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

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

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,

Defendant.

COMPLAINT FOR DISCLOSURE OF PUBLIC RECORDS

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 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 with its main office in Olympia, Washington. Airway Heights Corrections Center and the Washington State Reformatory are correctional institutions operated by the DOC.
FIRST CAUSE OF ACTION

3. First Request for Public Records. In the summer of 1998, the Spokane Spokesman-Review published an article alleging that since the 1993 opening of the Airway Heights Corrections Center, 18 employees had quit or been fired for being "compromised" or having an improper relationship with an inmate, and that seven of those employees had left Airway Heights since December 1997. On or about October 6, 1998, Paul Wright, reporter and editor for PLN, prepared and sent a written request to the superintendent of Airway Heights Corrections Center ("AHCC"), requesting "a copy of all memos, reports, Employee Conduct Reports or similar documents, concerning the following incidents: Any AHCC staff members that have been disciplined, investigated, criminally charged or have resigned based on allegations of: introducing contraband to the institution; engaging in inappropriate relationships with prisoners; stealing or misappropriating prisoner mail and/or property; and lastly, for unlawfully extending prisoners release dates." In the letter, Wright specifically stated that the request was pursuant to RCW 42.17, the Public Disclosure Act.

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

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

The records requested are records relating to complaints and investigations of improper conduct by public officials and government agents in the course of performing their duties—clearly records relating to the conduct of government and performance of a governmental or proprietary function. The records are further prepared, owned, used, and retained by the DOC, a state agency. The documents in question are therefore public records to be made available for inspection and copying under RCW 42.17.260, which provides:
(1) Each agency, in accordance with published rules, shall make available for public inspection and copying, all public records unless the record falls within [a specific exemption] . . . To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW 42.17.310 and 42.17.355, an agency shall delete identifying details in a manner consistent with RCW 42.17.310 and 42.17.315 when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

5. **Failure to Respond Promptly.** PLN was entitled to promptness and the agency’s fullest assistance and most timely possible action on PLN’s request. RCW 42.17.290, .320. The DOC was required to respond to PLN’s request no later than 5 business days following the request by either denying or producing the record. RCW 42.17.320. More than 5 days—indeed, more than three weeks—passed before the agency even responded to Mr. Wright, at which point the DOC did not provide any records or explain why they were being withheld, but instead initiated a long and tortured exchange of correspondence that delayed the disclosure of records for months.

(a) The Administrative Program Manager and Public Disclosure Officer for AHCC, Cly Evans, replied to Mr. Wright on October 28, 1998, acknowledging that the DOC had received the public disclosure request as of October 12, 1998. Mr. Evans refused to indicate what, if any, documents were responsive to Mr. Wright’s request, or the specific statutory exemptions (if any) being claimed. Instead, Mr. Evans characterized the request as so “vague, general, and sweeping” as to be “overly burdensome.” No records were provided.

(b) In Mr. Wright’s response to Mr. Evans on November 3, 1998, Mr. Wright reiterated his request that the DOC inform him of what documents or materials were responsive to his request and explain what exemption the agency claimed applied. Mr. Wright reiterated that his request pertained to specified acts of employee misconduct, and that this information would surely be available in some centralized record, filing, or database. Mr. Wright even suggested several starting places available to Mr. Evans, such as quarterly reports that each institution
compiles pursuant to Department of Personnel Policy 400.300, the Intelligence and Investigation Program, which mandates a listing of staff resignations and the reasons therefor.

(c) On December 15, 1998, more than two months after PLN's request, Mr. Evans wrote to Mr. Wright, stating: "We are reviewing material that we feel falls within the parameters of your request. We are also consulting with an AAG to help us clearly identify what parts of the material are discloseable, and what parts are not discloseable." Mr. Evans concluded, "We expect to have further response to you by 1/15/99."

(d) On December 27, 1998, Mr. Wright wrote to the DOC Public Disclosure Coordinator, Steve Rawlins, informing him of Mr. Wright's correspondence with Mr. Evans and the failure of the agency to provide an adequate response to Mr. Wright's request, and asking Mr. Rawlins to confirm that Mr. Evans' non-response was the final agency action on that request.

(e) On January 6, 1999, Eldon Vail, an assistant deputy secretary of the DOC Office of Correctional Operations, responded to Mr. Wright's 12/27/98 letter by stating that his request "is being researched and processed," and urging him to "continue to work with the authorities at Airway Heights" to have the request processed.

