

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEREK E. GRONQUIST,

Plaintiff,

v.

KELLON CUNNINGHAM; VICTOR OWENS;
RAYDEAN GEORGE; CHRISTOPHER HICKS;
HERBERT PENROSE; AMANDA WESTPHAL;
VICTORIA TAPIA; ANA GARIBAY; GREG
MCCOMBS; ROBERT J. LONG; JEFFERY A
UTTECHT; ROY GONZALEZ; BERNARD
WARNER; and the DEPARTMENT OF
CORRECTIONS OF THE STATE OF
WASHINGTON,

Defendants.

CASE NO. 4:15-CV-5008-EFS

**ORDER GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT, DENYING MR.
GRONQUIST'S MOTION TO CERTIFY AND
MOTION TO SHOW CAUSE, AND CLOSING
FILE**

Derek Gronquist, a prisoner in the Washington state penal system, seeks relief from a variety of wrongs he asserts were committed by Washington State Department of Corrections (DOC) and its employees: 1) a violation of Washington's Public Records Act (PRA), 2) unconstitutional deprivation of his free speech, and 3) retaliation for exercising his free-speech rights. In addition, Mr. Gronquist contends that two state statutes that provide DOC with authority to regulate prison mail and define "contraband" for prison-mail purposes are unconstitutional. Defendants seek summary judgment in their favor on the asserted claims, ECF No. 17, while Mr. Gronquist asks the Court to

1 certify constitutional questions to the Washington Supreme Court, ECF
2 No. 74, and for an order requiring Defendants to show cause why documents
3 responsive to his PRA request were not disclosed, ECF No. 84. After
4 reviewing the record and relevant authority, the Court is fully informed
5 and grants Defendants' summary-judgment motion and denies Mr.
6 Gronquist's motion for certification and show-cause motion.

7 **A. Factual Statement¹**

8 **1. Public Records Act Request**

9 Mr. Gronquist was housed at Washington's Coyote Ridge Corrections
10 Center (CRCC) at all times relevant to the claims in this lawsuit. On
11 March 31, 2014, DOC received a public-records request from Mr. Gronquist
12 for "[a]ny and all grievances filed against Correctional Officer Kellon
13 Cunningham."² Officer Cunningham had worked for Airway Heights
14 Correction Center ("Airway Heights") and then relocated to CRCC's H-
15 Unit, where he continues to work. The H-Unit houses about 250 minimum
16 custody offenders, including Mr. Gronquist. As part of his job duties,
17 Officer Cunningham conducts formal headcount, tier checks, and cell
18 inspections, runs mainlines, supervises porters, conducts monthly
19 reports, and monitors the sliders and offender movement.

21 ¹ The parties submitted a Joint Statement of Uncontroverted Facts. ECF No.
22 112. These uncontroverted facts are included in this Factual Statement
23 without a citation to the record. Facts that are supported with a citation
24 are those that were submitted by Mr. Gronquist, which were not flatly
25 contradicted by the record, and those submitted by Defendants, which were
26 not contested by Mr. Gronquist. *See Anderson v. Liberty Lobby, Inc.*, 477
U.S. 242, 255 (1986); *Scott v. Harris*, 550 U.S. 372, 380 (2007).

² The request was assigned tracking log number PDU-28803.

1 DOC responds to thousands of public-records requests every year.
2 Pernula Dec., ECF No. 19 ¶ 5. For instance, in 2013, DOC responded to
3 14,705 requests for inmate central and medical file reviews, health
4 records, and other records. *Id.* Of these 14,705 requests, 4,418 were
5 for records other than file reviews or offender health-related records
6 and were handled by the unit or designated statewide public disclosure
7 coordinators. *Id.* In response to these 4,418 requests, over 1.3 million
8 pages were gathered and offered to requestors. *Id.* DOC staff spent more
9 than 36,000 hours responding to these requests. *Id.* The majority of
10 those requests include some claim of exemption and redaction or
11 withholding of information. *Id.* At any one time, a PRA specialist may
12 have up to 80 open public-records requests assigned to her. *Id.* After
13 a public-records request is completed, the requestor has the opportunity
14 to appeal the response to DOC's Public Disclosure Appeals Officer. *Id.*
15 The Public Disclosure Unit is a centralized unit located in DOC's
16 Tumwater headquarters building currently employing 16 full-time staff,
17 including 3 administrative staff, 11 specialists, 1 supervisor, and 1
18 compliance manager. *Id.* ¶ 3.

19 When a public-records request is received, it is assigned a
20 tracking number, and assigned to either a specialist within the unit or
21 to a correctional facility or field office Public Disclosure Coordinator
22 or records staff for processing. *Id.* ¶ 4. The specialist determines the
23 response time-frames, which are based on many factors, including the
24 specialist's and other staffs' current workloads; the complexity and
25 scope of the records requested; the number of sources for potentially
26 responsive records and any other factor which may affect the production

1 of the record. *Id.* DOC uses the SharePoint computer program to help
2 track the requests and responses thereto. *Id.*

3 The day that DOC received Mr. Gronquist's public-records request,
4 DOC Public Disclosure Specialist Darla Koflanovich sent an email to DOC
5 Grievance Program Manager Clara Curl, inquiring if there is "any way to
6 search for grievances that might contain [C/O Kellon Cunningham's] name
7 and get a report with the grievance numbers on it so I can pull them?"
8 Ms. Curl responded:

9 I would need to know when and where they worked, is there a
10 timeframe to consider? We do not track complaints by staff
11 grievated. I can check all staff conducts at the facility where
they worked. I could get you a list of log#'s pretty quickly
if I knew time, date, location. Does that help?

12 Ms. Koflanovich replied to Ms. Curl that she "will get the information
13 you need and route the request to you for a list."

14 On April 1, 2014, Ms. Koflanovich sent Mr. Gronquist a letter
15 acknowledging receipt of the public-records request and stating that
16 his request was interpreted as asking for "all grievances filed against
17 Correctional Officer Kellon Cunningham" and "we will contact you
18 regarding your request within 48 business days, on or before June 6,
19 2014." ECF No. 19, Attach. A at 11.

