

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

JOHN DOE G, JOHN DOE I and JOHN DOE J,
as individuals and on behalf of others similarly
situated,

Plaintiffs,

v.

DEPARTMENT OF CORRECTIONS, STATE
OF WASHINGTON,

Defendant,

DONNA ZINK, a married woman,

Requestor.

No. 14-2-25433-4 SEA

~~[PROPOSED]~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

THIS MATTER came before the Court on Plaintiffs John Doe G's, John Doe I's and John Doe J's Motion for Preliminary Injunction. Plaintiffs made the Motion as individuals and on behalf of a proposed class of others similarly situated ("Plaintiffs").

Having considered Plaintiffs' Motion and all pleadings submitted in support of and in opposition to the Motion, the requirements of CR 65, as well as the arguments of counsel for the parties, the Court rules as follows:

I. FINDINGS OF FACT

1
2 1. On or about July 28, 2014, a member of the public, Donna Zink, submitted a
3 public records request to the Department of Corrections (DOC). Ms. Zink requested from DOC
4 copies of all "SSOSA evaluations, [Special Sex Offender Disposition Alternative] evaluations,
5 and victim impact statements related to those convicted of sex offenses held, maintained, in the
6 possession of, or owned by the Washington State Department of Corrections from January 1,
7 1990 to the present."

8
9 2. SSOSA evaluations are made by certified health care providers to determine an
10 offender's amenability to treatment and eligibility for a Special Sex Offender Sentencing
11 Alternative (SSOSA).

12 3. Ms. Zink's request includes SSOSA evaluations for Level I sex offenders the
13 who are in compliance with their registration or who have been relieved of the duty to register.

14 4. After a hearing in which DOC and Ms. Zink appeared, Plaintiffs were granted a
15 Temporary Restraining Order on September 17, 2014.

16
17 5. The Evaluations include detailed psychological, medical, and sexual information
18 related to hundreds of level I offenders. For example, certified treatment providers must include
19 in the Evaluations detailed information about Class members' mental and physical health,
20 familial histories, substance abuse and sexual histories. WAC 246-930-320. The certified health
21 care professionals who conduct the Evaluations also make a finding of amenability to treatment
22 and, if applicable, devise a proposed treatment plan. *Id.*

23
24 6. Plaintiffs John Doe G, John Doe I and John Doe J are level I offenders in
25 compliance with registration or relieved of the duty to register. They each received SSOSA
26 evaluations after 1990 and were supervised by DOC. Plaintiffs are named in the responsive

1 records. As Level I offenders, the Plaintiffs have not been determined to have a high risk of
2 reoffending

3 7. There is no evidence indicating any specific threat towards Ms. Zink.

4 8. DOC did not notify individuals named in the Evaluations about the public
5 records request or the impending release of the Evaluations. DOC has indicated that it will make
6 a blanket release of the Evaluations and will not conduct the individualized determinations
7 required for permissive disclosure of Level I sex offender records pursuant to the
8 comprehensive statutory scheme of RCW 4.24.550.
9

10 9. Plaintiffs submitted detailed declarations, from the individual Plaintiffs and third
11 parties, attesting to the harm caused by public disclosure of the SSOSA Evaluations. The Court
12 finds these declarations to be credible and compelling evidence of the potential irreparable harm
13 that will result from blanket or generalized disclosure of the Evaluations.
14

15 10. Plaintiffs submitted declarations from experts, including Brad Merryhew, Amy
16 Muth, and the Washington Association for the Treatment of Sexual Abusers. These declarations
17 attested to the harm from disclosure and the public interest in the maintaining confidentiality of
18 the SSOSA Evaluations. The Court finds these declarations to be credible and compelling
19 evidence of the potential harm that will result from blanket or generalized disclosure of the
20 Evaluations and of the public's interest in limited and relevant disclosure of such records.
21

22 11. The psychologists, social workers, and other professionals who provide treatment
23 to sexual offenders, and who by law are authorized to perform SSOSA evaluations, are licensed
24 health care practitioners. RCW 18.15; WAC 246-930-020, 030, 040 (outlining requirements for
25 sex offender treatment providers). SSOSA treatment is specialized mental health treatment.

26 11(a) In creating the SSOSA alternative the legislature
recognized that mental or behavioral health treatment
is appropriate for certain types of sexual offenders.

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION - 3

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SSOSA evaluations pertain and are
maintained as part of a treatment process.

1 12. The evidence submitted indicates that sex offenders who are identified to the
2 public through a blanket public disclosure face an increased risk of physical violence,
3 stigmatization, mental and emotional distress, and loss of economic opportunity. If Level I sex
4 offenders' SSOSA evaluations are released by DOC, they will find it significantly more difficult
5 to find employment and housing. Their families, sometimes including victims, face harassment
6 and criticism. Blanket or generalized release of the Evaluations of Class members would make it
7 more difficult for them to safely integrate into their communities. Generalized disclosure could
8 also deter individuals from seeking treatment or providing sensitive information necessary for
9 effective treatment. Disclosure would thus undermine the legislature's purpose in creating the
10 SSOSA, and jeopardize the success of those who receive SSOSAs.

12 II. CONCLUSIONS OF LAW

13 13. A party seeking a preliminary injunction under the Public Records Act must
14 prove that (1) the record specifically pertains to the party; (2) an exemption applies; (3)
15 disclosure would not be in the public interest and would substantially and irreparably harm that
16 party or a vital governmental function. RCW 42.56.540.

17 14. DOC is subject to the Public Records Act for the purpose of responding to
18 requests for public information concerning sex offender registration information. DOC is a
19 public agency as defined in the PRA.

