⁴

The Court of Appeals’ decision that a school district can disclose records concerning a certificated public school employee on administrative leave pending an investigation into allegations of misconduct involves a significant question under article I, section 3 of Washington’s Constitution. Article I, section 3 of the Constitution provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law.” Under RCW 28A.405.300, a “teacher, principal, supervisor, superintendent, or other certificated employee,” may not be discharged without “probable cause.” “RCW 28A.405.300 creates a property right in continued public employment for those who fall under

⁴ State of Washington Office of the Superintendent of Public Instruction website, available at <http://www.k12.wa.us/AboutUs/default.aspx>; See State of Washington Office of Superintendent of Public Instruction, *School District Personnel Summary Reports 2012-2013 School Year*, at 21 (2013), available at <https://www.k12.wa.us/safs/PUB/PER/1213/All.pdf>

or public perception as a basis for discipline apart from the allegations of misconduct for which it placed an employee on administrative leave, disclosing records—including redacted records relating to the employee—before the school district completes its investigation is improper. Accordingly, the Court of Appeals’ decision potentially affects every public employee in Washington, and is of particular substantial interest to Washington’s approximately 150,000 public school employees working in Washington’s 295 public school districts.⁴

The Court of Appeals’ decision that a school district can disclose records concerning a certificated public school employee on administrative leave pending an investigation into allegations of misconduct involves a significant question under article I, section 3 of Washington’s Constitution. Article I, section 3 of the Constitution provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law.” Under RCW 28A.405.300, a “teacher, principal, supervisor, superintendent, or other certificated employee,” may not be discharged without “probable cause.” “RCW 28A.405.300 creates a property right in continued public employment for those who fall under

⁴ State of Washington Office of the Superintendent of Public Instruction website, available at <http://www.k12.wa.us/AboutUs/default.aspx> (a copy of the OSPI home page is attached in the Appendix at A-14); See State of Washington Office of Superintendent of Public Instruction, *School District Personnel Summary Reports 2012-2013 School Year*, at 21 (2013), available at <https://www.k12.wa.us/safs/PUB/PER/1213/All.pdf>

the statute.” *Giedra v. Mount Adams School District No. 209*, 126 Wn. App. 840, 110 P.3d 232 (2005).

The Court of Appeals decision requiring the District to disclose records related to employees on administrative leave during an investigation into allegations of highly offensive misconduct allows the District to potentially affect a teacher’s employment on the basis of negative public opinion. Mr. Predisik and Mr. Katke have been on leave for over two years. (CP 12, 280). The District is pushing for the release of the records to generate negative public opinion that will create public animosity toward Mr. Predisik and Mr. Katke, or shame them into leaving.

The Court of Appeals’ decision that a school district must disclose records concerning a public school employee on leave pending the district’s investigation into allegations of misconduct against the employee presents a significant question under article I, section 7 of Washington’s Constitution. Article I, section 7 of Washington’s Constitution states that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” The PRA exemptions in RCW 42.56.230(3) and RCW 42.56.240(1) require Washington courts to determine whether disclosing records would violate any person’s right to privacy.

This Court has held that a teacher has a right to privacy in connection with unsubstantiated allegations of misconduct. *Bellevue John*

Does, 164 Wn.2d at 215-16. And disclosing records concerning a teacher in connection with unsubstantiated allegations of misconduct, while the school district is still investigating the allegations, violates the teacher's right to privacy. *See Cowles Publishing Co. v. State Patrol*, 109 Wn.2d 712, 725, 748 P.2d 597 (1988) ("Release of files dealing with pending investigations, or with complaints which were later dismissed would constitute a more intrusive invasion of privacy than would the release of files relating only to completed investigations which resulted in some sanction against the officers involved.").

Finally, the Court of Appeals' decision created a broad new rule that redaction necessarily prevents disclosure of records from violating a person's right to privacy. A public employer may now simply side-step the privacy right protections contained in RCW 42.56.230(3) and RCW 42.56.240(1). The legislature could not have intended that result, as RCW 42.56.230(3) and RCW 42.56.240(1) expressly require an inquiring into whether any disclosure would violate a person's right to privacy.