(f) On January 18, 1999, Mr. Wright responded to the 1/6/99 letter from Mr. Vail, reiterating that he had yet to receive an adequate response to his initial PDA request of early October 1998.

(g) On January 22, 1999, Mr. Wright received a letter from Mr. Evans that indicated Airway Heights had identified cases responsive to the request, and that he expected to have the material ready by March 1, 1999. The letter also stated that the agency would be notifying the employees involved "to allow them their right to seek a protective order."

(h) On January 31, 1999, Mr. Wright responded to Mr. Evans' 1/22/99 letter reiterating that the DOC was grossly out of compliance with the PDA's requirement of promptness.
(i) On March 10, 1999, Mr. Evans wrote that he had compiled the documents requested by Mr. Wright, incorrectly referring to Mr. Wright’s PDA request as having been “dated January 31, 1999,” when in fact the initial PDA request was submitted nearly four months earlier. Yet Mr. Evans still did not enclose any responsive documents with this letter, instead stating that the documents were “being forwarded to the Attorney General’s Office for their review and approval.” The letter also stated that the employees in question were told of Mr. Wright’s request so that they could seek a protective order in court. No protective orders were subsequently sought.

(j) On March 25, 1999, Mr. Wright responded to Mr. Evans’ 3/10/99 letter, informing him that the DOC still had not identified which records were being disclosed or the bases, if any, for withholding any responsive documents.

(k) On April 12, 1999, Mr. Evans replied, attempting to defend the delay in the agency’s PDA response but still not providing the documents. The letter states that “[r]edaction has been done on all documents under authority of 42.17.310 1(b) (d) (e) and (u),” but does not specify what documents are being produced or any reason that those redactions are authorized by the statutes cited.

(l) On April 26, 1999, more than six months after Mr. Wright’s initial request, the DOC produced two records consisting of 72 heavily redacted pages, without explaining whether there were any other responsive documents that were being withheld as exempt from public disclosure, the statutory basis for any such withholding, or the statutory basis for the redactions. Mr. Evans had earlier admitted that he received PLN’s request on October 12, 1998; therefore, the DOC should have provided PLN with an adequate response or the records by October 17, 1998. The DOC has violated RCW 42.17.320 by delaying its response to PLN in excess of six months. The DOC has yet to provide remaining responsive documents believed to be in existence.
(m) On May 1, 1999, Mr. Wright informed the DOC that the redactions, and the failure of the DOC to disclose documents concerning other employees whom Mr. Wright had reason to believe left AHCC because of misconduct, were in violation of the PDA.

(n) On May 17, 1999, the DOC wrote to Mr. Wright, citing the exemptions being claimed in support of the agency's redaction of material in the two records that were disclosed three weeks earlier, but not providing any basis for applying the cited exemptions to the information at issue. For the next six weeks, Mr. Wright engaged in correspondence with the DOC in which the DOC refused to provide unredacted versions of the two records disclosed or to substantiate its withholding of other records.

(o) Even 15 months following Mr. Wright's initial request, the information sought by PLN continues to be of legitimate public concern. These issues of misconduct within a state correctional facility are of high importance to the readers of PLN, particularly given the scant coverage of these issues by daily newspapers.

6. **Refusal to Make Public Record Available or Provide Adequate Explanation for Withholding.** The DOC has failed to disclose all records responsive to PLN's request. PLN has reason to believe that from December 1997 to the time of PLN's request, at least 18 employees were terminated or resigned from Airway Heights Corrections Center because of being "compromised" or having inappropriate relationships with inmates. See June 17, 1998 Spokesman-Review article, attached as Exhibit A to Wright Decl. Since PLN's request was from 1995 to 1998, there should have been at least 18 and in all likelihood even more records responsive to Mr. Wright's request. Yet the DOC produced only two records and has not acknowledged the existence of any others, much less alleged a PDA exemption under which they were entitled to be withheld.

7. **Unlawful Redaction and Failure to Properly Segregate.** The DOC has not explained or established why the redacted information is exempt under RCW 42.17.310(1)(b) or
(d). The agency is not permitted to make dozens of redactions under a “blanket” exemption but must specify which statutory exemption applies to which redaction. The DOC has also violated RCW 42.17.310(2), which imposes a duty on the part of the agency to segregate, and to release all portions of a record that are not exempt.

