

F I L E D  
A.M. 2:55 P.M.

JUN 05 2012

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE,	)	
	)	
Petitioner,	)	CASE NO. CV 2012-3744*C
	)	
vs.	)	MEMORANDUM DECISION ON
	)	PETITION FOR ACCESS TO
BRYAN F. TAYLOR, COUNTY	)	PUBLIC RECORDS
PROSECUTING ATTORNEY, CANYON	)	
COUNTY PROSECUTING ATTORNEY'S	)	
OFFICE, a public agency,	)	
	)	
Respondent.	)	
_____	)	

The above entitled matter came on for hearing on the 4<sup>th</sup> day of May, 2012, and was continued to the 17<sup>th</sup> day of May, 2012. Ronaldo Coulter, attorney at law, appeared for the Petitioner. Michael Porter, Canyon County Deputy Prosecutor, appeared for the Respondent. This Court has reviewed the Petition for Access to Public Records filed on April 19, 2012, Respondent's Answer filed on April 27, 2012, the arguments presented at the hearings, and concluded that it was necessary to review the records contained in the prosecuting attorney's file *in camera*. The Court has completed it's *in camera* review and sets forth its written decision below.

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## SUMMARY OF ARGUMENTS

Petitioner is considering a claim under the Idaho Tort Claims Act (ITCA) against certain government entity(ies) related to a December 22, 2011 incident involving Petitioner and a Fruitland Police Officer in which Petitioner was shot twice. Under I.C. §6-906, the Petitioner must file a tort claim by June 19, 2012. In order to evaluate the merits of the tort claim, Petitioner has requested copies of reports related to the incident that were prepared by the Idaho State Police, Fruitland Police Department, and Payette County Sherriff's Department.

The requirements to file a tort claim against government entity(ies) under I.C. §§ 6-903, 6-904, do not have a heightened pleading standard. Plaintiff simply must act timely to file notice of a tort claim against a government entity. Compliance with the ITCA notice requirement is a mandatory condition precedent to bringing suit, the failure of which is fatal to a claim, no matter how legitimate; the notice requirement is in addition to the applicable statute of limitations. I.C. §§ 6-906, 6-908. *Cobbley v. City of Challis*, 138 Idaho 154, 59 P.3d 959 (2002).

Under I.C. §6-907, "All claims presented to and filed with a governmental entity shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed..." The State argues in this case, the Petitioner could file a tort claim with the limited information available to him. Petitioner can describe the incident, his injuries and damages, the time and place this incident occurred, and the names of persons involved. The primary function of notice under the ITCA is to "put the governmental entity on notice that a claim against it is being prosecuted and thus apprise it of the need to preserve evidence and perhaps prepare a defense." *Blass v. County of Twin Falls*, 132 Idaho 451,452, 974 P.2d 503, 504 (1999).

Under the facts known to the Petitioner at this time, he can effectively submit a tort claim; however, his ability to pursue this claim will be hindered unless given access to the requested documents.

The Canyon County Prosecutor's Office has denied Petitioner access pursuant to I.C. §9-335. Respondents point out that the Canyon County Prosecutor's Office is a law enforcement agency under the language of I.C. §9-335 and if these documents were disclosed it could interfere

with enforcement proceedings, and/or deprive a person of a right to a fair trial, or an impartial adjudication.

### ANALYSIS

The investigation file possessed by the Canyon County Prosecuting Attorney includes three white three-ring binders. Two of these binders contain Petitioner's medical records. The third binder contains police reports; interviews with witnesses, the alleged victim, and the officer involved; 911 audio recordings; dispatch reports, photographs, and a video of the shooting.

The State claims that these documents relate to an active investigation inasmuch as the Canyon County Prosecuting Attorney's Office has yet to make a charging decision, if any is to be made, related to the December 22, 2011 shooting. Additionally, the State argues that the video of the shooting and some police reports could impact Petitioner's statements in a prosecutorial hearing such as a preliminary hearing or a grand jury proceeding. Thus, it is the State's contention that the documents contained in this investigation file are exempt from disclosure because production of the records would interfere with enforcement proceedings and deprive a person of a right to a fair trial.