If the legislature wanted to create a rule as broad as the Court of Appeals' holding, it would state that redacting a public employee's name from a public record is always sufficient to protect his right to privacy. Instead, the legislature requires public employers and courts to consider whether disclosure violates a person's right to privacy by examining

whether disclosure is highly offensive to a reasonable person and whether there is a legitimate public interest in disclosure. RCW 42.56.050

2. The Court of Appeals' decision refusing to prevent the disclosure of the requested records before Mr. Predisik and Mr. Katke have had a hearing to prove the allegations false presents an issue of substantial public interest to all Washington teachers and public employees, and involves a significant question of law under article I, section 7 of Washington's Constitution.

The Court of Appeals' decision that the District must disclose the records before a public school employee receives a hearing to determine the merits of the allegations against him presents an issue of substantial public interest. The decision improperly expands the principles set forth in this Court's decisions in *Bellevue John Does* and *Bainbridge Island Police Guild v. City of Puyallup*, 174 Wn.2d 398, 259 P.3d 190 (2011), by applying a blanket redaction rule to circumstances in which an adverse finding or action against a public employee is not a final, binding determination or action. As a result, the Court of Appeals' decision potentially affects every Washington public employee who is entitled to a hearing by a neutral third party before any adverse employment action.

The Court of Appeals' decision directly affects approximately 60,000 certificated public school employees,⁵ who are guaranteed a statutory appeal hearing under RCW 28A.405.310. Any adverse decision

⁵ See State of Washington Office of Superintendent of Public Instruction, *School District Personnel Summary Reports 2012-2013 School Year*, at 21 (2013), available at <https://www.k12.wa.us/safs/PUB/PER/1213/All.pdf>

resulting from a school district's investigation into allegations against a public school employee is not a binding, final decision. *See Giedra*, 126 Wn. App. at 849 (“A termination notice is legally defective if it indicates a decision to terminate as ‘a fait accompli’ rather than notice of probable cause.”). Under RCW 28A.405.300, certificated public school employees are entitled to a notice of probable cause and a hearing before any decision to adversely affect a teacher.

The Court of Appeals’ decision also affects every public employee—including approximately 75,000 public K-12 school employees⁶—who, like Mr. Predisik and Mr. Katke, are parties to a collective bargaining agreement (CBA) that provides a right to a hearing on his or her employer’s adverse employment actions. (CP 10, 283, 313, 321-23). Under the Spokane Education Association’s (SEA) Collective Bargaining Agreement (CBA) with the District, an SEA member has a right to a hearing before a neutral arbitrator to determine whether “just cause” supports the District’s action against the employee. (CP 321, 323).

Releasing information concerning a public employee accused of highly offensive misconduct before the employee has had an opportunity

⁶ Washington Education Association, *Washington Education Association Local Affiliates and Membership* (2014), available at: <http://www.washingtonea.org/content/docs/comm/statistics/membership.pdf> (A copy is attached in the Appendix at A-12).

for a hearing creates the public perception that the employee is guilty of the alleged misconduct, regardless of the existence or strength of the evidence of the alleged misconduct. The neutral third party may determine that no discipline was warranted. *See Cowles*, 109 Wn.2d at 725 (releasing files that were later dismissed is a more intrusive invasion of privacy than releasing files relating only to completed investigations resulting in some sanction). In that case, the teacher's reputation is potentially harmed by a false allegation. The Court of Appeals' holding is of substantial public interest because it allows disclosure of the allegation before the teacher has the opportunity to point to a neutral third party's decision exonerating the employee, as in *Bainbridge*. *See Bainbridge*, 174 Wn.2d at 413.

The Court of Appeals' decision that disclosure is required before an investigation is completed and before a public school employee has his statutorily and contractually guaranteed hearing presents a significant question under article I, section 7 of Washington's Constitution. The legislature has expressly provided Washington's approximately 60,000 certificated public school employees with special privacy right protections in connection with the right to a hearing before a neutral third party. *See* RCW 28A.405.300; RCW 28A.405.310; RCW 28A.645.010; CP 61-63. RCW 28A.405.310(2) not only guarantees certificated employees the right to a hearing, but guarantees the right to a *closed* hearing. RCW

28A.405.310(2).