(a). Exemption of RCW 42.17.310(1)(b) Does Not Apply. The DOC has not established that disclosure of the information it redacted would violate any employee’s right to privacy. Under the PDA, a person’s privacy is violated “only if 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 42.17.255. Not only did DOC redact the names of the terminated employees, but also it redacted names of investigating officers, witnesses, and even pronouns, making the documents largely unintelligible. Because the matters at issue are those in which misconduct was actually found, the DOC has no basis for withholding the names of the wrongdoers and investigating officers. Specific acts of misconduct of government employees are matters of legitimate public concern and the release of such information can never violate one’s right to privacy. Furthermore, some of the details redacted from the records are now a matter of public knowledge, because PLN could literally see through some of the DOC’s attempted redactions.

(b) Investigative Report Exemption Does Not Apply. RCW 42.17.310(1)(d) exempts from disclosure only information the nondisclosure of which is essential to effective law enforcement. The records in question concern closed investigations for which administrative, if not criminal, action has already been taken against the prison employees. Blanket redaction of certain categories, without any showing that the nondisclosure of specific information is truly essential to effective law enforcement, is not allowed by the PDA.

(c) Victim/Complaint Privacy Exemption Does Not Apply. The DOC cannot show that RCW 42.17.310(1)(e), which exempts only that information “revealing the identity of
persons who are witnesses to or victims of crime or who file complaints . . . if disclosure would endanger any person's life, physical safety, or property,” applies to this request. As such, the citation by Mr. Evans to this statute in his 4/12/99 letter is without merit.

(d) Residential Addresses and Residential Telephone Numbers Exemption Does Not Apply. PLN has not requested such information. As such, the citation by Mr. Evans to RCW 42.17.310(1)(u) in his 4/12/99 letter is not a basis for withholding documents or redacting the information that the DOC redacted.

SECOND CAUSE OF ACTION

8. Second Request for Public Records. As editor of PLN, Mr. Wright became aware in June 1999 of a telemarketing venture that, although owned and run by a private company, employed as many as 30 prisoners and operated at a state prison. This venture was being discontinued, and the reasons for its discontinuance were and are of legitimate concern to the public. On behalf of PLN, Mr. Wright made a PDA request by writing to the superintendent of the Washington State Reformatory (“WSR”) on June 27, 1999, seeking “all documents, memorandums, investigative reports, contracts and any other written material pertaining to Washington Marketing Group and their departure from WSR.” The request was forwarded to the DOC’s Correctional Industries division.

9. Requested Records Are Public Records. RCW 42.17.020(36) defines “public record” to include:

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

The records sought by PLN regarding the Washington Marketing Group unquestionably relate to the operation of the DOC in its contracting with private entities for the use of prisoner labor.
The records are further prepared, owned, used or retained by the DOC, a state agency, or by WSR, the institution within that agency. They are, therefore, public records.

10. **Failure to Respond Promptly.** The DOC was required to respond to PLN request no later than 5 business days by either denying or producing the record. RCW 42.17.320. The DOC received PLN’s request on June 29, 1999 and forwarded it to Howard Yarbrough of the Office of Correctional Operations, Correctional Industries. On August 2, 1999, more than a month after PLN’s request, the DOC sent Mr. Wright a bill for photocopying but did not identify which records were being produced or the exemptions, if any, for redacting any parts of those records. On September 17, 1999, the DOC finally produced responsive records, but redacted “the information for private citizens and businesses” without giving any further explanation. The DOC violated RCW 42.17.320 by delaying its response to PLN and by continuing to refuse to provide an adequate response.

