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

PRISON LEGAL NEWS, INC., a Washington
non-profit corporation,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF
CORRECTIONS,

Defendant.

No.

COMPLAINT FOR DISCLOSURE OF
PUBLIC RECORDS

I. PARTIES

1. **Plaintiff.** Plaintiff, The Prison Legal News ("PLN") is a Washington non-profit corporation, qualified to do business in the State of Washington, with its main office in Seattle, Washington. PLN is an independent monthly publication created by and for prisoners and their advocates. Founded in 1990, PLN provides news and analysis of judicial rulings that affect correctional institutions. PLN has approximately 3,200 subscribers, comprised of prisoners, investigative journalists, academics, lawyers, judges and lay members of the public, and the newspaper reaches all 50 states and 23 countries worldwide.

2. **Defendants.** Defendant Washington State Department of Corrections ("DOC") is a public agency of the state of Washington. McNeil Island Corrections Center ("MICC") is an institution operated by DOC and located in the town of Steilacoom, in Pierce County, Washington.

II. FIRST CAUSE OF ACTION

3. **Request for Public Records.** On or about April 16, 2000, Paul Wright, reporter and editor for PLN, prepared and sent a written request to Alice Payne, Superintendent of MICC,

1 requesting documents "pertaining to the death of former MICC employee Bruce Barrett"
2 including "his cause and location of death, any investigation into such and any other materials
3 pertaining to his death and potential malfeasance while employed by the Department of
4 Corrections." Mr. Wright had learned of Barrett from an article published in The News Tribune,
5 a daily newspaper in Tacoma, Washington. The article stated that Barrett, who was a physician's
6 assistant at MICC, died in March 1999 of an accidental narcotics overdose caused by drugs
7 Barrett had stolen from MICC. The article also said MICC knew of Barrett's drug problems
8 when it hired him and that Barrett had been investigated before. A true and correct copy of the
9 October 28, 1999, article is attached hereto as Exhibit A. Mr. Wright's PDA request additionally
10 sought copies of "any safety inspection(s) of MICC conducted by any state or federal agencies
11 from January 1998 to the present. This includes physical, seismic (earthquake), fire, water,
12 ventilation, asbestos, sewage and similar safety issues." A true and correct copy of Mr. Wright's
13 request is attached hereto as Exhibit B.

14 4. **Requested Documents are Public Records.** RCW 42.17.020(36) defines
15 "public record" to include:

16 [A]ny writing containing information relating to the conduct of
17 government or the performance of any governmental or proprietary
18 function prepared, owned, used or retained by any state or local
19 agency regardless of physical form or characteristics.

19 The records requested are records relating to the death and misconduct of a government
20 employee that are believed to have reflected on his ability to perform his duties, as well as
21 records regarding the safety of a state prison—clearly records relating to the conduct of
22 government and performance of a governmental or proprietary function. The records are further
23 owned, used, and retained by the DOC, a state agency. The documents in question are therefore
24 public records. Under RCW 42.17.260, they must be made available for inspection and copying.

25 RCW 42.17.260 provides:
26

1 (1) Each agency, in accordance with published rules, shall make
2 available for public inspection and copying, all public records
3 unless the record falls within [a specific exemption] . . . To the
4 extent required to prevent an unreasonable invasion of personal
5 privacy interests protected by RCW 42.17.310 and 42.17.355, an
6 agency shall delete identifying details in a manner consistent with
7 RCW 42.17.310 and 42.17.315 when it makes available or
8 publishes any public record; however, in each case, the
9 justification for the deletion shall be explained fully in writing.

6 **5. Failure to Respond Promptly.** PLN was entitled to promptness and the
7 agency's fullest assistance and most timely possible action on PLN's request. RCW 42.17.290,
8 .320. The DOC was required to respond to PLN's request no later than five (5) business days
9 following the request by either denying or producing the record. RCW 42.17.320. DOC did not
10 provide an initial response until May 8, 2000 – sixteen (16) business days after the request – in
11 violation of the PDA. Moreover, DOC did not provide any records or explain why they were
12 being withheld. Instead, Administrative Assistant Corrina McElfish provided a one-paragraph
13 letter stating, without explanation, that DOC would give itself an additional thirty (30) business
14 days to respond. Instead of a response, DOC initiated a long and tortured exchange of
15 correspondence that still – more than seven months after the request – has not resulted in the
16 disclosure of records. A true and correct copy of Ms. McElfish's letter is attached hereto as
17 Exhibit C.