20 Ms. Koflanovich determined that Officer Cunningham worked at CRCC;
21 and she provided a copy of the request to CRCC. ECF No. 19 ¶ 9, Attach.
22 B. CRCC employees Valerie Ostrem and Mike McCourtie hand searched "all
23 paper copies of grievance records that included the name Cunningham,
24 such as "Kellon Cunningham," "K. Cunningham," or "Cunningham." ECF No.
25 20 ¶ 2. They found 40 responsive documents. Ms. Ostrem's search also
26 included a search on the log sheet for the name Cunningham to ensure

1 that no grievances were missed during the hand search; this log search
2 revealed no additional grievances. *Id.* ¶¶ 2 & 3. At this time, CRCC
3 maintained paper copies of grievances for three years. *Id.* ¶ 2.

4 On April 4, 2014, Ms. Koflanovich wrote Mr. Gronquist a letter
5 advising him that 40-responsive pages to his request for "[a] copy of
6 all grievances filed against Correctional Officer Kellon Cunningham"
7 had been gathered and would be provided to him upon his payment of the
8 identified photocopying fees. ECF No. 19-1 at 12-13. Mr. Gronquist
9 submitted payment. ECF No. 19-1 at 14-15. Upon receipt of the payment,
10 Ms. Koflanovich mailed the first installment of responsive records to
11 Mr. Gronquist on April 28, 2014. ECF No. 19-1 at 17; Attach. A at 14-
12 17. These were not received by CRCC mailroom staff until June 12, 2014,
13 at which time 31 of the documents were rejected by mailroom staff as
14 contraband because the documents contained information about other
15 inmates. Mr. Gronquist had the rejected documents mailed to his mother,
16 Ms. Parker.

17 Also on April 28, 2014, Ms. Koflanovich issued a "routing slip"
18 directing Grievance Program Manager Dale Caldwell to "gather a report
19 with all grievances related to C/O Kellon Cunningham," clarifying that
20 "his employment began with DOC in 2008." Mr. Caldwell responded to Ms.
21 Koflanovich the next day, stating:

22 Darla I can't comply with your request as requested.
23 Grievances are not filed by staff member. I can ran [sic]
24 all grievances at that facility from 2008 to present - let
me know if you can narrow the search I will forward the data
as listed - thank [sic].

25 Ms. Koflanovich replied to Mr. Caldwell that she would "contact HR and
26 get the facilities that the officer was at and the time period for

1 running the report." Later that day, Ms. Koflanovich informed Mr.
2 Caldwell that she had spoken with a fellow employee who "suggested we
3 get a report of grievances about 'staff misconduct' for the dates and
4 facilities" where Mr. Cunningham had worked: Airway Heights Corrections
5 Center ("Airway Heights") from April 16, 2008, to April 15, 2011, and
6 then CRCC thereafter. On April 30, 2014, Mr. Caldwell provided Ms.
7 Koflanovich with a list of staff-conduct grievance numbers for the two
8 facilities during the pertinent dates, emphasizing that he is "[n]ot
9 sure if this particular staff is mentioned in any of them." Ms.
10 Koflanovich replied that she would begin her review for Officer
11 Cunningham's name within the 515 grievances listed on the report. Ms.
12 Koflanovich located 31 grievances against Officer Cunningham amongst
13 these grievances. Of these 31 grievances, 15 were filed at CRCC and
14 were not located during Mr. McCourtie's and Ms. Ostrem's hand search
15 of physical documents.

16 On June 23, 2014, Mr. Gronquist was told that there were 68 more
17 responsive documents; he paid the copying fee, and the requested
18 documents, except for 3 pages which were not disclosed due to a computer-
19 security exemption, were mailed to Mr. Gronquist on July 23, 2014. ECF
20 No. 19, Attach. A at 18-27. About a week later these PRA documents were
21 received by the CRCC mailroom; mailroom staff rejected 33 pages as
22 contraband because they contained information about other inmates. Mr.
23 Gronquist had the rejected documents sent to his mother and requested
24 that she redact the other inmates' names on the documents and then mail
25 the documents back to him. ECF No. 19, Attach. A at 28-29. These redacted
26

1 documents were later rejected by the mailroom staff as contraband
2 because they contained redactions.

3 In July 2014, Ms. Koflanovich requested documents related to the
4 Prison Rape Elimination Act (PREA) investigation report against Kellon
5 Cunningham, Report #1210062. On August 25, 2014, DOC informed Mr.
6 Gronquist by letter that they had 98 more responsive pages. ECF No.
7 19, Attach. A at 31-32. The copying fee was paid, and records mailed
8 to Mr. Gronquist. ECF No. 19, Attach. A at 35-42. DOC mailed these
9 records to Mr. Gronquist on September 17, 2014. All but one of these
10 records were rejected by CRCC mailroom staff because the records
11 contained information about other inmates. The rejected records were
12 then mailed to Mr. Gronquist's mother at Mr. Gronquist's request.

13 Also, on September 17, 2014, Ms. Koflanovich informed Mr. Gronquist
14 that DOC's response to his public-records request was "complete and now
15 closed." Ms. Koflanovich did not identify any records that were being
16 withheld.

17 **2. CRCC Mailroom**

18 When the documents sent to Mr. Gronquist in response to his public-
19 records request were mailed to him at CRCC, they were subject to DOC's
20 mail policy. Mail entering and leaving CRCC, and other DOC facilities,
21 is subject to screening. RCW 72.09.530 provides:

22 The secretary [of the Department of Corrections] shall, in
23 consultation with the attorney general, adopt by rule a
24 uniform policy that prohibits receipt or possession of
25 anything that is determined to be contraband. The rule shall
26 provide consistent maximum protection of legitimate
penological interests, including prison security and order
and deterrence of criminal activity. The rule shall protect
the legitimate interests of the public and inmates in the
exchange of ideas. The secretary shall establish a method of

1 reviewing all incoming and outgoing material, consistent with
 2 constitutional constraints, for the purpose of confiscating
 3 anything determined to be contraband. The secretary shall
 4 consult regularly with the committee created under RCW
 5 72.09.570 on the development of the policy and implementation
 6 of the rule.

