

NEWS RELEASE

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FROM: WASHINGTON COALITION FOR OPEN GOVERNMENT

TOPIC: WCOG SUPPORTS COURT FINDINGS IN BURT V. DEPT OF CORRECTIONS

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A recent decision by the Washington Supreme Court underscores the threat to the Public Records Act (PRA) when parties resisting the disclosure of records join with agencies to block their release, according to the Washington Coalition for Open Government (WCOG).

In *Burt v. Department of Corrections*, the Court ruled that persons requesting public records must be allowed to participate in legal actions where an agency's employees, or other persons named in the records, try to prevent their release. WCOG filed a brief in the case as an amicus curiae.

"The stated purpose of the PRA is to protect the public's interest in being able to obtain public records," the Court wrote. "Without an advocate for the release of the requested records, this purpose can be frustrated. Here, no such advocate existed."

The *Burt* case began when Allan Parmelee, an inmate at the Washington State Penitentiary, requested records from the Department of Corrections (DOC). Eleven DOC employees filed suit against their agency to block release. The superior court blocked Parmelee's records request without allowing him to join the case or argue why the records should be disclosed. A court of appeals upheld the lower court's decision.

The Supreme Court reversed the lower courts in a 5-4 ruling, agreeing with WCOG that persons who request records under the PRA must be parties to any legal action to prevent disclosure. The Court explained that "because of the parties' employee/employer relationship, no party was in a position to zealously advocate for the release of the records, which made for a proceeding that was not truly adversarial."

Justice Richard Sanders went further in his concurring opinion, writing that the proceeding had "all the earmarks of a collusive lawsuit." His opinion also reflected WCOG's concern that perceived abuses of the PRA by prison inmates had prompted DOC and the lower courts to take legal positions harmful to other requesters and the PRA's goal of open, accountable government.

The Court did not rule whether the records requested by Parmelee should be released to him when the case returns to the superior court, and WCOG took no position on that issue.

“Although some might not view Mr. Parmelee as the poster child for rigorous enforcement of the Public Records Act, we should not cut corners to allow bad facts to make bad law as well,” Sanders wrote.

In a related action, WCOG has filed suit against DOC and the Attorney General’s Office (AGO) to obtain records related to *Burt v. DOC*. In response to WCOG’s request for records, both the AGO and DOC refused to produce them in native electronic format, and broadly claimed that various records were exempt under the attorney-client privilege.

WCOG believes that the requested records may show that the AGO and DOC were engaged in the kind of “collusive lawsuit” that Justice Sanders described or that the AGO was improperly providing legal advice to both the DOC and the DOC’s employees in their efforts to block disclosure.

Regardless of what the records ultimately reveal about *Burt v. DOC*, WCOG filed suit to compel the AGO and DOC to produce them in native electronic form, as the PRA requires, and to limit the use of the attorney-client privilege to withhold requested records.

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