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SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

JOHN DOE D, as an individual and on behalf of
others similarly situated,

Plaintiffs,

v.

PIERCE COUNTY,

Defendant,

v.

DONNA ZINK, a married woman,

Requestor.

No. 14-2-15100-0

PROPOSED AMENDED CLASS
ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Plaintiffs and the Class have been designated Level II and Level III sex offenders and are the subject of Public Records Act requests by Donna Zink. Ms. Zink seeks their registration forms and their evaluations by mental health professionals. Plaintiff seeks declaratory and injunctive relief for themselves and the Class. The relief would prevent the blanket release of the registration forms and the SSOSA evaluations.

On December 22, 2014, the Court granted a Motion for a Temporary Restraining Order on behalf of John Doe D, as an individual. No party has yet answered the original complaint.

1 Based on investigation of counsel and on information and belief, Plaintiffs allege as
2 follows:

3 **I. PARTIES**

4 **Class Representative**

5 1. John Doe D is a resident of Pierce County, Washington. He is currently
6 registered as a Level III sex offender and is compliant with the conditions of his registration.

7 **Defendant**

8 2. Defendant Pierce County is a municipality under Washington law.

9 **Requestor**

10 3. Donna Zink is a resident of Franklin County, Washington.

11 **II. JURISDICTION AND VENUE**

12 4. Jurisdiction and venue are proper in this Court pursuant to RCW 2.08.010, RCW
13 7.24.010, and RCW 42.56.540.

14 **III. GENERAL ALLEGATIONS**

15 **Ms. Zink's Request for Records to Pierce County and its Departments**

16 5. Sometime in October or November 2014, Ms. Zink sent a PRA request to Pierce
17 County and/or the Pierce County Sheriff's Department and/or the Pierce County Prosecuting
18 Attorney's Office. Ms. Zink seeks "all sex offender registration forms" in the possession of the
19 Sheriff's Department. Ms. Zink also seeks a computerized database of this information. Finally,
20 Ms. Zink seeks SSOSA Evaluations, which Pierce County has interpreted to mean psychosexual
21 evaluations administered by Sex Offender Treatment Providers meeting certain requirements in
22 the Washington Administrative Code (WAC 246-930-320), regardless of whether a SSOSA
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1 sentence was entered. These evaluations will be referred to as “SSOSA Evaluations” or
2 “psychosexual evaluations.”

3 6. Plaintiffs challenge the release of the actual registration forms and/or the release
4 of the information, otherwise not available to the public, contained in the forms and/or such
5 information if it has been transferred to a computerized database. Plaintiffs also challenge the
6 release of the SSOSA Evaluations.

7 7. The Sheriff’s Office informed Plaintiffs and Class Members that, absent a court
8 order, it would begin releasing information contained in the registration forms after 4:00 p.m. on
9 December 23, 2014.

10 8. Plaintiff John Doe D completed a registration form and submitted it to Pierce
11 County.

12 9. Ms. Zink intends to post information from the registration forms and SSOSA
13 Evaluations, in whole or in part, on a website available to the general public information not
14 available through websites maintained by the Sherriff’s Office and other public agencies,
15 including detailed psychological records. Ms. Zink and has already posted similar information
16 from sex offender registration forms obtained from Franklin County.

17 10. Plaintiffs and the Proposed Class will be substantially and irreparably damaged
18 by the release of the information.

19
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21 **The Registration Forms Are Exempt from Disclosure Under the PRA**

22 11. Washington’s Public Records Act requires agencies to produce public records
23 upon request “unless the record falls within the specific exemptions of [the PRA], or any other
24 statute which exempts or prohibits disclosure of specific information or records.” RCW
25 42.56.070(1) (emphasis added).
26

1 12. Washington’s statute governing the disclosure of information to the public
2 regarding sex and kidnapping offenders, RCW 4.24.550, sets forth a comprehensive scheme for
3 release of sex offender information.

4 13. RCW 4.24.550 mandates disclosure in some circumstances. In all other
5 circumstances, including the circumstances of Plaintiffs and the Proposed Class, RCW 4.24.550
6 permits disclosures *only* if disclosure meets the requirements of a test designed to protect both
7 public safety and privacy.

8 14. RCW 4.24.550(5) sets forth mandatory disclosures relevant to Level II and Level
9 III offenders such as Plaintiffs and the Proposed Class.

