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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

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

Plaintiff,

v.

KING COUNTY, a municipal organization, and
its department KING COUNTY SHERIFF'S
OFFICE and KING COUNTY PROSECUTING
ATTORNEY'S OFFICE,

Defendant,

v.

DONNA ZINK, a married woman,

Requestor.

No.

CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Plaintiffs and members of the Class are King County residents who were convicted of sex offenses that require that they register with the King County Sheriff's Office after release from custody. Plaintiffs and the Class, which includes juveniles, have been assessed as Level II or Level III offenders. When sex offenders register with the King County Sheriff's Office, they are required by statute to fill out a form that contains sensitive information not otherwise publicly available, including the telephone number, workplace, school, exact current address,

CLASS ACTION COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF- 1

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1 and former addresses of the individual Plaintiffs and Class Members. These forms are then
2 forwarded as necessary to the King County Prosecuting Attorney's Office when the sex offender
3 is out of compliance with registration and the prosecutor is considering criminal charges.
4 Washington State has a well-documented history of sex offender slayings by vigilante members
5 of the public who are able to obtain location information for sex offenders. Release of this
6 information would therefore harm Plaintiffs and the Class, as well as family members,
7 employers, and fellow students, endangering their safety. Release of this information also would
8 undermine the Legislature's intent, which is to release sufficient information to protect the
9 public while allowing registered offenders a carefully-monitored chance to reintegrate into
10 families and communities.
11

12 Donna Zink, a member of the general public, seeks access to the registration forms
13 pursuant to the Public Records Act (PRA). Ms. Zink apparently seeks to publish the details of
14 these forms to the public. Plaintiffs seek declaratory and injunctive relief for themselves and the
15 Class. The relief would prevent the release of the registration forms.
16

17 Ms. Zink also seeks evaluations of individual Class Members performed by mental
18 health professionals to determine the Class Member's amenability to treatment and eligibility
19 for a Special Sex Offender Sentencing Alternative (SSOSA). The evaluations were the basis for
20 intensive mental health treatment. King County has interpreted the request to cover all
21 psychosexual evaluations, regardless of whether they were undertaken as part of the SSOSA
22 process. Ms. Zink apparently seeks to publish the details of these evaluations to the public.
23 Plaintiffs seek relief preventing the blanket release of the psychosexual evaluations, which are
24 protected by RCW 70.02, which protects the privacy of mental health care records.
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1 Based on investigation of counsel and on information and belief, Plaintiffs allege as
2 follows:

3 **I. PARTIES**

4 **Class Representatives**

5 1. John Doe is a resident of King County, Washington. He is registered with the
6 King County Sheriff's Office and has been evaluated as a Level III offender. On or about
7 November 15, 2014, John Doe was informed that King County would release his registration
8 form to a member of the public unless he filed for a temporary restraining order by December 1,
9 2014. He has completed psychosexual evaluations that are in the possession of King County.
10

11 **Defendant**

12 2. Defendant King County is a municipal organization under the laws of
13 Washington.

14 3. Defendant King County Sheriff's Office is a department of King County.

15 4. Defendant King County Prosecuting Attorney's Office is a department of King
16 County.
17

18 **Requestor**

19 5. Donna Zink is a resident of Franklin County, Washington.

20 **II. JURISDICTION AND VENUE**

21 6. Jurisdiction and venue are proper pursuant to RCW 2.08.010, RCW 7.24.010,
22 and RCW 42.56.540.
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III. GENERAL ALLEGATIONS

Ms. Zink's Request for Records to King County and its Departments

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

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

9. The Sheriff's Office informed Plaintiffs and Class Members that, absent a court order, it would begin releasing information contained in the registration forms after 4:30 on December 1, 2014.

10. Plaintiff John Doe completed a registration form when he moved in 2014. He had previously completed other forms since first registering in 2006.

11. Ms. Zink intends to use information from the registration forms and SSOSA Evaluations, in whole or in part, to post on a website available to the general public information not available through websites maintained by the Sheriff's Office and other public agencies,

1 including detailed psychological records. Ms. Zink and has already posted similar information
2 from sex offender registration forms obtained from Franklin County.

3 12. Plaintiffs and the Proposed Class will be substantially and irreparably damaged
4 by the release of the information.

