

1  **EXPEDITE**  
2  No Hearing Set  
3  Hearing is Set  
Date: December 16, 2020  
Time: 8:30 am  
Judge/Calendar: Ex Parte

4  
5  
6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF THURSTON

8  
9 THURSTON COUNTY SHERIFF'S OFFICE,

10 Plaintiff,

11 vs.

12 WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS; and CJ CIARAMELLA,

13 Defendants.

No.:

PLAINTIFF'S MEMORANDUM IN  
SUPPORT OF MOTION FOR TEMPORARY  
RESTRAINING ORDER

14 **I. RELIEF REQUESTED**

15 Plaintiff Thurston County Sheriff's Office, by and through its undersigned counsel, seeks a  
16 temporary restraining order under RCW 42.56.540 of the Public Records Act, enjoining the Washington  
17 State Department of Corrections from providing CJ Ciaramella with records containing sensitive law  
18 enforcement information related to an open and active Thurston County homicide investigation, the non-  
19 disclosure of which is essential to effective law enforcement.

20 Thurston County Sheriff's Office seeks injunctive relief on the grounds that the records are  
21 exempt under RCW 42.56.240(1), and disclosure would therefore undermine the integrity of Thurston  
22 County's criminal investigation and irreparably damage vital governmental functions under RCW  
23 42.56.540.

1 **II. STATEMENT OF FACTS**

2 On September 3, 2020, Michael Reinoehl was shot and killed in a confrontation with a U.S.  
3 Marshals task force at an apartment complex in Thurston County. Declaration of Ray Brady in Support  
4 of Plaintiff's Motion for Temporary Restraining Order, (Brady Decl.), ¶ 3. Law enforcement officers  
5 with the Washington State Department of Corrections (DOC) were part of the task force and were  
6 present at the September 3, 2020 Reinoehl incident. Brady Decl., ¶ 3

7 No member of Thurston County law enforcement was part of the task force. Thurston County  
8 Sheriff's Office is the lead agency responsible for the independent investigation into Mr. Reinoehl's  
9 death. Brady Decl., ¶ 4. Because Mr. Reinoehl was killed, the investigation is treated as a homicide  
10 investigation. Brady Decl., ¶ 5. Whether such homicide is justified or unjustified remains to be seen and  
11 is a focus of the investigation. Brady Decl., ¶ 5. This is not an internal agency investigation; it is an  
12 independent criminal investigation conducted pursuant to RCW 10.114.011 and RCW 9A.16.040. Brady  
13 Decl., ¶ 5.

14 The investigation into Mr. Reinoehl's death is currently open and ongoing. Brady Decl., ¶ 6.  
15 Resources have been and are currently allocated to the investigation. Brady Decl., ¶ 6. The matter has  
16 not yet been referred to a prosecutor for a charging decision. Brady Decl., ¶ 6. Enforcement proceedings  
17 are still being contemplated. Brady Decl., ¶ 6. The circumstances of Mr. Reinoehl's death are unknown  
18 and the investigation team is working to understand what happened, as it would with any individual who  
19 is killed by the hand of another in Thurston County. Brady Decl., ¶ 7. Thus, the circumstances of Mr.  
20 Reinoehl's death remain unsolved. Brady Decl., ¶ 7.

21 The investigation team estimates that the investigation will take approximately two more months.  
22 Brady Decl., ¶ 8. Until the investigation is closed, it would be extremely difficult for the investigating  
23 team to parse out sensitive and nonsensitive information. Brady Decl., ¶ 9. It is only when an  
investigation is completed that investigators are able to parse the records and determine what information

1 is relevant or essential to effective law enforcement. Brady Decl., ¶ 10. Release of any records associated  
2 with the investigation at this time would impair the ability of investigating officers to share information  
3 in a manner that effects efficient and good police work, and would inhibit the ability of investigating  
4 officers to determine, in their professional judgment, how and when information will be released. Brady  
5 Decl., ¶ 10.