7 "Contraband" is defined as "any object or communication the secretary
 8 determines shall not be allowed to be: (a) [b]rought into; (b) possessed
 9 while on the grounds of; or (c) sent from any institution under the
 10 control of the secretary." RCW 72.09.015(5).

11 To implement RCW 72.09.530, DOC established Policy 450.100, Mail
 12 for Offenders. DOC Policy 450.100³ directs designated facility staff to
 13 inspect and read incoming and outgoing mail to prevent the "[r]eceiving
 14 or sending [of] contraband or any other material that threatens the
 15 security and order of the facility through the mail, and . . .
 16 [c]riminal activity." Policy 450.100 authorizes mail to be rejected
 17 "based on legitimate facility interests or order and security and/or
 18 for any [of the 39 unauthorized mail] reasons identified:

19 **Mail to or from offenders, including publications and**
 20 **eMessages/attachments, may be rejected for any of the**
 21 **following reasons:**

- 22 1. Not specifically authorized by DOC 450.100 Mail for
 23 Prison Offenders or any other policy or applicable
 24 Operational Memorandum
- 25 2. Attempts to establish contact with a person or his/her
 26 guardian who has requested not to be contacted by the
 offender, when the offender is aware or should be aware
 of the request
3. Violates sentencing conditions and/or court orders or
 otherwise attempts to establish prohibited contact
 between the sender and recipient

24 ³ The language of DOC 450.100 was modified during the relevant time period.
 25 See Gonzalez Dec., ECF No. 21, Attach. A, DOC Policy 450.100(VII) (eff.
 26 July 25, 2011) and DOC Policy 450.100(IX) (eff. Aug. 15, 2014).

4. Contains an unknown substance(s) or contraband, or relates to sending contraband into or out of the facility
5. Contains items written or drawn in crayon or gel pen, or contains or has been treated with perfume, glitter, and/or other items that could be easily misidentified
6. Contains escape plans and/or other information related to escape
7. Provides technical/detailed information on security systems, equipment, and practices used in the correctional field
8. Contains plans for activity that violates state/federal law, the Washington Administrative Code, Department policy, and/or local facility rules
9. Contains instruction and/or "how to" material for committing illegal activities
10. Depicts or describes the procedures for constructing or using weapons, ammunition, bombs, and/or other destructive devices, or includes life sized photograph(s)/graphic illustration(s) of these items
11. Provides instructions on martial arts, fighting/self-defense techniques, and/or how to disable/disarm others
12. Appears to be in code
13. Contains content in multiple languages
14. Contains written/graphic information on security equipment/operations or facility blueprints/diagrams
15. Contains detailed maps/charts of Washington, Oregon, Idaho, and/or British Columbia
16. Contains information that could create a risk of physical harm to the offender or another person if the communication were allowed
17. Contains sexually explicit material as defined in WAC 137-48-020 and/or references sexually explicit behavior. May include altered images, strategically placed graphics, or airbrushing. Sexually explicit behavior must be the predominant theme when rejecting written and/or audio based publications, letters, or eMessages.
18. The publication(s) is not in English, with the exception of authorized religious books. May include dictionaries or glossaries translating words from the language to English.
19. Contains publications or documents, other than legal mail sent from a legal entity/agency, that have been altered (e.g., pages torn/removed, extraneous markings, etc.)
20. Advocates violence against others and/or the overthrow of authority
21. Advocates that a protected class or group of individuals is inferior and/or makes such class/group the object of ridicule and/or scorn, and may reasonably be thought to

- precipitate a violent confrontation between the recipient and a member(s) of the target group
22. Purports to be legal/special mail, but upon inspection is determined to be general correspondence
 23. Contains cash or personal check(s)
 24. Contains markings of gang symbols or symbols of other unauthorized groups that may reasonably be thought to precipitate violence
 25. Contains multiple or similar copies/photocopies of the same photograph, document, and/or publication/subscription, in whole or part
 26. Contains pre-franked envelopes and/or non-cancelled postage stamps, with the exception of eStamps, without prior approval from the Superintendent/designee
 27. Contains correspondence, information, or other items relating to another offender(s) without prior approval from the Superintendent/designee, or attempts or conveys unauthorized offender to offender correspondence
 28. Contains a blank greeting card or postcard
 29. Contains a photograph, card, poster, and/or calendar that is padded, laminated/layered, musical, and/or exceeds the storage dimensions noted in DOC 440.000 Personal Property for Offenders
 30. Contains an unauthorized cassette tape(s) and/or CD(s), including public disclosure CDs
 31. Contains clipping(s)/copies of copyrighted material
 32. Contains or attempts to obtain an item(s) not approved and paid for in advance through facility designated channels.
 33. Solicits money or anything of value from anyone other than the offender's immediate family member without prior approval from the Superintendent/designee. This does not preclude authorized purchases through approved vendors
 34. Requests/directs another person to provide money or anything of value to a third party without prior approval from the Superintendent/designee
 35. Contains printed material other than correspondence for an offender currently assigned to a Reception Diagnostic Center
 36. Contains a metal and/or inflexible binder
 37. The eMessage videogram (i.e., pre-recorded video attached to an eMessage) does not comply with DOC 450.100 Mail for Prison Offenders or otherwise contains any display of nudity, behavior or actions that are sexual in nature, drugs/alcohol or related paraphernalia, weapons, graphics or paraphernalia associated with any Security Threat Group, or unlawful activity
 38. Contains copies that are being sent to a Reception Diagnostic Center

1 39. Contains sweepstakes, contests, lottery tickets, or
2 other mailings soliciting or offering games of chance.
3 Publications that contain a sweepstakes or contest entry
 will not be restricted. However, offenders are not
 authorized to enter sweepstakes or contests of any kind.

4 ECF No. 21, Attach. A at 45-47. In regard to unauthorized mail, DOC
5 contends that it has a strong interest in not allowing inmates to possess
6 grievances pertaining to other inmates because inmates can use the
7 information therein to harass the named inmate or to intimidate and
8 strong-arm staff. Gonzalez Dec., ECF No. 21 ¶ 6.

