IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KING COUNTY DEPARTMENT OF ADULT AND JUVENILE DETENTION,	)	No. 62937-9-I
Respondent,	)	DIVISION ONE
v.	)	
ALLAN PARMELEE ,	)	PUBLISHED IN PART
Appellant.	)	FILED: June 27, 2011

Cox, J. — Allan Parmelee appeals from two successive permanent injunctions. They enjoin a governmental agency from allowing him to inspect and copy public records that he sought under the Public Records Act (PRA), chapter 42.56 RCW. We hold that the trial court properly enjoined access to nonexempt public records pursuant to RCW 42.56.565 in the second injunction. Because the relief that Parmelee requests with respect to the first injunction is unavailable due to the issuance of the second injunction, we decline to address his challenges to the first injunction. Parmelee also challenges other orders of the trial court. These challenges are not meritorious. We affirm.[1]

Parmelee has a long history of harassing and threatening government

[1] We deny Parmelee's motion to strike supplementation of the record, filed in this court on December 30, 2010. To the extent that Parmelee's Notice of Change in Authority Relied Upon and Supplemental Authority, dated May 9, 2011, is a motion to stay consideration of this case, we deny the motion.

employees with personal information obtained through various avenues, including the PRA.[2] His tactics include publishing private information on public web sites, issuing "press releases" and other media about alleged improprieties by government employees, and filing administrative grievances and lawsuits.

Parmelee has been involved in several PRA cases involving Washington State agencies. For example, Parmelee submitted 223 separate PRA requests to the Department of Corrections (DOC) between 2001 and 2007. These requests primarily sought personal information about specific DOC employees or information about all DOC employees at a specific location. Based on Parmelee's stated intent to use this information to intimidate, harass, slander, and harm DOC employees, a number of superior courts have issued permanent injunctions prohibiting him from obtaining the requested information.[3] On review, some of these injunctions were vacated and the cases remanded for further consideration. But the factual background of these cases provides context for our analysis.

Division Two of this court recently described some of this context in DeLong v. Parmelee:[4]

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[2] We hereby order consolidation of the record on appeal in King County Sheriff's Office v. Parmelee, case No. 62938-7, with the record on appeal in this case.

[3] See, e.g., Burt v. Wash. State Dep't of Corr., 168 Wn.2d 828, 231 P.3d 191 (2010); Parmelee v. Wash. State Dep't of Corr., noted at __ Wn. App. __, 2011 WL 1631722; DeLong v. Parmelee, 157 Wn. App. 119, 236 P.3d 936 (2010), remanded for reconsideration, 171 Wn.2d 1004, 248 P.3d 1042 (2011).

[4] 157 Wn. App. 119, 236 P.3d 936 (2010).

In 2004, a jury found Parmelee guilty of two counts of first degree arson for the fire-bombing of two automobiles belonging to attorneys opposing him in two separate civil legal actions. Parmelee fire-bombed the automobiles at the attorneys' respective residences. Prior to the first attack, Parmelee posted the attorneys' home addresses on a web site he created to complain about court rulings in his custody and dissolution dispute with the victim's client, Parmelee's former wife. On that web site, Parmelee "invited" other disgruntled fathers to pay the attorney victim "a visit."

In addition, Parmelee's first criminal trial on the arson charges resulted in a mistrial because the superior court discovered that Parmelee possessed materials with discrete personal information about the jurors who had been impaneled. The trial court found that Parmelee had secreted this information in direct violation of a superior court order that he not retain any information on jurors. After the jury found him guilty, Parmelee expressed extreme hostility toward the judge and subsequently sought the judge's photograph from the Washington State Bar Association.

Parmelee has written several letters to DOC staff stating that he intends to misuse information that he receives about DOC staff. He has also made comments that DOC staff have interpreted as thinly veiled threats against them and their families.

On July 20, 2005, Parmelee wrote a letter to DOC Secretary Harold Clarke in which he referred to former Clallam Bay Correctional Center (CBCC) Superintendent Sandra Carter as an "anti-male . . . lesbian," and Associate Superintendent John Aldana as an "antagonist." Parmelee went on to state that "[h]aving a man-hater lesbian as a superintendent is like throwing gas on already smouldering [sic] fire." Parmelee asked Clarke for his "thoughts on this so [Parmelee could] conclude a series of media releases [he had] planned about CBCC."

On October 8, 2005, Parmelee wrote a letter to Carter, which stated,

> I have initiated investigators to possibly interview your neighbors, photograph your home and conduct a detailed due diligence into any actual or potential parties or witnesses to lawsuits. Some of the information will be interpreted and posted on the internet to make it easier for others to sue you people also, and to let the public know what type of people

> their taxes pay. . . . I already have some of your home addresses (for a dollar each) and now await the video and photographs. You want to conduct yourselves like official crooks, [sic] you deserve the publicity that comes with it. This letter is not intended to threaten, intimidate or coerce anyone. It is intended to simply put you on notice so you won't jump to the wrong conclusion when you see a photographer or video camera operator around yours [sic] or your staff's homes.

On March 19, 2006, CBCC staff confiscated a letter from Parmelee's cell addressed to Maxwell Tomlinson of Max Investigations. In that letter, Parmelee referred to past and future plans to send people on his behalf to CBCC staff members' homes or to follow them, indicating, "I'll have to call through another as we've done before. As usual bill me through the usual source, up to $2,000.00 per lot that I will pre-approve." Parmelee went on to state that "[s]everal prison staff are defendants in lawsuits and I want them followed and photographed, and all the public records you can find, including SS's, DC's, and vehicle licenses, codes and pictures of them, their homes, and vehicles." Parmelee identified 20 DOC employees he wanted Tomlinson to follow. He then went on to state,

> I also propose that when we get ready to move forward, that your material not only be posted on the internet for other prisoners to access, but to hire some legal talent to enforce security and to prevent these inbred bullies from causing too much more trouble. Be careful, as we're dealing with people whose thought processes are defective and base. You may need a few bullies of your own. CR-4 service will be required.