In providing certificated public school employees the right to a closed hearing, the legislature purposefully created protection for a certificated public school employee's right to privacy. A public school employee's right to privacy requires that his employer withhold records until a neutral third party determines whether sufficient cause supports the school district's probable cause determination.

3. The Court of Appeals' decision that a person's right to privacy is adequately protected by redacting a person's name from a record that relates to the person, when redaction does not actually protect the person's identity from disclosure, is an issue of substantial public interest and presents a significant question under article I, section 7 of Washington's Constitution.

The Court of Appeals' decision that redacting a public employee's name from a public record adequately protects his right to privacy when the employee's employer is investigating allegations against him, he has a right to a hearing on any adverse probable cause determination, and disclosure itself necessarily identifies the public employee, presents an issue of substantial public interest. The Court of Appeals' holding affects every Washington public employee who is the specific subject of a PRA request while under investigation by his employer, including Washington's approximately 150,000 public school employees, who are also entitled to review of a school district's probable cause determination.

The Court of Appeals' decision presents a significant question under Article I, section 7 of the Washington Constitution because redacting a person's name from a public record does not protect that person's privacy rights when disclosure with redaction necessarily discloses the person's identity. The Court of Appeals acknowledged that "disclosure of [Mr. Predisik's and Mr. Katke's] *identities* in connection to the unsubstantiated allegations" would violate their rights to privacy. (A-9) (emphasis added); RCW 42.56.050 (right to privacy violated if disclosure is highly offensive and of no legitimate public concern). Despite acknowledging that redaction would not prevent the disclosure of Mr. Predisik's and Mr. Katke's identities, the Court of Appeals required the District to redact Mr. Predisik's and Mr. Katke's names from the records to protect their rights to privacy. (A-7, A-9).

4. Whether a school district is an investigative agency under RCW 42.56.240(1) when it formally investigates allegations of misconduct against its employees, and whether records created during a school district's investigation are investigative records under RCW 42.56.240(1), are issues of substantial public interest that this Court should determine.

Whether a public employer is an "investigative agency" that creates "specific investigative records", for purposes of RCW 42.56.240(1), when it formally investigates allegations of misconduct against one of its employees is an issue of substantial public interest

because it potentially effects every Washington “agency” that investigates its employees’ alleged misconduct. For purposes of the PRA, “Agency” includes . . . every state office, department, division, bureau, board, commission, or other state agency . . . [and every] county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.” RCW 42.56.010(1).

The PRA does not define the term “investigative agency”. School districts fall within the PRA’s broad definition of agency. When investigating allegations of misconduct against an employee, a school district is an “investigative agency” within that term’s plain meaning. “Investigate” means “to observe or study closely: inquire into systematically. . . .” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1189 (2002).

The issue of whether an “agency”, as that term is broadly defined in the PRA, is an investigative agency when it investigates alleged employee misconduct potentially effects every state and local government employee in Washington. The issue is of particular interest to Washington’s approximately 150,000 public school employees because school districts are required to investigate allegations of misconduct against employees. (CP 360-61); *See, e.g.*, RCW 28A.400.317; RCW

28A.405.210; RCW 28A.405.300; WAC 181-86-110.

F. CONCLUSION

Based on the above, Mr. Predisik and Mr. Katke respectfully request that the Court grant their Petition for Review of the decision of the Court of Appeals and reverse the Court of Appeals' decision that the District is required to disclose the requested records.

Respectfully submitted this 29th day of March, 2014.

MONTOYA HINCKLEY PLLC
Attorneys for Petitioners Predisik and Katke



TYLER M. HINCKLEY, WSBA No. 37143

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the state of Washington that on the date stated below I served a copy of this document in the manner indicated:

Paul Clay Stevens Clay, P.S. Attorneys for Riverside School District and Spokane School District 421 W. Riverside Ave #1575 Spokane, WA 99201	<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Email <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> FedEx Next Day
Clerk of Court Court of Appeals, Division III 500 N. Cedar Street Spokane, WA 99201-2159	<input type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Email <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> FedEx Next Day

DATED at Yakima, Washington, this 29th day of March, 2014.



