JUDGE ROGER ROGOFF

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JOHN DOE G AND JOHN DOE H, et. al.,

Plaintiffs,

v.

DEPARTMENT OF CORRECTIONS,

Defendants,

v.

DONNA ZINK,

Requestor.

NO. 14-2-21109-1 SEA

ORDER ON MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER having come on regularly before the undersigned Judge of the King County Superior Court upon Plaintiff's Motion for Preliminary Injunction, and the Court having reviewed Plaintiff's Motion and all attached Declarations and Exhibits, and having reviewed Defendant's Response and all declarations and exhibits, and having reviewed the Requestor's Memorandum in Opposition to Motion and all declarations and exhibits, the Court hereby engages in the following analysis and enters the following order:

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BACKGROUND

On May 9, 2014, Donna Zink made a public records request from the Department of Corrections. Her request sought, "the notification form/letter that the department gives [to] sex offenders [who are released] from prison [and into] the community [who have last names] beginning with A, B, C, or D." Ms. Zink made the request pursuant to the Washington State Public Records Act. RCW 42.56, et. seq.

The Department of Corrections (hereinafter "DOC") agreed to release the records, and intended to initiate the records release on August 4, 2014. *See* Complaint at Paragraph 18. On July 30, 2014, Plaintiffs filed a lawsuit seeking to enjoin the release of these records, arguing that they are exempt from release and would cause irreparable harm to members of a specific class of people. *See* Complaint.

Plaintiffs immediately requested a Preliminary Injunction, which was to be heard before the undersigned Court at 8:30 a.m. on August 12, 2014. On July 31, 2014, Plaintiffs sought and received an *ex parte* Temporary Restraining Order, preventing DOC from releasing the requested records to Ms. Zink until the hearing on Preliminary Injunction. *See* Temporary Restraining Order, dated 7/31/14. The Temporary Restraining Order was extended to August 22, 2014, preserving the status quo so that this Court could make a decision on the current motion.

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Subsequently, plaintiffs filed three motions: 1) A Motion to Proceed via Pseudonym; 2) A Motion to Certify as a Class Action; and 3) The Motion for Preliminary Injunction. The Court granted the first two motions, and now addresses the third.

ANALYSIS

Standard for Preliminary Injunction

It is within the Court's equitable discretion to grant or deny a motion for preliminary injunction. Rabon v. City of Seattle, 135 Wash.2d 278, 284, 957 P.2d 621 (1998). The standard of the appellate court's review will be whether or not this court abused its discretion. Id. Thus, this Court must make its decision on the Motion for Preliminary Injunction based upon tenable grounds, and the decision must not be manifestly unreasonable or arbitrary. Id.

A party seeking relief through a preliminary injunction must show:

1. A clear legal or equitable right;
2. A well-grounded fear of immediate invasion of that right;
3. That the acts complained of have or will result in actual and substantial injury;
4. That there is no adequate remedy at law; and
5. The Court must balance the equities

Id.; Tyler Pipe Indus., Inc. v. Department of Revenue, 96 Wash.2d 785, 792, 638 P.2d 1213 (1982); Kucera v. Department of Transportation, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). The Court must evaluate the above criteria in light of equity, including the balancing of the relative interests of the parties and the interests of the public, if appropriate. Id.

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The Court notes that the Rabon court's decision -- that an order granting preliminary injunction on a "purely legal issue" is tantamount to a final decision on the merits – conflicts significantly with the notion of a court exercising its discretion in an equitable manner by balancing all of the relevant factors.

In this case, neither DOC nor Ms. Zink seriously claims that factors two, three and four are in their favor. It is clear in this case that these factors favor Plaintiff's position. There is no remedy at law for Plaintiffs. Given DOC's intent to produce the requested documents absent a court order, if Plaintiffs have a legal/equitable right, then they have a well-grounded fear of an immediate invasion of that right. The Court further finds that, should DOC provide the records to Ms. Zink, Plaintiffs will likely suffer actual and substantial injury.

