

FILED
KING COUNTY, WASHINGTON

MAY 15 2014

SUPERIOR COURT CLERK -
BY David Witten
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JOHN DOE A, a minor by and through his
legal guardians Richard Roe and Jane Roe; and
JOHN DOE B, a married man; as individuals
and on behalf of others similarly situated;

Plaintiffs,

v.

WASHINGTON STATE PATROL, an agency
of the State of Washington; and DONNA
ZINK, a married woman,

Defendants.

No. 13-2-41107-5 SEA

Consolidated with
No. 14-2-05984-1 SEA

**ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
AND PERMANENT INJUNCTION**

~~AMENDED PROPOSED~~ *JK*

JOHN DOE C, a minor by and through his
legal guardians Richard Roe C and Jane Roe C;
JOHN DOE D, a minor by and through his
legal guardians Richard Roe D and Jane Roe D;
JOHN DOE E; and JOHN DOE F; as
individuals and on behalf of others similarly
situated;

Plaintiffs,

v.

WASHINGTON ASSOCIATION OF
SHERIFFS AND POLICE CHIEFS,

Defendant,

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND PRELIMINARY INJUNCTION - 1

ORIGINAL

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1 v.
2 DONNA ZINK, a married woman,
3 Requestor.
4

5 THIS MATTER came on for hearing before this Court upon Plaintiffs' Motion for
6 Summary Judgment and Permanent Injunction ("Plaintiffs' Motion").

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

10 **FINDINGS OF FACT**

- 11 1) Ms. Donna Zink, a resident of Mesa, Washington, submitted three requests for public
12 records to Defendants. The first request, dated November 1, 2013 and modified
13 November 20, 2013, requests a copy of the Washington State Patrol's Sex and
14 Kidnapping Offender Database. The second request, dated November 28, 2013, seeks
15 email correspondence between the Washington State Patrol and Benton County for a
16 specific period. The records identified as responsive to this request include sex
17 offender registration records including an extract of the Sex and Kidnapping Offender
18 Database. The third request, dated January 23, 2014, seeks from the Washington
19 Association of Sheriffs and Police Chiefs sex offender registration forms pertaining to
20 offenders with last names beginning with the letter "A" and sex offender registration
21 files pertaining to offenders with last names beginning with the letter "B."
22 2) The Requested Records (as defined in Plaintiffs' Motion for Summary Judgment and
23 Preliminary Injunction) name or specifically pertain to the members of the Classes (as
24 defined in the Court's orders dated April 21, 2014).
25

- 1 3) The Requested Records are sex offender registration records, the public disclosure of
2 which is governed by the exemption codified at RCW 4.24.550.
- 3 4) The Washington State Patrol (WSP) is a public agency as defined by the Public
4 Records Act, RCW 42.56.010(1).
- 5 5) The Washington Association of Sheriffs and Police Chiefs (WASPC) is directed in
6 RCW 4.24.550 to create and maintain a statewide registered kidnapping and sex
7 offender web site. The sex offender registration forms and files requested by Ms. Zink
8 and maintained by WASPC in accordance with RCW 4.24.550 are public records
9 within the meaning of the Public Records Act.
- 10 6) Prior to the filings of the complaints in this consolidated case, both the WSP and
11 WASPC indicated that they would release all Requested Records, including those
12 pertaining to juvenile and adult offenders classified at risk level I and designated as in
13 compliance with registration, without reference to the exemption contained at RCW
14 4.24.550. Both the WSP and WASPC have adopted a policy or practice that RCW
15 4.24.550 is not an exemption to the Public Records Act.
- 16 7) On December 9, 2013, this Court issued a Temporary Restraining Order, preventing
17 the WSP from disseminating records or information pertaining to level I sex offenders
18 pursuant to Ms. Zink's request submitted on November 1, 2013 and modified on
19 November 20, 2013. On December 12, 2013, this Court issued a Preliminary
20 Injunction preventing the WSP from disseminating records or information pertaining
21 to level I sex offenders, except as permitted by RCW 4.24.550, pursuant to Ms. Donna
22 Zink's Public Records Act request submitted on November 1, 2013 and modified on
23 November 20, 2013.
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- 1 8) On February 27, 2014, this Court entered a temporary restraining order preventing
2 WASPC from disclosing or disseminating any records or information pertaining to
3 level I sex offenders, except as permitted by RCW 4.24.550.
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5 9) On March 5, 2014, this Court entered an order consolidating the cases against the
6 WSP and WASPC for trial.
7
8 10) Class members are level I sex offenders named in extracts of the WASPC and WSP
9 sex offender registration databases. As such, the Requested Records specifically
10 pertain to them. Level I offenders are those who, after assessment using actual risk-
11 assessment instruments, are determined to have a low risk of sexual re-offense within
12 the community at large.
13
14 11) There are no material facts in dispute. The primary question to be resolved in this
15 action is whether the records are exempt, which is a question of law.
16
17 12) Plaintiffs submitted detailed declarations from the individual Plaintiffs and third
18 parties, attesting to the harm caused by public disclosure of sex offender registration.
19 The Court finds these declarations to be credible and compelling evidence of the
20 irreparable harm that will result from "blanket" or generalized disclosure of sex
21 offender registration records.
22
23 13) Plaintiffs also submitted declarations from experts (including Maia Christopher,
24 Nicole Pittman, Brad Merryhew, and John Clayton), attesting to harm and the public
25 interest in sex offender registration records. The Court finds these declarations to be
credible and compelling evidence of the harm that will result from "blanket" or
generalized disclosure of sex offender registration records and of the public's interest
in limited and relevant disclosure of such records.