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APPENDIX

No. 31176-7-III
Predisik v. Spokane Sch. Dist. No. 81

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

DATED:

PANEL: Judges Kulik, Brown, and Fearing

FOR THE COURT:


LAUREL H. SIDDOWNAY
ACTING CHIEF JUDGE

FILED
JAN. 23, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ANTHONY J. PREDISIK and)	No. 31176-7-III
CHRISTOPHER KATKE,)	
)	
Appellants,)	
)	UNPUBLISHED OPINION
v.)	
)	
SPOKANE SCHOOL DISTRICT NO. 81,)	
)	
Respondent.)	

KULIK, J. — Anthony Predisik and Christopher Katke are teachers in the Spokane School District who were placed on administrative leave pending investigations into alleged misconduct. The District received PRA¹ requests for information regarding the allegations against the teachers. Consequently, the District notified the teachers of the specific documents that it would be disclosing. Mr. Predisik and Mr. Katke filed a lawsuit to enjoin disclosure, claiming that the records are exempt from disclosure under RCW 42.56.230(3), as personal information maintained in an employee’s file, and under RCW 42.56.240(1), as investigative records compiled by an investigative agency. The

¹ Public Records Act, chapter 42.56 RCW.

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trial court determined that the records were not subject to an exemption to the PRA. The court ordered disclosure with the teachers' names redacted from the records. Mr. Predisik and Mr. Katke appeal. We affirm the trial court.

FACTS

Mr. Predisik. Mr. Predisik worked as a counselor at Shadle Park High School in the Spokane School District. In November 2011, the District placed Mr. Predisik on administrative leave pending an investigation into allegations of misconduct. Mr. Predisik denies the allegations.

In March 2012, a reporter for The Spokesman-Review requested a copy of Mr. Predisik's administrative leave letter from the District. The District informed Mr. Predisik that it intended to disclose the letter in response to the PRA request. Mr. Predisik filed a lawsuit seeking to enjoin disclosure of the requested document.

In May 2012, the District informed Mr. Predisik that it received another records request, this time from a reporter at KREM 2 News. Generally stated, the reporter requested information on all district employees on administrative leave, the names of the employees, and the reason for the administrative leave if the leave was related to misconduct. The District told Mr. Predisik that documents that mention his name were

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within the purview of the KREM 2 reporter's request. Mr. Predisik also sought to enjoin the disclosure of these requested documents.

Mr. Katke. Mr. Katke worked as a teacher at Glover Middle School in the Spokane School District. On January 11, the District placed Mr. Katke on administrative leave pending an investigation into allegations of misconduct. Mr. Katke denies the allegations.

In May 2012, the District informed Mr. Katke of the records request from the KREM 2 reporter. The District informed Mr. Katke that the KREM 2 request included documents that mentioned Mr. Katke.

Also in May 2012, a reporter from The Spokesman-Review requested from the District any documents related to the investigation into the allegations against Mr. Katke, his resignation, and/or any determination on the investigation. The District informed Mr. Katke of this request. In response, Mr. Katke filed a lawsuit seeking to enjoin disclosure of the requested documents.

Procedural Facts. The District identified three documents for disclosure. One document is an administrative leave letter concerning Mr. Predisik. The other two documents are payroll spreadsheets created in response to KREM 2's request.

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The trial court consolidated Mr. Predisik's and Mr. Katke's cases. A hearing was held and the trial court reviewed the requested records in camera. The trial court determined the teachers had a right to privacy in their respected identities in connection with the allegations against them. The court also determined that the public had a legitimate concern in the procedural steps being taken by the District in investigations into the allegations. Accordingly, the trial court ordered the District to disclose the requested records with Mr. Predisik's and Mr. Katke's names redacted to preserve their right to privacy. The teachers appeal.

ANALYSIS

This court reviews decisions under the PRA de novo. RCW 42.56.550(3).

The PRA "is a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). The purpose of the PRA is to provide full access to nonexempt public records. *Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 86 Wn. App. 688, 695, 937 P.2d 1176 (1997).

A party seeking to enjoin production of documents under the PRA bears the burden of proving that an exemption to the statute prohibits production in whole or part. *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 35, 769 P.2d 283 (1989). The PRA exemptions "protect certain information or records from disclosure" and "are

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provided solely to protect relevant privacy rights . . . that sometimes outweigh the PRA's broad policy in favor of disclosing public records." *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 432, 300 P.3d 376 (2013). However, exemptions under the PRA are to be narrowly construed to assure that the public interest will be protected. RCW 42.56.030.

