

1
2
3
4
5
6
7 SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

8 JOHN DOE G and JOHN DOE H, as
9 individuals and on behalf of others similar
situated,

10 Plaintiffs,

11 v.
12

13 DEPARTMENT OF CORRECTIONS,

14 Defendant,

15 v.
16

17 DONNA ZINK, a married woman,

18 Requestor.

No. _____

CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

19 Plaintiffs seek declaratory and injunctive relief for themselves and a Proposed Class of
20 all those similarly situated within the state of Washington. Based on investigation of counsel
21 and on information and belief, Plaintiffs allege as follows:
22

23 **I. PARTIES**

24 **Proposed Class Representatives**

25 1. John Doe G is a resident of King County, state of Washington. He served time in
26 prison under the custody of Defendant Department of Corrections and completed a form

CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF - 1

KELLER ROHRBACK L.L.P.

1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 notifying him of the duty to register when he was released from custody. He is currently
2 required to register as a Level I sex offender and is fully compliant with the requirements of
3 registration.

4 2. John Doe H is a resident of Montana. He was convicted of a sex offense in
5 Washington and served time in prison under the custody of Defendant Department of
6 Corrections. When he was released from prison, he completed a form notifying him of the duty
7 to register. He was fully compliant with all requirements of registration, and was relieved of the
8 duty to register in 2013.
9

10 **Defendant**

11 3. Defendant Washington State Department of Corrections (“DOC”) was and is an
12 agency of the state of Washington.

13 **Requestor**

14 4. Donna Zink is a resident of Franklin County, Washington.
15

16 **II. JURISDICTION AND VENUE**

17 5. Jurisdiction and venue are proper in this Court pursuant to RCW 2.08.010, RCW
18 7.24.010, and RCW 42.56.540.

19 **III. GENERAL ALLEGATIONS**

20 **Background**

21 6. Washington’s Public Records Act (“PRA”) requires agencies to produce public
22 records upon request “unless the record falls within the specific exemptions of [the PRA], or
23 *any other statute* which exempts or prohibits disclosure of specific information or records.”
24 RCW 42.56.070(1) (emphasis added).
25
26

1 7. Washington’s statute governing the disclosure of information to the public
2 regarding sex and kidnapping offenders, RCW 4.24.550, sets forth a comprehensive scheme for
3 release of Level I sex offender registration records. Risk level I sex offenders are those who are
4 assessed to pose the least risk to the general public.

5 8. RCW 4.24.550 mandates disclosure in some circumstances. In other
6 circumstances, including the circumstances of Plaintiffs and the proposed class, RCW 4.24.550
7 permits disclosures, but only if disclosure meets the requirements of a test designed to protect
8 both public safety and privacy.

9 9. RCW 4.24.550 sets forth two mandatory disclosures relevant to Level I offenders
10 such as Plaintiffs and the proposed Class. First, under Section 3(a), local law enforcement shall
11 “share information with other appropriate law enforcement agencies and, if the offender is a
12 student, the public or private school” that the offender is attending. Second, under Section 5, law
13 enforcement shall create a public website posting all Level III and Level II sex offenders, plus
14 all Level I offenders who are out of compliance with the conditions of registry. In other words,
15 RCW 4.24.550 does not mandate release of information regarding Level I sex offenders to the
16 general public unless they are out of compliance.

17 10. RCW 4.24.550 sets forth a comprehensive test for permissive disclosures under
18 Sections 1, 2, and 3. These sections provide the circumstances under which disclosure of the
19 records is authorized. Section 3(a) specifies that “the agency may disclose, upon request,
20 relevant, necessary, and accurate information . . . to any individual community member who
21 lives near the residence where the offender resides, expects to reside, or is regularly found.” For
22 all other permissive disclosure of Level I sex offender records, Sections 1 and 2 prescribe the
23 circumstances under which information may be disclosed. Before releasing the records of a
24
25
26

1 particular offender, an agency must undertake a balancing test, under which: “the extent of the
2 public disclosure of relevant and necessary information shall be rationally related to (a) The
3 level of risk posed by the offender to the community; (b) the locations where the offender
4 resides, expects to reside, or is regularly found; and (c) the needs of the affected community
5 members for information to enhance their individual and collective safety.”

