

1  EXPEDITE  
2  No Hearing Set  
3  Hearing is Set:  
4     Date: 6/24/2016  
5     Time: 9:00 AM  
6 The Honorable Carol Murphy  
7

8                                   **STATE OF WASHINGTON**  
9                                   **THURSTON COUNTY SUPERIOR COURT**

10 SANTIAGO RODRIGUEZ,  
11                                   Plaintiff,  
12     v.  
13 WASHINGTON STATE  
14 DEPARTMENT OF CORRECTIONS,  
15                                   Defendant,  
16     v.  
17 DAVID PIERCY,  
18                                   Defendant.

NO. 16-2-02199-34  
  
DEFENDANT DEPARTMENT OF  
CORRECTIONS' RESPONSE TO  
PLAINTIFF'S MOTION FOR A  
PRELIMINARY INJUNCTION

18           COMES NOW the Washington State Department of Corrections, by and through its  
19 attorneys, ROBERT W. FERGUSON, Attorney General, and CASSIE B. VANROOJEN,  
20 Assistant Attorney General, and respectfully submit this response to Plaintiffs' request for  
21 a preliminary injunction.

22                                   **I.     INTRODUCTION**

23           Mr. Rodriguez has filed this action under RCW 42.56.540 seeking to prevent the  
24 disclosure of records to Mr. Piercy. Specifically, Rodriguez seeks to enjoin the Department of  
25 Corrections (Department) from releasing records in response to Piercy's request wherein he  
26 sought "police reports, incident reports, investigative reports, and photographs ... involving

1 Santiago C. Rodriguez....” Exhibit 1, Declaration of Denise Vaughan, Attachment A, Request  
2 received on December 31, 2015. The Department intends to release these records in response  
3 to Piercy’s request because these records are public records and it is obligated to produce  
4 public records under the Public Records Act (PRA) absent some statutory exemption. In this  
5 case, there is no statutory exemption that prevents the release of these records in their entirety.  
6 Moreover, while the Department is aware of the civil harassment restraining order, this order  
7 does not govern the conduct of the Department and, even if it did, the legal effect of this order  
8 on a valid public records request absent any exemption is unclear. As such, in this response  
9 the Department does not take a position on the outcome of this matter, instead the  
10 Department’s response is intended to provide the Court with relevant factual and legal  
11 information so that the Court can be fully informed in making its decision.

## 12 II. STATEMENT OF FACTS

13 The Department received a public records request from Piercy on December 31, 2015,  
14 seeking records regarding Santiago Rodriguez. *Id.* Consistent with its practice, the  
15 Department assigned this request a tracking number and began identifying and gathering  
16 records. Exhibit 1, at ¶ 4. The Department identified and gathered responsive records and  
17 provided a first installment of records to Piercy on March 22, 2016. Exhibit 1, at ¶ 5. During  
18 the pendency of the request, the Department learned that Piercy and Rodriguez had restraining  
19 orders against each other. *Id.*

20 Based on Rodriguez’s stated concerns with producing a second installment of records  
21 to Piercy, the Department provided Rodriguez notification of its intent to release a second  
22 installment of records to Piercy and would do so on June 1, 2016, absent a court order  
23 prohibiting release. Exhibit 1, Attachment B, May 17, 2016. Notification Letter. The  
24 Department reached this decision after carefully reviewing the second installment of records  
25 and applying whatever limited exemptions it believed applied to the records. This second  
26 installment of records is 216 pages, contains some redactions and largely consists of

1 Rodriguez's criminal history information, prison infraction information, and prison  
2 classification records. *Id.* at ¶ 5.

3 Commissioner Zinn entered a temporary restraining order on June 1, 2016, prohibiting  
4 the Department from releasing records regarding Rodriguez in response to public record  
5 requests. The Department subsequently received a second request from Piercy regarding  
6 Rodriguez's efforts to obtain the temporary restraining order. Exhibit 1, at ¶ 6. The  
7 Department has also received correspondence from Piercy wherein he indicates he is seeking  
8 records regarding Rodriguez through the discovery procedures. *See* Exhibit 1, Attachment A;  
9 Exhibit 1, at ¶ 7.