On July 9, 2006, Parmelee wrote another letter to Carter informing her that he had hired picketers to picket the homes of DOC employees. He stated that he had hired individuals for

> $2,000.00 per weekend to picket peacefully [outside] some DOC staff's residences and hand out information brochures about DOC employees to the neighbors. . . . These pickets are planned for Olympia DOC people whom [sic] may be in the dark about what's going on here and how bad things really

> are. They are also planned to occur at your CBCC staff's residences, which one(s) and when will not be revealed until a day or so in advance to the media.
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> On July 11, 2006, Parmelee received a serious infraction at CBCC when he handed a DOC employee a mock-up of a flyer containing the names of several DOC staff members. Parmelee told the employee, "These are the flyers that I am having printed and passed out tomorrow and if you don't stay out of it your dead bitch will be on one of them."
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> The flyer Parmelee gave the correctional officer is entitled "SEXUAL PREDITORS [sic] IN YOUR NEIGHBORHOOD" and lists the names of six DOC employees. Above each DOC employee's name is a rough outline of a picture of that individual with "insert actual photos here as designated" written across one of the sketches. The flyer states in relevant part,
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> > These sexual preditors [sic] . . . work at the Clallam Bay prison where homosexual assaults are encouraged against prisoners by Sandra Carter, the gay feminist superintendent. Protect Your Families and Children. Demand The [DOC] Fire These People Now Before You Become Their Next Victim.[5]

Here, Parmelee exhibited similar behavior to that described in DeLong toward employees of the King County Department of Adult and Juvenile Detention (DAJD). In 2001, Parmelee was found in possession of a self-drawn diagram of the King County jail with notations indicating which areas to bomb. Twice in 2004, DAJD employees found a razor blade mixed in with Parmelee's legal papers when they were cleaning his cell. Parmelee has also physically assaulted DAJD employees on at least 13 occasions.

Parmelee also has a history of threatening DAJD employees. In 2001,

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[5] Id. at 132-35 (internal citations omitted). The supreme court remanded this case for reconsideration in light of Seattle Times v. Serko, 170 Wn.2d 581, 243 P.3d 919 (2010) and RCW 42.56.565.

Parmelee wrote a letter to the Corrections Program Administrator (CPA) stating, "I realize you enjoy threatening me because it happens so often. Don't worry, the score will be evened one day. . . . Till Death. AP."[6]

While incarcerated at King County jail, Parmelee filed numerous grievances about DAJD employees. These grievances included the following express and implied threats. "Fire this idiot because it's people like him that get beat up when their backup isn't present."[7] "Fire these stupid idiots before this harassment escalates into violence and someone gets hurt . . . . Pay me money."[8] "Fire these stupid idiots . . . pay me money. This is how guards get beat up."[9] "He . . . wants someone to hunt him down and beat his ass . . . cease this conduct or I'll resolve this using other means."[10] "Perhaps what she wants is for me to send these to her home. Is that what you're pushing for?"[11]

In a grievance response letter Parmelee wrote,

> I admit telling Porter that I would put pictures of his [and other jail employees] residences, cars, themselves, and a wide variety of other personal information, all publicly available on the internet. . . . I am aware that past persons on this web site have had problems. . . . Although it is common knowledge, public information may "fuck up someone's life," that's the price society pays for electronic and free information. I will put up many jail staff's publically available personal information, and any secondary

[6] Clerk's Papers at 931.

[7] Clerk's Papers at 933.

[8] Clerk's Papers at 934.

[9] Clerk's Papers at 936.

[10] Clerk's Papers at 943.

[11] Clerk's Papers at 968.

> paranoia or unproven relationship to problems they have are coincidental. Enjoy the publicity.[12]

In addition to the threats in his written grievance reports, Parmelee verbally threatened to visit DAJD employees at home. On September 5, 2002, Parmelee told the CPA that he would "watch his home and get him."[13] On November 3, 2002, Parmelee asked the CPA, "Did you see that small black car drive by your house last Saturday evening?"[14] On April 17, 2004, Parmelee asked a corrections officer, "Do you want someone to come to your house?" And on May 18, 2004, Parmelee told a corrections officer that he knew his home address and would use that information to "get" him.[15]

Finally, on multiple occasions, documents containing the names and addresses of DAJD employees were found either in Parmelee's possession or in his handwriting.

On May 12 and 26, 2008, Parmelee made six separate requests under the PRA to the DAJD for information and records. These requests sought the following information about DAJD employees:

1. First, middle, and last name (including hyphenated, changed, and maiden names);

2. Date of birth;

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[12] Clerk's Papers at 979-80.

[13] Clerk's Papers at 957.

[14] Clerk's Papers at 959.

[15] Clerk's Papers at 975.

3. Gender;

4. Race;

5. Height and weight;

6. Date of hire, job title, annual pay/rate of pay;

7. Employment identification number;

8. Information related to special training;

9. Employment evaluations, discipline, and termination records;

10. Photographs (in electronic format and including metadata);

11. E-mail addresses;

12. Direct phone number, pager number, and cell phone number; and

13. All reports, investigation records, photographs, administrative grievances, emails, letters, and memos related to "sex-by-guards."[16]

DAJD commenced this action for declaratory and injunctive relief on behalf of the employees who were the subjects of Parmelee's public disclosure requests. Parmelee filed his answer and also moved for relief in several respects. He sought in camera review of the records at issue, consolidation of this case with a similar case filed by the King County Sheriff's Office, and striking of what he characterized as "redundant, inmaterial [sic], impertinent and scandalous" matter in DAJD's complaint. Thereafter, DAJD moved for a permanent injunction, requesting that the court permanently enjoin it from releasing records to Parmelee that contained employee photographs, dates of

[16] Clerk's Papers at 892-97.

birth, gender, race, height and weight, and direct phone, cell, and pager numbers.

The court granted DAJD's motion to enjoin the release of employee photographs, dates of birth, gender, race, height and weight, and direct phone, cell, and pager numbers. The court also entered findings of fact and conclusions of law supporting issuance of this injunction. The court denied DAJD's motion for a blanket injunction with respect to other records.

