



SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

JOHN DOE L; JOHN DOE M; JOHN DOE N; AND
JOHN DOE O, as individuals and on behalf of
others similarly situated,

Plaintiffs,

vs

PIERCE COUNTY,

Defendant,

vs

DONNA ZINK, a married woman,

Requestor.

NO. 14-2-14293-1

(Consolidated cases 14-2-14293-1;
14-2-15100-0; 15-2-05605-6; and
15-2-06442-3)

[PROPOSED] ORDER GRANTING PLAINTIFF
MOTION FOR SUMMARY JUDGMENT AND
PERMANENT INJUNCTION

Assigned to Judge Philip K. Sorensen

Hearing Date: September 25, 2015

THIS MATTER came on for hearing before this Court upon Plaintiffs' Motion for
Summary Judgment.

Having considered Plaintiffs' motion and all pleadings submitted in support of and
in opposition to the motion, as well as the arguments of counsel and the parties, the
Court enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1) On October 3, 2014, a member of the public, Donna Zink, sent a Public
Records Act ("PRA") request to Pierce County for all Special Sex Offender Sentencing
Alternative ("SSOSA") and Special Sex Offender Disposition Alternative ("SSODA")

Order Granting Plaintiffs' Motion for Summary
Judgment and Permanent Injunction - 1 of 10

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1 evaluations in its possession. Ms. Zink also requested Victim Impact Statements for all
2 sex offenders in the possession of Pierce County, all registration forms of all sex
3 offenders registered in Pierce County, and a list or database of all registered sex
4 offenders registered in Pierce County. The SSOSA and SSODA evaluations and sex
5 offender registration information are referred to herein as the "Requested Records."

6 2) The Requested Records include information regarding all Level I sex
7 offenders registered in Pierce County, Washington, and all those who received a SSOSA
8 or SSODA evaluation in Pierce County. The Requested Records include information
9 regarding Level I sex offenders who are in compliance with their registration. The
10 Requested Records include information regarding both adult and juvenile offenders.

11 3) Sex offender registration records include detailed personal information,
12 including names, current and complete residential addresses, photographs, social
13 security addresses, employers, schools, and information about the crime conviction.

14 4) SSOSA and SSODA evaluations require the offender to disclose highly
15 sensitive personal and medical information and it is an essential step for any defendant
16 who hopes to participate in court-ordered specialized sex offender treatment. SSOSA and
17 SSODA community-based treatment has been recognized for successfully identifying and
18 treating offenders. SSOSA and SSODA evaluations are conducted by certified mental
19 health professionals.

20 5) Plaintiffs John Doe L, John Doe M, John Doe N and John Doe O are Level I
21 sex offenders who are or were compliant with their registration for all required times.
22 Plaintiffs John Doe L, John Doe M, John Doe N, and John Doe O reside in Pierce County
23 and are named in the Requested Records.

24 6) As Level I sex offenders who are either in compliance with registration or
25 relieved from registration requirements, the names and identifying information of
26 Plaintiffs and the Class are not published on the State website of registered offenders

1 and they are not subject to broad community notification. As Level I offenders, Plaintiffs
2 have not been determined to have a high risk of reoffending.

3 7) Pierce County and its departments are public agencies as defined by the
4 Public Records Act, RCW 42.56.010(1).

5 8) Ms. Zink is a resident of Franklin County, who resides about 200 miles
6 from Pierce County. There is no evidence that Ms. Zink lives near where any Plaintiff or
7 Class member resides, expects to reside, or is regularly found.

8 9) There is no evidence that Ms. Zink is a victim or witness to the offenses of
9 Plaintiffs or any members of the Class.

10 10) Ms. Zink has published records of sex offenders, including SSOSA
11 evaluations, on a public website.

12 11) Prior to the filings of the Complaints in this consolidated case, Pierce
13 County indicated that, absent an order enjoining disclosure, it would begin to release the
14 Requested Records.

15 12) On December 30, 2014, this Court issued a Preliminary Injunction,
16 preventing Pierce County from disseminating records or information pertaining to Level I
17 sex offenders, except as permitted by RCW 4.24.550 and Chapter 70.02 RCW, pursuant
18 to Ms. Donna Zink's Public Records Act requests.

19 13) On December 30, 2014, this Court issued an order certifying a class of
20 Level I sex offenders. The class is defined as: All individuals named in registration forms,
21 a registration database, SSOSA evaluations, or SSODA evaluations in the possession of
22 Pierce County, and classified as sex offenders at risk Level I who are compliant with the
23 conditions of registration or have been relieved of the duty to register.

24 14) Class members are Level I sex offenders named in sex offender registration
25 forms and SSOSAs and SSODAs. As such, the Requested Records specifically pertain to
26 them. Level I offenders are those who, after assessment using actual risk-assessment

1 instruments, are determined to have a low risk of sexual re-offense with the community at
2 large.

