

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JANE AND JOHN DOES 1 – 6,

Petitioners,

v.

SEATTLE POLICE DEPARTMENT, ET
AL.

Respondents,

v.

JEROME DRESCHER, ANNE BLOCK,
SAM SUEOKA and CHRISTI LANDES,

Requestor Defendants.

No. 99901 - 5

Court of Appeals No. 82430-9-I

**RULING GRANTING MOTION TO
TRANSFER APPEAL**

Public Records Act requester Sam Sueoka moves to transfer an appeal pending in Division One of the Court of Appeals to this court. The case concerns whether information on Seattle police officers being investigated for their alleged roles in the January 6, 2021, attack¹ on the United States Capitol is subject to disclosure under the

¹ The incident from which this case sprang forth has been described in news media and political commentary variously as a “riot,” “insurrection,” and something analogous to “a normal tourist visit.” *See, e.g.,* <https://www.nbcnews.com/politics/congress/republican-loyal-trump-claims-capitol-riot-looked-more-normal-tourist-n1267163#:~:text=Multiple%20Republican%20members%20of%20Congress%20on%20Wednesday%20offered,%E2%80%9Cnormal%20tourist%20visit%E2%80%9D%20than%20a%20deadly%20attack.%20> (visited August 4, 2021). However

Public Records Act and whether the concerned officers may contest disclosure in the courts pseudonymously. Having reviewed the briefing and record below and having heard oral argument, it is readily apparent this case touches on fundamental and urgent issues that will be determined ultimately in this court; therefore, transfer is warranted, as explained more fully below.

On January 6, 2021, thousands of supporters of President Donald J. Trump gathered in Washington D.C. to attend a so-called “Stop the Steal” rally. At that time, a joint session of Congress was gathering in the Capitol to count Electoral College votes and certify the results of the presidential election, which President Trump lost to the current occupant of the White House, President Joseph R. Biden. A throng of Trump supporters streamed out of the rally, broke through police barricades, and stormed the Capitol. As indicated, the attack that day resulted in injuries and death.

Six off-duty Seattle police officers were allegedly at or in the vicinity of the attack. The Seattle Police Department and the Office of Public Accountability launched an internal investigation to determine whether misconduct occurred. After the news broke that Seattle police officers were allegedly connected to the attack, several individuals, including Mr. Sueoka, submitted public records requests to the department for information about them. The department determined that relevant exemptions did not apply, and that therefore information about the officers would be disclosed.

The officers being investigated, proceeding under John and Jane Doe pseudonyms (and asking the court for permission to do so), filed an action for declaratory and injunctive relief in King County Superior Court. The superior court allowed the officers to use pseudonyms but denied their request for injunctive relief while staying release of records pending appellate review. The officers appealed, and

described, it involved an attempt to prevent certification of the presidential election by means of force and violence, and many people were injured. Several died. For purposes of this ruling, it will be called an “attack”: “the act of falling on with force or violence.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (2002) at 140.

the Court of Appeals continued the stay of the superior court's order pending the appeal. Mr. Sueoka filed a cross-appeal of the decision to allow the officers to proceed under pseudonyms.

Mr. Sueoka filed a motion in the Court of Appeals to certify the case for transfer to this court and a motion to change the case title to include the officers' names. The court denied the motion to change the case title without prejudice, and it has not yet decided the motion for certification. After the record was perfected and the briefing in the Court of Appeals was completed, Mr. Sueoka filed the instant motion in this court to transfer the case. The department does not oppose transfer, although it questions whether it would be the best use of judicial resources in light of the completed investigation.² Four of the officers oppose transfer.³ The matter proceeded to a teleconference hearing on July 29, 2021.⁴

“The Supreme Court, to promote the orderly administration of justice may, on its own initiative, upon certification by the Court of Appeals, or on motion of a party, transfer a case from the Court of Appeals to the Supreme Court.” RAP 4.4. When deciding whether to transfer a pending appeal or motion for discretionary review from the Court of Appeals to this court, it is helpful to consider the direct review criteria listed under RAP 4.2(a); *see also* RCW 2.06.030. In particular, Mr. Sueoka asserts review in this court is necessary to resolve inconsistent decisions by this court, and

² The internal investigation determined that two of the officers (Does 3 and 6) engaged in misconduct. There was an inconclusive determination with respect to a third officer. No sustained misconduct finding was made concerning the other three officers. The city filed a motion in the Court of Appeals to partially vacate the stay of the superior court's order with respect to officers Does 3 and 6, allowing release of the records. Mr. Sueoka does not oppose that request for relief but asks that the records of the remaining officers be released with redactions. That ancillary motion is not before me.

³ Counsel appeared to jointly represent the three officers with unsustained misconduct findings and the one officer with an inconclusive finding (Does 1, 2, 4, and 5). It was clarified at oral argument that the two officers with misconduct findings (Does 3 and 6) are currently unrepresented in this matter. It was also suggested there may be a conflict of interest concerning representation of the officers. No motions were filed in relation to representation issues, however, the matter was noted for the record at oral argument.

⁴ Livestreamed and archived at www.TVW.org.

because this case involves fundamental and urgent issues of broad public import that require prompt and ultimate determination” RAP 4.2(a)(3)-(4). As indicated, the city is not opposed to transfer. Four of the officers are.

Whether the records of these officers, at least the officers without a clear finding of misconduct, should be disclosed is at least debatable. *See generally Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 259 P.3d 190 (2011) (plurality decision concerning law enforcement officer records). And whether the officers may rely on pseudonyms is uncertain. *See generally John Doe G v. Dep’t of Corr.*, 190 Wn.2d 185, 410 P.3d 1156 (2018) (concerning use of pseudonyms in litigation). This is not the time to determine the relative merits of the parties’ positions on these issues. But it is abundantly clear that whether the identity of these officers should be revealed is an issue of considerable public interest. The aftershocks of the attack on the Capitol are still being felt, and they touch on fundamental questions regarding the intersection of law enforcement, politics, our democratic institutions, and racial and social justice.⁵ Stated another way, the past 18 months have been a time of great and continuing upheaval nationally, and this case is a small part of those troubles.⁶ This context lends urgency to this dispute.⁷

There is no doubt the Court of Appeals can decide this case. But it seems all but certain that whatever the Court of Appeals decides on the merits, this court will ultimately resolve the case as a matter of substantial public interest. RAP 13.4(b)(4). Viewing this case in the broader context of the controversy surrounding the attack on

⁵ The court is aware of these issues, as partly reflected in the court’s June 4, 2020, open letter to the judicial and legal community. <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>.

⁶ The global COVID-19 pandemic added force to the upheaval but is not a factor here.

⁷ Another factor seemingly reflecting the sense of urgency, but not relevant to the Public Disclosure Act analysis, is an unsurprising allegation that the officers’ identities have already been revealed through online social media platforms.

the Capitol and its aftermath, it would serve the “orderly administration of justice” to transfer the appeal, including pending motions, to this court pursuant to RAP 4.4 for a prompt and ultimate determination.

The motion to transfer the appeal is granted. The stay entered in the Court of Appeals will remain in effect until further order of this court. The Clerk of the Court will separately issue a letter setting the case for oral argument.


COMMISSIONER

August 4, 2021