In the same order, the court denied Parmelee's motion to consolidate and motion to strike DAJD's pleadings. The court also denied Parmelee's motion for in camera review of the records with the exception that the court reviewed a single photograph and related metadata to determine whether it contained any information subject to public disclosure.

The court concluded by separate order that some of the photo metadata was subject to disclosure and some was not. Specifically, the court found that the employees' name, date of hire, title, department and division were subject to disclosure. The court concluded that all other information contained in the photo metadata was not subject to disclosure.

Parmelee timely filed his notice of appeal of this injunction.

In March 2009, the Legislature amended the PRA.[17] The new section is codified at RCW 42.56.565. It expressly authorizes courts to enjoin the inspection and copying of nonexempt public records by prisoners, provided the

[17] See Laws of 2009, ch. 10 (codified as RCW 42.56.565).

court finds that:

> (i) The request was made to harass or intimidate the agency or its employees;
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> (ii) Fulfilling the request would likely threaten the security of correctional facilities;
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> (iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or
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> (iv) Fulfilling the request may assist criminal activity.[18]

Following the March 20, 2009, effective date of this amendment, King County and the King County Prosecuting Attorney's Office (collectively "PAO"), filed a motion for injunctive relief against Parmelee under a separate case number from this action. PAO sought to enjoin any past, pending, or future public records requests by Parmelee for the remainder of his incarceration. DAJD moved to join in the PAO motion. Parmelee opposed the motion, moved for discovery, and moved to strike DAJD's motion for joinder.

On August 25, 2009, the trial court entered findings of fact, conclusions of law, and an order enjoining all pending and future public records requests by Parmelee to DAJD for the remainder of his incarceration under RCW 42.56.565. The trial court also denied Parmelee's motion for discovery and motion to strike.

DAJD then moved to supplement the trial court record in this case with the PAO motion for injunction and supporting declarations on which the trial court relied in granting the second injunction. The trial court subsequently

[18] RCW 42.56.565(1)(c).

granted DAJD's motion to supplement the record.

Parmelee filed a supplemental notice of appeal seeking review of the trial court's second injunction. This court consolidated the two appeals.

RCW 42.56.565 INJUNCTION

We first address Parmelee's challenges to the second injunction that the court issued pursuant to RCW 42.56.565, the March 20, 2009, amendment to the PRA. Parmelee primarily argues that the statute was improperly applied retroactively and that RCW 42.56.565 is unconstitutional on several bases. We disagree with these arguments.

The PRA makes all "public records" available for public inspection and copying unless the record falls within a specific exemption.[19] The PRA is a "'strongly worded mandate for broad disclosure of public records'" and should be "liberally construed to promote full access to public records, and its exemptions are to be narrowly construed."[20] The PRA also provides that persons named in a request for records or to whom the requested record specifically pertains, may move to enjoin the release of the requested records under RCW 42.56.540 or RCW 42.56.565.

The superior court may issue an injunction under RCW 42.56.540 if the requested records "fall within specific exemptions found elsewhere in the Act"

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[19] Fischer v. Wash. State Dep't of Corr., __ P.3d __, 2011 WL 1572465 (citing Lindeman v. Kelso Sch. Dist. No. 458, 162 Wn.2d 196, 201, 172 P.3d 329 (2007); RCW 42.56.070(1)).

[20] Amren v. City of Kalama, 131 Wn.2d 25, 31, 929 P.2d 389 (1997) (quoting PAWS v. Univ. of Wash., 125 Wn.2d 243, 251, 884 P.2d 592 (1994)).

and "examination would clearly not be in the public interest and would substantially and irreparably damage any person."[21] Under RCW 42.56.565, the superior court may issue an injunction if the requestor is currently in prison and it finds that the request was made to harass or intimidate an agency or its employees or that fulfilling the request would cause one of the other enumerated harms identified in the statute.[22]

We review de novo injunctions issued under the PRA.[23]

Retroactivity

Parmelee argues that the trial court improperly applied RCW 42.56.565 retroactively "because it strips away rights to previous transactions without a statutory provision to do so." We conclude that the statute was not applied retroactively on this record.

The Legislature amended the PRA to add the provisions codified as RCW 42.56.565, and this amendment became effective on March 20, 2009.[24]

The threshold question is whether retroactivity is even at issue on this record. Parmelee appears to argue that the court enjoined the release of records responsive to requests that predate the effective date of RCW

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[21] PAWS, 125 Wn.2d at 257-58; RCW 42.56.540.

[22] RCW 42.56.565(1)(c).

[23] Dragonslayer, Inc. v. Wash. State Gambling Comm'n, 139 Wn. App. 433, 441, 161 P.3d 428 (2007) (citing Spokane Police Guild v. Liquor Control Bd., 112 Wn.2d 30, 35, 769 P.2d 283 (1989)).

[24] See Laws of 2009, ch. 10 (codified as RCW 42.56.565).

42.56.565. But he fails to cite to the portion of this voluminous record on appeal that supports this claim. Likewise, DAJD does not fill this void, making other arguments why we should reject this claim.[25]

We will not speculate on whether the court's injunction applies to requests made before the effective date of the amendment. We note that in its motion to join PAO's motion for injunctive relief under RCW 42.56.565, DAJD requested "that all past, pending, and future PRA requests from [Parmelee] to [DAJD] be enjoined for the duration of his incarceration."[26] But this one page motion did not identify what past records were at issue or whether they were requested before or after the effective date of the amendment.

Finally, and most importantly, the trial court did not identify any pre-amendment PRA requests from Parmelee in its order granting injunctive relief. That order specifically addresses requests made on June 18 and 22, 2009, after the March 20, 2009, effective date of the amendment. The three other categories of requests in the order do not specify when they were made.

Given the lack of clarity in this voluminous record whether there is any retroactivity issue, we decline to consider this argument any further.

Parmelee next makes several arguments that challenge the constitutionality of RCW 42.56.565 in various ways. We consider each of these arguments in turn and reject them all.

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[25] Brief of Respondent at 36-39.