3 15) Plaintiffs submitted detailed declarations, from the individual Plaintiffs and
4 third parties, attesting to the harm caused by public disclosure of the Requested Records.
5 The Court finds these declarations to be credible and compelling evidence of the
6 irreparable harm that will result from blanket or generalized disclosure of the Requested
7 Records.

8 16) Plaintiffs submitted declarations from experts, including John Clayton, Brad
9 Meryhew, Nicole Pittman, Maia Christopher, Dan Knoepfler, and the Washington
10 Association for the Treatment of Sex Abusers. These declarations attested to the harm
11 from disclosure and the public interest in maintaining the confidentiality of the Requested
12 Records. The Court finds these declarations to be credible and compelling evidence of
13 the irreparable harm that will result from blanket or generalized disclosure of the
14 Requested Records.

15 17) Plaintiffs submitted undisputed evidence that SSOSA and SSODA
16 evaluations are mental health records.

17 18) The evidence submitted indicates that sex offenders who are identified to
18 the public through a blanket public disclosure face mental and emotional damages
19 associated with the stigma of the disclosure, and may face physical violence. If
20 Defendants release the Requested Records for Level I sex offenders, the Level I sex
21 offenders will find it significantly more difficult to find employment and housing. Their
22 families, sometimes including the victims, face harassment and ostracism.

23 19) Blanket or generalized release of the Requested Records of Class
24 members would make it more difficult for Level I offenders to safely integrate into their
25 communities, and might deter individuals from seeking treatment or providing sensitive
26 information for effective treatment. Disclosure would thus undermine the legislature's

1 purpose of creating the SSOSA and SSODA, and jeopardize the success of those who
2 receive SSOSAs and SSODAs.

3 20) The public interest is served by targeted disclosure of sex offender
4 registration information. Generalized or categorical disclosure dilutes the efficacy of
5 disclosures related to individuals who pose a risk to the community and undermines the
6 carefully crafted legislative scheme differentiating between risk levels.

7 CONCLUSIONS OF LAW

8 21) A party seeking a permanent injunction under the Public Records Act must
9 prove that (1) the record specifically pertains to that party; (2) an exemption applies; and
10 (3) disclosure would not be in the public interest and would substantially and irreparably
11 harm that party or a vital governmental function. RCZW 42.56.540.

12 22) Pierce County and its departments are subject to the Public Records Act.

13 23) RCW 42.56.070(1) states that agencies shall make available "all public
14 records, unless the record falls within the specific exemptions ... [of] this chapter, or *other*
15 *statute which exempts* or prohibits disclosure of specific information or records"
16 (emphasis added). An "other statute" need not explicitly reference the PRA in order to
17 provide an exemption.

18 24) RCW 4.24.550 is an "other statute which exempts or prohibits disclosure"
19 of sex offender registration records. The statute sets forth a comprehensive scheme for
20 what information is to be provided regarding sex offenders, to whom it is provided, and
21 under what circumstances.

22 25) The legislative history of RCW 4.24.550 clearly sets forth a legislative
23 intention to limit release or disclosure of sex offender information to the general public.
24 In *State v. Ward*, 123 Wn. 2d 488, 870 P.2d 295 (1994), the Supreme Court relied
25 specifically on the limits on public disclosure of sex offender registration records in RCW
26 4.24.550 as a basis for upholding the constitutionality of the sex offender registration

1 statues.

2 26) The Legislature exempted Level I sex offenders who are compliant with
3 registration requirements from blanket disclosure of their identities and information on
4 the statewide web site. RCZW 4.24.550(5)(a).

5 27) The Requested Records are also exempt from blanket disclosure because
6 they do not fall into the permissive disclosure provisions of RCW 4.24.550. The agency
7 may disclose, upon request, *relevant, necessary, and accurate* information of Level I
8 offenders to: (1) any victim or witness to the offense; and (2) any individual community
9 member who lives near the residence where the offender resides, expects to reside, or is
10 regularly found. RCW 4.24.550(3)(a). These permissive disclosures of information to an
11 individual with a particularized relationship with a sex offender must be "relevant and
12 necessary" and "shall" be rationally related to: (1) the level of risk posed by the offender
13 to the community; (b) the locations where the offender resides; and (c) the needs of the
14 affected community members for information to enhance their individual and collective
15 safety. RCW 4.24.550(2).

16 28) Ms. Zink's PRA requests categorically do not fall within any of the permitted
17 disclosures of sex offender information because she does not satisfy the particularized
18 relationship requirements in RCW 4.24.550(3)(a).

19 29) Chapter 70.02 RCW is an "other statute" which exempts disclosure of sex
20 offender SSOSA and SSODA evaluations under the PRA. Chapter 70.02 RCW governs
21 access to and disclosure of individual health care information. SSOSA and SSODA
22 evaluations are health care records, specifically records of specialized mental health
23 treatment.