It appears from the Court's review of the documents that the last active investigation into this incident was on January 19, 2012 when Idaho State Police Detective Ken White interviewed the manager of the Reel Theater and collected a CD entitled "Video from Reel Theatre." Indeed, the Petition for access to these records argues that all of the subject investigations have been completed. Further, Petitioner cites to a letter written by the Payette County Prosecuting Attorney declaring that her office was no longer in possession of the documents as they had been forwarded to the Canyon County Prosecuting Attorney "*[U]pon completion of the Idaho State Police Investigation*". *Emphasis added.* Nevertheless, the Canyon County Prosecuting Attorney's Office continues to maintain that this remains an ongoing investigation even though over four and one-half months have gone by with no activity.

I.C. § 9-335(3) clearly sets forth that an "inactive investigatory record *shall* be disclosed unless the disclosure would violate the provisions of subsection (1)(a) through (f)" of this code section. *Emphasis added.* The only provisions that the State claims are possibly applicable are (a) and (b). Thus, in order for this Court to find that the investigation file possessed by the

Canyon county Prosecuting Attorney is exempt from disclosure, it must find that disclosure will interfere with enforcement proceedings or deprive a person of a right to a fair trial or an impartial adjudicatory hearing.

The only argument presented by the State to support such a finding is that disclosure would *possibly* taint the testimony of the Petitioner in a grand jury proceeding or preliminary hearing. This disregards that Petitioner's statements about the incident have been preserved by recorded interviews of him taken January 12, 2012. Further, it assumes that he might perjure himself in order to improve the value of his tort claim. The language of the statute does not state that the records are exempt from disclosure if production *might possibly* interfere with enforcement proceedings. The statute requires that interference would result. This Court cannot make that finding.

The only possible persons who might be placed on trial over this incident are the Petitioner Wade or the Fruitland Police Officer. Whether either person is charged with a crime is undecided. Indeed, the State may conclude that the evidence does not support a criminal charge against either party. But in the event a criminal charge is brought, this Court cannot find that disclosure of these documents would deprive either person of a fair trial or an impartial adjudication.

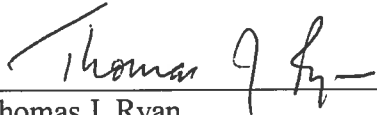
Therefore, the Court finds that the decision of the Canyon county Prosecuting Attorney's office is not justified. Accordingly,

**ORDER**

IT IS HEREBY ORDERED, that the Petition for Access to Public Records is GRANTED pursuant to the Court's reasoning above.

IT IS FURTHER ORDERED that the Canyon county Prosecuting Attorney's office make this record public.

Dated this 4<sup>th</sup> day of June, 2012.

  
\_\_\_\_\_  
Thomas J. Ryan  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

**Ronaldo A. Coulter**  
Camacho Mendoza Coulter Law Group  
776 E. Riverside Drive, Suite 240  
Eagle, Idaho 83616

**Bryan F. Taylor**  
**Michael K. Porter**  
Canyon County Prosecuting Attorney  
1115 Albany St.  
Caldwell, Idaho 83605

6-5-12  
Date

  
\_\_\_\_\_  
Deputy Clerk

**F I L E D**  
A.M. 2:45 P.M.

**JUN 29 2012**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE L. WADE,	)	
	)	
	)	
	)	
Petitioner,	)	CASE NO. CV 2012-3744*C
	)	
vs.	)	MEMORANDUM DECISION &
	)	ORDER UPON MOTION TO ALTER
	)	OR AMEND JUDGMENT
	)	
BRYAN F. TAYLOR, COUNTY	)	
PROSECUTING ATTORNEY, CANYON	)	
COUNTY PROSECUTING ATTORNEY'S	)	
OFFICE, a public agency,	)	
	)	
Respondent.	)	
_____	)	

On June 6, 2012 the State filed a Motion to Alter or Amend Judgment in response to this Court's June 5, 2012 Memorandum Decision on the Petition for Access to Public Records. It was the conclusion of the Court that certain law enforcement records requested by the Petitioner are not exempt from disclosure. On June 12, 2012, the State filed its supporting memorandum, and on June 19, 2012, Petitioner responded. This Court has reviewed and considered the written briefing submitted and hereby finds as follows:

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MEMORANDUM DECISION & ORDER UPON  
MOTION TO ALTER OR AMEND JUDGMENT

The decision to alter or amend is discretionary with the Court. *Slaathuug v. Allstate Ins. Co.*, 132 Idaho 705, 979 P.2d 107 (1999). No one disputes that I.C. § 9-335 is the operative statute in this case. Although the Court discussed the subject of whether this investigation was active vs. inactive in its original Memorandum Decision, this distinction was not particularly important to this Court's decision. If the State wishes to characterize it as an active and ongoing investigation, so be it.

The important consideration for this Court and for deciding the issue of whether certain records are exempt from disclosure is the analysis of subsection (1) of I.C. § 9-335. Therein it clearly states that records of a law enforcement agency are exempt from disclosure only under certain circumstances as set forth in subsections (a) through (f) of the 9-335(1). In its Memorandum Decision filed June 5, 2012, the Court found as follows:

The only provisions that the State claims are possibly applicable are (a) and (b). Thus, in order for this Court to find that the investigation file possessed by the Canyon County Prosecuting Attorney is exempt from disclosure, it must find that disclosure will interfere with enforcement proceedings or deprive a person of a right to a fair trial or an impartial adjudicatory hearing.

The only argument presented by the State to support such a finding is that disclosure would *possibly* taint the testimony of the Petitioner in a grand jury proceeding or preliminary hearing. This disregards that Petitioner's statements about the incident have been preserved by recorded interviews of him taken January 12, 2012. Further, it assumes that he might perjure himself in order to improve the value of his tort claim. The language of the statute does not state that the records are exempt from disclosure if production *might possibly* interfere with enforcement proceedings.

The statute requires that interference would result. This Court cannot make that finding.

The only possible persons who might be placed on trial over this incident are the Petitioner Wade or the Fruitland Police Officer. Whether either person is charged with a crime is undecided. Indeed, the State may conclude that the evidence does not support a criminal charge against either party. But in the event a criminal charge is brought, this Court cannot find that disclosure of these documents would deprive either person of a fair trial or an impartial adjudication.

In the analysis set forth above, the Court was attempting to follow the plain meaning of the statute. “The objective of statutory interpretation is to derive legislative intent.” *Robison v. Bateman-Hall*, 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). Because the best guide to legislative intent is the words of the statute itself, “the interpretation of a statute ‘must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.’” *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 892, 265 P.3d 502, 505 (2011); citing *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003). The plain meaning of a statute therefore will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. *Id.*

It is this Court’s opinion that the statute clearly sets forth a requirement that disclosure of the relevant documents, to be exempt, must interfere with enforcement proceedings and/or deprive a person of a right to a fair trial or an impartial adjudication. The pertinent language of the statute that this Court relies upon is “such exemption from disclosure applies only to the extent that the production of such records *would*: (a) Interfere with enforcement proceedings; (b) Deprive a person of a right to a fair trial or an impartial adjudication . . . .” I.C. § 9-335 (a) ***Emphasis added.***

The State now cites subsections (1)(c) and (1)(e). These arguments were not made in opposition to the Petition at the original hearing and thus will not be considered.

In its Memorandum in Support of Motion to Alter or Amend Judgment, the State makes several claims that the Court exceeds its constitutional authority by limiting the time period within which criminal charges may be brought and/or restricts whom may be charged with criminal conduct arising out of this situation. It is difficult to determine how the State reaches that conclusion, but in the interest of clarifying the record, this Court specifically declares that its earlier ruling was not intended to nor does it in any way restrict the time within which charges may be brought. That is decided by the relevant statute of limitations. Nor does the Court intend to restrict whom the State may charge. That is for the probable cause determination of a detached magistrate.

The State further argues that disclosure of these records might also open “the proverbial



floodgates” of media attention. This concern can be handled by restricting the use of the information contained in those records. To that extent, the Court will alter its earlier ruling.

Therefore, it is the conclusion of this Court that there is no basis to alter or amend the Court’s earlier decision requiring the disclosure of the requested records to the Petitioner and his legal counsel. However, disclosure is limited to Petitioner and his legal counsel only.