RCW 42.56.230(3) exempts disclosure of "[p]ersonal information in files maintained for employees . . . of any public agency to the extent that disclosure would violate their right to privacy."

RCW 42.56.240(1) exempts from public inspection and copying specific investigative records compiled by investigative agencies, the nondisclosure of which is essential to the protection of any person's right to privacy.

Here, the specific documents under review are an administrative leave letter concerning Mr. Predisik, and two payroll spreadsheets, one concerning Mr. Predisik and another concerning Mr. Katke. Mr. Predisik and Mr. Katke contend that the records are exempt from disclosure pursuant to the employee personal information exemption, RCW 42.56.230(3), and the investigative records exemption in RCW 42.56.240(1), in the PRA. Both of these exemptions require Mr. Predisik

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and Mr. Katke to establish a right to privacy in their identities and the records, and that disclosure of their identities and the records would violate their right to privacy.

Generally, the right to privacy applies “only to the intimate details of one’s personal and private life.” *Spokane Police Guild*, 112 Wn.2d at 38. Under the PRA, a person’s right to privacy “is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.” RCW 42.56.050. It is not enough that the disclosure of personal information may cause embarrassment to the public official or others.

RCW 42.56.550(3). Even if the disclosure of the information would be offensive to the employee, it shall be disclosed if there is a legitimate or reasonable public interest in the disclosure. *Tiberino v. Spokane County*, 103 Wn. App. 680, 689, 13 P.3d 1104 (2000).

“[W]hen a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right to privacy in the complaint.” *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 164 Wn.2d 199, 215, 189 P.3d 139 (2008). However, “[w]hen an allegation is unsubstantiated, the teacher’s identity is not a matter of legitimate public concern.” *Id.* at 221. Teachers have a right to privacy in their identities when the complaint involves unsubstantiated or false allegations because these allegations concern matters involving

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the private lives of teachers and are not specific instances of misconduct during the course of employment. *Id.* at 215.

When a document does not detail the unsubstantiated misconduct and a teacher is not disciplined or subject to any restriction, the name of the teacher should be redacted before disclosure. *Id.* at 226-27. "This result protects the public interest in overseeing school districts' responses to allegations . . . and the teacher's individual privacy rights." *Id.* at 227. Redaction of the name transforms a record from one that would be highly offensive if disclosed to one that is not highly offensive if disclosed. *Id.* at 224.

Mr. Predisik and Mr. Katke have a right to privacy in their identities, and their right to privacy will be violated if the records are disclosed without redacting their names. The teachers have a right to privacy in their identities because the misconduct alleged in the record has not yet been substantiated. The disclosure of their identities in connection to the unsubstantiated allegations could be highly offensive and is not of public concern. *See id.* at 220-21. While *Bellevue John Does* addresses unsubstantiated allegations of sexual misconduct, disclosure of unsubstantiated allegations of other types of misconduct can be offensive because it also subjects the teacher to gossip and ridicule without a finding of wrongdoing. *See id.*

However, Mr. Predisik's and Mr. Katke's right to privacy can be protected by redacting their names from the records. Absent information regarding Mr. Predisik's and Mr. Katke's identities, disclosure of the requested records does not violate the teachers' right to privacy. The administrative leave letter and the spreadsheets are not highly offensive when identifying information is redacted. *See id.* at 224. Also, the public has a legitimate interest in the administrative leave letter and spreadsheets, even when the allegations of misconduct have not been substantiated and the teachers' names are redacted. The public has a legitimate interest in seeing that a government agency conducts itself fairly and uses public funds responsibly. *Tiberino*, 103 Wn. App. at 690 (quoting *Yakima Newspapers, Inc. v. City of Yakima*, 77 Wn. App. 319, 328, 890 P.2d 554 (1995)). "The public can continue to access documents concerning the nature of the allegations and reports related to the investigation and its outcome, all of which will allow concerned citizens to oversee the effectiveness of the school district's responses. The identities of the accused teachers will simply be redacted to protect their privacy interests." *Bellevue John Does*, 164 Wn.2d at 221. Mr. Predisik and Mr. Katke do not have a privacy interest in the redacted records because the remaining information in the records is not highly offensive and the public has a legitimate concern in the District's operations.