24 30) Disclosure of SSOSA and SSODA evaluations is governed by Chapter 70.02
25 RCW, which makes them confidential except as provided under that Chapter.

26 31) None of the permitted disclosures for mental health care records in

1 Chapter 70.02 RCW allow for blanket disclosure to a general member of the public with
2 no relationship to the patients, like Ms. Zink vis-à-vis the Level I Plaintiffs.

3 32) Disclosure of SSODA evaluations is governed by RCW 13.50.050, which
4 makes them records other than the official juvenile court file confidential. SSODA
5 evaluations are not part of the official juvenile court file, but rather psychological reports
6 that include a proposed treatment plan. SSODA evaluations are confidential and
7 therefore cannot be disclosed under RCW 13.50.050.

8 33) Chapter 13.50 is an "other statute" which exempts disclosure of sex
9 offender SSOSA evaluations under the PRA.

10 34) Generalized or "blanket" disclosure of the Requested Records, without
11 reference to the exemption at RCW 4.24.550 or Chapter 70.02 RCW would substantially
12 and irreparably harm the Class. Sex offenders who are identified by public disclosure
13 face an increased risk of physical violence, stigmatization, mental and emotional distress,
14 and loss of economic opportunity. Sex offenders who are publicly identified on lists of
15 registrants find it significantly more difficult to find employment and housing. Their
16 families, sometimes including victims, face harassment and ostracism.

17 35) Generalized release of the records and sex offender information of Class
18 members would make it more difficult for them to safely integrate into their communities.

19 36) "Blanket" or generalized disclosure of the Requested Records would not be
20 in the public interest. The legislature has carefully created a statute that ties the level of
21 public disclosure of the level of risk posed by an individual offender. The Legislature's
22 intent was clearly to limit disclosure to the general public to those circumstances
23 presenting a threat to public safety.

24 37) "Blanket" or generalized disclosure of the names, exact residential
25 addresses, and other information related to Level I sex offenders would not advance
26 public safety or governmental interest, and will undermine the efficacy of the current

1 system. In particular, "blanket" or generalized disclosure would undermine the efficacy of
2 targeted disclosure.

3 38) The members of the Class have a clear legal and equitable right to enjoin
4 the release of exempt records to the general public. They have a clear legal and
5 equitable right to have Pierce County recognize the exemption contained in statute.

6 39) The members of the Class have a well-grounded fear of immediate invasion
7 of that right.

8 40) Plaintiffs have shown that release of the Requested Records that name or
9 specifically pertain to the members of the Classes would result in actual or substantial
10 injury.

11 ORDER

12 The Court therefore ORDERS that Plaintiffs' Motion for Summary Judgment and
13 Permanent Injunction is GRANTED as follows:

- 14 1) Declaratory judgment is entered providing that Level I sex offender
15 registration records and SSOSA and SSODA evaluations are exempt from
16 disclosure under RCW 42.56.070 pursuant to RCW 4.24.550. RCW 4.24.550
17 is another statute exempting Level I sex offender registration records from
18 generalized disclosure under the Public Records Act. RCW 4.24.550 provides
19 the exclusive mechanism for public disclosure of sex offender registration
20 records and information.
- 21 2) Declaratory judgment is entered providing that Level I sex offender SSOSA and
22 SSODA evaluations are exempt from disclosure under RCW 42.56.070
23 pursuant to Chapter 70.02 RCW. RCW 70.02 provides the exclusive
24 mechanism for public disclosure of confidential medical information without
25 the patient's consent.
- 26 3) Declaratory judgment is entered providing that Level I sex offender SSODA

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1 evaluations are exempt from disclosure under RCW 42.56.070 pursuant to
2 RCW 13.50.050. SSODA evaluations are not part of the official juvenile court
3 file and are confidential juvenile records, and therefore can only be released
4 after any and all information that could reasonably be expected to identify the
5 offender has been redacted.

- 6 4) Pierce County shall not produce the sex offender registration records (including
7 any un-redacted SSOSA or SSODA evaluations) of Class members in response
8 to Ms. Zink's requests for public records. To the extent Pierce County produces
9 juvenile offender documents that are not part of the official juvenile court file,
10 SSOSA, or SSODA evaluations, it shall redact any and all information that could
11 reasonably be expected to identify the offender, including but not limited to the
12 following: the offender's name; the names of family members; social security
13 numbers; drivers' license numbers; address information, such as street
14 address or email address; dates of birth; phone numbers; vehicle registration
15 numbers or title numbers; patient identification numbers; court case numbers;
16 employer names and addresses; and any personal characteristics, including
17 photographic images.

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19 DATED this 9th day of October, 2015.

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22 The Honorable Philip K. Sorensen
23 Superior Court Judge

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FILED
DEPT. 19
IN OPEN COURT

OCT 09 2015

Pierce County Clerk
By 

DEPUTY

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