



Prosser School District No. 116

1126 Meade Avenue, Suite A
Prosser, WA 99350
(509) 786-3323 FAX: (509) 786-2062
Website: www.prosserschools.org

January 17, 2013

The Honorable Bob Ferguson
Attorney General of Washington
P.O. Box 40100
Olympia, WA 98504-0100

RECEIVED
PROSSER
2013 JAN 22 A 8:34
ATTORNEY GENERAL
WASHINGTON

Re: Request for Attorney General Opinion

Dear Mr. Attorney General:

This letter is written on behalf of Prosser School District No. 116 to request a formal opinion on whether or not a school district has the right to receive from law enforcement agencies pursuant to the Public Records Act, RCW 42.56 or RCW 4.24.550(3), or any other law, the address of a known registered sex offender residing within the boundary of a school district. The safety of students within the school district is of paramount concern and importance.

Enclosed with this letter, please find a copy of a public records request made to Benton County Sheriff's Office Records Division by Prosser School District on November 27, 2012. In addition, please find the initial response of the Benton County Sheriff's Office Records Division, dated December 3, 2012; and a final response from the Benton County Sheriff's Office Records Division, dated December 11, 2012, wherein the Benton County Sheriff's Office denied the request for the address to a registered sex offender living within the boundaries of the Prosser School District.

The district is made aware of registered sex offenders residing within the district by notice from law enforcement. The notice contains a general area location, but does not contain the full address of the registered sex offender.

The address of the registered sex offender is relevant and necessary to allow school districts to provide notice to persons regarding access or non-access to school property, school events and other school activities. Notice is a necessary element to the district's authority to control its property and control access to its property. See State v. Green, 157 Wash.App. 833 P.3d 1130 (2010).

Based upon the above, the district is requesting an opinion on the following questions:

1. Is the address of a registered sex offender a public record? If yes, is the record exempt from disclosure under RCW 42.56, or any other law addressing such record?

2. If the answer to inquiry number 1 above is no (not a public record), does RCW 4.24.550, or any other law prevent the disclosure (to a school district) by a county sheriff or other law enforcement agency, of address records for registered sex offenders residing within the school district?

Thank you for your review and consideration of this request.

Respectfully,

A handwritten signature in cursive script, appearing to read "Ray E. Tolcacher".

Dr. Ray Tolcacher
Superintendent

Cc: Benton County Sheriff Steven Keane

Tolcacher, Ray

From: Tolcacher, Ray
Sent: Tuesday, November 27, 2012 11:26 AM
To: 'BCSO.PublicDisclosure@co.benton.wa.us'
Subject: FW: Request for Public Records

Pursuant to RCW 42.56 please consider this a request for Public Records. The Prosser School District is requesting the complete address of Registered Sex Offender [REDACTED] who resides on the 1500 Block of Sheridan Ave. The School District believes it is in the best interest of the district to obtain this Record.

Sincerely,

Dr. Ray Tolcacher, Superintendent of Schools.

1/4/2013



**BENTON COUNTY SHERIFF'S OFFICE
RECORDS DIVISION**

STEVE KEANE, SHERIFF
7122 W. Okanogan Pl., Bldg. B * Kennewick, Washington 99336
Kennewick (509) 735-6555 * Prosser (509) 786-5605

December 3, 2012

PROSSER SCHOOL DISTRICT
ATTN: RAY TOLCACHER, Superintendent
1126 MEADE AVE, STE A
PROSSER WA 99350

Re: Public Records Request Dated 11/27/2012
Email: ray.tolcacher@prosserschools.org

Dear Sir or Madam:

On November 27, 2012 this office received your request for public records. Pursuant to RCW 42.56.520, this letter is to acknowledge receipt of such request.

The Benton County Sheriff's office cannot immediately provide the responsive documents involving sex offender [REDACTED] due to the nature of your request. We estimate that the requested non-exempt documents will be available to you on December 14, 2012, if said record exists.

Thank you for your patience and if you have any questions, please call 509-735-6555 option 3 extension 3284 or send an email to BCSO.publicdisclosure@co.benton.wa.us.

Sincerely,

STEVE KEANE
SHERIFF

Linda Finley

Linda Finley
Public Records Officer



**BENTON COUNTY SHERIFF'S OFFICE
RECORDS DIVISION**

STEVE KEANE, SHERIFF
7122 W. Okanogan Pl., Bldg. B * Kennewick, Washington 99336
Kennewick (509) 735-6555 * Prosser (509) 786-5605

December 11, 2012

PROSSER SCHOOL DISTRICT
ATTN: DR. RAY TOLCACHER
1126 MEADE AVE STE A
PROSSER WA 99350

Re: Public Records Request
EMAIL: Ray.Tolcacher@prosserschools.org

Dear Sir or Madam:

On November 27, 2012, this office received your records request asking for an accurate address [REDACTED] registered sex offender in the Prosser School District. An extension letter was sent by email extending our response to December 14, 2012. Pursuant to RCW 42.56.520, this letter is to acknowledge receipt of such request.