18 (a) Because Mr. Wright had not received a timely response from DOC, he wrote to
19 DOC Public Disclosure Officer Kay Wilson-Kirby on May 7, 2000, to appeal DOC's inaction.
20 On May 18, 2000, Ms. Wilson-Kirby claimed that although Mr. Wright had submitted a proper
21 PDA request, DOC allegedly misrouted the PDA request, and Ms. McElfish did not receive the
22 document until May 1. DOC therefore refused to consider Mr. Wright's appeal until
23 Ms. McElfish provided a response. True and correct copies of Mr. Wright's letter and
24 Ms. Wilson-Kirby's response are attached hereto as Exhibits D and E.

25 (b) On June 9, 2000, Ms. McElfish wrote to Mr. Wright but failed to provide the
26 response required by the PDA. Instead of releasing documents or citing applicable exemptions,

1 Ms. McElfish announced that "I am going to discontinue researching your request."
2 Ms. McElfish acknowledged she had "yet to determine to what extent the documents are
3 disclosable," but she did not describe plans to do so as required by the PDA. Ms. McElfish
4 decided she did not need to comply with the PDA because Mr. Wright's prison account did not
5 contain enough funds to cover copies of all the potential documents. Ms. McElfish did not
6 provide Mr. Wright the option of inspecting or personally copying the documents as required by
7 the PDA. She did not consider that PLN might provide funding other than Mr. Wright's prison
8 account. She did not provide a description of the documents she had found or explain how many
9 applied to the two requests made by Mr. Wright. Ms. McElfish made the unilateral decision not
10 to complete the PDA request based on her own view that the request was too voluminous and
11 expensive to complete – an excuse which is not covered by any exemption in the PDA. A true
12 and correct copy of the letter from Ms. McElfish is attached hereto as Exhibit F.

13 (c) Mr. Wright continued efforts to review the documents. In a letter to
14 Ms. McElfish dated June 14, 2000, Mr. Wright explained the deficiencies of Ms. McElfish's
15 previous response. Mr. Wright requested that Ms. McElfish identify which records related to
16 Bruce Barrett, because PLN wanted to purchase those documents. As for safety inspection
17 documents, Mr. Wright explained that "since the documents are voluminous and probably not all
18 of which I am interested in, I would like to examine the records personally and . . . then purchase
19 copies of those records which will further my needs." Mr. Wright alerted Ms. McElfish to the
20 PDA requirement that DOC allow inspection without fee and to segregate and disclose non-
21 exempt documents. Finally, Mr. Wright explained that PLN possessed funds for copies and that
22 his personal financial status was not a relevant factor under the PDA. A true and correct copy of
23 the letter from Mr. Wright is attached hereto as Exhibit G.

24 (d) Mr. Wright received no further response from Ms. McElfish. He followed up
25 with another letter on June 20, 2000, seeking a price quote for documents related to the death of
26

1 Bruce Barrett and an appointment to review safety inspection documents. A true and correct
2 copy of the letter from Mr. Wright is attached hereto as Exhibit H.

3 (e) Because DOC still had not disclosed documents by July 30, 2000 – more than
4 three months after the initial request – Mr. Wright appealed the delay to Ms. Wilson-Kirby again.
5 Mr. Wright described his request again, explained how DOC had failed to respond, and
6 requested clarification about whether DOC planned to respond at all to his request for documents
7 or whether he could appeal the inaction. A true and correct copy of the letter from Mr. Wright is
8 attached as Exhibit I.

9 (f) In a letter dated August 14, 2000, Ms. Wilson-Kirby responded that DOC “is
10 currently in the process of reviewing the information that you have requested.” DOC said the
11 stalling did not meet the requirements of a final agency action, so Mr. Wright could not appeal.
12 Instead, “Ms. McElfish has not denied your requests but is in the process of reviewing all
13 requested information.” DOC did not provide any estimate of when it finally would disclose
14 documents or even cite an exemption under the PDA justifying nondisclosure. A true and
15 correct copy of the letter from Ms. Wilson-Kirby is attached as Exhibit J.

16 (g) Four months after the PDA request, on August 17, 2000, DOC provided a
17 description of responsive documents and cited PDA exemptions for the first time. A letter from
18 Ms. McElfish stated that DOC had identified four documents regarding Bruce Barrett. Yet DOC
19 agreed only to release one documents, the Certificate of Death, which DOC described as “public
20 information.” DOC refused to release any of the Critical Incident Fact Finding Review or MICC
21 investigation report, citing RCW 42.17.310(1)(b) and (d). DOC provided *no* explanation of how
22 or why those PDA exemptions applied to the documents or why DOC did not segregate and
23 release disclosable portions of those documents. DOC also withheld the King County Medical
24 Examiner’s Autopsy Report according to RCW 68.50.105. Moreover, Ms. McElfish did not
25 state whether the four records were the *only* records DOC had regarding Barrett’s malfeasance.
26 The News Tribune’s article said Barrett had faced investigations before, but Ms. McElfish did