9 The mailroom staff inspect the mail and determine whether the mail
10 may be delivered to an inmate or whether the mail must be rejected and
11 considered "contraband" pursuant to Policy 450.100. If the mail is
12 rejected, written notice on DOC Form 05-525, which indicates why the
13 mail was rejected, is given to both the inmate and the sender of the
14 mail. The notice advises the inmate of his right to appeal the rejection
15 to the facility superintendent/designee.

16 If the mail rejection is appealed, the facility superintendent
17 or his designee will review the rejection and affirm or reverse the
18 rejection. If the mail rejection is affirmed, the inmate or sender may
19 appeal the decision to the Assistant Secretary or his designee, who may
20 affirm or reverse the rejection. If the mail rejection is affirmed, the
21 inmate must pay to have the item mailed to a non-incarcerated person,
22 or the item will be destroyed or donated to charity.

23 CRCC mailroom employees Victoria Tapia and Ana Garibay work in the
24 mailroom and screen mail pursuant to Policy 450.100. On June 12, 2014,
25 they intercepted the first installment of grievance records produced by
26 the DOC's Public Disclosure Unit in response to Mr. Gronquist's public-

1 records request. They issued a rejection notice for 31 of the 40 pages
2 because the pages allegedly contained "other offender's name/unit
3 address/DOC numbers." Of the individuals identified as being inmates,
4 whose names, numbers, and institutional addresses were listed on the
5 rejected records, at least one - Robert Simonis - was not incarcerated
6 at that time. This rejection notice was sent even though no CRCC employee
7 or DOC official had knowledge that Mr. Gronquist had ever used
8 information about another prisoner for an improper purpose.

9 Mr. Gronquist appealed the rejection to CRCC Superintendent
10 Jeffrey Uttecht, emphasizing that:

11 Over the . . . last two decades I have routinely obtained,
12 possessed, and used grievance records filed by other inmates
13 to remedy the unlawful conduct of DOC employees . . . [and]
have never revealed the contents of those grievances to any
other inmate, or used the records for an improper purpose.

14 Mr. Gronquist explained that he needed the records

15 to discharge the duties which you fail to perform: to hold
16 Mr. Cunningham accountable for his unprofessional and
criminal conduct, and to protect Washington prisoners from
further harm by his hand.

17 CRCC Lieutenant Robert Long, on behalf of Superintendent Uttecht,
18 affirmed the rejection, claiming that Mr. Gronquist is "not allowed to
19 possess information such as names and numbers of other offenders." Mr.
20 Gronquist appealed Lieutenant Long's decision. Correctional Manager Roy
21 Gonzalez denied the appeal, asserting that "offenders are not allowed
22 mail containing another offender's correspondence or items." Mr.
23 Gronquist had the rejected mail sent to his mother.

24 On July 29-30, 2014, CRCC mailroom officials Amanda Westphal and
25 Greg McCombs intercepted the second installment of grievance records
26

1 produced by the DOC's Public Disclosure Unit in response to Mr.
2 Gronquist's public-records request and issued a rejection notice for
3 33 of the 68 pages because they allegedly contained "information that,
4 if communicated, could create a risk of violence and/or physical harm
5 to any person [because they] . . . contain information about other
6 offenders currently incarcerated in WA state." Of the individuals
7 identified as being "currently incarcerated in WA state," at least one
8 - Karl Tobey - was not incarcerated at that time.

9 Mr. Gronquist appealed the rejection to Superintendent Uttecht.
10 Lieutenant Long, on behalf of Superintendent Uttecht, denied the appeal
11 without comment. A subsequent appeal was denied by Correctional Manager
12 Gonzalez, who claimed that in addition to the basis asserted by Ms.
13 Westphal and Mr. McCombs, "item 22 would also be applicable because it
14 contains another offenders [sic] information or documents such as the
15 grievance you noted."

16 On August 28, 2014, CRCC mailroom employees Ms. Garibay and Mr.
17 McCombs reviewed a package of documents sent by Mr. Gronquist's mother
18 to him. These documents were the records that were previously rejected
19 and sent to Mr. Gronquist's mother and that she then attempted to redact
20 other inmate's names. The mailroom staff issued a notice prohibiting
21 Mr. Gronquist from receiving these records because they were alleged to
22 contain "another offenders [sic] information" or were "altered." Mr.
23 Gronquist appealed the rejection to Superintendent Uttecht. That appeal
24 was denied by Lieutenant Long without comment. Later, Superintendent
25 Uttecht affirmed the rejection, asserting that "mailroom staff were
26 acting in according [sic] to policy when they rejected your incoming

1 mail due to it being altered." Correctional Manager Gonzalez did not
2 respond to Mr. Gronquist's subsequent appeal.

3 On September 22-23, 2014, CRCC mailroom employees Ms. Westphal and
4 Mr. McCombs reviewed the third-installment of records, which were
5 produced by DOC's Public Disclosure Unit. A rejection notice was issued,
6 prohibiting Mr. Gronquist from receiving 98 of the 99 pages of the
7 records because they allegedly contained "correspondence, information,
8 or other items relating to another offender(s), or other items relating
9 to another offender(s) without prior approval from the
10 superintendent/designee, or attempts or conveys unauthorized offender
11 to offender correspondence." Mr. Gronquist appealed the rejection to
12 Superintendent Uttecht, emphasizing:

13 I intend to use those records as evidence in a soon to be
14 filed lawsuit over Mr. Cunningham's conduct and your policy
15 of retaliating against inmates for exercising their right to
16 freely speak. I believe these records are being singled out
17 for censorship in your deliberate attempt to hide that
18 unconstitutional behavior from judicial intervention.

16 Lieutenant Long, on behalf of Superintendent Uttecht, affirmed the
17 rejection without comment. The appeal of this rejection was denied
18 without comment. These rejected pages were mailed to Mr. Gronquist's
19 mother.

