



## **CASE REPORT**

**PUBLIC RECORDS ACT - CRIMINAL INVESTIGATIVE REPORTS AND INTERNAL INVESTIGATIONS - IDENTITY OF ACCUSED - RIGHT TO PRIVACY.** When allegations of officer misconduct are investigated and determined to be unsubstantiated, the identity of the officer should be redacted from the criminal investigative report and internal investigation. *Bainbridge Island Police Guild v. City of Puyallup*, \_\_\_ Wn.2d \_\_\_ (August 18, 2011).

**I. Facts.** A citizen filed a complaint against a Bainbridge Island police officer alleging sexual assault and strangulation during the course of a traffic stop. The Bainbridge Island Police Chief asked the Puyallup Police Department to conduct a criminal investigation. After the criminal investigation, the Puyallup Police Department found the allegation unsubstantiated and the Kitsap County Prosecutor declined to prosecute. The Police Chief also asked the Mercer Island Police Department to conduct an internal investigation. After conducting the internal investigation the Mercer Island Police Department found the allegations unsubstantiated and recommended exoneration. Public records requests were made to the City of Bainbridge Island for the Puyallup criminal investigative report and the Mercer Island internal investigation report. The officer and police guild filed a complaint in Kitsap County to prevent release. The trial court found release would violate the officer's right to privacy and ordered the records be withheld under RCW 42.56.240, the investigative records exemption. Requests were also made to the City of Puyallup for the Puyallup investigative report and to the City of Mercer Island for the Mercer Island internal investigation report. As for the request to the City of Puyallup, the officer and police guild filed a complaint in Pierce County Superior Court requesting an injunction prohibiting release of the records, which was initially denied, but then the court later ruled the investigative report was exempt as personal information under RCW 42.56.230(2). The requestors petitioned for direct review to the Supreme Court. As for the request to the City of Mercer Island, the officer and police guild again filed an action to prohibit disclosure. The King County Superior Court granted the request and ruled the entirety of the internal investigation report was exempt as personal information under RCW 42.56.230(2). The requestors in that case also petitioned for direct review to the Supreme Court and the Supreme Court accepted for consolidated review both the Pierce County and King County decisions.

**II. Applicable Law and Analysis.** The Supreme Court held that both records were subject to production, but that the identity of the accused officer could be redacted from each report to protect his right to privacy. The officer and guild argued that RCW 42.56.230(2), which protects personal information in files maintained for employees to the extent that disclosure would violate their right to privacy, prevented disclosure of the records in their entirety. The Court found that the officer's identity was personal information under RCW 42.56.230(2) and that he had a right to privacy in his identity in connection with the unsubstantiated allegation of misconduct. (The

Court noted that the fact that the officer's identity was previously released to the media did not mean his right to privacy should be lost forever.) The requesters argued that even if the officer has a right to privacy in his identity, that right would not be violated by production of the reports with the officer's name redacted. The Court agreed and found that the public has a legitimate interest in how a police department responds to and investigates allegations against an officer and that the reports themselves were not personal information so could not be exempt under RCW 42.56.230(2).

The officer and guild also argued that the entirety of both reports were exempt under the privacy prong of RCW 42.56.240(1), the investigative records exemption, which provides that investigative records may be exempt to the extent nondisclosure is necessary for the protection of a person's right to privacy. Again, the Court held that only the officer's identity was exempt from disclosure.

Finally, the Court considered whether chapter 10.97 RCW (the Criminal Records Privacy Act) exempted the criminal investigation, and to the extent it contained the criminal investigation, the internal investigation as well. The Court rejected the argument that RCW 10.97.080 exempts an entire record from production if it contains any nonconviction criminal history record information (notations of arrest, detention, indictment, etc.). The Court held that RCW 10.97.080 allows redaction of only criminal history record information and that because the criminal investigation report did not arise from an arrest, detention, indictment, etc., it could not be withheld or redacted on that basis.

**III. Conclusion.** Because the public has a legitimate interest in how a police department responds to and investigates allegations against officers, criminal investigative reports and internal investigation reports must be disclosed, whether or not the allegations are substantiated. If the allegations are unsubstantiated, the identity of the accused employee may be redacted, even if the public can put two and two together to determine the identity of the employee that is the subject of the investigation. This case also clarifies that entire criminal investigative reports (incident reports) are not criminal history record information, and that those reports may be obtained and copied with nonconviction notations of arrest, detention, indictment or other formal criminal charges redacted. If you have any questions relating to the Public Records Act, please contact your city attorney.