6 In light of the foregoing, in response to an unrelated records request in October 2020 for Reinoehl  
7 investigative records, Thurston County Sheriff's Office claimed a categorical exemption under RCW  
8 42.56.240(1). Horowitz Decl., ¶ 3. A lawsuit was filed against the Sheriff's Office by that requester. By  
9 memorandum decision dated November 25, 2020, the Mason County Superior Court confirmed that  
10 Reinoehl investigative records are categorically exempt from disclosure at this time under RCW  
11 42.56.240(1). Horowitz Decl., ¶ 3, Ex. A.

12 On September 8, 2020, CJ Ciaramella (Requester) submitted a request to DOC for "all incident  
13 reports, weapon discharge reports, or use of force reports filed by officers or agents involved in the  
14 Sept. 3, 2020 shooting of Michael Forest Reinoehl in Lacey, Washington," as well as "any body  
15 camera footage or still photographs taken by officers or agents related to the Sep. 3, 2020 shooting of  
16 Michael Forest Reinoehl Lacey, Washington." Horowitz Decl., ¶ 4, Ex. B. Thurston County Sheriff's  
17 Office understands that DOC intends to release responsive records on December 23, 2020, in redacted  
18 form. Horowitz Decl., ¶ 5; Brady Decl., ¶ 11.

19 The likelihood is high that the records requested by CJ Ciaramella, which DOC intends to  
20 release, contain facts or statements that may be relevant to the Sheriff's open investigation, may be  
21 sensitive information, and that could in turn undermine the Sheriff's investigation if released, making  
22 their categorical non-disclosure essential to effective law enforcement. Brady Decl., ¶ 11

### 23 **III. ISSUE TO BE DECIDED**

1. Should this court enter a Temporary Restraining Order (TRO) enjoining the state from  
disclosing records containing facts and information related to events that occurred during the law

1 enforcement confrontation with Michael Reinoehl on September 3, 2020, where such records are exempt  
2 from disclosure under RCW 42.56.240(1), and such disclosure is likely to have a deleterious effect on  
3 the integrity of Thurston County’s open and active homicide investigation, irreparably damaging vital  
4 governmental functions? [Short Answer: Yes.]

5 2. Should this court enter a Temporary Restraining Order (TRO) enjoining the state from  
6 disclosing records containing facts and information related to events that occurred during the law  
7 enforcement confrontation with Michael Reinoehl on September 3, 2020, where such disclosure is likely  
8 to result in inadvertent sharing of prohibited information between law enforcement agencies in violation  
9 of WAC 139-12-030? [Short Answer: Yes]

10 **IV. ARGUMENT**

11 **1. This Court should grant the request for the TRO because DOC’s records are**  
12 **exempt from disclosure under RCW 42.56.240(1), their non-disclosure is essential**  
13 **to effective law enforcement, and their disclosure at this time would irreparably**  
14 **damage vital governmental functions.**

15 Despite the broad mandate toward disclosure of public records under the PRA in Washington,  
16 specific investigative records essential to effective law enforcement are exempted from disclosure.

17 Specific intelligence information and specific investigative records compiled by investigative, law  
18 enforcement, and penology agencies, and state agencies vested with the responsibility to discipline  
19 members of any profession, the nondisclosure of which is essential to effective law enforcement or  
20 for the protection of any person's right to privacy.

21 RCW 42.56.240(1). Where an investigation is active and on-going, the exemption is categorical.  
22 *Newman v. King County*, 133 Wn.2d 565, 573-575, 947 P.2d 712 (1997); *Sargent v. Seattle Police Dep’t*,  
23 179 Wn.2d 376, 387-89, 314 P.3d 1093 (2013).