6 11. RCW 4.24.550 sets forth a mandatory, comprehensive scheme for release of
7 Level I sex offender information that is an “other statute” exempting these records from the
8 PRA. Any disclosure of such records is therefore subject to the statutory scheme of RCW
9 4.24.550, not the PRA.

11 **The Subject Public Records Request**

12 12. On or about January 24, 2014, a member of the public, Donna Zink, submitted a
13 public records request to DOC.

14 13. Ms. Zink requested from DOC “any and all sex offender registration forms of
15 registered sex offenders prepared, owned, used, or retained” by the Washington Association of
16 Sheriffs and Police Chiefs for offenders whose names begin with the letters C or D. On January
17 31, DOC requested clarification that the request was directed to DOC. Ms. Zink responded that
18 it was.

19 20 14. On February 28, 2014, DOC asked Ms. Zink to clarify the scope of her request
21 and informed her that some of the records she requested did not exist.

22 23 15. On March 1, 2014, Ms. Zink modified her request. On March 10, 2014, DOC
24 responded, clarifying which records might be available and detailing burdensome aspects of the
25 request.

1 16. Ms. Zink did not respond to DOC's March 10 email. On April 21, DOC wrote
2 Ms. Zink, asking her if she wished to pursue her request.

3 17. On May 9, Ms. Zink revised her request to include the "notification form/letter
4 that the department gives sex offenders releasing from prison to the community with a last name
5 beginning with A, B, C or D" (the "Requested Records").

6 18. DOC has represented that it intends to produce the Requested Records by August
7 4, 2014.

8 19. DOC has represented that there are approximately 4,488 individuals whose
9 records will be released beginning on August 4. On information and belief, DOC did not notify
10 any subjects or individuals named in the Requested Records about the public records request or
11 the impending release of the Requested Records.

12 20. The Requested Records include information regarding all Level I sex offenders
13 whose last names begin with A, B, C, or D, including those who are in compliance with their
14 registration. The Requested Records include names, dates of birth, social security numbers,
15 release address, employment address, and crimes for level I offenders who are in compliance
16 with their registration obligations and for those offenders who have been relieved of the duty to
17 register. These offender records would not otherwise be subject to mandatory public disclosure.

18 21. DOC intends to release the Requested Records pursuant to the PRA and without
19 conducting the mandatory, individualized determinations necessary for permissive disclosure of
20 Level I sex offender records pursuant to RCW 4.24.550. DOC does not consider the sex
21 offender registration records exempt from the PRA.

22 22. Ms. Zink intends to use the Requested Records, in whole or in part, to post on a
23 website available to the general public information, including addresses, regarding all Level I
24
25
26

1 sex offenders in the state of Washington, including those who are in compliance with their
2 registration and including those who have been relieved of the duty to register.

3 23. Plaintiffs and the proposed Class will be substantially and irreparably damaged
4 by the release of the Requested Records.

5 IV. CLASS ACTION ALLEGATIONS

6 Class Definition

7 24. Pursuant to Civil Rule 23(b)(2), Plaintiffs bring this case as a class action on
8 behalf of the Class defined as follows:
9

10 All individuals classified as sex offenders at risk Level I and in compliance with the
11 conditions of registry or relieved of the duty to register, who are named in registration
12 notifications in the possession of the Washington Department of Corrections and whose
last name begins with A, B, C or D.

13 Exclusions from Class

14 25. Excluded from the Class are Defendants' legal representatives, assignees, and
15 successors. Also excluded are the judge to whom this case is assigned and any member of the
16 judge's immediate family.