[26] Clerk's Papers at 1066.

We presume that a statute is constitutional and the challenging party bears the burden of proving, beyond a reasonable doubt, its unconstitutionality.[27] We review de novo a challenge to the constitutionality of a statute.[28]

Due Process

Without citation to or discussion of any relevant authority, Parmelee claims that the "preponderance of the evidence" standard in RCW 42.56.565(3), stating the evidentiary standard for proceedings to enjoin access to public records, violates due process.

We note that "[p]arties raising constitutional issues must present considered arguments to this court."[29] "'[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.'"[30]

This claim is unsupported by any considered argument. Accordingly, we decline to consider it further.

We are left with the question whether due process applies to any of his remaining claims. We conclude that it does not.

The Fourteenth Amendment's due process clause provides that no state shall "deprive any person of life, liberty, or property, without due process of

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[27] State ex rel. Peninsula Neighborhood Ass'n v. Dep't of Transp., 142 Wn.2d 328, 335, 12 P.3d 134 (2000).

[28] State v. Williams, 159 Wn. App. 298, 319, 244 P.3d 1018 (2011) (citing State v. Shultz, 138 Wn.2d 638, 643, 980 P.2d 1265 (1999)).

[29] State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992).

[30] Id. (quoting In re Rosier, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986)).

[31] U.S. Const. amend. XIV, § 1.

law."[31] A person alleging a violation of his right to due process must establish that he was deprived of an interest cognizable under the due process clause.[32]

"'A liberty interest may arise from the Constitution,' from 'guarantees implicit in the word "liberty,"' or 'from an expectation or interest created by state laws or policies.'"[33] However, for a statute to "create a liberty interest, it must contain 'substantive predicates' to the exercise of discretion and 'specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow.'"[34] "Thus, laws that dictate particular decisions given particular facts can create liberty interests, but laws granting a significant degree of discretion cannot."[35]

Here, Parmelee has not cited any authority to show that the PRA creates a constitutionally protected liberty interest.[36] We assume he has found none.

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[31] U.S. Const. amend. XIV, § 1.

[32] Ky. Dep't of Corr. v. Thompson, 490 U.S. 454, 459-60, 109 S. Ct. 1904, 104 L. Ed. 2d 506 (1989); Bd. of Regents v. Roth, 408 U.S. 564, 571-72, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

[33] In re Pers. Restraint of Mattson, 166 Wn.2d 730, 737, 214 P.3d 141 (2009) (quoting In re Pers. Restraint of Bush, 164 Wn.2d 697, 702, 193 P.3d 103 (2008) (internal quotation marks omitted) (quoting In re Pers. Restraint of McCarthy, 161 Wn.2d 234, 240, 164 P.3d 1283 (2007)).

[34] In re Pers. Restraint of Cashaw, 123 Wn.2d 138, 144, 866 P.2d 8 (1994) (quoting Ky. Dep't of Corr., 490 U.S.at 463; Swenson v. Trickey, 995 F.2d 132, 134 (8th Cir.), cert. denied, 510 U.S. 999, 114 S. Ct. 568, 126 L. Ed. 2d 468 (1993)).

[35] Id.

[36] RAP 10.3(a)(6); State v. Logan, 102 Wn. App. 907, 911 n.1, 10 P.3d 504 (2000) ("'Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.'") (quoting DeHeer v. Seattle Post-Intelligencer,

In any event, Division Two of this court recently concluded that the PRA "merely creates [a] procedure, it does not create a liberty interest."[37] This is consistent with the supreme court's recent observation that a request for injunctive relief under the PRA is procedural, not substantive.[38]

Moreover, RCW 42.56.565 does not direct a specific result. Rather, it grants the trial court considerable discretion in determining whether to grant an injunction based on the facts presented.

For all these reasons, we conclude that the statute does not create a liberty interest that is subject to due process protections.

Vagueness and Overbreadth

Parmelee argues that RCW 42.56.565 is vague and overbroad, chilling constitutionally protected free speech activities. We disagree.

A statute is unconstitutionally vague if it "does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed" or it "does not provide ascertainable standards of guilt to protect against arbitrary enforcement."[39] When determining whether a statute

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60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

[37] DeLong, 157 Wn. App. at 163, remanded for reconsideration, 171 Wn.2d 1004, 248 P.3d 1042 (2011) (citing Cashaw, 123 Wn.2d at 146).

[38] See Serko, 170 Wn.2d at 597 (commenting on RCW 42.56.540, which provides for injunctive relief under the PRA); see also Proctor v. White Lake Tp. Police Dep't, 248 Mich. App. 457, 465, 639 N.W.2d 332 (2001) (holding inmates' exclusion from seeking public documents under state FOIA does not implicate constitutional rights).

[39] State v. Williams, 144 Wn.2d 197, 203, 26 P.3d 890 (2001) (internal quotation marks omitted) (quoting City of Bellevue v. Lorang, 140 Wn.2d 19, 30,

provides fair warning of the proscribed conduct, we examine the context of the entire enactment, giving the language a "sensible, meaningful, and practical interpretation."[40] We do not, however, require absolute specificity.[41] "[A] statute is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct."[42]

Parmelee appears to argue that RCW 42.56.565 is unconstitutionally vague because it does not precisely define what evidence is sufficient to satisfy the moving party's burden when seeking an injunction. A challenged statute is unconstitutionally vague only if its terms "are so loose and obscure that they cannot be clearly applied in any context."[43]

The terms at issue here are not so loose and obscure that a trial court would be unable to apply them.[44] To the contrary, the terms that Parmelee

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992 P.2d 496 (2000)).

[40] City of Spokane v. Douglass, 115 Wn.2d 171, 180, 795 P.2d 693 (1990).

[41] Id. at 179.

[42] City of Seattle v. Eze, 111 Wn.2d 22, 27, 759 P.2d 366 (1988).

[43] State v. Sullivan, 143 Wn.2d 162, 183, 19 P.3d 1012 (2001).

