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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

JOHN DOE C, a minor, by and through his legal guardians Richard Roe C and Jane Roe C; JOHN DOE D, a minor by ant 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.

THE WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS, a combination of units of local government;

Defendant

v.

DONNA ZINK, a married woman,

Requestor.

No. 14-2-05984-1 SEA

**CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Plaintiffs, by and through their attorneys of record, bring this Class Action Complaint for Declaratory and Injunctive Relief on behalf of themselves and all those similarly situated within the State of Washington, and allege as follows:

1
2 **I. PARTIES**

3 **Proposed Class Representatives**

4 1.1 Richard Roe C and Jane Roe C are the legal guardians to John Doe C, whose
5 last name begins with the letter “B” and who at all times material hereto was a minor and a
6 resident of King County, State of Washington.

7 1.2 Richard Roe D and Jane Roe D are the legal guardians to John Doe D, whose
8 last name begins with the letter “A” and who at all times material hereto was a minor and a
9 resident of King County, State of Washington.

10 1.3 John Doe E is a single man, whose last name begins with the letter “B” and who
11 at all times material hereto was a resident of King County, State of Washington.

12 1.4 John Doe F is a single man, whose last name begins with the letter “B” and who
13 at all times material hereto was a resident of King County, State of Washington.

14 1.5 This action is a class action filed by John Doe C, a minor by and through his
15 legal guardians Richard Roe C and Jane Roe C; John Doe D, a minor, by and through his legal
16 guardians Richard Roe D and Jane Roe D; John Doe E; and John Doe F, as individuals and on
17 behalf of all persons similarly situated in the State of Washington (collectively, “Plaintiffs”)

18 **Defendant**

19 1.6 Defendant the Washington Association of Sheriffs and Police Chiefs
20 (hereinafter “WASPC”) is a combination of units of local government.

21 **Requestor**

22 1.7 Requestor Donna Zink is a married woman and resident of Mesa, Washington.¹

23 **II. JURISDICTION AND VENUE**

24 _____
25 ¹ Plaintiffs’ position is that a requestor for public records should not be involuntarily joined to an action seeking to
26 enjoin release of records under the PRA. Plaintiffs do not, however, seek to limit the requestor’s ability to
voluntarily intervene or otherwise present her position to the Court. Nevertheless, Plaintiffs were ordered in case
no. 13-2-41107-5 to join Ms. Zink as a party. Because this case involves the same questions of law and similar
facts and parties, Plaintiffs have named Ms. Zink as a party to this action.

1 2.1 Jurisdiction and venue are proper in this Court pursuant to RCW 2.08.010, RCW
2 7.24.010, and RCW 42.56.540.

3 **III. GENERAL ALLEGATIONS**

4 **Background**

5 3.1 Washington’s Public Records Act (“PRA”) requires agencies to produce public
6 records upon request “unless the record falls within the specific exemptions of this chapter, **or**
7 **any other statute which exempts** or prohibits disclosure of specific information or records.”
8 *See* RCW 42.56.070 (emphasis added).

9 3.2 Washington’s statute governing the disclosure of information to the public
10 regarding sex and kidnapping offenders, RCW 4.24.550, sets forth a comprehensive scheme for
11 release of level I sex offender registration records. Risk level I sex offenders are those who are
12 assessed to pose the least risk to the general public.

13 3.3 RCW 4.24.550 includes both (1) mandatory disclosures, and (2) permissive
14 disclosures subject to a test specified therein.

15 3.4 RCW 4.24.550 sets forth two mandatory disclosures relevant to level I
16 offenders. First, under Section 3(a), local law enforcement shall share information with other
17 appropriate law enforcement agencies and public or private schools that the offender is
18 attending. Second, under section 5, law enforcement shall create a public website posting all
19 level III and level II sex offenders, plus all level I offenders who are out of compliance. In
20 other words, RCW 4.24.550 does not mandate release of information regarding level I sex
21 offenders to the general public unless they are out of compliance.

22 3.5 RCW 4.24.550 sets forth a comprehensive scheme for permissive disclosures
23 under sections 1, 2, and 3. These sections provide the circumstances under which disclosure of
24 the records is authorized. Section 3(a) specifies that “the agency may disclose, upon request,
25 relevant, necessary, and accurate information . . . to any individual community member who
26 lives near the residence where the offender resides, expects to reside, or is regularly found.”