The Benton County Sheriff's Office is unable to provide you documents responsive to your request. Pursuant to RCW 4.24.550(3) we are only authorized to release said records if we determine the information is relevant and necessary for release. Unfortunately, we do not believe this information is either relevant or necessary for release at this time.

We now regard your request as fulfilled and concluded. If you have any questions, please call 509-735-6555 ext. 3284 or send an email to BCSO.publicdisclosure@co.benton.wa.us

Sincerely,

STEVE KEANE
SHERIFF

Linda Finley

Linda Finley
Public Records Officer

Prohibition of Registered Sexual Offenders on School Property

Recognizing that the safety and welfare of students is of paramount importance, the Prosser School Board of Directors hereby declares that, except in limited circumstances, as approved by the Superintendent, the Prosser School District, ("PSD") will not permit registered sex offenders to be on PSD property. Registered sex offenders are classified by RCW 4.24. The board further authorizes the Superintendent to cause personal service of "No Trespass Notices" to all registered sex offenders who are known to reside within the Prosser School District boundaries. The "Notice of No Trespass" constitutes a final decision of the Board of Directors for appeal purposes.

The Board of Directors declares that no registered sex offender may come on the property of the PSD except as otherwise provided in this policy and as maybe required by State and Federal law or court of competent jurisdiction. If an administrator or designee becomes aware that a registered sex offender is on school property, the administrator or designee shall direct the sex offender to leave the areas immediately, unless the sexual offender is in possession of prior written permission from the Superintendent stating the reasons for such approval or permission. The school administrator shall advise the Superintendent of the presence or removal of a registered sex offender from school property as soon as reasonably possible.

A student who is on the sex offender registry may be assigned alternative education, as deemed appropriate by school officials and consistent with State and Federal laws.

Enforcement of this policy shall occur immediately upon the school administration becoming aware that a person on the Sex Offender Registry is on school property. The provisions of this policy prohibiting a registered sex offender from coming on school property shall not apply in the event that a sex offender's name has been lawfully expunged from the registry.

The Superintendent shall be responsible for developing and implementing procedures for the Prohibition of Registered Sexual Offenders on School Property in compliance with this policy.

RCW 9A.44	Sex Offenses
RCW 28A.395.090	Control of Property
RCW 28A.605.020	Parent Access
RCW 28A.645.010	Appeal

State v. Green 157 Wn. App 833, 239 P.3d 1130 (2011)
State v. Bililie, 132 Wn.2d 484, 939 P.2d 691 (1997)

Prohibition of Registered Sexual Offenders on School Property

Each school in the Prosser School District will have a district-supplied notebook to maintain materials related to known registered sex offenders residing in the Prosser School District as reported by any law enforcement agency. The school district will issue each known registered sex offender a "Notice of No Trespass" and send a copy of each notice to the Prosser Police Department.

School Notebooks

Each notebook will contain:

- a. A list of currently known registered sex offenders residing within the boundaries of the Prosser School District.
- b. A copy of all "Notices of No Trespass" sent to known registered sex offenders residing in the Prosser School District.
- c. Any other known information from law enforcement including photos of registered sex offenders.

Protocols for Addressing "Notice of No Trespass"

1. If an administrator or a staff member is informed that a known registered sex offender is on the school grounds or is attending an activity on Prosser School District property; they are to request that the person in question provide a written letter of permission from the Superintendent allowing that person specific access to the event or activity. A copy of written approvals for school property attendance or activity prepared by the Superintendent will be provided to a building administrator prior to any approved event. The Superintendent's approved document shall indicate the reasons for attendance as well as any requirements regarding the visit. This includes any parents or legal guardians of students who attend PSD and are a registered sex offender. Parents, who are registered sex offenders, may be allowed on school property without prior written approval in cases of medical or other emergencies involving their own child. This access to school property is limited to the emergency matter involving their child.
2. Should a person identified on the list of registered sex offenders be on school property without the Superintendent's prior approval, they are to be asked to leave the school property immediately by the administrator or their designee. Should the person not leave as directed, an immediate phone report should be made to the local police. A follow-up call to the Superintendent should be made as soon as possible after any incident involving a registered sex offender.