20 15. Washington's PRA requires agencies to produce public records upon request
21 "unless the record falls within the specific exemptions of . . . [the PRA] or other statute which
22 exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). An
23 "other statute" need not explicitly reference the PRA in order to provide an exemption.
24
25
26

1 16. Plaintiffs have clear legal and equitable right to enjoin the release of exempt
2 records to the general public, as the disclosure would cause immediate and irreparable harm and
3 would not be in the public interest. Plaintiffs have shown a likelihood of prevailing on the merits
4 of their claims that:

5 a. Disclosure of the SSOSA evaluations is governed by RCW 71.05.445,
6 which makes them confidential except as provided by RCW 72.09.585, and that RCW
7 72.09.585 does not permit generalized disclosure in response to this request.

8 b. Disclosure of the SSOSA evaluations is governed by RCW 70.02, which
9 applies to health care records.

10 ~~c. RCW 4.24.550 is an "other statute" which exempts disclosure of Level I~~
11 ~~sex offender SSOSA Evaluations under the PRA. Release of information under the PRA~~
12 ~~pertaining to sex offenders is determined under the analysis set forth in RCW 4.24.550.~~
13

14 17. Plaintiffs have also shown a likelihood of prevailing on their claims that
15 generalized or blanket disclosure of the Evaluations, without reference to the exemptions at
16 RCW 71.05.445, RCW 70.02, ⁰⁵ ~~or RCW 4.24.550~~, would substantially and irreparably harm the
17 proposed Class. Sex offenders who are identified by public disclosures face an increased risk of
18 mental, emotional, and economic harm associated with the stigma of the disclosure, and the
19 potential physical harm resulting from homelessness and/or attacks on their person that may
20 follow public release of this information.
21

22 18. Plaintiffs have shown a likelihood of prevailing on their claim that a generalized
23 or blanket disclosure of all Level I sex offender SSOSA Evaluations would also not be in the
24 public interest because it would undermine the public policy of confidentiality in mental health
25 records, fail to comport with the balancing test established by Washington's legislature for the
26

1 disclosure of sex offender registration information, and because it dilutes the value of the
2 classification system.

3 19. Plaintiffs have a clear legal and equitable right to have DOC recognize the
4 exemption contained in the statute.

5 20. Plaintiffs have a well-grounded fear of immediate invasion of their rights.

6 21. Plaintiffs' ability to seek injunctive relief would be meaningless if the records
7 were released prior to a determination on the merits.

8 22. Plaintiffs have shown that DOC's actions would result in substantial injury.

9 The Court therefore ORDERS that Plaintiffs' Motion for Preliminary Injunction is
10 GRANTED; DOC shall not disclose or disseminate any SSOSA Evaluations pertaining to Level
11 I sex offenders pursuant to the request by Ms. Donna Zink.

12 DONE IN OPEN COURT this 3 day of October, 2014.

13
14
15 By 

16 THE HONORABLE BARBARA LINDE

17 Presented by:

18 KELLER ROHRBACK L.L.P.

19
20 By /s/Harry Williams IV

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THE HONORABLE BARBARA LINDE
Noted for Hearing: October 3, 2014 at 10:00 am

FILED
KING COUNTY, WASHINGTON

OCT 03 2014

SUPERIOR COURT CLERK
BY April Ramirez-Chavez
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JOHN DOE G, JOHN DOE H, and JOHN DOE
J as individuals and on behalf of others similarly
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DEPARTMENT OF CORRECTIONS,


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DONNA ZINK, a married woman,

Requestor.

No. 14-2-25433-4


[PROPOSED] ORDER GRANTING
MOTION FOR PERMISSION TO
PROCEED IN PSEUDONYM

This Motion having come before the undersigned court on Plaintiffs' Motion for
Permission to Proceed in Pseudonym, and the Court having reviewed the pleadings and deeming
itself fully advised in the premises, hereby FINDS:

[PROPOSED] Order Granting
Motion for Permission
to Proceed in Pseudonym -- 1

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- 1) Typically, civil plaintiffs must file suit in their names. Nevertheless, Plaintiffs may be allowed to proceed under a pseudonym if the need for anonymity outweighs the public interest in access to their identities.
- 2) Plaintiffs seek to exercise their right, under the Public Records Act ("PRA"), to enjoin release of information pertaining to them which they contend is exempt from the PRA. Forcing Plaintiffs to disclose their identities to bring this action would eviscerate their ability to seek relief.
- 3) Plaintiffs have demonstrated a significant risk of physical, mental, economic, and emotional harm if their identities are disclosed. Plaintiffs also allege that the records at issue contain sensitive mental health information, and that their privacy would be violated by disclosure of this information to the general public.
- 4) The public's right to access the proceedings will not be compromised apart from its ability to ascertain the names of individual Plaintiffs. The names of individual Plaintiffs have little bearing on the public's interest in the dispute or its resolution.
- 5) Defendant will not be prejudiced if Plaintiffs proceed in pseudonym.
- 6) Plaintiffs' interest in proceeding anonymously outweighs the public interest in knowing their names.

There are no reasonably viable alternatives to address these concerns.
The Court therefore GRANTS Plaintiffs' Motion for Permission to Proceed in Pseudonym and ORDERS that Plaintiffs be allowed to proceed in pseudonym throughout the pendency of this action, *or until further order of the Court.* (3)

DATED this 3rd day of October, 2014.

Barbara Linde

The Honorable Barbara Linde

Presented by:

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s/ Harry Williams IV

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Donna Zink, pro-se requestor

[PROPOSED] Order Granting
Motion for Permission
to Proceed in Pseudonym -- 3

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