1 14) The evidence submitted in this case establishes that sex offenders who are identified
2 by public disclosure face an increased risk of physical violence, stigmatization, mental
3 and emotional distress, and loss of economic opportunity. Sex offenders who are
4 publicly identified on lists of registrants find it significantly more difficult to find
5 employment and housing. Their families, sometimes including victims, face
6 harassment and ostracism. "Blanket" or generalized release of the records and sex
7 offender information of Class members would make it more difficult for them to safely
8 integrate into their communities.

9 15) The evidence submitted in this case establishes that the public interest is served by
10 targeted and limited disclosure of sex offender registration information. "Blanket" or
11 generalized disclosure dilutes the efficacy of disclosures related to dangerous
12 individuals and undermines the carefully crafted legislative scheme.

13 CONCLUSIONS OF LAW

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

18 17) WASPC is subject to the Public Records Act for the purpose of responding to requests
19 for public information concerning the registered kidnapping and sex offender website
20 maintained by WASPC per RCW 4.24.550(5)(a). The WSP is a public agency as
21 defined by the Public Records Act.

22 18) RCW 42.56.070(1) states that agencies shall make available "all public records, unless
23 the record falls within the specific exemptions . . . this chapter, or *other statute which*
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1 *exempts* or prohibits disclosure of specific information or records” (emphasis added).

2 An “other statute” need not explicitly reference the PRA in order to provide an
3 exemption.

4 19) RCW 4.24.550 is an “other statute which exempts or prohibits disclosure” of sex
5 offender registration records. The statute sets forth a comprehensive scheme for what
6 information is to be provided regarding sex offenders, to whom it is provided, and
7 under what circumstances.

8 20) The legislative history of RCW 4.24.550 clearly sets forth a legislative intention to
9 limit release or disclosure of sex offender information to the general public.

10 21) RCW 4.24.550(2) states that, unless disclosure of sex offender registration
11 information is specifically required under RCW 4.24.550(5), “the extent of the public
12 disclosure of relevant and necessary information shall be rationally related to: (a) the
13 level of risk posed by the offender to the community; (b) the locations where the
14 offender resides, expects to resident, or is regularly found; and (c) the needs of the
15 affected community members for information to enhance their individual and
16 collective safety.”

17 22) In *State v. Ward*, 123 Wn. 2d 488, 870 P.2d 295 (1994), the Supreme Court relied
18 specifically on the limits on public disclosure of sex offender registration records in
19 RCW 4.24.550 as a basis for upholding the constitutionality of the sex offender
20 registration statutes.

21 23) Section 9 of RCW 4.24.550 indicates that the legislature did not intend to make
22 registration information “confidential.” This language does not mean that RCW
23 4.24.550 is not an exemption to the PRA. First, section 9 was in the statute in 1994
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1 when the Supreme Court expressly declared in *State v. Ward* that sex offender
2 registration records are in most cases confidential. Second, section 9 references
3 subsection (1), which authorizes release of “relevant and necessary” information.
4 Section 9 therefore establishes that law enforcement agencies are not prohibited from
5 disclosing sex offender records, but does not authorize “blanket” or generalized
6 disclosure.

7 24) Generalized or “blanket” disclosure of the Requested Records, without reference to the
8 exemption at RCW 4.24.550 would substantially and irreparably harm the Class. Sex
9 offenders who are identified by public disclosure face an increased risk of physical
10 violence, stigmatization, mental and emotional distress, and loss of economic
11 opportunity. Sex offenders who are publicly identified on lists of registrants find it
12 significantly more difficult to find employment and housing. Their families,
13 sometimes including victims, face harassment and ostracism. Generalized release of
14 the records and sex offender information of Class members would make it more
15 difficult for them to safely integrate into their communities.

16 25) “Blanket” or generalized disclosure of the Requested Records would not be in the
17 public interest. The legislature has carefully created a statute that ties the level of
18 public disclosure of the level of risk posed by an individual offender. The
19 Legislature’s intent was clearly to limit disclosure to the general public to those
20 circumstances presenting a threat to public safety.

21 26) “Blanket” or generalized disclosure of the names, exact residential addresses, and
22 other information related to level I sex offenders would not advance public safety or
23 governmental interest, and will undermine the efficacy of the current system. In
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1 particular, "blanket" or generalized disclosure would undermine the efficacy of
2 targeted disclosure.

3 27) The members of the Classes have a clear legal and equitable right to enjoin the release
4 of exempt records to the general public. They have a clear legal and equitable right to
5 have the WSP and WASPC recognize the exemption contained in statute.

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

8 29) Plaintiffs have shown that release of the Requested Records or other WASPC or WSP
9 sex offender registration records that name or specifically pertain to the members of
10 the Classes would result in actual or substantial 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 registration
15 records are exempt from disclosure under RCW 42.56.070 pursuant to RCW
16 4.24.550. RCW 4.24.550 provides the exclusive mechanism for public disclosure
17 of sex offender registration records.
- 18 2) The WSP and WASPC shall not make a "blanket" or generalized production of sex
19 offender records of Class members in response to Ms. Zink's requests for public
20 records (whether pending or made during the duration of this litigation (including
21 any appeals)).
- 22 3) The WSP and WASPC may disclose "relevant and necessary" level I sex offender
23 records in response to a request under RCW 4.24.550 by a member of the general
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1 public, after considering in good faith the offender's risk classification, the places
2 where the offender resides or is expected to be found, and the need of the requestor
3 to protect individual and community safety.

4 DATED this 15 day of 5, 2014.

6 

7 The Honorable Jean Rietschel
8 Superior Court Judge

9 Presented By:

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ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND PRELIMINARY INJUNCTION - 9

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ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND PRELIMINARY INJUNCTION – 10

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