It is important to understand that it is not expected that administration or staff know each and every person on the list of registered sex offenders, but if it is brought to their attention that a registered sex offender may be on school property, it is expected that the person be asked by the administration for a copy of written

permission signed by the Superintendent. The same protocols apply to a transient person on any school property and who is identified as a registered sex offender.

Notebooks will be updated as information is added with new or removed names and/or new Notices of No Trespass. Any questions regarding policy or procedures should be directed to the Superintendent.



Prosser School District No. 116

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NOTICE OF NO TRESPASS

RCW 4.24.550, RCW 9A.44.130 (Registered Sex Offender)

_____ (hereafter referred to as you)

[Address]

You have been identified as a "registered sex offender" pursuant to RCW 4.24.550 and RCW 9A.44.130 from information obtained from the **Benton and/or Yakima County Sheriff Sex Offender Update**.

You are hereby notified according to Prosser School District Policy No. 6514 that you are prohibited from entry, remaining upon or reentry to all property of the Prosser School District and prohibited from attending any student activities of the Prosser School District regardless of location.

You may at no time enter, remain on, reenter the property of the Prosser School District or attend student activities of the Prosser School District at any location, without possessing written permission of the Superintendent of the Prosser School District.

If you violate this notice of no trespass, you may be charged and prosecuted for criminal trespass.

This notice is to be treated as a final decision of the Prosser School District. Pursuant to RCW 28A.645 et seq. you have the right to appeal this decision. To appeal this decision you must file a notice of appeal with the Benton County Superior Court and the Superintendent of the Prosser School District within thirty (30) days of the date of this notice. The notice of appeal must set forth in a clear and concise manner the errors complained of. If you fail to appeal this notice of trespass within thirty (30) days of the date of this notice, such failure constitutes a knowing and intelligent waiver of the opportunity to challenge this notice. In such case, the Prosser School District will take all action available to enforce this notice including referral to law enforcement for prosecution for criminal trespass.

If you have questions about your right to appeal this decision, you are advised to consult an attorney of your choice.

Superintendent of Schools: Dr. Ray Tolcacher

Signature of Superintendent of Schools: _____

Date of Notice: _____

Cc: Prosser Police Department

LEVEL
I



Prosser School District No. 116

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NOTICE OF NO TRESPASS

RCW 9A.44.193 (Criminal trespass against children)

_____ hereafter referred to as you)

[Address]

You have been identified as a "covered offender" pursuant to RCW 9A.44.130 and RCW 9A.44.190(5) and information obtained from the **Benton and/or Yakima County Sheriff Sex Offender Update.**

You are hereby notified in accordance with RCW 9A.44.193 that you are prohibited from accessing, remaining upon or reentry to all legal premises of the Prosser School District.

You may at no time enter or remain upon the legal premises of the Prosser School District without possessing written permission from the Superintendent of the Prosser School District.

If you violate this notice of no trespass, you may be charged and prosecuted for a felony offense as provided in RCW 9A.44.196.

This notice is to be treated as a final decision of the Prosser School District. Pursuant to RCW 28A.645 et seq. you have the right to appeal this decision. To appeal this decision you must file a notice of appeal with the Benton County Superior Court and the Superintendent of the Prosser School District within thirty (30) days of the date of this notice. The notice of appeal must set forth in a clear and concise manner the errors complained of. If you fail to appeal this notice of trespass within thirty (30) days of the date of this notice, such failure constitutes a knowing and intelligent waiver of the opportunity to challenge this notice. In such case, the Prosser School District will take all action available to enforce this notice including referral for prosecution for trespass as provided in RCW 9A.44.196.

If you have questions about your right to appeal this decision, you are advised to consult an attorney of your choice.

Issued by School District Representative:

Superintendent of schools: Dr. Ray Tolcacher

*LEVEL
II and III*



YAKIMA COUNTY SHERIFF'S OFFICE

KEN IRWIN, Sheriff

RECORDS DIVISION

P.O. Box 1388 Yakima, Washington 98907

TELEPHONE: (509) 574-2625

Date: January 18, 2013
To: Kurt H. Hilyard
Superintendent
From: CarriAnn M. Ross
Records Supervisor
Re: Public Records Request Dated January 15, 2013

Dear Superintendent Hilyard,

On January 17, 2013, Yakima County Sheriff's Office received your request for public records asking for names and accurate addresses of each registered sex offender residing within the Union Gap School District. Pursuant to RCW 41.56.520, this letter is to acknowledge receipt of your request.

The Yakima County Sheriff's Office is unable to provide you documents responsive to your request. Pursuant to RCW 4.24.550(3) we are only authorized to release said records if we determine the information is relevant and necessary for release. We do not believe your stated desire to use these records to preemptively send out trespass notices to all registered sex offenders in your community is both relevant and necessary for release.

