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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.

No.

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.

COPY

1 **FIRST CAUSE OF ACTION**

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

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

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

20 The records requested are records relating to complaints and investigations of improper conduct
21 by public officials and government agents in the course of performing their duties—clearly
22 records relating to the conduct of government and performance of a governmental or proprietary
23 function. The records are further prepared, owned, used, and retained by the DOC, a state
24 agency. The documents in question are therefore public records to be made available for
25 inspection and copying under RCW 42.17.260, which provides:

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 5 business days
9 following the request by either denying or producing the record. RCW 42.17.320. More than 5
10 days—indeed, more than three weeks—passed before the agency even responded to Mr. Wright,
11 at which point the DOC did not provide any records or explain why they were being withheld,
12 but instead initiated a long and tortured exchange of correspondence that delayed the disclosure
13 of records for months.

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

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

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

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

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

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

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

24 (h) On January 31, 1999, Mr. Wright responded to Mr. Evans' 1/22/99 letter reiterating
25 that the DOC was grossly out of compliance with the PDA's requirement of promptness.
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1 (i) On March 10, 1999, Mr. Evans wrote that he had compiled the documents requested
2 by Mr. Wright, incorrectly referring to Mr. Wright's PDA request as having been "dated January
3 31, 1999," when in fact the initial PDA request was submitted nearly four months earlier. Yet
4 Mr. Evans still did not enclose any responsive documents with this letter, instead stating that the
5 documents were "being forwarded to the Attorney General's Office for their review and
6 approval." The letter also stated that the employees in question were told of Mr. Wright's
7 request so that they could seek a protective order in court. No protective orders were
8 subsequently sought.

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

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

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

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

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

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

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

5 (a). Exemption of RCW 42.17.310(1)(b) Does Not Apply. The DOC has *not*
6 established that disclosure of the information it redacted would violate any employee’s right to
7 privacy. Under the PDA, a person’s privacy is violated “only if disclosure of information about
8 the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate
9 concern to the public.” RCW 42.17.255. Not only did DOC redact the names of the terminated
10 employees, but also it redacted names of investigating officers, witnesses, and even *pronouns*,
11 making the documents largely unintelligible. Because the matters at issue are those in which
12 misconduct was actually found, the DOC has no basis for withholding the names of the
13 wrongdoers and investigating officers. Specific acts of misconduct of government employees
14 are matters of legitimate public concern and the release of such information can never violate
15 one’s right to privacy. Furthermore, some of the details redacted from the records are now a
16 matter of public knowledge, because PLN could literally see through some of the DOC’s
17 attempted redactions.

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

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

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

8 SECOND CAUSE OF ACTION

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

18 **9. Requested Records Are Public Records.** RCW 42.17.020(36) defines "public
19 record" to include:

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

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

3 **10. Failure to Respond Promptly.** The DOC was required to respond to PLN
4 request no later than 5 business days by either denying or producing the record.
5 RCW 42.17.320. The DOC received PLN's request on June 29, 1999 and forwarded it to
6 Howard Yarbrough of the Office of Correctional Operations, Correctional Industries. On August
7 2, 1999, more than a month after PLN's request, the DOC sent Mr. Wright a bill for
8 photocopying but did not identify which records were being produced or the exemptions, if any,
9 for redacting any parts of those records. On September 17, 1999, the DOC finally produced
10 responsive records, but redacted "the information for private citizens and businesses" without
11 giving any further explanation. The DOC violated RCW 42.17.320 by delaying its response to
12 PLN and by continuing to refuse to provide an adequate response.

13 **11. Unlawful Redaction and Failure to Properly Segregate.** On September 23,
14 1999, Mr. Wright responded to Mr. Yarbrough with a letter specifically requesting that the
15 agency substantiate the reasons for its withholding of the redacted information. Mr. Wright also
16 stated that he was *not* seeking the *addresses* of people or businesses that the DOC had redacted,
17 but that the *names* of people and businesses in the documents should be disclosed. The DOC
18 never responded. The DOC has never attempted to explain why disclosure of the redacted
19 information would be "highly offensive to a reasonable person" *and* "not of legitimate concern
20 to the public" so as to justify redaction. Nor has the DOC even cited RCW 42.17.310, let alone
21 the specific exemption within 42.17.310(1) that it claims applies here. The DOC has thus
22 unlawfully withheld the redacted information and, as a result, violated RCW 42.17.310(2), which
23 imposes a duty on the part of the agency to segregate, and to release all portions of a record that
24 are not exempt.
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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.

1 RCW 42.17.340(1).

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

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

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

15 **16. Statutory Penalty.** Finally, RCW 42.17.340(4) provides that the court has
16 discretion to award the person who prevails against an agency an amount not to exceed \$100.00
17 for each day that he was denied the right to inspect or copy a public record. The DOC has
18 exercised bad faith in refusing to comply with the PDA in its actions on PLN's requests. To
19 deter future willful violations of the PDA by this agency, the Court should award PLN the
20 maximum statutory penalty of \$100 per record for each day PLN has been denied the right to
21 inspect or copy responsive and non-exempt records.

22 PRAYER FOR RELIEF

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

24 FIRST CAUSE OF ACTION

25 1. Declaration that that the DOC failed to respond promptly to PLN's Airway
26 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.

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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.

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

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