10 Commissioner Zinn extended the Temporary Restraining Order on June 13, 2016,  
11 setting a hearing for June 24, 2016. Now before the Court is Plaintiff's motion for Preliminary  
12 Injunction. It is the Department's understanding that, while Piercy has been added, he has not  
13 yet been served in this action.

### 14 III. ARGUMENT

15 This Court has inherent authority to issue injunctions. CR 65. The civil rules govern  
16 court action taken under RCW 42.56. *Spokane Research & Defense Fund v. City of Spokane*,  
17 155 Wn.2d 89, 105, 117 P.3d 1117 (2005). In Washington, a court may enter an injunction  
18 upon a showing that: (1) an individual has a clear legal or equitable right, (2) an individual has  
19 a well-grounded fear of immediate invasion of that right, and (3) the acts complained of are  
20 either resulting or will result in actual and substantial injury to the individual. *Tyler Pipe*  
21 *Industries, Inc. v. State Dept. of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). When  
22 considering whether a party has a clear legal or equitable right, courts consider whether there is  
23 a likelihood that the party will succeed on the merits. *See id.* at 793. Because injunctions are  
24 within the equitable powers of the court, courts examine the criteria in light of equity,  
25 including balancing the relative interests of the parties and the interest of the public if  
26 appropriate. *Id.* at 792-93.

1 Under RCW 42.56.540, the agency or the subject of the records may move for an  
2 injunction to prevent the release of records where (1) a specific exemption applies;  
3 (2) disclosure would not be in the public interest; (3) and disclosure would substantially and  
4 irreparably damage a person or government interest. RCW 42.56.540; *Ameriquist Mortg. Co.*  
5 *v. Office of Attorney General of Washington*, 177 Wn.2d 467, 486-87, 300 P.3d 799 (2013).  
6 The person seeking to prevent disclosure bears the burden of proof of establishing an  
7 applicable exemption. *See Ameriquist*, 177 Wn.2d at 486-87.

8 **A. The July 24, 2014, Civil Harassment Restraining Order Governs Piercy's**  
9 **Conduct, Not That of The Department**

10 As a preliminary issue, the Department does not contest that this Court must give full  
11 effect to a civil harassment restraining order validly entered in another state under 18 U.S.C. §  
12 2265(a). The Department has no indication the July 24, 2014, civil harassment restraining  
13 order is invalid, and therefore, believes this Court should give it full faith and credit as if it  
14 were entered in Washington. However, the civil harassment restraining order restrains the  
15 conduct of Piercy, not the Department, and therefore does not relieve the Department of its  
16 obligations under the Public Records Act.

17 The relevant civil harassment restraining order restrains Mr. Piercy from harassing  
18 Mr. Rodriguez. Specifically, it notes that Piercy must not “harass, intimidate, molest, attack,  
19 strike, stalk, threaten, assault (sexually or otherwise), hit, abuse, destroy personal property of,  
20 or disturb he peach of [Rodriguez].” Declaration of Rodriguez, Exhibit A. Notably, the  
21 Department is not a party to that action and the order does not relieve third parties from other  
22 obligations under the law on the basis of this order. Rather, the order prohibits Piercy from  
23 taking action in violation of the order.

24 Moreover, it is not clear to the Department that Piercy's receipt of the requested records  
25 violates the restraining order. Piercy represents that these records are sought for discovery  
26 purposes in ongoing civil ligation in California. *See* Exhibit 1, Attachment A; Exhibit 1, at ¶ 7.

1 The Department is also under the understanding that both Piercy and Rodriguez have  
2 restraining orders against each other and that there is ongoing litigation regarding many of  
3 these issues. Exhibit 1, at ¶ 5. As such, it is a quandary for the Department to sort out the  
4 relevant court orders and legal proceedings and what effect these orders have on the  
5 Department's strict obligations under the Public Records Act. In light of this, the Department  
6 seeks guidance from this Court regarding the effect of this order on its obligations to provide  
7 further records in response to Piercy's requests absent the applicability of a specific exemption  
8 under the Public Records Act.