Thus, the only contested question the Court faces is whether Plaintiffs are likely to prevail on the merits in this matter. In deciding whether a party has a clear legal or equitable right, the court examines the likelihood that the moving party will prevail on the merits. Rabon, supra at 284-5, citing Washington Fed'n of State Employees, Council 28 v. State, 99 Wash.2d 878, 888, 665 P.2d 1337 (1983). The Court should not grant an injunction in a doubtful case. Id.

The Plaintiff here has argued, pursuant to Rabon, that where the essential facts are not in dispute and the only issue is the likelihood that plaintiff will prevail on the merits "the trial court necessarily decides the merits of the case." Rabon, at 300–01. However, Plaintiff fails to take into consideration the appellate posture of the Rabon case. In that matter, the trial

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Court made clear that it believed it HAD decided the merits of the case, and it was this particular finding that Mr. Rabon disputed. Rabon appealed the trial court's decision and argued to the appellate court that the Court's decision on preliminary injunction did not constitute a ruling on the merits.

CR 65 provides that, before or after commencement of a hearing on a request for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the preliminary injunction. Rabon, at 285, fn. 2. Absent such consolidation, or a stipulation of the parties, the court cannot enter an order disposing of the case on the merits. Id., citing, Turner v. City of Walla Walla, 10 Wash.App. 401, 406, 517 P.2d 985 (1974). Rather than holding that the trial court MUST adjudicate the merits of the case at the preliminary injunction stage, it rather held that the trial court ***did not err*** by essentially adjudicating the ultimate merits of the suit. Id. The Court made clear however, that "in accord with well-settled principles, a court is ***not*** to adjudicate the ultimate merits of the case." Id (Emphasis added).

Thus, the Court will address the merits of the underlying lawsuit insofar as the Court can determine whether a legal or equitable right exists. The Court will then balance all of the Rabon factors. This decision should not be confused with any decision this Court may make in the future on the ultimate merits of the case.

The Public Records Act (PRA)

The PRA is a strongly worded mandate for broad disclosure of public records. *See* RCW 42.56.070. Courts should liberally construe the act, and narrowly construe its

exemptions in favor of disclosure. Soter v. Cowles Pub. Co., 162 Wn.2d 716, 731 (2007). The burden of proof is on the party seeking to prevent disclosure to show that an exemption applies. Limstrom v. Ladenburg, 136 Wn.2d 595, 612, 963 P.2d 869 (1998); RCW 42.56.540, .550(1).

Pursuant to the PRA, each government agency "shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of [the PRA], or other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070. Moreover, "to the extent required to prevent an unreasonable invasion of personal privacy interests," an agency shall delete identifying details in a manner consistent with [the PRA] when it makes available or publishes any public record. RCW 42.56.070(1). However, in each case, the justification for the deletion shall be explained fully in writing. RCW 42.56.070(1).

An invasion of privacy occurs when 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.

The Sex Offender Registration Statute

Plaintiffs in this case are people previously convicted of sex offenses, released from custody, and subsequently designated as Level I Registered Sex Offenders. Some of these offenders are no longer required to register. Some are required to register. Level I Sex Offenders are those who, after assessment using actual risk assessment instruments, are determined to have a low risk of sexual re-offense within the community at large.

Plaintiffs submitted a significant number of declarations from experts in the field of sex offender treatment attesting to the harm that will result in generalized disclosure of sex offender registration records for all Level I sex offenders. The Court finds these declarations credible insofar as they provide *potential* harms that could befall these offenders.

The offenders identified by public disclosure face an increased risk of physical violence, mental distress, and loss of employment opportunities. Sex offenders identified on public lists of registrants have significantly more difficulty finding housing. Their families, which oftentimes include their victims, face harassment. Blanket release of sex offender registration information for this class of offenders would make it more difficult for them to integrate into society. Moreover, this Court finds that release of information that will cause upheaval in many of these offenders' lives will negatively impact the course of their treatment and progress.