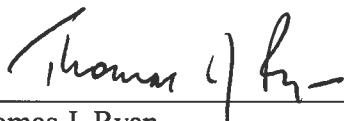
Therefore,

**ORDER**

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Petition for Access to Public Records filed April 19, 2012 is GRANTED. The Court’s earlier Order is altered as follows:

IT IS FURTHER ORDERED that disclosure of the requested records is limited to disclosure to the Petitioner and his legal counsel and may not be disclosed outside of the pending Tort Claim before Payette County or any subsequent civil litigation that may result from said tort claim.

Dated this 29<sup>th</sup> day of June, 2012.

  
\_\_\_\_\_  
Thomas J. Ryan  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

Ronaldo A. Coulter  
Camacho Mendoza Coulter Law Group  
776 E. Riverside Drive, Suite 240  
Eagle, Idaho 83616

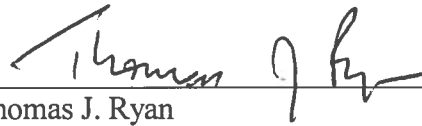
Bryan F. Taylor  
Michael K. Porter  
Canyon County Prosecuting Attorney  
1115 Albany St.  
Caldwell, Idaho 83605

6-29-12  
Date

  
Deputy Clerk



Dated this 20<sup>th</sup> day of July, 2012.



Thomas J. Ryan  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

Ronaldo A. Coulter  
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Eagle, Idaho 83616

Bryan F. Taylor  
Michael K. Porter  
Canyon County Prosecuting Attorney  
1115 Albany St.  
Caldwell, Idaho 83605

7.20.12  
Date

  
Deputy Clerk

**BRYAN F. TAYLOR, ISB No.**  
**MICHAEL K. PORTER, ISB No. 7502**  
CANYON COUNTY PROSECUTING ATTORNEY'S OFFICE  
CANYON COUNTY COURTHOUSE  
1115 Albany Street  
Caldwell, Idaho 83605  
Telephone: (208) 454-7391

**FILED**  
A.M. 2:40 P.M.

**JUL 20 2012**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMEE LEE WADE

Plaintiff / Appellee,

vs.

BRYAN F. TAYLOR, COUNTY  
PROSECUTING ATTORNEY,  
CANYON COUNTY PROSECUTING  
ATTORNEY'S OFFICE, a public agency;

Defendant / Appellant.

CASE NO.CV2012-3744\*C

**ORDER TO STAY MEMORANDUM  
DECISION AND ORDER PENDING  
APPEAL**

Pursuant to Respondent's motion and good cause appearing;

IT IS HEREBY ORDERED to stay the Memorandum Decision and Order dated June 29,  
2012 pending appeal.

DATED: July 20<sup>th</sup>, 2012.

  
\_\_\_\_\_  
THOMAS J. RYAN  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of July, 2012, I caused a true and correct copy of the foregoing **ORDER TO STAY MEMORANDUM DECISION AND ORDER PENDING APPEAL** to be served on the following in the manner indicated:


Michael K. Porter  
Deputy Prosecuting Attorney  
Canyon County Prosecuting Attorney's Office  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605

U.S. Mail  
 Overnight Delivery  
 Hand Delivery  
 Facsimile  
 Email

Ronaldo A. Coulter  
Camacho Mendoza Coulter Law Group  
Attorney at Law  
776 E. Riverside Drive, Suite 240  
Eagle, Idaho 83616  
Fax: 208-672-6114

U.S. Mail  
 Overnight Delivery  
 Hand Delivery  
 Facsimile  
 Email

CHRIS YAMAMOTO, CLERK

By:   
\_\_\_\_\_  
Deputy Clerk



**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:

10-5-12

BRIAN TAYLOR  
MICHAEL PORTER  
COUNTY PROSECUTING ATTORNEY  
1115 ALBANY STREET  
CALDWELL, ID 83605

R.A. (RON) COULTER  
CAMACHO MENDOZA COULTER  
LAW GROUP  
776 E. RIVERSIDE DRIVE, STE 240  
EAGLE, ID 83616

*TCM*

\_\_\_\_\_  
Clerk