17 Numerosity

18 26. Plaintiffs believe there are hundreds, if not thousands, of Class members. These
19 Class members are geographically dispersed throughout the state of Washington, likely unaware
20 of the controversy underlying this action, and are unable or reluctant to sue individually. The
21 members of the class are so numerous that joinder of all members is impracticable. Moreover,
22 the disposition of the claims of the Class in a single action will provide substantial benefits to all
23 parties and the Court.
24
25
26

Commonality

27. There are numerous questions of law and fact common to Plaintiffs and members of the Class. These questions include, but are not limited to, the following:

A. Whether RCW 4.24.550 is an “other statute” exempting records related to Level I offenders from the PRA under RCW 42.56.070;

B. Whether the records of Class members can be released in response to a request under the PRA, absent compliance with RCW 4.24.550;

C. Whether RCW 4.24.550 requires DOC to determine that information relating to Level I sex offenders who are in compliance with registration or relieved of the duty to register is “relevant and necessary” and to consider “(a) [t]he level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety”;

D. Whether the above determination must be made individually for each offender;

E. Whether blanket, categorical disclosure of all Level I offenders and formerly registered offenders named in the Requested Records violates RCW 4.24.550;

F. Whether blanket, categorical disclosure of all Level I sex offender information in the registration notification forms, in response to request under the PRA, will result in immediate and irreparable harm to any person;

G. Whether blanket, categorical disclosure of all Level I sex offender information in the registration notifications, in response to a request under the PRA, is in the public interest; and

1 H. Whether the Court should issue a temporary or permanent order enjoining release
2 of the Requested Records naming members of the Class by DOC.

3 **Typicality**

4 28. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs' claims, like the
5 claims of the members of the Class, arise out of the same conduct by Defendant DOC and are
6 based on the same legal and remedial theories.

7 **Adequacy**

8
9 29. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs
10 have retained competent and capable attorneys who have significant experience in litigation
11 under the PRA and with complex, class action litigation. Plaintiffs and their counsel are
12 committed to prosecuting this action vigorously on behalf of the Class and have the financial
13 resources to do so. Neither Plaintiffs nor their counsel have interests that are contrary to or that
14 conflict with those of the proposed Class.

15 **Appropriateness of Injunctive and Declaratory Relief**

16
17 30. DOC has acted and will act on grounds generally applicable to the Class, thereby
18 making final injunctive and corresponding declaratory relief appropriate with respect to the
19 Class as a whole. Prosecution of separate actions by individual members of the Class would
20 create the risk of inconsistent or varying adjudications with respect to individual Class members
21 that would establish incompatible standards of conduct for Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

V. FIRST CLAIM FOR RELIEF

**(Action to Enjoin Release of Records Exempt or Prohibited by any Other Statute,
RCW 42.56.540)**

31. Plaintiffs repeat and reallege the above paragraphs.

32. Plaintiffs request entry of a permanent injunction enjoining DOC from disclosing Level I sex offender information pursuant to Ms. Zink's request (either in its original form or as modified), except as provided in RCW 4.24.550.

33. If DOC makes a "blanket" disclosure of all Level I sex offender information under the PRA, Plaintiffs will suffer immediate and irreparable harm. Disclosure of this information would not be in the public interest, would not comport with the statutory requirements for disclosure provided in RCW 4.24.550, and would substantially and irreparably damage Plaintiffs as set forth in RCW 42.56.540. Final injunctive relief is necessary to protect Plaintiffs and members of the Class from the release of exempt and private information.

VI. SECOND CLAIM FOR RELIEF

(Declaratory Judgment)

34. Plaintiffs repeat and reallege the above paragraphs.

35. Notwithstanding DOC's intent to make a "blanket" release of the Requested Records under the PRA, Plaintiffs dispute that Level I sex offender registration records must be disclosed under the PRA, and contend that they are exempt records governed by the comprehensive disclosure scheme set forth at RCW 4.24.550. Plaintiffs assert that RCW 4.24.550 requires an individualized determination as to the information that may be disclosed as to each individual Level I sex offender.