10 15. RCW 4.24.550(2) requires that an agency undergo a balancing test prior to
11 releasing information that is not otherwise required to be released: “Except for the information
12 specifically required under subsection (5) of this section, the extent of the public disclosure of
13 relevant and necessary information shall be rationally related to: (a) The level of risk posed by
14 the offender to the community; (b) the locations where the offender resides, expects to reside, or
15 is regularly found; and (c) the needs of the affected community members for information to
16 enhance their individual and collective safety.

17 16. The PRA requires agencies to produce public records upon request “unless the
18 record falls within the specific exemptions of [the PRA], or *other statute* which exempts or
19 prohibits disclosure of specific information or records.” RCW 42.56.070(1) (emphasis added).

20 17. RCW 4.24.550 is an “other statute” that exempts or prohibits the disclosure of
21 the records Ms. Zink requests.
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Background on SSOSA

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2 18. The Special Sex Offender Sentencing Alternative was enacted in 1984 as part of
3 the Sentencing Reform Act “to support and encourage family member victims to engage in the
4 criminal justice system, knowing there was opportunity for the offender to receive treatment
5 rather than exclusively a prison term.” Washington Sex Offender Policy Board, *Review of the*
6 *Special Sex Offender Sentencing Alternative (SSOSA)* at 11 (Dec. 2013),
7 http://www.ofm.wa.gov/sgc/sopb/documents/SSOSA_review_201401.pdf.
8

9 19. When a person receives a SSOSA, a significant part of his or her prison term is
10 suspended, provided the offender completes intensive, community-based treatment for up to five
11 years and complies with stringent conditions of supervision.

12 20. To be eligible for a SSOSA, a person must have no prior sex offenses or other
13 felonies, must be subject to a maximum sentence of more than one year but no more than eight
14 years, have no adult conviction for a violent offense within the past five years, and have some
15 established relationship or connection to the victim. RCW 9.94A.670(2).
16

17 21. In determining whether to grant a SSOSA, the court shall consider whether the
18 offender is amenable to treatment based on an evaluation report provided by a treatment
19 provider, whether the offender and the community will benefit from the SSOSA, whether the
20 victim supports entry of a SSOSA, and whether the SSOSA is too lenient in light of the
21 circumstances of the offense. RCW 9.94A.670(4).
22

23 22. Approximately 100 individuals received a SSOSA in the past year, down from
24 nearly 500 individuals per year in the mid-1990s.
25
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1 23. Sex offenders who complete a SSOSA have the lowest recidivism rates of all sex
2 offenders. Washington Sex Offender Policy Board, *Review of the Special Sex Offender*
3 *Sentencing Alternative* at 21.

4 24. To receive a SSOSA, an individual must submit to an intensive evaluation
5 prepared by a Certified Sex Offender Treatment Provider (“Certified Treatment Provider”).
6 RCW 9.94A.670(3); RCW 9.94A.820.

7 25. The evaluation can be submitted by the individual on his or her own motion,
8 or can be ordered by the Court. *Id.*

9 26. WAC 246-930-320 sets out specific standards for evaluations by Certified
10 Treatment Providers, including SSOSA evaluations. The evaluation reports must “include a
11 compilation of data from as many sources as reasonable, appropriate, and available” including
12 medical, substance abuse, psychological, and sexual deviancy assessments as well as
13 psychological and physiological tests. WAC 246-930-320(2)(d).

14 27. The evaluation report must also address a description of the current offense;
15 a sexual history; sexual offense history; patterns of sexual arousal, preference, and interest;
16 prior attempts to remediate and control offensive behavior, including prior treatment; risk
17 factors (including alcohol and drug abuse, stress, mood, sexual patterns, use of pornography,
18 and social and environmental influences); a comprehensive personal history including medical
19 information, marital and other relationships, employment, education, military history, a family
20 history, history of criminal behavior, and mental health functioning; and overall findings of
21 psychological, physiological, and medical assessments. WAC 246-930-320(2)(e).

22 28. The Certified Treatment Provider must include in the evaluation a conclusion
23 regarding the appropriateness of community-based treatment and, if the offender is found to be
24

1 amenable to treatment, must include a proposed treatment plan that describes in detail the
2 anticipated length of treatment, frequency and type of contact with providers, specific issues to
3 be addressed in treatment and a description of planned treatment interventions,
4 recommendations for specific behavioral prohibitions, and proposed methods for monitoring
5 and verifying compliance with the conditions of the treatment program. WAC 246-930-
6 320(2)(f)-(g).

7
8 29. Certified Treatment Providers are mental health professionals who conduct
9 SSOSA evaluations in their capacity as evaluators and treatment providers.