1 For all other permissive disclosure of level I sex offender records, sections 1 and 2 proscribe
2 the circumstances under which information may be disclosed, including a mandatory balancing
3 test that must be applied to determine the release of records of a particular offender, *i.e.*, “the
4 extent of the public disclosure of relevant and necessary information **shall** be rationally related
5 to (a) The level of risk posed by the offender to the community; (b) the locations where the
6 offender resides, expects to reside, or is regularly found; and (c) the needs of the affected
7 community members for information to enhance their individual and collective safety”
8 (emphasis added).

9 3.6 Plaintiffs allege that RCW 4.24.550 sets forth a mandatory, comprehensive
10 scheme for release of level I sex offender information that is an “other statute” exempting these
11 records from the PRA. Any disclosure of such records is therefore subject to the statutory
12 scheme of RCW 4.24.550, not the PRA.

13 **The Subject Public Records Request**

14 3.7 On or about January 1, 2014, a member of the public, Donna Zink, submitted a
15 public records request to WASPC.

16 3.9 On information and belief, the public records request seeks (a) any and all sex
17 offender registration forms of registered sex offenders prepared, owned, used, or retained by
18 WASPC, if the offender’s last name begins with the letter A and (b) any and all registered sex
19 offender files of all registered sex offenders prepared, owned, used, or retained by WASPC, if
20 the offender’s last name starts with the letter B (hereinafter the “Requested Records.”)

21 3.10 On January 29, 2014, WASPC notified third parties that it intended to produce
22 the first installment of responsive records, absent a court order blocking release, on February
23 28, 2014. These third parties included all police chiefs and sheriffs in the state, the Department
24 of Corrections, and the Juvenile Rehabilitation Administration. On information and belief,
25 WASPC sent notification of the request to level I sex offenders the week of February 17, 2014.
26

1 3.11 On information and belief, there are approximately 4,000 registered sex
2 offenders identified as having last names beginning with the letters A or B. This number
3 includes offenders at all risk levels, including level I offenders. On information and belief, it
4 includes registered sex offenders whose registration in Washington is “active” and those whose
5 registration in Washington is “inactive.”

6 3.12 Upon information and belief, WASPC intends to release records pertaining to all
7 sex offenders with last names beginning “A” or “B,” including those who are assessed at risk
8 level 1 and who are in compliance with their registration and including juveniles. Upon
9 information and belief, the Requested Records include *inter alia*, the names, dates of birth,
10 complete residential addresses (past and present), physical descriptions, employers, schools
11 attending, crimes, psychological diagnoses, treatment information, records of infractions during
12 incarceration, adolescent conduct reports, employment history, relationship history, and
13 photographs of level I sex offenders, including persons in compliance with their registration
14 obligations, who would not otherwise be subject to mandatory public disclosure.

15 3.13 WASPC intends to release the Requested Records pursuant to the PRA and
16 without conducting the mandatory individualized determinations necessary for permissive
17 disclosure of level I sex offender records pursuant to RCW 4.24.550. Upon information and
18 belief, WASPC does not consider sex offender registration records to be exempt from the PRA.

19 3.14 Upon information and belief, Ms. Zink intends to post the Requested Records, in
20 whole or in part, on a website available to the general public and containing information
21 (including addresses) regarding all adult and juvenile level I sex offenders in the State of
22 Washington, including those who are in compliance with their registration.

23 3.15 Plaintiffs are level I sex offenders whose last names begin with the letters “A” or
24 “B” and who are named in the requested records. Plaintiffs and the proposed Class will be
25 substantially and irreparably damaged by the release of the Requested Records. Disclosure of
26 the Requested Records, absent compliance with RCW 4.24.550, is not in the public interest.

1 **IV. CLASS ACTION ALLEGATIONS**

2 4.1 Class Definition: Pursuant to Civil Rule 23(b)(2), Plaintiffs bring this case as a
3 class action on behalf of the Class defined as follows:

4 All individuals who are named in sex offender registration forms or files prepared,
5 owned, used or retained by the Washington Association of Sheriffs and Police Chiefs who have
6 names that begin with the letters “A” or “B”, who are classified at risk level I, and who are in
7 compliance with the conditions of registration.

8 4.2 Exclusions from Class: Excluded from the Class are Defendants’ legal
9 representatives, assignees, and successors. Also excluded are the judge to whom this case is
10 assigned and any member of the judge’s immediate family.

11 4.3 Numerosity: Plaintiffs believe there are hundreds, if not thousands, of members
12 in the Class and that these members are geographically dispersed throughout the State of
13 Washington and unable or reluctant to sue individually. The members of the class are so
14 numerous that joinder of all members is impracticable. Moreover, the disposition of the claims
15 of the Class in a single action will provide substantial benefits to all parties and the Court.