On the other hand, sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and protection of the public from sex offenders is a paramount governmental interest. King v. Riveland, 125 Wn.2d 500, 513, 886 P.2d 160 (1994). Moreover, the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Id. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Id.

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It is this state's policy as expressed in RCW 4.24.550 to require the exchange of relevant information about sexual predators ***among public agencies and officials*** and to authorize the release of ***necessary and relevant information*** about sexual predators to members of the general public. Id. DOC argues that, because RCW 4.24.550 states that, "nothing in this section implies that information regarding [sex offenders] is confidential," it cannot constitute an exemption to the PRA. See Response Brief of DOC, at 4.

However, our State Supreme Court has described the sex offender registration statute as a legislative "pronouncement [evincing] a clear regulatory intent to limit the exchange of relevant information to the general public to those circumstances which present a threat to public safety." State v. Ward, 123 Wash.2d 488, 502, 869 P.2d 1062 (1994). The Legislature clearly intended public agencies to disseminate warnings to the public "under limited circumstances." Id., at 502. The court stated that, under the statute, in many cases, both the registrant information and the fact of registration remain "confidential." Id.

For those cases which merit disclosure, the statute requires an agency to have some evidence that the offender poses a threat to the public or, in other words, some evidence of dangerousness in the future. Id., at 503. The release of the registrant information must be "necessary for public protection". Id., *referencing* RCW 4.24.550(1).

The Supreme Court held that a public agency must have some evidence of an offender's future dangerousness, likelihood of re-offense, or threat to the community, to

justify disclosure to the public in a given case. Id.[1] This statutory limit ensures that disclosure occurs to prevent future harm, not to punish past offenses.

Moreover, non-disclosure under the PRA is not synonymous with "confidential." Rather, the statute sets out a mandate for disclosure, along with a series of exemptions to disclosure. Those documents described within those exemptions are not necessarily "confidential." Rather, they are simply not available in the manner and at the time they were requested under the PRA. For example, in Newman v. King County, 133 Wn.2d 565 (1997), the Supreme Court found that law enforcement reports in an open, ongoing investigation were protected from disclosure under the PRA, yet in Sargent v. Seattle Police Department, 179 Wash.2d 376, 314 P.3d 1093 (2013) those same files did not fall within the exemption once the police referred the case to the prosecutor's office. Thus, the exemption to release of requested records under the PRA does not necessarily equate to confidentiality.

Based upon a combination of the language in the statute and the holding in Ward, this Court concludes that RCW 4.24.550 is an "other statute which exempts or prohibits disclosure" of sex offender registration records. RCW 4.24.550 creates a thoughtful statutory scheme for what sex offender records public agencies should and should not release to either governmental agencies or the public. The legislature considered the balancing of the danger to the public against the harm to the offenders in authorizing the disclosures described in the statute.

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[1] This Court notes that, contrary to DOC's interpretation of RCW 4.24.550 as a statute of community notification as opposed to a "disclosure statute, the State Supreme Court couched its holding in terms of "disclosure," rather than "notification."

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This Court concludes that it is reasonably likely that Plaintiffs will prevail. Moreover, given that the same legal issue has been raised in other Courts in this State, and those matters are on appeal, the Court has a greater reason to maintain the status quo pending the outcome of those cases and this one. The Court further concludes that Plaintiffs have a well-grounded fear of immediate invasion of that right and that any violation of that right will result in actual and substantial injury. There is no adequate remedy at law and, in balancing the equities, the Court is convinced that a preliminary injunction will allow the parties a full and fair hearing without fear of harm.

ORDER

IT IS HEREBY ORDERED THAT the Plaintiff's Motion for Preliminary Injunction is GRANTED. The DOC shall not release any records pursuant to Ms. Zink's request until further order of this Court.

Dated this 21st day of August, 2014.

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