20 **3. Grievance Program**

21 DOC maintains and implements an Offender Grievance Program to
22 "promote[] proper and effective communication between staff and
23 offenders in an effort to resolve issues." The Offender Grievance
24 Program requires inmates to file a grievance in order for certain
25 complaints to be heard and considered by DOC.
26

1 To file a grievance, an inmate writes his complaint on DOC Form
2 5-165 or an 8½" x 11" piece of paper and deposits it in a locked
3 grievance box. After the complaint is retrieved from the box, a facility
4 grievance coordinator determines whether the issue presented is
5 grievable, and if so, whether it will be processed as:

- 6 • a routine grievance: concerning "policy or procedure, lack
7 of policy or procedure, or the actions of another offender";
- 8 • an emergency grievance: concerning "a potential serious
9 threat to the life or health of an offender or staff member,
10 related to severe pain being suffered by the offender, or
11 that involve a potential threat to the orderly operation of
12 a facility, and its resolution would be too late if handled
13 through routine administrative or grievance channels"; or
- 14 • an employee-conduct grievance: "against a specific,
15 identified employee . . . for alleged inappropriate
16 demeanor, language or actions," including the allegations
17 of "retaliation for participation in the Offender Grievance
18 Program."

19 After the grievance type is established, the grievance coordinator
20 types the complaint on Form 05-166 Level I - Initial Grievance, or Form
21 05-170 for employee-conduct grievances. Depending on its type,
22 substance, and resolution, a grievance can proceed through four levels
23 of response, investigation, or review.

24 To manage inmate records and grievances, DOC uses a computer system
25 called OMNI to electronically store and retrieve inmate information.
26

1 OMNI permits: 1) remote data entry by local grievance coordinators, 2)
2 monitoring and auditing capability both locally and at the Grievance
3 Program Office, 3) indexing of complaints and grievances by the name of
4 individual offenders, 4) on-time synopsis of individual grievances and
5 their status within the grievance system, and 5) on-site generation of
6 statistical reports. In addition to OMNI's electronic storage, paper-
7 grievance records are maintained in the relevant facility's grievance
8 departments for at least six months, and the master grievance file is
9 maintained in DOC's OnBase⁴ database for six years. OnBase is a document
10 imaging database where copies of all documents generated by staff and
11 offenders are stored.

12 **4. Life at CRCC H-Unit**

13 Inmates at CRCC, including the H-Unit, are subject to daily
14 headcounts at 6:20 a.m., 4:00 p.m., 9:05 p.m., and 12:00 a.m. ECF No.
15 97-2 at 131. To ensure the welfare of all inmates, Officer Cunningham
16 (and the other officers) perform daily headcounts, which require the
17 officers to count only "living, breathing flesh." Cunningham Dec., ECF
18 No. 22, ¶¶ 1 & 2. To perform this task, Officer Cunningham loudly
19 announces into an intercom system that headcount will promptly take
20 place and that the inmates are to be out of their bunks. *Id.* ¶ 2. If an
21 inmate is unresponsive to a correctional officer's request for
22 compliance with headcount, they will be given a direct verbal directive;
23 if still not in compliance, the correctional officer will obtain the

24
25
26 ⁴ The database was formerly called Liberty.

1 assistance of another officer before either entering the living space
2 or escorting the non-compliant offender to segregation. *Id.* ¶ 2. Inmates
3 are informed of the formal count times and procedures at the time they
4 receive their orientation handbook. *Id.* The handbook specifically notes
5 formal count will be called by unit staff and announced overhead prior
6 to count beginning. *Id.* Inmates are also informed that, if correctional
7 officers are required to stop during the headcount and have to ask the
8 offender to become visible and identifiable, the offender will be
9 infracted for interfering with count. *Id.*

10 In addition to being subjected to daily headcounts, inmates have
11 restricted access to sundry items, such as toilet paper. Part of a
12 correctional officer's duties is to restock the H-unit with toilet
13 paper. Officer Cunningham's standard procedure during his eight-hour
14 shift (6:10 a.m. to 2:10 p.m.) was to resupply the unit in the morning
15 prior to 10:00 a.m. and when notified by the bathroom porter as
16 necessary. *Id.* ¶ 3. Officer Cunningham contends that additional toilet
17 paper was also provided as needed. *Id.* When the H-Unit changed to 12-
18 hour shifts (5:30 a.m. to 6:00 p.m.), Officer Cunningham reports that
19 toilet paper was stocked shortly after the 6:20 a.m. count, when needed
20 throughout the afternoon, and then again prior to the graveyard shift
21 arriving. *Id.* Officer Cunningham states that additional toilet paper is
22 made readily available to unit porters to resupply the individual stalls
23 when necessary, *id.*; Mr. Gronquist challenges this assertion.

24 On July 1 and 2, 2014, Mr. Gronquist filed grievances against
25 Officers Cunningham and Victor Owens for screaming over the H-Unit
26 intercom system at 6:30 a.m. and failing to stock the H-Unit bathrooms

1 with sufficient toilet paper. On July 8, 2014, CRCC's Grievance
2 Coordinator Michael McCourtie attempted to informally resolve the
3 grievances by "forward[ing] [the] complaint to [the] unit [Correctional
4 Unit Supervisor Christopher Hicks] and the captains office." Two days
5 later, H-unit Sergeant Raydean George sent an email to each of the eight
6 correctional officers assigned to the H-Unit, including Officers
7 Cunningham and Owens, stating:

8 OK, even thou [sic] I like the outcome that is produced by
9 loud meaningful announcements, it does bring a lot of negative
10 response, that is making its way out of my control. This will
11 be a short lived life if we try to fight to keep it as it is,
sometimes it is better to retire something to keep other
things ours. That being said I would like for you to turn the
announcements down a notch.

12 Sergeant George forwarded a copy of the email to Supervisor Hicks, who
13 in turn forwarded it to the Grievance Coordinator McCourtie.

14 Mr. Gronquist was not satisfied with the response to his
15 grievances; he appealed to the next level. On July 24, 2014, Lieutenant
16 Herbert Penrose was assigned to investigate the grievance. During his
17 investigation, Lt. Penrose obtained statements from Mr. Gronquist,
18 Supervisor Hicks, and Officers Cunningham and Owens.⁵ During the
19 interview, Mr. Gronquist expressed concern, which Lt. Penrose
20 paraphrased as:

21
22
23 ⁵ Officers Cunningham and Owens state that they have kept the fact
24 that Lt. Penrose questioned them about Mr. Gronquist's two grievances
25 confidential until this lawsuit was filed. Cunningham Dec., ECF No. 22
26 ¶ 5. This is questioned by Mr. Gronquist.