5 **The Registration Forms Are Exempt from Disclosure Under the PRA**

6 13. Washington’s Public Records Act requires agencies to produce public records
7 upon request “unless the record falls within the specific exemptions of [the PRA], or any other
8 statute which exempts or prohibits disclosure of specific information or records.” RCW
9 42.56.070(1) (emphasis added).
10

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

14 15. RCW 4.24.550 mandates disclosure in some circumstances. In all other
15 circumstances, including the circumstances of Plaintiffs and the Proposed Class, RCW 4.24.550
16 permits disclosures *only* if disclosure meets the requirements of a test designed to protect both
17 public safety and privacy.
18

19 16. RCW 4.24.550(5) sets forth mandatory disclosures relevant to Level II and Level
20 III offenders such as Plaintiffs and the Proposed Class.

21 17. RCW 4.24.550(2) requires that an agency undergo a balancing test prior to
22 releasing information that is not otherwise required to be released: “Except for the information
23 specifically required under subsection (5) of this section, the extent of the public disclosure of
24 relevant and necessary information shall be rationally related to: (a) The level of risk posed by
25 the offender to the community; (b) the locations where the offender resides, expects to reside, or
26

1 is regularly found; and (c) the needs of the affected community members for information to
2 enhance their individual and collective safety.

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

6 19. RCW 4.24.550 is an “other statute” that exempts or prohibits the disclosure of
7 the records Ms. Zink requests.
8

9 Background on SSOSA

10 20. The Special Sex Offender Sentencing Alternative was enacted in 1984 as part of
11 the Sentencing Reform Act “to support and encourage family member victims to engage in the
12 criminal justice system, knowing there was opportunity for the offender to receive treatment
13 rather than exclusively a prison term.” Washington Sex Offender Policy Board, *Review of the*
14 *Special Sex Offender Sentencing Alternative (SSOSA)* at 11 (Dec. 2013),
15 http://www.ofm.wa.gov/sgc/sopb/documents/SSOSA_review_201401.pdf.
16

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

20 22. To be eligible for a SSOSA, a person must have no prior sex offenses or other
21 felonies, must be subject to a maximum sentence of more than one year but no more than eight
22 years, have no adult conviction for a violent offense within the past five years, and have some
23 established relationship or connection to the victim. RCW 9.94A.670(2).
24

25 23. In determining whether to grant a SSOSA, the court shall consider whether the
26 offender is amenable to treatment based on an evaluation report provided by a treatment

1 provider, whether the offender and the community will benefit from the SSOSA, whether the
2 victim supports entry of a SSOSA, and whether the SSOSA is too lenient in light of the
3 circumstances of the offense. RCW 9.94A.670(4).

4 24. Approximately 100 individuals received a SSOSA in the past year, down from
5 nearly 500 individuals per year in the mid-1990s.

6 25. Sex offenders who complete a SSOSA have the lowest recidivism rates of all sex
7 offenders. Washington Sex Offender Policy Board, *Review of the Special Sex Offender*
8 *Sentencing Alternative* at 21.

9 26. To receive a SSOSA, an individual must submit to an intensive evaluation
10 prepared by a Certified Sex Offender Treatment Provider (“Certified Treatment Provider”).
11 RCW 9.94A.670(3); RCW 9.94A.820.

12 27. The evaluation can be submitted by the individual on his or her own motion,
13 or can be ordered by the Court. *Id.*

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

19 29. The evaluation report must also address a description of the current offense;
20 a sexual history; sexual offense history; patterns of sexual arousal, preference, and interest;
21 prior attempts to remediate and control offensive behavior, including prior treatment; risk
22 factors (including alcohol and drug abuse, stress, mood, sexual patterns, use of pornography,
23 and social and environmental influences); a comprehensive personal history including medical
24 and social and environmental influences); a comprehensive personal history including medical
25 and social and environmental influences); a comprehensive personal history including medical
26 and social and environmental influences); a comprehensive personal history including medical

1 information, marital and other relationships, employment, education, military history, a family
2 history, history of criminal behavior, and mental health functioning; and overall findings of
3 psychological, physiological, and medical assessments. WAC 246-930-320(2)(e).

4 30. The Certified Treatment Provider must include in the evaluation a conclusion
5 regarding the appropriateness of community-based treatment and, if the offender is found to be
6 amenable to treatment, must include a proposed treatment plan that describes in detail the
7 anticipated length of treatment, frequency and type of contact with providers, specific issues to
8 be addressed in treatment and a description of planned treatment interventions,
9 recommendations for specific behavioral prohibitions, and proposed methods for monitoring
10 and verifying compliance with the conditions of the treatment program. WAC 246-930-
11 320(2)(f)-(g).

