

Washington Court of Appeals Holds Public Agency Does Not Violate Washington Public Records Act by Withholding Records Pending Third-Party Notification

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Division Three of the Washington Court of Appeals concluded that Benton County did not violate the Public Records Act, Chapter 42.56 RCW (PRA), by temporarily withholding records pending notice to a third party named in those [records](#).

Donna Zink made a PRA request for records, which included records regarding sex offenders. The County sent third-party notices to the individuals named in those records, notifying them of the records request. The County's notices stated that while RCW 42.56.540 permitted the notification, the County did not believe the records were exempt.

In response to the notices, one of the individuals named in the records, John Doe, filed a lawsuit against the County and the requester, seeking to enjoin production of any record identifying him. In an answer to the complaint, the requester asserted a cross claim against the County for violations of the PRA. The cross claim contended the County was withholding records without an applicable exemption, that the County was not required to give John Doe notice, and that the County provided that notice in order to delay or deny release of the records.

The superior court granted Doe's request for an injunction, ordering the County to produce the records with Doe's name redacted. The superior court also granted the County's motion to dismiss the requester's PRA claim. Following the trial court's ruling, the Washington Supreme Court, [in a separate lawsuit](#), concluded level I sex offender registration was not exempt from disclosure. Following this ruling and on the County's motion, the trial court dissolved the injunction and ordered the County to

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provide the unredacted records to the requester.

On appeal, the court affirmed dismissal of the PRA claim. The court reasoned that when the requester filed suit, the County had not denied access to a record, and that the PRA, RCW 42.56.540, expressly permits agencies to provide third parties notice in order to permit third parties the opportunity to seek an injunction to prevent disclosure. The court further reasoned that the County “never claimed an exemption, refused to produce records, or otherwise engaged in final action denying access to the records.” The court cited the Attorney General’s model rules in concluding that a requirement that an agency claim an exemption or provide an exemption log before notifying a third party would be “inconsistent with the policy underlying third party notice, which is to give the third party a chance to assert an exemption when the agency does not believe the records are exempt, and will not claim a potential exemption on the third party’s behalf.”

The court also rejected the requester’s argument that the County should not have provided Doe with the requester’s contact information. The court concluded that the County was entitled to provide this information, stating that without the information, Doe would not have been able to contact the requester to ask her to revise her request or name her as a party to the action.

If you have any questions, contact a member of our [Public Records & Open Government](#) team.