

Felons Don't Have Rights to Public Records, Attorney General says

OLYMPIA — Felons who have not had their civil rights restored should not have the same rights to public records that others have, state Attorney General Rob McKenna says.

McKenna makes the assertion in a friend-of-the-court brief that has been filed with the state Court of Appeals in a case concerning an imprisoned arsonist who's been trying to dig up information on the judges, lawyers and corrections officers who helped put him behind bars.

In the filing obtained by The Associated Press, McKenna — an active proponent of public-records access — says that inmates' access under the state Public Records Act (PRA) is "fundamentally inconsistent with the objectives, needs and realities of the prison system and the legal status of inmates."

McKenna said Monday that the brief doesn't conflict with his advocacy on public records.

"I'm an ardent defender of the First Amendment, but I don't think you can yell fire in a crowded movie theater," he said. "The massive abuse of the Public Records Act by inmates is a threat to the use of the sunshine laws by legitimate requesters."

In 2007, 73 percent of public-records requests to the state Department of Corrections came from offenders, a total of 4,917 requests, according to McKenna's office. Corrections staff spent more than 12,000 hours responding to the requests at a cost of more than \$250,000.

McKenna's office noted that one inmate alone made 788 requests during a five-month period; other inmates have sought everything from user names and logins for corrections employees, to all Washington Corrections Center audio and video recordings, past and present. One request asked for all records that show how many plastic bags are purchased by the department.

"It's astounding, absolutely astounding, how many abusive requests there have been and how rapidly the abuse of the records act has grown among inmates," McKenna said.

The filing, requested by the Court of Appeals, was submitted Friday evening.

The case involves Allan Parmelee, who in 2004 was convicted at his second trial of first-degree arson in the firebombing of a vehicle belonging to his ex-wife's divorce lawyer and another belonging to a lawyer who represented his roommate's ex-girlfriend. His first trial ended in a mistrial because he was found to have personal information about the jurors.

While in prison, Parmelee has made hundreds of requests, seeking records that include addresses, photos, pay, schedules, professional histories and birth dates of Washington State Patrol troopers and Corrections Department staff. Several jurisdictions have disputed Parmelee's rights to the records.

In March, a King County Superior Court judge ruled she had no authority to bar Parmelee from making the requests. County Prosecutor Dan Satterberg had sought not only to let his office ignore the pending requests but also to bar Parmelee from filing more unless he first obtained court permission.

McKenna submitted his friend-of-the-court brief for a similar case involving several other counties and records requested by Parmelee. The Court of Appeals has consolidated three cases, one from Thurston County and two from Clallam County.

McKenna said his reading of the law is clear.

"The state doesn't allow inmates to physically harass or intimidate corrections officials or other officials; it doesn't make sense that the law would allow them to use the public records as a means of coercion," he said.

In the brief, McKenna said if inmates have access to public records under the act, it "allows inmates, including inmates with a history of violence, like Mr. Parmelee, to engage in harassment and intimidation of staff, to disrupt prison order by diverting its resources, and to waste the public's money on an extraordinary scale."

Voters enacted the law with the overwhelming passage of Initiative 276 in 1972. The measure called for disclosure of campaign finances, lobbyist activity, financial affairs of elective officers and candidates, and access to public records.

McKenna wrote that "it is difficult to conceive that the people who enacted Initiative 276 decided to remove its regulatory authority over inmate access to public records, and grant expanded rights for incarcerated felons."

Toby Nixon, president of the Washington Coalition for Open Government, said the coalition was analyzing the brief.

But he said if the appeals court decides to adopt McKenna's line of reasoning, "this would be a significant change that we don't think would be in the best public interest."

If the arguments in McKenna's brief are accepted, Nixon said not only imprisoned felons would lose their access to public records but all convicted felons who are out of prison but haven't had their civil rights restored.

"Does this mean that anyone who makes a public-records request is subject to a criminal-background check?" he asked.

The brief argues that just as incarcerated felons lose the right to vote, hold public office and serve on a jury, until their civil rights are restored "they forfeit the legal authority that citizens exercise over their government to influence its decision-making processes."

But Nixon said prisoners would still likely be able to get family members or advocacy groups to make the requests for them.

He agreed there are cases of abuse of public records by inmates, and that the coalition had been hoping to meet with the Department of Corrections to look for solutions that would not affect broader access to records.

"I think that the community at large needs to figure out a way to deal with the abuses of the Public Records Act so that the Legislature or courts, in a reactive way, don't do something that results in the inability of all the rest of us to have access to public records," Nixon said.

McKenna spokeswoman Janelle Guthrie said that the attorney general's office currently has only one public-records request pending from an incarcerated felon — Parmelee — and that it will suspend the request until there is a decision from the appeals court.

John Scott Blonien, an assistant secretary at the Corrections Department, said his agency will wait for a judicial decision before making any change in how it handles public-records requests from incarcerated felons.