[44] RCW 42.56.565(1)(c) provides:

> In order to issue an injunction, the court must find that:
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> (i) The request was made to harass or intimidate the agency or its employees;
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> (ii) Fulfilling the request ***would likely*** threaten the security of correctional facilities;

challenges, such as "would likely" and "may assist," are commonly understood terms that are regularly applied by courts in the context of statutory interpretation. In addition, the non-exclusive list of factors that may support an injunction in subsection (2) of the statute clearly describe the kind of conduct that the statute is intended to deter.[45] These factors are not unconstitutionally

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> (iii) Fulfilling the request ***would likely*** threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or
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> (iv) Fulfilling the request ***may assist*** criminal activity.
>
> (Emphasis added).

[45] RCW 42.56.565(2) provides:

> In deciding whether to enjoin a request under subsection (1) of this section, the court may consider all relevant factors including, but not limited to:
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> (a) Other requests by the requestor;
>
> (b) The type of record or records sought;
>
> (c) Statements offered by the requestor concerning the purpose for the request;
>
> (d) Whether disclosure of the requested records would likely harm any person or vital government interest;
>
> (e) Whether the request seeks a significant and burdensome number of documents;
>
> (f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and
>
> (g) The deterrence of criminal activity.

vague.

Parmelee also argues that the statute is unconstitutionally vague because it does not adequately notify an incarcerated records requestor what types of records requests he is not permitted to make. This argument also fails.

The statute does not prohibit a prisoner from making PRA requests. Rather, it permits a court to enjoin a prisoner from obtaining access to nonexempt public records if the court finds: (1) the request was made to harass or intimidate a public agency or its employees; (2) fulfilling the request would likely threaten the security of a correctional facility; (3) fulfilling the request would likely threaten the safety or security of staff, inmates or other persons; or (4) fulfilling the request may assist criminal activity.[46] Giving this language a "sensible, meaningful, and practical interpretation," the statute is not subject to a vagueness challenge.

Parmelee also argues that RCW 42.56.565 is overbroad. He is mistaken.

A statute is overbroad if it chills or sweeps within its prohibition constitutionally protected free speech activities.[47] A statute that regulates behavior, and not pure speech, will not be overturned as overbroad unless the challenging party shows the overbreadth is both real and substantial in relation to the statute's plainly legitimate sweep.[48]

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[46] RCW 42.56.565(1)(c).

[47] Lorang, 140 Wn.2d at 26; State v. Halstien, 122 Wn.2d 109, 122, 857 P.2d 270 (1993).

[48] City of Seattle v. Webster, 115 Wn.2d 635, 641, 802 P.2d 1333 (1990), cert. denied, 500 U.S. 908 (1991); see also Virginia v. Hicks, 539 U.S. 113, 122,

The first inquiry in the overbreadth analysis is whether the statute prohibits a substantial amount of constitutionally protected speech.[49] As we have discussed in this opinion, RCW 42.56.565 creates a procedure whereby an agency or individual that is the subject of a public records request may seek to enjoin the release of the requested records under narrow circumstances. Parmelee appears to argue that this constitutes a restriction on speech because it deters publication of government records and permits the agency to deny records based on the type of records requested. But, as the U.S. Supreme Court recently pointed out, "the PRA is not a prohibition on speech, but instead a ***disclosure*** requirement. '[D]isclosure requirements may burden the ability to speak, but they . . . do not prevent anyone from speaking.'"[50] We agree.

RCW 42.56.565 does not limit Parmelee's right to publish material critical of state agencies. Nor does it prohibit Parmelee from speaking in any other manner he chooses. The statute merely creates a procedure to enjoin the disclosure of nonexempt public records under limited circumstances. This does not offend the First Amendment. While the U.S. Supreme Court has determined that certain types of public information, primarily involving judicial proceedings, are covered by the First Amendment's right of access, it has not extended this

123 S. Ct. 2191, 156 L. Ed. 2d 148 (2003).

[49] City of Seattle v. Huff, 111 Wn.2d 923, 925, 767 P.2d 572 (1989).

[50] John Doe No. 1 v. Reed, __ U.S. __, 130 S. Ct. 2811, 2818, 177 L. Ed. 2d 493 (2010) (emphasis added) (quoting Citizens United v. Fed. Election Comm'n, 558 U.S. __, 130 S. Ct. 876, 914, 175 L. Ed. 2d 753 (2010)).

right to all government documents.[51] As that Court explained in Houchins v. KQED, Inc.,[52] while parties have a right to obtain information "'from any source by means within the law,' . . . that affords no basis for the claim that the First Amendment compels others—private persons or governments—to supply information."[53]

In sum, Parmelee fails in his burden to prove beyond a reasonable doubt that the statute is either vague or overly broad.

Equal Protection

Parmelee argues that RCW 42.56.565 violates equal protection because it permits government agencies to "arbitrarily select an unpopular records requestor and deny him or her public records." We disagree.

Equal protection under the law is guaranteed by both the Fourteenth Amendment to the United States Constitution and article 1, section 12, of the Washington Constitution.[54] "The appropriate level of scrutiny in equal protection claims depends upon the nature of the classification or rights involved."[55] The

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[51] See, e.g., Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 12-13, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986); Houchins v. KQED, Inc., 438 U.S. 1, 9, 98 S. Ct. 2588, 57 L. Ed. 2d 553 (1978) ("[T]his Court has never intimated a First Amendment guarantee of a right of access to all sources of information within government control.").

[52] 438 U.S. 1, 9, 98 S. Ct. 2588, 57 L. Ed. 2d 553 (1978).

[53] Id. at 11 (quoting Branzburg v. Hayes, 408 U.S. 665, 681-82, 92 S. Ct. 2646, 33 L. Ed. 2d 626 (1972)).

[54] State v. Hirschfelder, 170 Wn.2d 536, 550, 242 P.3d 876 (2010).

[55] Id. (citing Am. Legion Post No. 149 v. Dep't of Health, 164 Wn.2d 570, 608, 192 P.3d 306 (2008)).

challenged classification need only be rationally related to a legitimate state interest unless it violates a fundamental right or is drawn upon a suspect classification such as race, religion, or gender.[56] Because we do not recognize prisoners as "a suspect class" and Parmelee does not argue that the classification violates a fundamental right, rational basis review applies.