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Predisik v. Spokane Sch. Dist. No. 81

Mr. Predisik and Mr. Katke contend that disclosure of the redacted records still violates their right to privacy because the public could figure out their identities in the redacted records. The records requests served on the District specifically identified the teachers as the subject of the request. The teachers' contention fails. Production of a redacted record is permitted even though redaction is insufficient to protect the person's identity. *See Koenig v. City of Des Moines*, 158 Wn.2d 173, 182-83, 142 P.3d 162 (2006). Nonexempt information in a record must be produced, even if disclosure of this information would result in the court's inability to protect the identity of an individual. *See Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 417-18, 259 P.3d 190 (2011). In *Bainbridge*, the court recognized that the circumstances of a public record request may result in others figuring out the identity of the individual whose name has been redacted to protect his privacy interest. *Id.* at 418. Still, the court held that even though the individual's identity must be redacted, the requested records must be disclosed because they were not statutorily exempt under the PRA. *Id.* Here, the redacted records are not exempt even though it is possible for a third party to conclude that Mr. Predisik or Mr. Katke is the subject of the records.

As previously stated, both the employee personal information exemption in RCW 42.56.230(3) and the investigative records exemption in RCW 42.56.240(1) hinge

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on whether Mr. Predisik's and Mr. Katke's right to privacy would be violated by disclosure. We conclude that Mr. Predisik and Mr. Katke do not have a privacy interest in the redacted records. Therefore, an examination into the other requirements of these exemptions is not needed. The redacted records are not exempt from disclosure under RCW 42.56.230(3) or RCW 42.56.240(1).

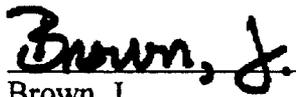
We affirm the trial court.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

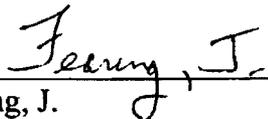


Kulik, J.

WE CONCUR:



Brown, J.



Fearing, J.

Washington State Superintendent of Public Instruction
 School Apportionment and Financial Services
 School District Personnel Summary Profiles - 2012-13 - Final