1 I believe that [O]fficer Cunningham should be evaluated to
2 determine fitness to interact with offenders or be directly
3 supervised-[O]fficer Cunningham has the ability to get
other[s] to do what he wants, even to disobey direct orders
from headquarters/Olympia.

4 The same day, Officer Cunningham provided a statement: "I have been
5 unaware of [inmate] Gronquist's concerns at any time prior to typing
6 this response[,] and first "became aware Gronquist filed a grievance
7 making complaints about my behavior when I was interviewed about the
8 allegations by Lt. Penrose." Concerning the loud, early morning intercom
9 announcements, Officer Cunningham stated that it is "my full intention
10 to continue this detail as I have for over six years as it has proven
11 to be systematic, and productive." Officer Owens' statement denied any
12 wrongdoing. After his investigation, Lt. Penrose found that Officers
13 Cunningham and Owens were following CRCC's written guidelines and denied
14 Mr. Gronquist's grievance. *Id.* ¶ 4 & Attach. B.

15 After his investigation about the toilet-paper stocking, Lt.
16 Penrose determined that Officers Cunningham and Owens were complying
17 with Operations Memorandum 440.080, which requires unit staff to ensure
18 that all general restroom areas have toilet paper, and MI3 Unit Manual,
19 which indicates that state-issued supplies, including toilet paper, are
20 not for inmate retention. Penrose Dec., ECF No. 23 ¶ 3 & Attach. A.

21 On July 29, 2014, Officers Cunningham and Owens issued 39
22 disciplinary infractions to H-Unit inmates who interfered with headcount
23 by not making themselves "present" for headcount in violation of WAC
24 137-25-030(214). Cunningham Dec., ECF No. 22 ¶ 6. The infractions were
25 reviewed and approved by Supervisor Hicks.

1 Following these infractions, Mr. Gronquist filed a grievance
2 against Lt. Penrose, Supervisor Hicks, Sergeant George, and Officers
3 Cunningham and Owens, claiming they retaliated against him for filing
4 grievances by issuing headcount infractions to H-Unit inmates. Lt.
5 Penrose investigated this grievance as well. Lt. Penrose interviewed
6 Mr. Gronquist, who stated that he had seen these CRCC employees engage
7 in a pattern of retaliation and he intended to file a lawsuit concerning
8 the retaliation. Lt. Penrose also interviewed Supervisor Hicks, Sergeant
9 George, and Officers Cunningham and Owens. Penrose Dec., ECF No. 23 ¶
10 5 & Attach. C. Through his investigation, Lt. Penrose learned that H-
11 Unit officers had changed their headcount process in an attempt to
12 accommodate Mr. Gronquist's previous complaint about the volume of the
13 count announcement. But because the volume of the announcement had been
14 lowered, the officers were needing to knock on cell fronts in order to
15 gain compliance with headcount. *Id.* Those inmates who failed to respond
16 to headcount directives were infracted. *Id.* Lt. Penrose found no
17 information to support an allegation of threats made by staff to
18 offenders who filed grievances, such as Mr. Gronquist. *Id.*

19 On November 18, 2014, Lt. Penrose was assigned to investigate
20 another grievance filed by Mr. Gronquist about CRCC employee misconduct.
21 During the interview, Mr. Gronquist indicated that Officer Cunningham
22 was spending time on the breezeway with other officers rather than doing
23 his job. Mr. Gronquist believed Officer Cunningham was abandoning his
24 post and believed it was creating a safety concern. Lt. Penrose also
25 interviewed Lt. Duncan in regard to the positioning of staff during
26 major movement from the living units. After his investigation,

1 Lt. Penrose found Officer Cunningham was following CRCC written
2 directives, which require staff to be in the breezeways to observe the
3 movement process. He found nothing to substantiate Mr. Gronquist's claim
4 of misconduct by Officer Cunningham. Penrose Dec., ECF No. 23, Attach
5 D.

6 Inmates have filed at least 66 grievances against Officer
7 Cunningham, ranging from destruction of property to verbal abuse based
8 on sexual orientation or race. ECF No. 87 ¶ 1.32. Officer Cunningham
9 called Mr. Gronquist a "fucking rat" in front of other inmates. ECF No.
10 87 ¶ 1.47.

11 In December 2014, Mr. Gronquist filed this lawsuit in state court;
12 Defendants then removed the lawsuit to federal court. ECF No. 1.
13 Discovery proceeded. Defendants filed the instant summary-judgment
14 motion, ECF No. 17, and Mr. Gronquist filed his motion for certification
15 and his motion for show-cause order. ECF Nos. 74 & 84. During the
16 pendency of this lawsuit, Mr. Gronquist was moved from the two-man H-
17 Unit cell he had been assigned for two years to a four-man cell in CRCC
18 I-Unit. *Id.*

19 **B. Standard**

20 Summary judgment is appropriate if the record establishes "no
21 genuine dispute as to any material fact and the movant is entitled to
22 judgment as a matter of law." Fed. R. Civ. P. 56(a). The party opposing
23 summary judgment must point to specific facts establishing a genuine
24 dispute of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S.
25 317, 324 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
26 U.S. 574, 586-87 (1986). If the non-moving party fails to make such a

1 showing for any of the elements essential to his case for which he bears
2 the burden of proof, the court should grant the summary-judgment motion.
3 *Celotex Corp.*, 477 U.S. at 322.