1 not ever mention prior malfeasance. Also, DOC did not cite any exemptions preventing
2 disclosure of any safety inspection documents. It provided a list of documents broken down by
3 type of inspection but, rather than making the documents promptly available for inspection as
4 required by the PDA, DOC told Mr. Wright to "review the list below and indicate which
5 documents you want to review first and rank those remaining by order of importance." A true
6 and correct copy of the letter from Ms. McElfish is attached hereto as Exhibit K.

7 (h) Mr. Wright promptly identified the safety records he required and informed DOC
8 in a letter to Ms. McElfish dated August 22, 2000. He requested inspection of "all documents
9 except those pertaining to: fire drills and fire extinguisher inspections. Those two categories of
10 documents constitute the bulk of documents cited in your response." Mr. Wright stated that he
11 would determine copying needs after the inspection and requested that MICC "schedule the
12 review promptly." Finally, Mr. Wright questioned whether MICC was claiming that a blanket
13 exemption prevented even partial disclosure of documents regarding Bruce Barrett, since DOC
14 had not clarified how exemptions applied to those documents but also had not indicated that it
15 would segregate and release disclosable material. A true and correct copy of the letter from
16 Mr. Wright is attached hereto as Exhibit L.

17 (i) Mr. Wright received no response to his letter. Counsel for PLN wrote to
18 Ms. McElfish on September 1, 2000, to follow up Mr. Wright's concerns. Counsel explained
19 that deceased employees did not have a protected privacy interest covered by RCW
20 42.17.310(1)(b) or (1)(d). Moreover, counsel noted that DOC had not segregated disclosable
21 material or explained how the exemptions applied to the documents. PLN's counsel also urged
22 MICC to schedule review of the safety documents immediately, as DOC had not claimed any
23 exemptions prevented disclosure of those documents. A true and correct copy of the letter from
24 Shelley Hall is attached hereto as Exhibit M.

25 (j) On September 15, 2000, DOC released the death certificate for Bruce Barrett.
26 However, it heavily redacted the document, even though DOC originally had said the document

1 was public and had not claimed that any PDA exemptions applied. Five months after the
2 request, DOC now claimed RCW 42.17.310(1)(b) required redaction of Mr. Barrett's parents'
3 names, although they were not employees of DOC. Second, DOC redacted the name of the
4 person who identified Barrett's body under exemption RCW 42.17.310(1)(e), although DOC
5 provided no explanation of how anyone's life or property would be threatened by disclosure or
6 how identifying a body is related to witnessing the commission of a crime. Third, DOC redacted
7 Mr. Barrett's social security number, date of birth, and veteran status. DOC again claimed RCW
8 42.17.310(1)(b) applied and again provided no support for this claim. Fourth, DOC redacted
9 Mr. Barrett's residential address under RCW 42.17.310(1)(b) and (u) with no explanation.
10 Finally, DOC redacted the cause of death "in accordance with RCW 70.02." DOC did not
11 explain what portion of RCW 70.02 applied or how it applied. The one paragraph letter provided
12 no details justifying any of the redactions. A true and correct copy of the letter from
13 Ms. McElfish is attached hereto as Exhibit N.

14 (k) The September 15, 2000, letter failed to mention the safety inspections requested
15 by Mr. Wright. To this date, DOC has refused to schedule inspection of the records although it
16 makes no claim that exemptions prevent inspection.

17 (l) Despite DOC's refusal to disclose basic information regarding Mr. Barrett's
18 death, another agency has provided the same details without claim of exemptions. The King
19 County Medical Examiner's Office responded to a separate PLN request by providing a copy of
20 its investigative report. The Medical Examiner did not redact a single item, including parents'
21 names, name of the person who identified the body, social security number, date of birth,
22 military status, and residential address. A true and correct copy of the document released by the
23 King County Medical Examiner is attached hereto as Exhibit O.

24 (m) On October 11, 2000, Ms. McElfish finally responded to the letter from
25 Mr. Wright's attorney. She stated that the safety documents Mr. Wright had requested were
26 "located in multiple offices throughout the institution. After I have all the documents in hand

1 and have reviewed each document, I will schedule Inmate Wright for an appointment to inspect
2 them.” Ms. McElfish did not explain why the DOC waited seven months before even beginning
3 to gather the documents Mr. Wright had requested. She also failed to respond to the attorney’s
4 request for an explanation of why DOC was withholding documents regarding Bruce Barrett and
5 his drug problems. Ms. McElfish only cited the statutory provisions again without describing
6 why DOC thought they might apply. A true and correct copy of the letter from Ms. McElfish is
7 attached hereto as Exhibit P.