11. **Unlawful Redaction and Failure to Properly Segregate.** On September 23, 1999, Mr. Wright responded to Mr. Yarbrough with a letter specifically requesting that the agency substantiate the reasons for its withholding of the redacted information. Mr. Wright also stated that he was not seeking the addresses of people or businesses that the DOC had redacted, but that the names of people and businesses in the documents should be disclosed. The DOC never responded. The DOC has never attempted to explain why disclosure of the redacted information would be “highly offensive to a reasonable person” and “not of legitimate concern to the public” so as to justify redaction. Nor has the DOC even cited RCW 42.17.310, let alone the specific exemption within 42.17.310(1) that it claims applies here. The DOC has thus unlawfully withheld the redacted information and, as a result, violated RCW 42.17.310(2), which imposes a duty on the part of the agency to segregate, and to release all portions of a record that are not exempt.
THIRD CAUSE OF ACTION

12. Fees Collected for Photocopying of Public Records. RCW 42.17.300 allows reasonable fees to be charged for inspection and copying of records, as "established and published by the agency." The DOC has promulgated a specific regulation which provides that the DOC's copying fee is 20 cents per page:

(2) The department shall collect a fee of twenty cents per page plus postage to reimburse itself for the cost of providing copies of public records.

WAC 137-08-110(2) (1999). Despite this provision, the DOC charged PLN a fee of 35 cents per page for the requests for public disclosure of records referenced above in the First and Second Causes of Action.

13. Refund Requested and Agency Delay. In early October 1999, Mr. Wright inquired about a refund. The Public Disclosure Officer responded by assuring Mr. Wright that the Department would reimburse him 15 cents per copy for requests made during the past three years. On January 9, 2000, Mr. Wright responded with the specific requests, number of copies, and amount overcharged during 1999, totaling $19.55. The DOC has failed to respond to this refund request. As such, the DOC is in violation of RCW 42.17.300 and WAC 137-08-110(2).

JUDICIAL REVIEW AND BASIS FOR RELIEF

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

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may 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 accordance with a statute that exempts or prohibits disclosure in whole or in part of the specific information or records.
RCW 42.17.340(1).

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

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

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

16. Statutory Penalty. Finally, RCW 42.17.340(4) provides that the court has discretion to award the person who prevails against an agency an amount not to exceed $100.00 for each day that he was denied the right to inspect or copy a public record. The DOC has exercised bad faith in refusing to comply with the PDA in its actions on PLN’s requests. To deter future willful violations of the PDA by this agency, the Court 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.

PRAYER FOR RELIEF

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

FIRST CAUSE OF ACTION

1. Declaration that the DOC failed to respond promptly to PLN’s Airway Heights request for records, thus violating RCW 42.17.320;

2. Declaration that the DOC violated RCW 42.17.260 by failing to produce all responsive and non-exempt records.
3. Declaration that the DOC violated RCW 42.17.260 by unlawfully redacting responsive and non-exempt material from the records it produced.

4. Order that all responsive records be made immediately available to PLN for inspection and copying;

5. Order that the records already produced must be made immediately available to PLN for inspection and copying in unredacted form;

6. An award to PLN of all costs, including reasonable attorneys' fees, incurred in connection with its action as provided in RCW 42.17.340(4);

7. An award to PLN of $100.00 per day per document for each day that PLN has been denied the right to inspect or copy the requested records since October 17, 1998;

8. Any other relief the Court deems just and proper for this cause of action;

SECOND CAUSE OF ACTION

9. Declaration that the DOC failed to respond promptly to PLN's Correctional Industries request for records, thus violating RCW 42.17.320;

10. Declaration that the DOC violated 42.17.260 by unlawfully redacting responsive and non-exempt material from the records it produced;

11. Order that the records produced must be made immediately available to PLN for inspection and copying in unredacted form;

12. An award to PLN of all costs, including reasonable attorneys' fees, incurred in connection with its action as provided in RCW 42.17.340(4);

13. An award to PLN of $100.00 per day per document for each day that PLN has been denied the right to inspect or copy the requested records since July 4, 1999;

14. Any other relief the Court deems just and proper for this cause of action;
THIRD CAUSE OF ACTION

15. Declaration that the DOC violated RCW 42.17.300 and WAC 137-08-110(2) by charging 35 cents per page for copying public records and failing to refund the difference;

16. Declaration that the DOC is estopped from refusing to reimburse PLN for amounts overcharged, based upon the letter from the agency's public disclosure officer promising such reimbursement;

17. Order requiring that the DOC reimburse PLN the amount of $19.55, based upon an overcharging of 15 cents per page for 129 copies.

18. An award to PLN of all costs, including reasonable attorneys' fees, incurred in connection with its action as provided in RCW 42.17.340(4);

19. Any other relief the Court deems just and proper for this cause of action.

DATED this 2nd day of March, 2000.

By

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