IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KING COUNTY SHERIFF'S OFFICE,	)	No. 62938-7-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
ALLAN PARMELEE ,	)	UNPUBLISHED
	)	
Appellant.	)	FILED: June 27, 2011
	)	
	)	

Cox, J. — Allan Parmelee appeals from two successive permanent injunctions of the King County Superior Court enjoining him from obtaining records that he sought under the Public Records Act (PRA), chapter 42.56 RCW. We hold that the trial court properly enjoined Parmelee from obtaining access to the requested nonexempt records in its second injunction, issued pursuant to RCW 42.56.565. 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 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

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[1] We deny Parmelee's motion to strike the appendices to respondent's brief because we have consolidated the record on appeal in this case with the record on appeal in King County Department of Adult and Juvenile Detention v. Parmelee, No. 62937-9. 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.

[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).

DeLong v. Parmelee:[4]

> 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."
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> 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.
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> 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.
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> 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

[4] 157 Wn. App. 119, 132, 236 P.3d 936 (2010).

> 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.

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."

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,

> 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 toward employees of the King County Sheriff's Office (KCSO). Specifically, when detectives were investigating Parmelee in 1998, Parmelee began targeting them with harassing and intimidating behavior:

> [T]heir pagers and cell phones were called incessantly 24 hours a day until they were forced to cancel the service and get new numbers issued; unknown persons were spotted at the officers'

[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.

> residences taking pictures of the officers' family, cars, and residence; while he was incarcerated at the Federal Detention Center Parmelee gave other inmates the officers' personal information and urged them to harass the officers.[6]

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

1. First, middle, and last name (including hyphenated, changed, and maiden names);
2. Date of birth;
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; and
9. Frontal face photographs (in electronic format and including metadata).

KCSO commenced this action for declaratory and injunctive relief on behalf of the employees who were the subjects of Parmelee's public disclosure requests on July 2, 2008. Parmelee filed 10 additional PRA requests on July 10, 2008, seeking:

1. The same information requested above, but with request to the six

[6] Clerk's Papers at 791.

KCSO sheriff's deputies currently assigned to the Shoreline Police Department;

2. The personnel files; performance evaluations; work compensation records; CLE, education and specific training records; professional association membership records (WSBA); work performance reviews; statistical and actuarial records; and complaints and internal investigations of the six KCSO sheriff's deputies currently assigned to the Shoreline Police Department and their supervisor;
3. Direct phone number, pager numbers, and cell phone numbers of all KCSO employees;
4. Names and e-mail addresses of all KCSO employees; and
5. Employment evaluations and termination records of all KCSO employees from 1997 through the present.

These requests sought information about the officers that assisted in the investigation of the firebombing of Parmelee's ex-wife's attorney's vehicle, for which Parmelee was convicted of two counts of first degree arson.

Parmelee filed his answer to KCSO's motion on July 17, 2008, 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 Department of Adult and Juvenile Detention, and striking of what he characterized as "redundant, inmaterial [sic], impertinent and scandalous" matter in KCSO's complaint. Thereafter, KCSO moved for a permanent injunction,

requesting that the court permanently enjoin it from releasing records to Parmelee that contained employee photographs, dates of birth, gender, race, height and weight, and direct phone, cell, and pager numbers.

On August 27, 2008, Parmelee filed his "Verified CR 13 Counter/Cross claim Complaint and CR 19 Joinder Parties Counter Complaint for Libel/Slander; Constitutional Free Speech Retaliation; Abuse of Process; Free Speech Infringement, Inter Alia, Including Public Records Act Violations (Trial by 12-Jury Requested)."

The court granted KCSO's motion to permanently 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 its issuance of this injunction.

In the same order, the court denied Parmelee's motions 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 the photo and metadata was not a public record because it did not relate to the conduct of government or the performance of any governmental function.

Parmelee timely filed his notice of appeal of this injunction.

In March 2009, the Legislature amended the PRA.[7] The new section is codified at RCW 42.56.565 and expressly authorizes courts to enjoin the

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

inspection and copying of nonexempt public records by prisoners, provided the court finds 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;
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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.[8]

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. KCSO moved to join in the PAO motion. Parmelee moved for discovery and moved to strike KCSO'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 KCSO 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.

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

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

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. Parmelee primarily argues that the statute was improperly applied retroactively and that RCW 42.56.565 is unconstitutional. Parmelee argues that the statute infringes on his right to due process, that it is vague and overbroad, and that it violates equal protection. Parmelee previously raised identical arguments in King County Department of Adult and Juvenile Detention v. Parmelee.[9] We rejected his argument there and adhere to our prior analysis. Parmelee's constitutional claims are without merit.

Findings of Fact

Parmelee also 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 Real Facts Evidence Necessary To Support Its Harsh 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
>
> (iv) Fulfilling the request may assist criminal activity.

[9] No. 62937-9-I (Wash. June __, 2011).

Parmelee argues variously that the facts with respect to his incarceration are irrelevant and that the facts relied upon are activities protected by the First Amendment. He argues that even if he has harassed KCSO 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 of the record confirms that the trial court's findings are supported by the record. The court's order indicates that the court considered the PAO motion and supporting declarations. These materials are extensive, and as discussed above, demonstrate behavior by Parmelee that clearly meets the requirements of RCW 42.56.565.