16 4.4 Commonality: There are numerous questions of law and fact common to
17 Plaintiffs and members of the Class. These questions include, but are not limited to, the
18 following:

- 19 A. Whether RCW 4.24.550 is an “other statute” exempting records related to
20 level I offenders from the PRA under RCW 42.56.070;
- 21 B. Whether the records of Class Members can be released in response to a request
22 under the Public Records Act, absent compliance with RCW 4.24.550;
- 23 C. Whether RCW 4.24.550 requires WASPC to determine that information
24 relating to level I sex and kidnapping offenders is “relevant and necessary”
25 and to consider “(a) The level of risk posed by the offender to the community;
26 (b) the locations where the offender resides, expects to reside, or is regularly

1 found; and (c) the needs of the affected community members for information
2 to enhance their individual and collective safety”;

3 D. Whether the above determination must be made individually as to each
4 individual offender;

5 E. Whether “blanket” or categorical disclosure of level I offender records
6 violates RCW 4.24.550;

7 F. Whether “blanket” disclosure of level I sex offender forms or files in the
8 WASPC database, under the PRA, will result in immediate and irreparable
9 harm to any person;

10 G. Whether “blanket” disclosure of all level I sex offender records, in response to
11 a request under the PRA, is in the public interest; and

12 H. Whether the Court should issue a temporary or permanent order enjoining
13 release by WASPC of records related to members of the Class.

14 4.5 Typicality: Plaintiffs’ claims are typical of the claims of the Class. Plaintiffs’
15 claims, like the claims of the members of the Class, arise out of the same conduct by
16 Defendants and are based on the same legal and remedial theories.

17 4.6 Adequacy: Plaintiffs will fairly and adequately protect the interests of the
18 Class. Plaintiffs have retained competent and capable attorneys who have significant
19 experience with complex class action litigation. Counsel has already filed a class action
20 seeking to represent a class of level I sex offenders and to enjoin production by the Washington
21 State Patrol (“WSP”) of its entire sex and kidnapping offender registration database, No. 13-2-
22 41107-5. Plaintiffs and their counsel are committed to prosecuting this action vigorously on
23 behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor their
24 counsel have interests that are contrary to or that conflict with those of proposed Class.

25 4.7 Appropriateness of Injunctive and Declaratory Relief: Defendant has acted and
26 will act on grounds generally applicable to the Class, thereby making final injunctive and

1 corresponding declaratory relief appropriate with respect to the Class as a whole. Prosecution
2 of separate actions by individual members of the Class would create the risk of inconsistent or
3 varying adjudications with respect to individual members of the Class that would establish
4 incompatible standards of conduct for Defendants.

5 **V. FIRST CLAIM FOR RELIEF**

6 **(Action to Enjoin Release of Records Exempt or Prohibited by Any Other Statute, 7 RCW 42.56.540)**

8 5.1 Plaintiffs repeat and reallege paragraphs 1.1 through 4.7 as if fully set forth
9 herein.

10 5.2 Plaintiffs request entry of a permanent injunction enjoining WASPC from
11 disclosing level I sex offender information, except permitted by RCW 4.24.550.

12 5.3 If WASPC makes a categorical disclosure of all level I sex offender information
13 under the PRA, Plaintiffs will suffer immediate and irreparable harm. Disclosure of this
14 information would not be in the public interest, would not comport with the statutory
15 requirements for disclosure provided in RCW 4.24.550, and would substantially and irreparably
16 damage Plaintiffs as set forth in RCW 42.56.540. Final injunctive relief is necessary to protect
17 Plaintiffs and members of the Class from the release of exempt and private information.

18 **VI. SECOND CLAIM FOR RELIEF**

19 **(Declaratory Judgment)**

20 6.1 Plaintiffs repeat and reallege paragraphs 1.1 through 5.3 as if fully set forth
21 herein.

22 6.2 Notwithstanding WASPC's intent to make a release under the PRA of all files
23 related to sex offenders with last names beginning in A or B , Plaintiffs dispute that level I sex
24 offender registration records must be disclosed under the PRA, and contend that they are
25 exempt records governed by the comprehensive disclosure scheme set forth at RCW 4.24.550.
26 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 6.3 Actual and justifiable controversies exists between Plaintiffs and Defendant as
2 to 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 as counsel for the certified class;
- 10 D. For a permanent injunction enjoining WASPC from disclosing any and all
11 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 and
17 G. For such other and further relief as the Court deems just and equitable.
- 18

19 DATED this 24th day of February, 2014.

20
21 **AMERICAN CIVIL LIBERTIES UNION
22 OF WASHINGTON FOUNDATION**

23 /s/ Vanessa T. Hernandez

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