4 **C. Analysis**

5 Mr. Gronquist asserts four causes of action:

- 6 1. DOC violated the Public Records Act (PRA) by conducting an
7 unreasonable search in response to his public-records request
8 for grievances against Officer Cunningham;
 - 9 2. Washington statutes relating to prison – RCW 72.09.530 and
10 72.09.015(5) – and the DOC mail policy are unconstitutionally
11 vague, overbroad, and create administrative censorship
12 tribunals which impose prior restraints upon speech in
13 violation of article I, section 5 of the Washington State
14 Constitution and the First and Fourteenth Amendments to the
15 U.S. Constitution;
 - 16 3. Defendants Garibay, Tapia, Westphal, McCombs, Long, Uttecht,
17 and Gonzalez censored the public records, which were mailed
18 to Mr. Gronquist in response to his PRA request, in violation
19 of Washington State Constitution article I, section 5 and
20 the First Amendment to the U.S. Constitution; and
 - 21 4. Defendants Cunningham, Owens, George, Hicks, Penrose, and
22 Uttecht violated Mr. Gronquist's First Amendment rights by
23 retaliating against him for pursuing his grievance remedies.
- 24
25
26

1 Defendants seek summary judgment in their favor on each of these claims.⁶
2 The Court addresses each claim in turn.

3 **1. Claim 1: the Public Records Act**

4 Defendants contend that Mr. Gronquist is unable to establish a
5 triable issue of material fact to support his PRA claim, alleging that
6 Defendants 1) failed to conduct an objectively reasonable search for
7 "[a]ny and all grievances filed against Correctional [O]fficer Kellon
8 Cunningham," and 2) withheld responsive records without properly
9 identifying them in an exemption log. Mr. Gronquist disagrees, arguing
10 that the public-records search and responses thereto were inadequate
11 and further that collateral estoppel bars relitigation of the issue of
12 whether DOC has a duty to search its records, written and electronic,
13 for grievances by a staff member's name.

14 Beginning with Mr. Gronquist's argument that DOC is collaterally
15 estopped from relitigating that it conducted an adequate PRA search,
16 the Court finds Defendants are not collaterally estopped from arguing
17 that the search conducted for grievances filed against Officer
18

19
20 ⁶ Mr. Gronquist argues that Defendants' summary-judgment motion does not
21 address Claim 2's overbreadth or vagueness challenge or Claim 4's policy
22 of retaliation. The Court finds that Mr. Gronquist was on notice that
23 Defendants sought summary judgment on each of his claims and Mr.
24 Gronquist had sufficient opportunity to provide argument and evidence
25 to support each of these claims. Accordingly, the Court analyzes whether
26 summary judgment is appropriate as to each of Mr. Gronquist's claims.

1 Cunningham was reasonable. Under Washington law, collateral estoppel
2 requires the party seeking preclusion to establish that:

3 (1) the issue decided in the earlier proceeding was identical
4 to the issue presented in the later proceeding, (2) the
5 earlier proceeding ended in a judgment on the merits, (3) the
6 party against whom collateral estoppel is asserted was a party
7 to, or in privity with a party to, the earlier proceeding,
8 and (4) application of collateral estoppel does not work an
9 injustice on the party against whom it is applied.

10 *Christensen v. Grant Cnty. Hosp. Dist. No. 1*, 152 Wn.2d 299, 307 (2004);
11 *see also Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 507 (1987). An
12 "issue" to which collateral estoppel applies may be one of law,
13 evidentiary fact, or the application of law to fact. Restatement
14 (Second) of Judgments § 27(c) (1982). Whatever the type of issue, the
15 issue must have been actually litigated and determined and that
16 determination must be essential to the judgment in order for litigation
17 of that issue to be collaterally estopped in a later action.
18 *Christensen*, 152 Wn.2d at 307; Restatement (Second) of Judgments
19 § 27(f)-(h); Moore's Federal Practice - Civil § 132.02.

20 Over a decade ago, Mr. Gronquist made a PRA request for "any and
21 all complaints or grievances ever filed against Omega Pacific Inc. or
22 Dan Stumph" - these were a medical provider and an employee who worked
23 at DOC. Unhappy with DOC's response to his PRA request, Mr. Gronquist
24 filed a lawsuit in Spokane County. The Spokane County Superior Court
25 found that DOC failed to conduct an adequate search for the records and
26 ruled in Mr. Gronquist's favor.

Although that case and this case both involve a challenge to DOC's
response to a public-records request by Mr. Gronquist, they sought
records about different entities - there, Omega Pacific and Mr. Stumph;

1 here, Officer Cunningham. Whether a PRA search is adequate is whether
2 it was "reasonably calculated to uncover all relevant documents."
3 *Neighborhood Alliance v. Cnty. of Spokane*, 172 Wn.2d 702, 720 (2011).
4 This is an individualized inquiry. *Id.* And a search that was reasonably
5 calculated to uncover all relevant documents need not have actually
6 uncovered all responsive documents; therefore, a search can still be
7 adequate even if additional responsive documents exist but are not
8 disclosed. *Id.* This is because an agency need not "search every possible
9 place a record may conceivably be stored, but only those places where
10 it is *reasonably likely* to be found." *Id.*

11 Given the individualized assessment that a court must use to
12 determine whether a public-records search was reasonable, the Court
13 finds the issues in this case and Mr. Gronquist's prior PRA case are
14 not identical. Whether DOC's search for records about Omega Pacific and
15 Mr. Stumph was reasonably calculated to uncover documents related to
16 them is a different inquiry than whether DOC conducted a reasonable
17 search to uncover grievances against Officer Cunningham. Furthermore,
18 the standards to apply when reviewing a PRA disclosure changed in
19 *Neighborhood Alliance*. Therefore, the first collateral-estoppel factor
20 (identical issues) is not met. DOC is not collaterally estopped from
21 arguing that its search for documents responsive to Mr. Gronquist's
22 request for Officer Cunningham records was reasonably calculated to
23 uncover all relevant documents.

24 The Court next analyzes whether Mr. Gronquist has presented
25 sufficient evidence to establish a triable dispute of fact as to whether
26 DOC's search for "[a]ny and all grievances filed against Correctional

1 [Officer Kellon Cunningham" was adequate under the PRA. In pertinent
2 part, the PRA states:

- 3 • "Public records shall be available for inspection and
4 copying, and agencies shall, upon request for identifiable
5 public records, make them promptly available to any person
6 including, if applicable, on a partial or installment
7 basis as records that are part of a larger set of requested
8 records are assembled or made ready for inspection or
9 disclosure." RCW 42.56.080.
- 10 • The agency has a duty to "make available for public
11 inspection and copying all public records, unless the
12 record falls within" a specific exemption. RCW 42.56.070.