"A classification passes rational basis review so long as it bears a rational relation to some legitimate end."[57] Under this deferential standard, legislation is presumed to be rational and the plaintiff bears the heavy burden of negating every conceivable basis which might support the legislation.[58] A legislative distinction survives rational basis analysis if: "first, all members of the class are treated alike; second, there is a rational basis for treating differently those within and without the class; and third, the classification is rationally related to the purpose of the legislation."[59]

Essentially, Parmelee claims that the authority provided in RCW 42.56.565 to enjoin prisoners from receiving records is not rationally related to any legitimate government interest. This conclusory assertion is insufficient to overcome the presumption of rationality that applies to the PRA. Moreover, there are several rational reasons for the legislative amendment. For example,

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[56] Id. at 550.

[57] Id. at 551 (internal quotation marks omitted).

[58] Id.; Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973).

[59] Hirschfelder, 170 Wn.2d at 551 (internal quotation marks omitted).

the statute preserves state resources and prevents frivolous requests by prisoners.[60] Because the statute also treats all prisoners alike and is rationally related to the purpose of the legislation, it passes rational basis scrutiny.

We affirm the issuance of the second injunction and all other decisions of the trial court that we have considered on the merits.

The balance of this opinion has no precedential value. Accordingly, pursuant to RCW 2.06.040, it shall not be published.

Findings of Fact

Parmelee appears to argue that the trial court's findings of fact are not supported by the evidence. Specifically, he argues "The Second Injunction Lacked Sufficient Admissible Non-Conclusory Evidence Necessary to Support Its Draconian Result." This claim is without merit.

RCW 42.56.565(1)(c) allows a court to grant injunctive relief if it finds, by a preponderance of the evidence, that:

> (i) The request was made to harass or intimidate the agency or its employees;
>
> (ii) Fulfilling the request would likely threaten the security of correctional facilities;
>
> (iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or

[60] See Giarratano v. Johnson, 521 F.3d 298, 304-05 (2008) (concluding Virginia's FOIA inmate exclusion did not offend equal protection because it furthered the state's interest in conserving resources and preventing frivolous requests); Proctor, 248 Mich. App. at 469-70 (holding Michigan's inmate FOIA exclusion is rationally related to the Legislature's interest in conserving resources and preventing frivolous FOIA requests).

(iv) Fulfilling the request may assist criminal activity.[61]

Parmelee argues variously that there is no evidence that all or any DAJD employees felt personally threatened by his records requests, that he has never harassed or intimidated DAJD employees, and that even if he has harassed DAJD employees, the proper remedy is to pursue a criminal harassment action, not an injunction under the PRA. Parmelee also argues that several of the trial court's findings and conclusions rely on evidence that was improperly considered by the trial court.

However, our independent review confirms that the trial court's findings are supported by the record. The court's order indicates that, in addition to the declarations submitted by the PAO in support of the injunction, the court also considered the pleadings in all of the underlying actions. These materials are extensive and, as discussed above, demonstrate behavior by Parmelee that clearly meets the requirements of RCW 42.56.565. Moreover, the findings are also supported by the 33 new public records requests by Parmelee to the DAJD that were received on June 22, 2009.

We further note that this court is unable to review several of Parmelee's arguments because no Verbatim Reports of Proceedings were designated for the appellate record. It is the appellant's duty to provide an adequate record so the appellate court can review assignments of error.[62] Parmelee's failure to

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[61] RCW 42.56.565(1)(c).

[62] State v. Malone, 72 Wn. App. 429, 434, 864 P.2d 990 (1994).

provide an adequate record precludes review of his claims to the extent they rely on the trial court's actions during any of the hearings.

Procedural Challenges

Parmelee argues that DAJD's motion to join the PAO's motion for a permanent injunction under RCW 42.56.565 was insufficiently pled under Civil Rule (CR) 7 because it does not identify the evidence relied upon or the legal basis for the claim. This argument is unpersuasive.

DAJD's motion to join PAO's motion for a permanent injunction states that DAJD "joins in, King County's motion for an injunction pursuant to the recent amendments to the PRA [RCW 42.56.565]. It is respectfully requested that all past, pending and future PRA requests from [Parmelee] to [DAJD] be enjoined for the duration of his incarceration."[63] This motion adequately informed the court that DAJD was relying on the underlying motion filed by the PAO. And Parmelee does not argue that the PAO motion was insufficiently pled. Our independent review confirms that it was not. Rather, the PAO motion is over 30 pages long and includes over three pages dedicated to Parmelee's history of threatening and intimidating DAJD employees. The motion also clearly outlines the legal basis for the relief requested. Both the PAO motion for injunctive relief and DAJD's motion to join in that motion comply with the requirements of CR 7.

Parmelee next argues that the trial court abused its discretion by issuing the second injunction when the case was already "dismissed with prejudice"

[63] Clerk's Papers at 1066.

when the court issued the first injunction. But CR 41 expressly provides that a dismissal is without prejudice unless an order states otherwise. The trial court order, entered on December 20, 2008, simply "dismissed" the case. The claim that the court dismissed the case with prejudice is without merit.

Parmelee also argues that the trial court violated Rule of Appellate Procedure (RAP) 7.2 by granting DAJD's motion to join the PAO motion for injunctive relief without first seeking leave from this court. He is again mistaken.

RAP 7.2 provides in relevant part:

> (a) Generally. After review is accepted by the appellate court, the trial court has authority to act in a case only to the extent provided in this rule, unless the appellate court limits or expands that authority as provided in rule 8.3.
> . . . .
>
> (e) Postjudgment Motions and Actions To Modify Decision. The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes . . . . If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. . . .