Here, DOC’s records sought by CJ Ciaramella (the Requester) fall under RCW 42.56.240(1)’s  
categorical exemption for law enforcement records set forth in *Newman* and affirmed in *Sargent*. The  
Requester asked for “all incident reports, weapon discharge reports, or use of force reports filed by

1 officers or agents involved in the Sept. 3, 2020 shooting of Michael Forest Reinoehl,” as well as “any  
2 body camera footage or still photographs taken by officers or agents related to the Sep. 3, 2020 shooting  
3 of Michael Forest Reinoehl.” Horowitz Decl., ¶ 4, Ex. B. These kinds of records likely contain specific  
4 investigative information relevant to Thurston County’s criminal investigation into the same, and  
5 information that is likely of a sensitive nature when set in the context of the County’s open investigation.  
6 Brady Decl. ¶ 11.<sup>1</sup> The non-disclosure of this type of information is essential to effective law  
7 enforcement, Brady Decl. ¶¶ 5-10, and thus is the type of information that is categorically protected  
8 under *Newman* and *Sargent*.

9         Given the foregoing, it is no surprise that Thurston County Sheriff’s Office has already  
10 successfully litigated the application of the categorical exemption under RCW 42.56.240(1) to its  
11 investigative records concerning the Reinoehl incident. Horowitz Decl., ¶ 3, Ex. A. The exemption  
12 should likewise apply to records held by DOC, which likely contain specific investigative information  
13 relevant to Thurston County’s criminal investigation. The plain language of RCW 42.56.240(1) instructs  
14 that records compiled by a non-investigating agency can nonetheless be essential to the investigating  
15 agency. The statute only requires that a law enforcement agency compiled the specific investigative  
16 records and that the nondisclosure of such records be essential to effective law enforcement. RCW  
17 42.56.240(1). DOC, a law enforcement agency, compiled records containing specific investigative  
18 information concerning the Reinoehl incident. The records likely contain statements and narratives from  
19 \_\_\_\_\_

20         <sup>1</sup> As explained below, WAC 139-12-030 prohibits the Sheriff’s Office from knowing with absolute  
21 certainty what DOC’s records contain. This places the Sheriff between the proverbial rock and a hard place. It  
22 must move for enjoinder based on the high likelihood of what DOC’s documents contain. The fact that it cannot  
23 be certain should not count against it when the uncertainty is created by the operation of law. This might be a  
bitter pill for the Requester to swallow if the Sheriff’s Office wished to enjoin production of these documents for  
all time. But it seeks only to enjoin production until its open and active criminal investigation is closed.  
Moreover—and perhaps more importantly to this discussion—even if the Sheriff’s Office could review the records  
DOC intends to release, the review would make no practical difference because the exemption is categorical for  
Thurston County. *Infra*, Horowitz Decl., ¶ 3, Ex. A.

1 officers involved in the shooting—the very subject of Thurston County’s investigation. Brady Decl., ¶  
2 11. Their non-disclosure is essential to Thurston County’s effective law enforcement.

3 Common sense bolsters this plain language reading. If DOC had shared these records with the  
4 Sheriff’s Office (which it has not), the records would be categorized as part of the Sheriff’s investigative  
5 file, and would fall under the protection of RCW 42.56.240(1). It would be an absurd result if RCW  
6 42.56.240(1) were read to hinge on who holds the records rather than what the records are; the nature of  
7 the records is what matters for the exemption. This is clear from *Newman*. The policy concern animating  
8 RCW 42.56.240(1) is the recognition that an investigative team should have the discretion and freedom  
9 to decide how and when to disseminate information in an open investigation. *See Newman*, 133 Wn.2d  
10 at 574 (explaining that release of investigative records can “inhibit the ability of police officers to  
11 determine, in their professional judgment, how when information will be released.”). Because the records  
12 held by DOC likely contain the same sort of facts and information the Sheriff’s Office has already  
13 properly withheld based on RCW 42.56.241(1), release of DOC’s records would undermine the  
14 exemption’s policy choice as articulated by *Newman*. Nondisclosure is therefore essential to the Sheriff’s  
15 ability to conduct effective law enforcement. This Court should enjoin the release of DOC’s records to  
16 preserve the integrity of Thurston County’s open and active investigation, until such time as the Sheriff  
17 informs DOC the investigation is closed.

18 2. Release of redacted information does not solve the exemption problem here, but rather  
19 exacerbates it.

