IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FRANKLIN R. SIMPSON,	)	**No. 28966-4-III**
	)	
Appellant,	)	
	)	
v.	)	
	)	
OKANOGAN COUNTY and OKANOGAN COUNTY PROSECUTING ATTORNEY KARL F. SLOAN, in his official capacity as Okanogan County Prosecutor,	)	**Division Three**
	)	
Respondents.	)	**UNPUBLISHED OPINION**

Korsmo, J. — Franklin R. Simpson sued Okanogan County after he disputed the county's compliance with his Public Records Act (PRA) requests. Chapter 42.56 RCW. The trial court denied Mr. Simpson's request for a continuance to conduct discovery and granted the county's motion for summary judgment. Mr. Simpson appeals. We affirm.

FACTS

Mr. Simpson, a prison inmate, filed a PRA request with Okanogan County for four types of records: (1) the "litigation file" in his criminal case; (2) the personnel file of Karl

Sloan, the Okanogan County Prosecuting Attorney; (3) Mr. Sloan's oath of office; and (4) Mr. Sloan's bond and liability insurance. The county responded by requesting clarification on the meaning of the first request, providing the oath of office, and denying that any records existed in the other two categories.

An extensive exchange of letters followed. Mr. Simpson clarified that he wanted the prosecutor's entire criminal file for his case and contended that the other documents he requested must exist. The county turned over 385 pages of criminal file documents and again denied that the other categories existed. Mr. Simpson alleged that the victim's medical records were missing from the criminal litigation file. The county responded that the documents were not subject to disclosure under the PRA. In response to a further clarification, the county turned over an additional 192 pages of documents that later were discovered to have been duplicates of items produced in the initial 385 pages. Mr. Simpson also argued that a private investigator's records should be produced; the county denied having those records.

Mr. Simpson filed suit on July 20, 2009. Two months later he requested that the county formulate a discovery plan; the county responded that no discovery was necessary. Mr. Simpson served interrogatories and requests for admission on the county. The county responded by moving for summary judgment on November 19, 2009. Mr.

Simpson moved on December 22 to continue the summary judgment hearing and to compel the county to comply with his discovery request. The next day, the county answered his discovery requests.

The court reviewed the medical records *in camera* and determined that they were medical records related to the victim of the crime. The court also considered the motion to continue and the summary judgment motion. It responded by letter opinion denying the continuance because additional discovery would not aid in addressing the summary judgment motion. The county's request for summary judgment then was granted. Mr. Simpson timely appealed to this court.

ANALYSIS

Mr. Simpson understandably challenges both of the trial court's rulings. We conclude that there was no abuse of discretion in denying the continuance request and that summary judgment was proper.

Continuance. A trial court has broad discretion to grant or deny a continuance; the court's decision will only be overturned for manifest abuse of discretion. *Coggle v. Snow*, 56 Wn. App. 499, 504, 784 P.2d 554 (1990). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A trial court may deny a CR 56(f) motion for a

continuance when "(1) the requesting party does not have a good reason for the delay in obtaining the evidence, (2) the requesting party does not indicate what evidence would be established by further discovery, or (3) the new evidence would not raise a genuine issue of fact." *Butler v. Joy*, 116 Wn. App. 291, 299, 65 P.3d 671, *review denied*, 150 Wn.2d 1017 (2003).

The trial court relied upon the third aspect of the *Butler* standard in its ruling. It noted that the discovery Mr. Simpson was seeking would not raise a genuine question of fact because the matters at hand were legal in nature. An affidavit stating that a record does not exist is dispositive on a PRA claim; there is no right to personally inspect records to confirm that no record exists. *Sperr v. City of Spokane*, 123 Wn. App. 132, 136-137, 96 P.3d 1012 (2004). Similarly, the question of whether or not the victim's medical records were exempt from disclosure presents a legal, not factual, issue. Thus, further discovery would not be necessary to address that question.

The trial court had very tenable grounds for denying the continuance—the discovery requests were not necessary. There was no error.

Summary Judgment. This court reviews a summary judgment *de novo*, performing the same inquiry as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The facts, and all reasonable inferences to be drawn from them, are viewed

in the light most favorable to the nonmoving party. *Id*. If there is no genuine issue of material fact, summary judgment will be granted if the moving party is entitled to judgment as a matter of law. *Id*.

The moving party bears the initial burden of establishing that it is entitled to judgment because there are no disputed issues of material fact. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If a defendant makes that initial showing, then the burden shifts to the plaintiff to establish there is a genuine issue for the trier of fact. *Id.* at 225-226. The plaintiff may not rely on speculation or having its own affidavits accepted at face value. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). Instead, it must put forth evidence showing the existence of a triable issue. *Id.*

There are no issues of fact here and the assignments of error Mr. Simpson makes do not identify any. Instead, his arguments are legal in nature. For instance, he argues that the county was not in compliance with the PRA in that it did not produce exemption logs. That presents a legal, not a factual, question. It also is without merit. There is no requirement that an exemption log be produced. *Smith v. Okanogan County*, 100 Wn. App. 7, 13-14, 994 P.2d 857 (2000) (no obligation to create records that do not exist). It may occasionally be a better practice to create a log, but there is no statutory obligation to

do so.

The remaining arguments likewise are without merit. Health care records are generally exempt from disclosure under the PRA. RCW 42.56.360. The exemption for patient health care records is assessed in accordance with the standards of chapter 70.02 RCW, which is incorporated into the PRA by RCW 42.56.360(2). *Prison Legal News, Inc. v. Dep't of Corrections*, 154 Wn.2d 628, 644, 115 P.3d 316 (2005). In turn, RCW 70.02.020(1) generally prohibits disclosure of health care information without the patient's consent. In turn, "health care information" is defined in relevant part by RCW 70.02.010(7) as "any information . . . that identifies or can *readily be associated with the identity of a patient*." (Emphasis added.)

Mr. Simpson argues that the court erred in permitting the county to exempt the entirety of the victim's medical records. He contends that the pages could have had the victim's name and other identifying information blacked out. His argument neglects the emphasized aspect of the health care information definition quoted above. As long as the document can be readily associated with a particular person, it is exempt health care information. Mr. Simpson knew very well whose information he was requesting—the only health care information that was relevant to his criminal case. Blacking out his victim's name would not disassociate the records from a particular known person. The

trial court correctly determined that the victim's records were exempt in their entirety.

The last issue on summary judgment concerns the nonexistent records. *Sperr* is dispositive. Whether or not a record should exist is a different question than whether it does exist. Mr. Simpson thinks there should be records concerning Mr. Sloan's personnel file and security bond or insurance.[1] However, the PRA only requires that access be granted to existent records, not nonexistent records that one believes should exist. *Sperr*, 123 Wn. App. at 136-137. Okanogan County provided an affidavit that says there is no personnel file for Mr. Sloan and that it has no bond information on file for him. That authoritatively resolved the issue. Failure to turn over a nonexistent record does not violate the PRA. *Id*. at 137.

The trial court properly granted summary judgment.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

_____
Korsmo, J.

WE CONCUR:

[1] The latter argument is based on a misreading of RCW 36.16.136. Counties may purchase liability insurance to protect their officials, but are not required to do so.

Kulik, C.J.

Sweeney, J.