Here, DAJD was not required to seek leave from this court under RAP 7.2. RAP 7.2(a) explicitly authorizes the trial court to hear and determine postjudgment motions authorized by the civil rules. Further, RAP 7.2(e) only requires the movant to seek leave from the appellate court prior to the formal entry of the trial court's decision "***[i]f the trial court determination will change a decision then being reviewed by the appellate court***."[64] Here, the

[64] (Emphasis added.)

injunction issued pursuant to RCW 42.56.565 did not change the initial injunction that had previously been appealed to this court.

Parmelee next appears to argue that DAJD's motion was not timely under the Civil Rules. This argument is not supported by the record and the trial court properly dismissed the same claim below.

RCW 42.56.540 INJUNCTION

Parmelee argues that the trial court's first injunction, issued pursuant to RCW 42.56.540, is improper for several reasons. He also argues that several other orders entered by the trial court are erroneous. We decline to address the alleged errors with respect to the first injunction for the reasons discussed below. Further, we conclude that the trial court did not abuse its discretion in denying Parmelee's motion to strike, motion to consolidate, and motion for in camera review.

Parmelee argues that the trial court erred in determining that employee photographs, dates of birth, gender, race, height and weight, and phone and pager numbers do not meet the definition of a "public record" under RCW 42.56.010(2). He also argues that the trial court's alternative holding, that employee photographs, dates of birth, gender, race, height and weight are exempt under RCW 42.56.230 (personal information exclusion) and that employee phone and pager numbers are exempt under RCW 42.56.420 (security exemption), is erroneous. Parmelee requests that this court reverse the first injunction and award PRA penalties for any record improperly withheld.

Assuming, without deciding, that the trial court abused its discretion in issuing the first injunction, the remedies sought by Parmelee for this alleged error are not available given our affirmance of the second injunction. First, Parmelee's pending PRA requests that were properly enjoined under RCW 42.56.565 are entirely duplicative of the requests enjoined by the first injunction. DAJD is permanently enjoined for the entirety of Parmelee's incarceration from producing for disclosure "any and all Seattle-KCJ staff's first, middle and last name and hyphenated or maiden names if applicable; their present job title, position, rank and job classification; their respective monthly-annual pay and compensation information and rates; their gender; their date of birth; their race; and any special job qualifications, recognized training and awards," and "electronic cop[ies] of every KCJ-Seattle staff person's ID picture such as on their ID cards, most recently taken with all metadata."[65] Because of this order, Parmelee is prohibited from receiving all of the records enjoined by the first injunction.

Second, Parmelee has not demonstrated that he is entitled to PRA penalties. A party who "prevails against an agency" in a court action seeking records under the PRA is entitled to a penalty for each day that the party was denied the right to inspect or copy the record.[66] A plaintiff is a "prevailing party" for purposes of the PRA if the action could reasonably be regarded as

[65] Clerk's Papers at 1154.

[66] RCW 42.56.550(4).

necessary to obtain the requested information, and the existence of the lawsuit had a causative effect on the release of the information.[67]

Here, Parmelee is not a prevailing party because this court has not determined that any records were wrongfully withheld. Even assuming that the first injunction was erroneously entered, as described above, Parmelee has not demonstrated that he has the right to obtain any of the requested records.

We conclude that the lack of a remedy for the trial court's alleged errors in issuing the first injunction renders the issues moot. We decline to address them.[68]

Motion to Strike

Parmelee argues that the trial court abused its discretion in denying his motion to strike DAJD's complaint as "redundant, inmaterial [sic], impertinent and scandalous" under CR 12(f). We disagree.

CR 12(f) provides:

> Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, ***the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter***.[69]

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[67] Violante v. King County Fire Dist. No. 20, 114 Wn. App. 565, 568-69, 59 P.3d 109 (2002) (citing Coalition on Gov't Spying v. Dep't of Public Safety, 59 Wn. App. 856, 863, 801 P.2d 1009 (1990) (quoting Miller v. United States Dep't of State, 779 F.2d 1378, 1389 (8th Cir. 1985)).

[68] See Grays Harbor Paper Co. v. Grays Harbor County, 74 Wn.2d 70, 73, 442 P.2d 967 (1968).

[69] (Emphasis added.)

We review a trial court's decision on a motion to strike for abuse of discretion.[70] A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.[71]

The language Parmelee relies on is intended to provide the trial court with adequate means to protect defendants from meritless attacks where the plaintiff maliciously alleges facts without probable cause.[72] Here, the trial court did not abuse its discretion in denying Parmelee's motion to strike DAJD's complaint. The facts that he alleges are "redundant, inmaterial [sic], impertinent and scandalous" constitute an accurate account of his own actions, including his criminal history, incarceration in the King County jail, treatment of DAJD employees, requests for public records at issue in DAJD's motion, and the probable harm that would result if the requested information was released.

Parmelee argues that "the PRA requires a case to focus only on an agency and specific PRA exemptions and if or how they apply." He suggests that CR 12(f) provides a remedy to clean up cases that rely on personal information about the requestor by striking "the scandalous trash talk, sensationalized rhetoric, impertinent and immaterial material the Jail flooded the case file with." Under the facts of this case, the information contained in DAJD's

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[70] King County Fire Prot. Dist. No. 16 v. Housing Auth., 123 Wn.2d 819, 826, 872 P.2d 516 (1994).

[71] In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

[72] Brin v. Stutzman, 89 Wn. App. 809, 821, 951 P.2d 291 (1998).

complaint was not improper. DAJD moved to enjoin Parmelee's requests under the personal, privacy, and security exemptions to the PRA. The information contained in the complaint was relevant and material to the court's decision whether these exemptions applied.

Because CR 12 is dispositive, we need not discuss Parmelee's references to evidentiary rules and statutes.

Motion for In Camera Review

Parmelee argues that the trial court abused its discretion in denying his motion for in camera review of the requested records. We disagree.