20 DOC intends to release redacted records to the Requester. It is possible the redactions will answer  
21 any concerns the Sheriff’s Office has about premature release of information that would compromise its  
22 investigation. But WAC 139-12-030(4)(b) prevents some information sharing between the Sheriff and  
23 DOC. Members of the investigative team are therefore functionally prevented from reviewing any of the  
records DOC intends to release. At the same time, members of the Sheriff’s investigative team are in the

1 best and only position to review DOC's intended redactions to ascertain if those redactions will  
2 adequately preserve the integrity of the Sheriff's investigation. As *Newman* instructs, the "exemption  
3 allows the law enforcement agency, not the courts, to determine what information, if any, is essential to  
4 solve a case." 133 Wn.2d at 576; *Sargent*, 179 Wn.2d 376, 387. This leaves the Sheriff's Office with no  
5 choice but to seek enjoinder of the release of any records, whether redacted or not.

6 But more importantly to this discussion, even if the Sheriff's Office could review the records  
7 DOC intends to release, the review would make no practical difference here because the exemption under  
8 RCW 42.56.240(1) is categorical for Thurston County. The reason it is categorical is because it is not  
9 tenable to require law enforcement to parse out what is or is not of a sensitive nature to the investigation  
10 before the investigation is complete.

11 Requiring a law enforcement agency to segregate documents before a case is solved could  
12 result in the disclosure of sensitive information. The determination of sensitive or  
13 nonsensitive documents often cannot be made until the case has been solved. This exemption  
14 allows the law enforcement agency, not the courts, to determine what information, if any, is  
15 essential to solve a case.

16 *Newman*, 133 Wn.2d at 574. Thus, even if the Sheriff's Office could review DOC's records and  
17 proposed redactions, it would still move for enjoinder because it cannot know—and is not required  
18 to know—what is important to the investigation until it is over. Categorical withholding is the only  
19 way to ensure the underlying investigation is not compromised. This is the policy choice of the  
20 exemption under RCW 42.56.240(1), as articulated by *Newman*: that records related to an ongoing,  
21 open and active criminal investigation are categorically exempt until such time as the investigation  
22 is closed.

23 Moreover, WAC 139-12-030's prohibition on information sharing further counsels in favor of  
enjoinder here. As noted, under the WAC members of the investigative team are prohibited from  
viewing information from the involved agency, including compelled statements, until the investigation  
is complete. WAC 139-12-030(4)(b). Release of DOC's records to the public at this time substantially  
increases the risk that members of the County's investigative team will be exposed to prohibited content

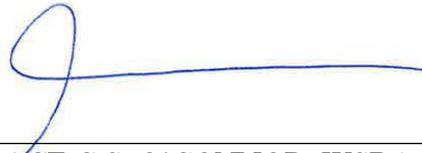
1 in violation of the WAC. This result is contrary to the spirit of the WAC, which places paramount  
2 importance on an independent investigation. To that end, the Sheriff's Office has made efforts consistent  
3 with the WAC to prohibit the accidental or purposeful exchange of information between it and involved  
4 agencies, including DOC. Brady Decl., ¶ 12. In sum, not only does the WAC leave the Sheriff's Office  
5 no choice but to seek enjoinder in lieu of redactions, enjoinder is the only way to ensure the Sheriff's  
6 efforts to meet its obligations under the WAC are not thwarted. The Court should grant this temporary  
7 restraining order.

8 **V. CONCLUSION**

9 The Sheriff's Office has a well-grounded fear that release of DOC's records would undermine  
10 the integrity of its independent, open, and active criminal investigation. And an eventual "permanent"  
11 injunction will not result in a everlasting denial to the Requester of DOC's records—just until such time  
12 as the investigation is closed. Based on the foregoing reasons, Plaintiff respectfully urges this Court to  
13 enter the proposed temporary restraining order.

14 DATED this 15th day of December, 2020.

15 JON TUNHEIM  
16 PROSECUTING ATTORNEY



17 GRACE C.S. O'CONNOR, WSBA #36750  
18 Deputy Prosecuting Attorney  
19 Attorney for Plaintiff Thurston County Sheriff's Office