In order for victims, witnesses or members of the public to have access to information on offenders who may live near their residence, our agency does have books available for viewing during regular business hours which have the names, descriptions, photos, convictions and approximate addresses of all registered sex offenders, including level 1 offenders, in Yakima County. These books are divided by zip code and organized alphabetically within each zip code. These books are available for viewing only. Copies of the pages are not supplied to the public, because the Level 1 photos are not released to the public at large and the Level 2 & 3 information is already made available to the public on our web site at www.yakimacounty.us/sheriff by clicking on the banner shown below.



RCW 4.24.550(3) & (4) outline the dissemination of information regarding Level 2 and Level 3 offenders, which is why notices are received by the school for those offenders whether or not they attend or work at the school.

If you have questions please feel free to contact me at 509-574-2625 or send an email to carriann.ross@co.yakima.wa.us.

Thank you.



Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

February 8, 2013

Dr. Ray Tolcacher
Superintendent
Prosser School District No. 116
1126 Meade Avenue, Suite A
Prosser, WA 99350

RE: Request for Attorney General Opinion

Dear Dr. Tolcacher:

I am replying to your letter of January 17, 2013 requesting an opinion from the Attorney General regarding whether a school district has a right to receive a record from a law enforcement agency for the address of a known registered sex offender residing within the boundary of a school district. My informal opinion is that a law enforcement agency record containing the address of a registered sex offender is a public record subject to disclosure unless a statute exempts such records. I do not interpret RCW 4.24.550(3) as either an exemption from disclosure or as statutory authority superseding the penalty provisions for violations of the Public Records Act.

The purpose of RCW 4.24.550 is to "require the exchange of relevant information about sexual predators among public agencies and officials and authorize the release of necessary and relevant information about sexual predators". Laws of 1990, Chapter 3 § 116 codified at RCW 4.24.550 (*See* Code Reviser's notes). The language "may disclose" provides law enforcement agencies with authority under RCW 4.24.550(3) to disseminate information to individuals, agencies, and the public at large. This authority is discretionary but is distinct from an agency's mandatory duty to respond to specific public records requests under the Public Records Act. Pursuant to the Public Records Act, an agency may only deny records or information where a law makes the information exempt. *See* RCW 42.56.070(1).

There is no express language in RCW 4.24.550 which creates an exemption from public disclosure under the Public Records Act for public records containing the address of registered sex offenders. RCW 4.24.550(9) expressly states "Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law." This provision is consistent with case law which disfavors implied exemptions from disclosure. *See American Civil Liberties Union of Washington v. City of Seattle*, 121 Wn. App. 544, 557 (2004).

ATTORNEY GENERAL OF WASHINGTON

Dr. Ray Tolcacher

February 8, 2013

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Even if a court were to imply an exemption from the Public Records Act, exemptions are required to be construed narrowly. *See* RCW 42.56.030. RCW 4.24.550 does not create an absolute exemption to withhold information that is relevant and necessary to the school district. Your specific facts make a persuasive case that disclosure is both relevant and necessary to protect the students and school district personnel.


I do not interpret RCW 4.24.550 to supersede or conflict with the Public Records Act. "The construction of two statutes shall be made with the assumption that the Legislature does not intend to create an inconsistency. Statutes are to be read together, whenever possible, to achieve a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes." *State ex rel. Peninsula Neighborhood Ass'n v. Dep't of Transportation*, 142 Wn.2d 328, 342, 12 P.3d 134 (2000).

The discretion to disseminate information under RCW 4.24.550 does not supersede the disclosure mandates and penalties imposed for violations of the Public Records Act. RCW 4.24.550(8) states "Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section." The Public Records Act is a law which imposes liability upon a public agency for failing to disclose non-exempt public records. Therefore RCW 4.24.550 may not be read to ignore the disclosure and penalty requirements of the Public Records Act.

The immunity created under RCW 4.24.550 is limited to the types of dissemination described therein and does not conflict with penalties required for violations of the Public Records Act. However, other attorneys may interpret the immunity provisions of RCW 4.24.550 and the penalty provisions of RCW 42.56.550 in conflict. Yet the Public Records Act clearly states "In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern." RCW 42.56.030.

In summary, RCW 4.24.550 is not an express exemption from disclosure permitting a denial of public records. The discretion to disseminate information does not supersede or conflict with the Public Records Act. A law enforcement agency may still claim another statutory exemption, but must provide you with the citation and a brief explanation of how the exemption applies. *See* RCW 42.56.210(3). This is not a formal opinion of the Attorney General but rather it is an informal opinion of the Attorney General's Ombudsman.

Sincerely,



TIMOTHY D. FORD
Assistant Attorney General

TDF/eg