12 31. Certified Treatment Providers are mental health professionals who conduct
13 SSOSA evaluations in their capacity as evaluators and treatment providers.

14 32. To conduct SSOSA evaluations and treatment, a Certified Treatment Provider is
15 required to possess a credential as a licensed health care professional in Washington. To earn
16 certification as a Sex Offender Treatment Provider, a professional must have a master's or
17 doctoral degree in social work, psychology, counseling, educational psychology, or an
18 equivalent field, or be a board certified or board eligible psychiatrist. WAC 246-930-030(1)(a)-
19 (c). In addition, Certified Treatment Providers must have extensive specialty training in the
20 evaluation and treatment of sexual offense behavior. WAC 246-930-040; 246-930-070; 246-
21 930-410.
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1 33. Generalized disclosure of SSOSA evaluations and similar psychosexual
2 evaluations to a member of the general public would cause significant harm to Level II and
3 Level III offenders. Such disclosure would not be in the public interest.

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

5 34. The PRA states that Chapter 70.02 RCW applies to public inspection and
6 copying of health care information of patients. RCW 42.56.360(2). In enacting chapter 70.02,
7 the Legislature found that “[h]ealth care information is personal and sensitive information that
8 if improperly used or released may do significant harm to a patient’s interests in privacy, health
9 care, or other interests.” RCW 70.02.005(1).

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

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

17 37. The psychosexual evaluations Ms. Zink seeks contain health care information
18 which is exempt from disclosure under RCW 70.02 because of the patient’s interest in privacy
19 and health care.

20 38. Defendants do not consider the psychosexual evaluations exempt under the PRA
21 and intend to release them to a member of the general public, contrary to RCW 70.02.
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1 A. Whether RCW 4.24.550 is an “other statute” exempting the registration forms
2 from the PRA under RCW 42.56.070;

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

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

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

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

15 F. Whether disclosure of the registration forms, in response to a PRA request, is in
16 the public interest; and

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

19 H. Whether the psychosexual mental health evaluations are exempt from disclosure
20 under RCW 70.02;

21 I. Whether the court should enjoin release of the psychosexual evaluations.
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1 **Typicality**

2 43. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs' claims, like the
3 claims of the members of the Class, arise out of the same conduct by Defendants and are based
4 on the same legal and remedial theories.

5 **Adequacy**

6 44. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs
7 have retained competent and capable attorneys who have significant experience in litigation
8 under the PRA and with complex, class action litigation. Plaintiffs and their counsel are
9 committed to prosecuting this action vigorously on behalf of the Class and have the financial
10 resources to do so. Neither Plaintiffs nor their counsel have interests that are contrary to or that
11 conflict with those of the Proposed Class.
12

13 **Appropriateness of Injunctive and Declaratory Relief**

14 45. King County has acted and will act on grounds generally applicable to the Class,
15 thereby making final injunctive and corresponding declaratory relief appropriate with respect to
16 the Class as a whole. Prosecution of separate actions by individual members of the Class would
17 create the risk of inconsistent or varying adjudications with respect to individual Class members
18 that would establish incompatible standards of conduct for Defendants.
19

20 **V. FIRST CLAIM FOR RELIEF**

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

23 46. Plaintiffs repeat and reallege the above paragraphs.
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VII. THIRD CLAIM FOR RELIEF

(Declaratory Judgment)

53. Plaintiffs repeat and reallege the above paragraphs.

54. If King County makes a blanket disclosure of all Level II and Level III sex offender registration forms, Plaintiffs will suffer immediate and irreparable harm.

55. 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

56. Actual and justifiable controversies exist between Plaintiffs and Defendant as to whether the registration forms are exempt from blanket disclosure under RCW 4.24.550.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

A. For certification of a Class as defined above;

B. For appointment of Plaintiff as representatives of the certified Class;

C. For an order allowing Plaintiff to proceed in pseudonym;

D. For appointment of the Law Office of Harry Williams LLC, and the Law Office of Amy Muth PLLC as counsel for the certified Class;

E. For a permanent injunction enjoining King County from disclosing all registration forms, in any format, except as permitted by RCW 4.24.550;

F. For a permanent injunction enjoining King County from disclosing all SSOSA Evaluations, except as permitted by RCW 70.02;

1 G. For a declaratory judgment, under RCW 7.24.010, that the registration forms are
2 exempt from disclosure under RCW 4.24.550;

3 H. For leave to amend these pleadings to conform to the evidence presented at trial;
4 and

5 I. For such other and further relief as the Court deems just and equitable.
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8 DATED December 1, 2014.
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11

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