8 (n) On November 3, 2000, Mr. Wright sent a letter to Ms. Wilson-Kirby again
9 appealing Ms. McElfish’s inaction and her refusal to disclose Bruce Barrett documents.
10 Mr. Wright has not received a response. A true and correct copy of the letter from Mr. Wright is
11 attached hereto as Exhibit Q.

12 **6. Refusal to Make Public Records Available.** The DOC has failed to disclose
13 public records responsive to PLN’s request. After seven (7) months of delay, DOC still refuses
14 to allow inspection of safety documents that it does not claim are exempt. The PDA requires a
15 response in five business days, which DOC failed to provide. When DOC did respond, it
16 unilaterally decided documents were too voluminous to produce. Even after DOC located
17 documents, it simply failed to respond to requests to disclose the documents. In addition, DOC
18 has withheld documents regarding Bruce Barrett in their entirety without explaining why
19 exemptions allegedly apply to the entire document. Moreover, DOC has failed to confirm
20 whether the cited documents are the only ones DOC has regarding Barrett’s malfeasance.

21 **7. Unlawful Redaction and Failure to Properly Segregate.** DOC finally
22 acknowledged some responsive documents regarding Bruce Barrett’s death exist, but it is
23 refusing to disclose most of those documents without explaining how the claimed exemptions
24 allegedly apply. DOC only has stated – without further explanation – that RCW 42.17.310(1)(b)
25 and (d) prevent disclosure of the fact-finding review and investigative report. For the death
26 certificate that DOC has released, DOC has redacted the document heavily but has not explained

1 or established why the redacted information is exempt under RCW 42.17.310(1)(b), (d), (e), (u)
2 or RCW 70.02. Thus, DOC has violated RCW 42.17.310(2), which imposes a duty on the part
3 of the agency to segregate and to release all portions of a record that are not exempt. In addition,
4 it has violated RCW 42.17.310(4) that imposes a duty to explain why the exemptions apply.

5 (a) Employee Privacy Exemption Does Not Apply. RCW 42.17.310(1)(b) exempts
6 “personal information in files maintained for employees . . . to the extent that disclosure would
7 violate their right to privacy.” A review and an investigative report prepared after an employee’s
8 death are not “maintained for” that employee. Moreover, information is only “personal” if it is
9 highly offensive to a reasonable person and of no legitimate concern to the public. RCW
10 42.17.255. The information is not “personal” as defined by case law. Finally, a deceased person
11 does not retain privacy rights to such information. The law does not allow blanket exemptions to
12 prevent disclosure of entire documents under this statutory provision. DOC also applies (1)(b) to
13 details from Barrett’s death certificate. The exemption does not apply for the same reasons.
14 Exemption (1)(b) also cannot apply to information regarding Barrett’s parents, because they are
15 not employees and within the scope of the exemption’s language, and it is not highly offensive to
16 reveal that they are related to Barrett.

17 (b) Privacy Portion of Investigative Records Exemption Does Not Apply. DOC seeks
18 to withhold the investigative report and fact-finding review based on privacy in exemption
19 (1)(d). Exemption (1)(d) fails to prevent disclosure for the same reason as (1)(b). In addition,
20 reports regarding investigations of misconduct by a public employee are not private. Even if
21 they contained private information, DOC is required to segregate and disclose non-exempt
22 materials.

23 (c) Victim/Complaint Privacy Exemption Does Not Apply. The DOC cannot show
24 that RCW 42.17.310(1)(e), which exempts only that information “revealing the identity of
25 persons who are witnesses to or victims of crime or who file complaints . . . if disclosure would
26 endanger any person’s life, physical safety, or property,” applies to this request. The cited

1 redaction is the name of the person who identified Barrett's body. This person did not witness or
2 become victim to a crime or file a complaint with a law enforcement agency. The exemption is
3 flatly inapplicable.

4 (d) Residential Address Exemption Does Not Apply. RCW 42.17.310(u) exempts
5 "the residential addresses and residential telephone numbers of employees or volunteers of a
6 public agency which are held by the agency in personnel records, employment or volunteer
7 rosters, or mailing lists of employees or volunteers." A death certificate from the Health
8 Department is not a personnel record or roster, nor is it a mailing list. On a more basic level,
9 Barrett is no longer an employee. The exemption does not apply to his address.