10 30. To conduct SSOSA evaluations and treatment, a Certified Treatment Provider is
11 required to possess a credential as a licensed health care professional in Washington. To earn
12 certification as a Sex Offender Treatment Provider, a professional must have a master's or
13 doctoral degree in social work, psychology, counseling, educational psychology, or an
14 equivalent field, or be a board certified or board eligible psychiatrist. WAC 246-930-030(1)(a)-
15 (c). In addition, Certified Treatment Providers must have extensive specialty training in the
16 evaluation and treatment of sexual offense behavior. WAC 246-930-040; 246-930-070; 246-
17 930-410.

18
19 31. Generalized disclosure of SSOSA evaluations and similar psychosexual
20 evaluations to a member of the general public would cause significant harm to Level II and
21 Level III offenders. Such disclosure would not be in the public interest.

22
23 **The SSOSA Evaluation Requests Are Exempt from Disclosure Under the PRA**

24 32. The PRA states that Chapter 70.02 RCW applies to public inspection and
25 copying of health care information of patients. RCW 42.56.360(2). In enacting chapter 70.02,
26 the Legislature found that “[h]ealth care information is personal and sensitive information that

1 if improperly used or released may do significant harm to a patient’s interests in privacy, health
2 care, or other interests.” RCW 70.02.005(1).

3 33. RCW 70.02.230 states: “Except as provided in this section [and other enumerated
4 sections], . . . all information and records compiled, obtained, or maintained in the course of
5 providing mental health services to either voluntary or involuntary recipients of services at
6 public or private agencies must be confidential.”

7 34. None of the permitted disclosures of mental health care records in RCW 70.02
8 permit disclosure to a member of the general public with no relationship to the patient—in short,
9 to someone like Ms. Zink, who has no relationship to Plaintiff or class members.

10 35. The psychosexual evaluations Ms. Zink seeks contain health care information
11 which is exempt from disclosure under RCW 70.02 because of the patient’s interest in privacy
12 and health care.

13 36. Defendants do not consider the psychosexual evaluations exempt under the PRA
14 and intend to release them to a member of the general public, contrary to RCW 70.02.

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17 **Koenig v. Thurston County Does not Govern this Request**

18 37. The issue presented in *Koenig v. Thurston County*, 175 Wn.2d 837, 287 P.3d 523
19 (2012), was, in relevant part, whether SSOSA evaluations are exempt from disclosure under the
20 PRA pursuant to the “investigative records” exception at RCW 42.56.240(1). Plaintiffs do not
21 rely on the investigative records exemption, and therefore *Koenig* does not control here.

22 **IV. CLASS ACTION ALLEGATIONS**

23 **Class Definition**

24 38. Pursuant to Civil Rule 23(b)(2), Plaintiffs bring this case as a class action on
25 behalf of the following Classes:
26

1 **Registration Class**

2 All individuals classified as sex offenders at Risk Level II or Risk Level III who
3 submitted sex offender registration forms that were or are in the possession of
4 Pierce County on or after the date of the public records request.

5 **Mental Health Records Class**

6 All individuals classified as sex offenders at Risk Level II or Risk Level III who
7 underwent psychosexual mental health evaluations that were or are in the
8 possession of Pierce County on or after the date of the public records request.

9 **Numerosity**

10 39. The Classes contains hundreds of individuals. These Class members are unable
11 or reluctant to sue individually. The members of the Class are so numerous that joinder of all
12 members is impracticable. Moreover, the disposition of the claims of the Class in a single action
13 will provide substantial benefits to all parties and the Court.

14 **Commonality**

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

17 A. Whether RCW 4.24.550 is an “other statute” exempting the registration forms
18 from the PRA under RCW 42.56.070;

19 B. Whether the records of Class Members can be released in response to a request
20 under the PRA absent compliance with RCW 4.24.550;

21 C. Whether RCW 4.24.550 requires Pierce County to determine that information
22 related to Level II and Level III sex offenders is “relevant and necessary” and to consider the
23 “(a) level of risk posed by the offender to the community; (b) the locations where the offender
24 resides, expects to reside, or is regularly found; and (c) the needs of the affected community
25 members for information to enhance their individual and collective safety”;

1 D. Whether the above determination must be made individually for each offender;

2 E. Whether blanket, categorical disclosure of all Level II and Level III sex offender
3 information in registration forms, in response to a PRA request, will result in immediate and
4 irreparable harm to any person;

5 F. Whether disclosure of the registration forms, in response to a PRA request, is in
6 the public interest;

7 G. Whether the Court should issue a permanent order enjoining release of the
8 registration forms;

9 H. Whether the psychosexual mental health evaluations are exempt from disclosure
10 under RCW 70.02; and

11 I. Whether the court should enjoin release of the psychosexual evaluations.

12
13 **Typicality**

14 41. Plaintiff's claims are typical of the claims of the Class. Plaintiff's claims, like the
15 claims of the members of the Class, arise out of the same conduct by Defendant and are based
16 on the same legal and remedial theories.