9 **B. Plaintiff Has Failed To Cite an Exemption Which Applies To the Records as**  
10 **Required Under RCW 42.56.540**

11 In order to obtain an injunction under the Public Records Act, Plaintiff must show not  
12 only that disclosure of the records would not be in the public interest and that disclosure would  
13 substantially and irreparably damage a person or governmental interest, but also that the  
14 records are actually exempt pursuant to a specific exemption under the Public Records Act.  
15 RCW 42.56.540; *Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wash. 2d 243,  
16 257, 884 P.2d 592, 600 (1994).

17 Plaintiff cites to *DeLong v. Parmelee (DeLong I)*, 157 Wn. App. 119, 236 P.3d 936  
18 (2010) to argue that enjoinderment is appropriate when a request would damage any person by  
19 invading their privacy. This argument ignores the subsequent history of the *DeLong* case,  
20 which illustrates the quotation from *DeLong* is not an accurate statement of the law. In this  
21 case, Division II of the Court of Appeals concluded that RCW 42.56.540 did not require a  
22 private citizen to prove that the requested information or records were exempt under the PRA  
23 because individual employees have a right to seek an injunction to protect their individual  
24 privacy rights when faced with an explicit and volunteered threat. *DeLong I*, 157 Wn. App. at  
25 151-53 & 168. However, Parmelee appealed that decision and the Supreme Court remanded  
26 for reconsideration in light of *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 243 P.3d 919 (2010)

1 and RCW 42.56.565. In *Serko*, the Supreme Court reaffirmed the requirement that a party  
2 seeking injunctive relief under RCW 42.56.540 must show that the records or information are  
3 otherwise exempt under the PRA. *Serko*, 170 Wn.2d at 597. The *Serko* Court rejected the  
4 rationale used by the *DeLong* court, and the Supreme Court's decision to remand the case  
5 demonstrates that the interpretation of RCW 42.56.540 in *DeLong I* is no longer good law.  
6 Therefore, contrary to Plaintiff's argument, that the release of records may not be in the public  
7 interest and could damage a person or governmental interest is not sufficient, but the records  
8 have to be exempt under a specific exemption of the Public Records Act.

9 Moreover, Plaintiff's reliance on RCW 42.56.050 as a substantive exemption is  
10 erroneous. Rather, there is no general privacy exemption under the Public Records Act. *See*  
11 WAC 44-14-06002(2). As such, Rodriguez's reliance on RCW 42.56.050 as an exemption  
12 entitling him to injunctive relief under RCW 42.56.540 is misplaced because RCW 42.56.050  
13 is not a substantive exemption under the PRA. Rather, by its own statutory language, RCW  
14 42.56.050 is merely a definitional provision and "does not create any right of privacy beyond  
15 those rights that are specified in [the Public Records Act] as express exemptions...." RCW  
16 42.56.050. Instead the concept of privacy under the PRA is incorporated as an element of  
17 specific exemptions. *See* RCW 42.56.230(2); RCW 42.56.230(3); RCW 42.56.240(1).


18 In the absence of the applicability of another specific exemption which incorporates the  
19 concept of privacy, Plaintiff has failed to cite a specific exemption under which the requested  
20 records are exempt. This failure is fatal to Plaintiff's request for injunctive relief under  
21 RCW 42.56.540. However, in the event that this Court proceeds with its analysis under  
22 RCW 42.56.540 and the preliminary injunction standard, the Department takes no position on  
23 the balancing of the interests between the parties.

1 **IV. CONCLUSION**

2 The Department believes that the requested records are not exempt under the PRA.  
3 Because these records are not exempt in their entirety, they must be produced and the Court  
4 should deny Plaintiff's motion for a preliminary injunction.