RCW 42.56.550(3) provides, in relevant part, "Courts ***may*** examine any record in camera in any proceeding brought under this section. The court ***may*** conduct a hearing based solely on affidavits."[73]

> Normally, determining whether in camera inspection is required is left to the discretion of the trial court. In deciding whether in camera review is necessary to determine whether an agency's asserted . . . exemptions apply, courts consider the following factors: (1) judicial economy, (2) the conclusory nature of the agency affidavits, (3) bad faith on the part of the agency, (4) disputes concerning the contents of the documents, (5) whether the agency requests an *in camera* inspection, and (6) the strong public interest in disclosure. These factors, taken together, make in camera review necessary when the court cannot evaluate the asserted exemption without more information than that contained in the government's affidavits.[74]

We review a trial court's decision whether to conduct an in camera review

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[73] (Emphasis added.)

[74] Overlake Fund v. City of Bellevue, 60 Wn. App. 787, 796-97, 810 P.2d 507 (1991) (internal quotation marks and citations omitted).

of records for abuse of discretion.[75]

Here, the court did not abuse its discretion in denying Parmelee's motion. The court properly determined that it was able to evaluate the asserted exemptions based upon the information contained in the written record. The parties' pleadings and affidavits clearly describe the nature of the documents requested and the basis for the requested exemptions. Further, the court did conduct a limited in camera review of the requested photographic records to determine whether any of the metadata was subject to disclosure.

Summary Hearing and Discovery

Without citation to or discussion of any relevant authority, Parmelee argues that the summary nature of the proceedings and the trial court's denial of his discovery requests violated his right to due process. The argument misstates the issue. The correct issue is whether the trial court abused its discretion by following the statutory procedures or denying discovery. We conclude that the trial court did not abuse its discretion in either respect.

RCW 42.56.565(3) provides that "[t]he motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise." As our supreme court held in O'Neill v. City of Shoreline,[76] the PRA explicitly allows the trial court to conduct a hearing based solely on affidavits.[77] The court also noted that "'the statute contemplates

[75] Harris v. Pierce County, 84 Wn. App. 222, 235, 928 P.2d 1111 (1996).

[76] 170 Wn.2d 138, 240 P.3d 1149 (2010).

judicial review upon motion and affidavit. Were we to interfere with trial courts' litigation management decisions, we would make [PRA] cases so expensive that citizens could not use the act for its intended purpose.'"[78]

The trial court followed the procedure set out in the statute, deciding the motion for injunctive relief based solely on affidavits and declarations. This was not an abuse of discretion.

Likewise, Parmelee fails to demonstrate that the trial court abused its discretion in denying his requests for discovery. A trial court has broad discretion under CR 26 to manage the discovery process, and if necessary, to limit the scope of discovery.[79] We review a trial court's denial of discovery for an abuse of discretion.[80]

First, Parmelee argues that the trial court lacked "jurisdiction" to grant DAJD's motion to deny the requested discovery because DAJD did not conduct a CR 26(i) conference with Parmelee. This argument is unpersuasive. As this court held in Amy v. Kmart of Washington, LLC,[81] "failure to strictly comply with the procedural provision of CR 26(i) does not divest the court of jurisdiction to

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[77] Id. at 152-53; RCW 42.56.550(3).

[78] O'Neill, 170 Wn.2d at 153 (quoting Brouillet v. Cowles Publ'g Co., 114 Wn.2d 788, 801, 791 P.2d 526 (1990) (citations omitted)).

[79] CR 26(b), (c); Nakata v. Blue Bird, Inc., 146 Wn. App. 267, 277, 191 P.3d 900 (2008), review denied, 165 Wn.2d 1033 (2009).

[80] Lang v. Dental Quality Assurance Comm'n, 138 Wn. App. 235, 254, 156 P.3d 919 (2007), review denied, 162 Wn.2d 1021 (2008).

[81] 153 Wn. App. 846, 223 P.3d 1247 (2009).

hear discovery motions. . . . [A] court has discretion to decide whether to hear a motion even where the moving party has failed to strictly comply with the rule."[82] Neither the court's subject matter nor personal jurisdiction is at issue. This claim is without merit.

Second, Parmelee claims that the trial court abused its discretion by denying his discovery requests. But it appears that Parmelee's discovery requests were not received by DAJD until approximately a week before the trial court was scheduled to hear argument on the motion for a permanent injunction. Parmelee cites no authority to show that a trial court abuses its discretion by denying an untimely request for discovery. This claim is also without merit.

Motion to Consolidate

Parmelee argues that the trial court abused its discretion in denying his motion to consolidate this case with King County Sheriff's Office v. Parmelee, No. 08-2-22251-9, under CR 16(a), CR 19, and CR 42(a). We disagree.

CR 42(a) provides:

> Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

CR 42(a) is a permissive rule.[83] "CR 42(a) allows a court to consolidate

[82] Id. at 863.

[83] Leader Nat'l Ins. Co. v. Torres, 51 Wn. App. 136, 142, 751 P.2d 1252 (1988), aff'd, 113 Wn.2d 366, 779 P.2d 722 (1989).

actions which involve a common question of law or fact. Consolidation is within the discretion of the trial court and will be reversed only upon a showing of abuse and that the moving party was prejudiced."[84] Here, Parmelee has not demonstrated that the trial court abused its discretion or that he was prejudiced by the trial court's decision.

Parmelee has also failed to demonstrate that the trial court abused its discretion in declining to hold a pretrial conference to consider his motion to consolidate under CR 16(a) or that the trial court failed to join any indispensible party under CR 19.

ATTORNEY FEES AND COSTS

Parmelee requests an award of attorney fees and costs pursuant to RCW 42.56.550. We decline the request.

RCW 42.56.550(4) does not support Parmelee's request for attorney fees and costs under the facts of this case. "[D]isclosure is a necessary prerequisite for attorney fees in a PRA case."[85] Here, because Parmelee has not demonstrated that he has a right to obtain the requested records, attorney fees are not authorized by the statute.

Given our disposition of the claims we have discussed, we need not address any of the other arguments or claims of the parties.

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[84] Id.

[85] City of Lakewood v. Koenig, 160 Wn. App. 883, 896, 250 P.3d 113 (2011).

We affirm the issuance of the second injunction and all other decisions of the trial court that we have addressed on the merits.

Cox, J.

WE CONCUR:

Spearman, J.

Grosse, J.