1 36. Actual and justifiable controversies exist between Plaintiffs and Defendant as to
2 whether level I sex offender registration records are exempt from disclosure under RCW
3 42.56.070 of the PRA.

4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs hereby pray for judgment against Defendant as follows:

6 A. For certification of a class as defined above;

7 B. For appointment of Plaintiffs as representatives of the certified Class;

8 C. For appointment of the American Civil Liberties Union of Washington
9 Foundation and the law firm of Keller Rohrbach LLP as counsel for the certified class;

10 D. For a permanent injunction enjoining DOC from disclosing any and all
11 Requested Records that constitute Level I sex offender registration information, except as
12 permitted under RCW 4.24.550;

13 E. For a declaratory judgment, under RCW 7.24.010, that Level I sex offender
14 registration records are exempt from disclosure under RCW 42.56.070;

15 F. For leave to amend these pleadings to conform to the evidence presented at trial;
16
17 and

18 G. For such other and further relief as the Court deems just and equitable.
19
20
21
22
23
24
25
26

1 DATED this 30th day of July, 2014.

2 KELLER ROHRBACK L.L.P.

3
4 By /s/ Harry Williams IV

5 Harry Williams IV, WSBA #41020
6 hwilliams@kellerrohrback.com
7 1201 Third Avenue, Suite 3200
8 Seattle, WA 98101
9 Tel: (206) 623-1900
10 Fax: (206) 623-3384

11 AMERICAN CIVIL LIBERTIES UNION
12 OF WASHINGTON FOUNDATION

13 By /s/ Sarah A. Dunne

14 Sarah A. Dunne, WSBA # 34869
15 901 Fifth Avenue, # 630
16 Seattle, WA 98164
17 dunne@aclu-wa.org
18 (206) 624-2184 Phone
19 (206) 624-2190 Fax

20 By /s/ Vanessa T. Hernandez

21 Vanessa T. Hernandez, WSBA # 42770
22 901 Fifth Avenue, # 630
23 Seattle, WA 98164
24 vhernandez@aclu-wa.org
25 (206) 624-2184 Phone
26 (206) 624-2190 Fax

Attorneys for Plaintiffs



Thank you. Your document(s) has been received by the Clerk.

Your order setting case schedule is listed below. Please click on the hyperlink and print a copy for your records and for service.

Confirmation Receipt

Filed By: Harry
Williams

**Submitted
Date/Time:** 7/30/2014 4:15:08 PM

User ID: harrywilliams4

WSBA #: 41020

**Payment
Reference:** 3620503698

14-2-21109-1 SEA John Doe G and John Doe H vs Department of Corrections

Received Date: 7/30/2014 4:15:08 PM

Case Category: OTHER COMPLAINTS/PETITIONS

Case Sub-Category: PUBLIC RECORDS ACT (PRA 2)

Case Filing Fee: 240.00

Document Type	File Name	Attachment(s)	Document Fee
PETITION	ClassActionComplaint (FINAL)073014.pdf		0.00
CASE INFORMATION COVER SHEET	cics.pdf		0.00
ORDER SETTING CASE SCHEDULE	schedule.pdf		0.00

Total Cost: \$242.49
(Includes Filing Fee)

CONFIRMATION RECEIPT

Case Number: 14-2-21109-1 SEA
Case Title: John Doe G and John Doe H vs Department of Corrections
Submitted By: Harry Williams
Bar Number: 41020
User ID: harrywilliams4
Submitted Date/Time: 7/30/2014 4:15:08 PM
Received Date/Time: 7/30/2014 4:15:08 PM
Payment Reference: 3620503698
Total Cost: \$242.49

DOCUMENTS

Document Type: PETITION
File Name: ClassActionComplaint(FINAL)073014.pdf
Cost: \$0.00

Document Type: CASE INFORMATION COVER SHEET
File Name: cics.pdf
Cost: \$0.00

Document Type: ORDER SETTING CASE SCHEDULE
File Name: schedule.pdf
Cost: \$0.00

Printed On: 7/30/2014 4:19:14 PM