5 RESPECTFULLY SUBMITTED this 22nd day of June, 2016.

6 ROBERT W. FERGUSON  
7 Attorney General

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10 CASSIE B. vanROOJEN, WSBA #44049  
11 Assistant Attorney General  
12 CassieV@atg.wa.gov  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the date below, I caused DEFENDANT DEPARTMENT OF  
3 CORRECTIONS' RESPONSE TO PLAINTIFF'S MOTION FOR A PRELIMINARY  
4 INJUNCTION to be filed with the Clerk of the Court and I further certify that I served a copy  
5 of the foregoing document on all parties or their counsel of record as follows:

6  ABC/Legal Messenger to:

7 CARSON COOPER  
8 JANE E. BROWN  
9 LANE POWELL PC  
10 1420 FIFTH AVENUE, SUITE 4200  
11 SEATTLE WA 98111-9402

12  Via E-mail to:

13 DAVID PIERCY dnpiercy@gmail.com

14 I declare under penalty of perjury under the laws of the State of Washington that the  
15 foregoing is true and correct.

16 EXECUTED this 22nd day of June, 2016, at Olympia, Washington.

17   
18 TERA LINFORD  
19 Legal Assistant  
20 TeraL@atg.wa.gov



**EXHIBIT 1**

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STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

SANTIAGO RODRIGUEZ,  
  
Plaintiff,  
  
v.  
  
WASHINGTON STATE  
DEPARTMENT OF CORRECTIONS,  
  
Defendant,  
  
v.  
  
DAVID PIERCY,  
  
Defendant.

NO. 16-2-02199-34  
  
DECLARATION OF DENISE  
VAUGHAN

I, DENISE VAUGHAN, make the following declaration:

1. I have knowledge of the facts herein, am over eighteen years of age, and am competent to testify to such facts. I am not a party to this lawsuit.
2. I am currently the Public Records Officer for the Department of Corrections (Department or DOC). I have held this position for approximately eight years with a one year break from December 2014 through January 2016. I most recently returned to the Department of Corrections in February 2016. My duties as Public Records Officer include statewide oversight of the Department's public disclosure program, including policy, process, and procedure. This includes development of statewide policy and rules, determination of how to

1 best manage complex requests, interpretation and application of RCWs, WACs, and case law,  
2 advising public disclosure staff statewide regarding changes or implementation in public  
3 disclosure law or DOC policy and procedure, and tracking statewide public disclosure statistics  
4 and trends. As part of my job duties I have access to records maintained by the Department in  
5 the regular course of business.

6 3. Prior to my current position, I was the Public Disclosure Unit Lead for  
7 Economic Services Administration (ESA) of the Washington State Department of Social and  
8 Health Services for approximately one year. In this position I was responsible for addressing  
9 ESA privacy issues, responding to public records request appeals, coordinating discovery  
10 responses, and providing guidance to ESA Public Disclosure Unit staff in responding to public  
11 records requests.

12 4. The Department received a public records request from Piercy on December 31,  
13 2015. This request was assigned Public Disclosure tracking number PDU-39916. Attached to  
14 this declaration as Attachment A is a true and correct copy of this request.

15 5. The Department gathered responsive records and provided a first installment of  
16 records to Piercy on March 22, 2016. This first installment consisted of 257 pages regarding  
17 Mr. Rodriguez with minor redactions taken. During the processing of this request, the  
18 Department learned that Piercy and Rodriguez allegedly each had restraining orders against  
19 each other. In light of these concerns, the Department provided Rodriguez notification of its  
20 intent to release a second installment of records on June 1, 2016, absent a specific order.  
21 Attached to this declaration as Attachment B is a true and correct copy of this notification  
22 letter. This second installment is 216 pages and largely consists of Rodriguez's criminal  
23 history information, prison infraction information, and prison classification records.

24 6. The Department received a second request from Piercy on June 2, 2016 seeking  
25 records regarding Rodriguez and this request was assigned tracking number PDU-42395. In  
26 response to this request, the Department notified Piercy that it was under a Court order to not

1 release any records regarding Rodriguez in response to public record requests. This request is  
2 still active but on hold pending the resolution of this case.