Table 7: All School Personnel by Duty

Duty Assignment	Individuals	Avg Add'l Salary per Indiv.	Total FTE	Average LEAP 1 Mix Factor	Average per 1.0 FTE				
					Base Salary	Total Salary	Insur. Ben.	Mand. Ben.	Days in 1.0 FTE
11 Superintendent	275	5,568	237.61	1.71457	128,252	142,836	12,323	18,482	250.8
12 Deputy/Assist. Supt.	128	6,938	108.38	1.71252	125,259	139,892	11,364	18,240	253.5
13 Other District Admin.	1,096	2,605	760.35	1.74270	103,391	110,525	10,358	15,993	245.8
21 Elementary Principal	1,224	2,535	1,122.77	1.74961	101,549	107,500	10,323	16,300	240.9
22 Elem. Vice Principal	182	1,173	134.13	1.63598	88,037	93,908	10,811	13,670	236.0
23 Secondary Principal	787	2,448	676.50	1.73337	105,278	112,255	10,432	16,692	239.6
24 Secondary Vice Principal	804	2,142	733.13	1.68500	98,847	104,624	10,257	15,855	242.5
25 Other School Admin.	596	3,170	197.71	1.68774	81,411	90,018	10,283	13,520	218.5
31 Elementary Teacher	31,752	6,906	26,095.20	1.55388	52,024	63,168	9,455	9,579	180.2
32 Secondary Teacher	27,243	8,224	22,011.62	1.57280	52,659	66,387	9,607	10,017	180.2
33 Other Teacher	8,257	8,349	5,231.35	1.54473	51,717	64,856	9,550	9,615	180.3
40 Other Support Personnel	3,623	5,150	1,104.59	1.68341	56,391	76,167	9,526	10,873	180.6
41 Library Media Specialist	1,231	9,355	1,057.10	1.72251	57,723	72,726	9,482	10,697	180.2
42 Counselor	2,319	9,041	2,036.39	1.64248	54,969	69,547	9,609	10,318	180.3
43 Occupational Therapist	385	9,539	329.81	1.56428	52,839	67,466	9,307	9,492	180.3
44 Social Worker	139	8,183	113.09	1.61865	54,224	67,696	9,232	9,940	180.2
45 Spch.-Lang. Path./Audio.	1,244	9,102	1,090.54	1.62911	54,642	68,335	9,283	9,809	180.3
46 Psychologist	1,115	9,517	941.08	1.63907	54,903	69,079	9,250	10,170	180.2
47 Nurse	546	7,722	449.62	1.40073	47,403	59,979	8,834	8,281	180.4
48 Physical Therapist	166	10,421	138.82	1.60024	54,676	71,173	9,586	9,725	180.2
49 Reading Resource Spec.	8	3,336	5.00	1.77207	59,190	73,899	10,148	11,173	180.0
51 Extracurricular	585	4,503	83.52	1.66962	68,121	84,395	9,926	13,109	201.9
52 Substitute Teacher	45	1,571	16.61	1.26133	41,922	52,478	5,780	4,766	180.0
61 Certificated on Leave	2,935	2,447	59.62	1.72720	59,018	73,090	9,490	10,621	181.5
63 Contractor Teacher	247	20	225.04	1.41793	48,021	25,906	2,060	670	180.7
64 Contractor ESA	47	209	36.01	1.29594	48,294	36,998	303	2,270	189.0
90 Classified on Leave	1,260	1,232	3.09	0.00000	65,275	59,122	11,951	10,669	260.0
91 Aide	23,083	282	12,001.57	0.00232	32,719	35,208	12,580	5,667	260.0
92 Crafts/Trades	1,597	257	1,505.75	0.00000	49,829	50,661	10,304	9,601	260.0
93 Laborer	231	165	202.53	0.00000	42,181	43,568	9,786	8,760	260.0
94 Office/Clerical	9,657	430	7,285.84	0.00038	39,858	42,129	11,122	6,744	260.0
95 Operator	6,400	308	3,224.92	0.00109	39,110	44,833	12,083	8,448	260.0
96 Professional	15,161	3,103	1,490.15	0.01399	56,067	61,720	11,050	9,638	260.0
97 Service Worker	11,636	195	8,030.22	0.00000	35,371	37,616	10,592	7,450	260.0
98 Technical	2,029	456	1,374.64	0.00788	53,469	55,918	10,636	8,829	260.0
99 Director/Supervisor	1,549	1,214	1,331.37	0.01448	79,054	82,862	10,605	12,622	260.0
State Summary	159,582	4,304	101,445.66	1.01248	49,845	58,703	10,242	9,116	211.3

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About OSPI

The Office of Superintendent of Public Instruction (OSPI) is the primary agency charged with overseeing K-12 public education in Washington state. Led by State School Superintendent Randy Dorn, OSPI works with the state's 295 school districts to administer basic education programs and implement education reform on behalf of more than one million public school students. OSPI is housed in the Old Capitol Building in Olympia.

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- [K-12 Laws and Regulations](#)
- [The Old Capitol Building](#)

Funding Our Schools

The financial management of schools rests with locally elected school boards in the state's 295 school districts. The state, through OSPI, supervises school district budgeting, accounting, and financial reporting to provide consistent financial management and accountability. The State Auditor conducts regular examinations of school districts' finances to ensure sound accounting practices and compliance with state and federal fiscal policy.

- [Organization and Financing of Washington Public Schools](#)

Data About Our Schools

We collect a great deal of data about our schools and operations. The School Report Card is a parent-friendly resource for data on student demographics, student performance and school staff in our state. The new Comprehensive Education Data and Research System (CEDARS) is an online system that captures every district's data on courses, students and teachers.

- [School Report Card](#)
- [CEDARS \(Comprehensive Education Data and Research System\)](#)
- [More Data](#)

Assessing Our Students

State and federal law requires testing to determine

Washington State Public Education

9 educational service districts (ESDs)
 295 school districts
 2,300+ schools
 1.04 million students
 53,600 + teachers
 \$13.78 billion annual budget (2011-13)

Directories

- [ESD Directory](#)
- [School District Directory](#)
- [School Building Directory](#)



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