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.[10] Parmelee's failure to 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 KCSO's motion to join in the PAO 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

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

basis for the claim. This argument is unpersuasive.

KCSO's motion to join the PAO motion for a permanent injunction states that KCSO "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 [KCSO] be enjoined for the duration of his incarceration."[11] This motion adequately informed the court that KCSO 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 violated Rule of Appellate Procedure (RAP) 7.2 by granting KCSO'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

[11] Clerk's Papers at 1341.

> . . . . 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, KCSO 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***."[12] Here, the injunction issued pursuant to RCW 42.56.565 did not change the initial injunction that had previously been appealed to this court.

Parmelee also argues that the trial court abused its discretion by issuing the second injunction when the case had already been dismissed. This argument is unpersuasive. Although a superior court lacks authority to enter an order that ***modifies the judgment or decision appealed*** without permission from this court, as discussed above, RAP 7.2(e) does not limit a trial court from considering a motion based on subsequent legislative action.[13] Moreover, CR 41 expressly provides that a dismissal is without prejudice unless an order states otherwise. The claim that the court did not have authority to enter the second injunction is without merit.

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[12] (Emphasis added.)

[13] Clark County Wash. v. W. Wash. Growth Mgmt. Hearings Review Bd., __ P.3d __, 2011 WL 1402769 at *8.

Additionally, Parmelee appears to argue that KCSO's motion was not timely under the Civil Rules. This argument is not supported by the record and we decline to consider it.[14]

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 counterclaim, motion to strike, 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 numbers 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 erred in issuing the first

[14] RAP 10.3(a)(6).

injunction, the remedies sought by Parmelee for this alleged error are not available given our affirmance of the second injunction. KCSO is permanently enjoined for the entirety of Parmelee's incarceration from producing for disclosure "any public record." 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.[15] A plaintiff is a "prevailing party" for purposes of the PRA if the action could reasonably be regarded as necessary to obtain the requested information, and the existence of the lawsuit had a causative effect on the release of the information.[16]

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.[17]

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[15] RCW 42.56.550(4).

[16] 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 Pub. 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)).

CR 13 Counterclaim

Without citation to or discussion of relevant authority, Parmelee argues that the trial court denied him due process of law by dismissing his CR 13 counterclaim. He asserted counterclaims against KCSO for alleged libel and slander and allegedly infringing on his right to free speech. In making a due process argument, he misstates the issue on appeal. The correct issue is whether the trial court either erred as a matter of law or abused its discretion in summarily dismissing the counterclaim. We conclude that the trial court did not err in either respect.

Here, KCSO filed and served its complaint for relief, which included a request for injunctive relief. Parmelee made a counterclaim based on the pleadings that KCSO filed in this case. The trial court summarily denied the counterclaim in its order granting KCSO's motion for injunctive relief.

We have carefully reviewed the pleadings and conclude there is no merit to the counterclaims that Parmelee made against KCSO in this case. The court did not err in summarily dismissing the counterclaims.

Motion to Strike

Parmelee argues that the trial court abused its discretion in denying his motion to strike KCSO's complaint under CR 12(f). He argues that the trial court should have stricken KCSO's motion for injunctive relief because it contained "sensational, distracting trash talk designed to sensationalize rehetoric [sic] with

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

impertinent and immaterial claims." 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***.[18]

We review a trial court's decision on a motion to strike for abuse of discretion.[19] A trial court abuses its discretion if its decision is manifestly

[18] (Emphasis added.)

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

unreasonable or based on untenable grounds or untenable reasons.[20]

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.[21] Here, the trial court did not abuse its discretion in denying Parmelee's motion to strike KCSO'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, past treatment of KCSO employees, requests for public records at issue in KCSO's motion, and the probable harm that would result if the requested information was released.

Parmelee suggests that CR 12(f) provides a remedy to clean up cases that rely on personal information about the requestor by striking "sensational, distracting trash talk." Under the facts of this case, the information contained in KCSO's complaint was not improper. KCSO 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.

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

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

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."[22]

> 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.[23]

We review a trial court's decision whether to conduct an in camera review of records for abuse of discretion.[24]

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

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[22] (Emphasis added.)

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

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

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,[25] the PRA explicitly allows the trial court to conduct a hearing based solely on affidavits.[26] The court also noted that "'the statute contemplates 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.'"[27]

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[25] 170 Wn.2d 138, 240 P.3d 1149 (2010).

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

[27] 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)).

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.[28] We review a trial court's denial of discovery for an abuse of discretion.[29]

First, Parmelee argues that the trial court lacked "jurisdiction" to grant KCSO's motion to deny the requested discovery because KCSO 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,[30] "failure to strictly comply with the procedural provision of CR 26(i) does not divest the court of jurisdiction to 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."[31] Neither the court's subject matter nor personal jurisdiction is at issue. This claim is without merit.

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[28] 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).

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

[30] 153 Wn. App. 846, 223 P.3d 1247 (2009).

[31] Id. at 863.

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 KCSO 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 Department of Adult and Juvenile Detention v. Parmelee, No. 08-2-22252-7, under 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.[32] "CR 42(a) allows a court to consolidate 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."[33] Here, Parmelee has not

[32] 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).

[33] Id.

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 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."[34] 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.

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

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

Cox, J.

WE CONCUR:

Spearman, J.

Grosse, J.