3 7. The Department has also received a discovery request from Piercy for records  
4 regarding Rodriguez. This request is being handled by the Department's counsel because it is  
5 not a request under the Public Records Act. In this request, Piercy states that these records are  
6 for the purposes of discovery in ongoing litigation in California.

7 I declare under the penalty of perjury under the laws of the state of Washington that the  
8 foregoing is true and correct to the best of my knowledge.

9 SIGNED this 22nd day of June, 2016, at Tumwater, Washington.

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12 DENISE VAUGHAN  
13 Public Records Officer  
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**ATTACHMENT A**

**Lightfoot, Karisa K. (DOC)**

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**From:** david piercy <dnpiercy@gmail.com>  
**Sent:** Thursday, December 31, 2015 4:05 PM  
**To:** doc public disclosure unit  
**Subject:** records request

Dear **Pierce County Sheriff Department:**

Under the **Washington Public Records Act, §42.56 et seq.**, I am requesting an opportunity to inspect or obtain copies of public records consisting of any and all documents including but not limited to police reports, incident reports, investigative reports, and photographs related to service calls involving Santiago C. Rodriguez D.O.B. 8/21/75 and case numbers 941009199

The purpose of this request is to satisfy civil discovery requirement related to ongoing litigation in Los Angeles County Superior Court in California


If there are any fees for searching or copying these records, please inform me if the cost will exceed \$ 5. This information is not being sought for commercial purposes.

The Washington Public Records Act requires a response to this request be made within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

David Piercy  


RECEIVED  
DEC 31 2015  
PUBLIC DISCLOSURE UNIT

**ATTACHMENT B**



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**

P.O. Box 41118 • Olympia, Washington 98504-1118 • Tel (360) 725-8673

May 17, 2016

Mr. Santiago Rodriguez

Alhambra, CA. 91801

Dear Mr. Rodriguez:

The Department is in receipt of a public records request from David Piercy. The purpose of this letter is to:

1. Notify you that your name either appears OR is the subject of Department records that have been requested under the Public Records Act, RCW 42.56;
2. Show you a copy of the documents pertaining to you (documents enclosed) in the format they will be released to the requestor; and
3. Provide you opportunity to pursue court action (legal term is referred to as "enjoinment") to stop the release of these records, should you choose to do so.

Public Disclosure staff has thoroughly reviewed the record responsive to this request and has taken out all information we have a legal exemption to withhold. I appreciate the sensitive nature of the information that may be contained in this document; however, the Department is constrained by RCW 42.56 and case law from withholding it.

Please find enclosed a copy of the following:

1. RCW 42.56.540, addresses "enjoinment;"
2. A copy of the original public records request received by the Department;
3. A set of instructions regarding pursuit of court action; and
4. A copy of the records regarding you that the Department intends to release in the format it will be released to the requestor.

If you desire to stop disclosure of the 2<sup>nd</sup> installment of records containing information about you, you must seek an "order of enjoinment" from the courts. If you intend to

*" Working Together for SAFE Communities"*



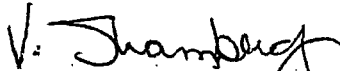
Santiago Rodriguez  
May 17, 2016

Page 2

pursue court action to stop the release of this record, you will need to notify me within ten (10) business days from the date of this letter, on or before June 1, 2016. If I am not available, please leave a voice mail message with your name, phone number, and the date of your call and I will return your call as soon as possible. If you do not notify me by that date, the requested documents will be made available to David Piercy. Also enclosed is a CD containing the 1<sup>st</sup> installment of records as they were provided to David Piercy.

If you would like more information about the public disclosure process, please see DOC Policy 280.510 Public Disclosure of Records, and RCW 42.56, the Public Records Act. If you have any additional questions or concerns, please contact me at 360-725-8637 or via email at [vbshamberg@doc1.wa.gov](mailto:vbshamberg@doc1.wa.gov).

Sincerely,



Virginia Shamberg, Public Disclosure Specialist  
Public Disclosure Unit  
Department of Corrections  
PO Box 41118  
Olympia, WA 98504-1118

PDU-39916

Enclosures