17
18 **Adequacy**

19 42. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has
20 retained competent and capable attorneys who have significant experience in litigation under the
21 PRA and with complex, class action litigation. Plaintiff and his counsel are committed to
22 prosecuting this action vigorously on behalf of the Class and have the financial resources to do
23 so. Neither Plaintiff nor his counsel have interests that are contrary to or that conflict with those
24 of the Proposed Class.
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Appropriateness of Injunctive and Declaratory Relief

43. Pierce County has acted and will act on grounds generally applicable to the Class, thereby making final injunctive and corresponding declaratory relief appropriate with respect to the Class as a whole. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants.

V. FIRST CLAIM FOR RELIEF

(Action to Enjoin Release of Records Exempt or Prohibited by any Other Statute, RCW 4.24.550)

44. Plaintiff repeats and realleges the above paragraphs.

45. Plaintiff requests entry of a permanent injunction enjoining Pierce County from disclosing registration forms of Level II and Level III sex offenders pursuant to Ms. Zink’s request.

46. If Pierce County makes a blanket disclosure of all Level II and Level III sex offender registration forms, Plaintiff and the Class will suffer immediate and irreparable harm.

47. The registration forms are exempt records governed by the comprehensive disclosure scheme set forth in RCW 4.24.550. Plaintiff asserts that RCW 4.24.550 requires an individualized determination as to the information that may be disclosed as to each individual offender.

VI. SECOND CLAIM FOR RELIEF

(Action to Enjoin Release of Records Exempt or Prohibited by any Other Statute, Chapter 70.02 RCW)

48. Plaintiff repeats and reallege the above paragraphs.

1 49. Plaintiff requests entry of a permanent injunction enjoining Defendants from
2 disclosing sex offender SSOSA evaluations pursuant to Ms. Zink's request, except as provided
3 in Chapter 70.02 RCW.

4 50. If Defendant discloses SSOSA evaluations, Plaintiffs will suffer immediate and
5 irreparable harm. Disclosure of this information would not be in the public interest, would not
6 comport with the statutory requirements for disclosure provided in RCW 70.02, and would
7 substantially and irreparably damage Plaintiff and the Class as set forth in RCW 42.56.540.
8 Final injunctive relief is necessary to protect Plaintiff and members of the Class from the release
9 of exempt and private information.
10

11 **VII. THIRD CLAIM FOR RELIEF**
12 **(Declaratory Judgment)**

13 51. Plaintiff repeats and realleges the above paragraphs.

14 52. If Pierce County makes a blanket disclosure of all Level II and Level III sex
15 offender registration forms, Plaintiff and the Class will suffer immediate and irreparable harm.

16 53. The registration forms are exempt records governed by the comprehensive
17 disclosure scheme set forth in RCW 4.24.550. Plaintiff asserts that RCW 4.24.550 requires an
18 individualized determination as to the information that may be disclosed as to each individual
19 offender.
20

21 54. Actual and justifiable controversies exist between Plaintiff and Defendant as to
22 whether the registration forms are exempt from blanket disclosure under RCW 4.24.550.
23

24 **VIII. PRAYER FOR RELIEF**

25 Plaintiff prays for judgment against Defendant as follows:

26 A. For certification of a Class as defined above;

- 1 B. For appointment of Plaintiff as representative of the certified Class;
- 2 C. For an order allowing Plaintiff to proceed in pseudonym;
- 3 D. For appointment of the Law Office of Harry Williams LLC and the Law Office
4 of Amy Muth PLLC as counsel for the certified Class;
- 5 E. For a permanent injunction enjoining Pierce County from disclosing all
6 registration forms, in any format, except as permitted by RCW 4.24.550;
- 7 F. For a permanent injunction enjoining Pierce County from disclosing all SSOSA
8 Evaluations, except as permitted by RCW 70.02;
- 9 G. For a declaratory judgment, under RCW 7.24.010, that the registration forms are
10 exempt from disclosure under RCW 4.24.550;
- 11 H. For leave to amend these pleadings to conform to the evidence presented at trial;
12
13 and
- 14 I. For such other and further relief as the Court deems just and equitable.

15 DATED December 23, 2014.

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