10 (e) RCW 70.02 Does Not Apply. RCW 70.02 is an entire chapter in the RCW. As
11 such, contains several provisions regarding the confidentiality of medical records held by health
12 care providers. DOC does not specify which of the many provisions of RCW 70.02 supposedly
13 exempts the cause of Barrett's death from disclosure. DOC was not Barrett's health care
14 provider, nor does the death certificate relate to treatment. However, since the DOC is citing the
15 entire chapter of the Washington statutes and no specific provision, it is impossible to know
16 whether DOC applied this exemption properly, because it provided *no details* regarding the
17 information redacted, the specific exemption, and the exemption's possible application to that
18 material. RCW 42.17.310(4) requires the state to provide such details.

19 III. JUDICIAL REVIEW AND BASIS FOR RELIEF

20 8. **Right to Judicial Review.** RCW 17.42.340 provides that any agency action
21 denying access to public records for inspection and copying is subject to judicial review by a
22 show cause motion:

23 (1) Upon the motion of any person having been denied an
24 opportunity to inspect or copy a public record by an agency, the
25 superior court in the county in which a record is maintained may
26 require the responsible agency to show cause why it has refused to
allow inspection or copying of a specific public record or class of
records. The burden of proof shall be on the agency to establish
that refusal to permit public inspection and copying is in

1 accordance with a statute that exempts or prohibits disclosure in
2 whole or in part of the specific information or records.

3 RCW 42.17.340(1).

4 RCW 42.17.340 also states that the court shall not defer to any determination made by
5 the agency, but shall review the matter de novo. In addition, the court may examine any record
6 in camera and the court must take into account the public policy in favor of disclosure.

7 (3). . . Courts shall take into account the policy of this chapter that
8 free and open examination of public records is in the public
9 interest, even though such examination may cause inconvenience
10 or embarrassment to public officials or others. Courts may
11 examine any record in camera in any proceeding brought under
12 this section.

13 RCW 42.17.340(3).

14 **9. Right to Attorney's Fees and Costs.** RCW 42.17.340(4) provides that any
15 person who prevails against an agency in any action seeking the right to inspect or copy any
16 public record *shall* be awarded all costs, including reasonable attorneys' fees. PLN is entitled to
17 recover such reasonable costs and attorneys' fees incurred in bringing this cause of action.

18 **10. Statutory Penalty.** Finally, RCW 42.17.340(4) provides that the court must
19 award the person who prevails against an agency an amount no less than \$5.00 and not to exceed
20 \$100.00 for each day that he was denied the right to inspect or copy a public record. No showing
21 of bad faith is required, but bad faith is a factor to consider when determining the size of the
22 award within the \$5.00 to \$100.00 per record per day range. The DOC has exercised bad faith in
23 refusing to comply with the PDA in its dilatory actions in delaying responses to PLN's requests.
24 The fact that another agency released information identical to that which DOC claims is exempt
25 shows DOC's bad faith. To deter future willful violations of the PDA by this agency, the Court
26 should award PLN the maximum statutory penalty of \$100 per record for each day PLN has been
denied the right to inspect or copy responsive and non-exempt records.

IV. PRAYER FOR RELIEF

WHEREFORE, PLN prays for judgment against the DOC as follows:

- 1 1. Declaration that that the DOC failed to respond promptly to PLN's request for
2 records dated April 16, 2000, thus violating RCW 42.17.320;
- 3 2. Declaration that the DOC violated RCW 42.17.260 by failing to produce all
4 responsive and non-exempt records.
- 5 3. Declaration that the DOC violated RCW 42.17.260 by unlawfully redacting
6 responsive and non-exempt material from the records it produced.
- 7 4. Declaration that the DOC violated RCW 42.17.320 by refusing to segregate
8 exempt material from disclosable material and by failing to release the disclosable material.
- 9 5. Order that all responsive records be made immediately available to PLN for
10 inspection and copying;
- 11 6. Order that the records produced in redacted form must be made immediately
12 available to PLN for inspection and copying in unredacted form;
- 13 7. An award to PLN of all costs, including reasonable attorneys' fees, incurred in
14 connection with its action as provided in RCW 42.17.340(4);
- 15 8. An award to PLN of \$100.00 per day per document for each day that PLN has
16 been denied the right to inspect or copy the requested records since April 21, 2000;
- 17 9. Any other relief the Court deems just and proper for this cause of action.

18
19 DATED this 17 day of November, 2000.

20 Davis Wright Tremaine LLP
21 Attorneys for Plaintiff Prison Legal News,
22 Inc., d/b/a Prison Legal News

23 By Shelley Hall

24 Shelley Hall
25 WSBA #28586