13 An identifiable public record "is one for which the requestor has given
14 a reasonable description enabling the government employee to locate the
15 requested record." *Beal v. City of Seattle*, 150 Wn. App. 865, 872 (2009);
16 see also WAC 44-14-04002(1) ("In general, a 'reasonably locatable'
17 electronic record is one which can be located with typical search
18 features and organizing methods contained in the agency's current
19 software.").

20 Consistent with the PRA, an agency is required to:

21 conduct an objectively reasonable search for responsive
22 records. . . One of the most important parts of an adequate
23 search is to decide how wide the search will be. If the agency
24 is small, it might be appropriate to initially ask all agency
25 employees if they have responsive records. If the agency is
26 larger, the agency may choose to initially ask only the staff
of the department or departments of an agency most likely to
have the records. . . It is better to be over inclusive rather
than under inclusive when deciding which staff should be
contacted, but not everyone in an agency needs to be asked if

1 there is no reason to believe he or she has responsive
2 records. An e-mail to staff selected as most likely to have
3 responsive records is usually sufficient. Such an e-mail also
4 allows an agency to document whom it asked for records.

5 WAC 44-14-04003(9). If the request is unclear, an agency is required to
6 communicate with the requestor to clarify the request. RCW 42.56.520;
7 WAC 44-14-04003(3). The agency bears the burden to establish that
8 refusal to permit public inspection and copying was in accordance with
9 the PRA. RCW 42.56.550(1). When interpreting and applying the PRA, the
10 court must liberally construe the PRA's application and narrowly
11 construe the PRA's exemptions. *Bonamy v. City of Seattle*, 92 Wn. App.
12 403, 408-09 (1998); RCW 42.56.030 ("In the event of conflict between
13 the provisions of this chapter and any other act, the provisions of
14 this chapter shall govern."). To satisfy its burden of showing that its
15 search was reasonably calculated to uncover all relevant documents, DOC
16 may "rely on reasonably detailed, nonconclusory affidavits submitted in
17 good faith" that "include the search terms and the type of search
18 performed" and "establish that all places likely to contain responsive
19 materials were searched." *Neighborhood Alliance of Spokane Cnty.*, 172
20 Wn.2d at 721.

21 Here, DOC submitted declarations from DOC Public Records Office
22 employees and CRCC employees. The submitted documents and declarations
23 indicate that upon receipt of Mr. Gronquist's PRA request, DOC asked
24 CRCC to go through its paper records to search for "[a]ny and all
25 grievances filed against Correctional [O]fficer Kellon Cunningham."
26 Because CRCC had to go through its paper records by hand, it elected to
27 produce any grievance that named Officer Cunningham.

1 Then DOC sought to conduct a search of its electronic database for
2 responsive records. This database is not searchable by a staff member's
3 name. Instead the documents are organized by the type of grievance,
4 date, facility, offender, and/or assigned grievance number. Once the
5 date(s), facility, offender and/or assigned grievance number(s) is
6 selected, then the DOC employee can pull up a particular grievance
7 through OMNI and review the grievance to determine whether it contains
8 a staff member's name. Here, DOC pulled all employee-conduct grievances
9 at the two facilities for the time periods for which Officer Cunningham
10 worked, thereby excluding routine and emergency grievances.

11 Mr. Gronquist challenges DOC's decision to limit its search to
12 only employee-conduct grievances. But the Court finds this employee-
13 conduct restriction reasonable because Mr. Gronquist did not request
14 any and all grievances "relating to" or "involving" Officer Cunningham;
15 instead, he requested any and all grievances "against" Officer
16 Cunningham. This is a narrow request and is consistent with the
17 definition of employee-conduct grievance as set forth in the Offender
18 Grievance Program literature. Therefore, the Court finds DOC reasonably
19 interpreted Mr. Gronquist's request to seek only employee-conduct
20 grievances.

21 Mr. Gronquist submits that DOC was required to confer with him
22 regarding the scope of his public-records request before limiting the
23 search to employee-conduct grievances, and/or at a minimum to advise
24 him that it so limited his request. Yet, an agency has a duty to confer
25 with the requestor if the request is unclear: Mr. Gronquist's request
26 was not unclear, he sought grievances "against" Officer Cunningham. This

1 would not include routine grievances, as routine grievances pertain to
2 policy or actions of another offender, or an emergency grievance, which
3 concerns a threat to the life or health of an offender or a threat to
4 the orderly operation of a facility. DOC Offender Grievance Program,
5 ECF No. 98, Ex. 1 at 31-32. In comparison, the Offender Grievance Program
6 defines an employee-conduct grievance: "against a specific, identified
7 employee . . . for alleged inappropriate demeanor, language or actions,"
8 including the allegations of "retaliation for participation in the
9 Offender Grievance Program." *Id.* at 32 (emphasis added). This comports
10 with Mr. Gronquist's public-records request for grievances against
11 Officer Cunningham, and DOC's decision to restrict its search for
12 responsive electronic records to employee-conduct grievances at the two
13 facilities that Officer Cunningham worked, for the dates that he worked
14 at those facilities, was reasonably calculated to uncover all relevant
15 documents. DOC did not need to advise Mr. Gronquist that it had not
16 searched all electronic records for grievances against, or more broadly,
17 concerning, Officer Cunningham.

18 All employee-conduct grievances for the time periods that Officer
19 Cunningham worked at Airway Heights and CRCC were electronically
20 reviewed to determine if it was a grievance filed against Officer
21 Cunningham. If it was, it was produced to Mr. Gronquist. That there
22 were apparently some grievances against Officer Cunningham that were
23 not produced by DOC in connection with its search does not undermine
24 that DOC's search was reasonably calculated to uncover all relevant
25 grievances against Officer Cunningham.

1 Accordingly, the Court grants Defendants summary judgment as to
2 Mr. Gronquist's PRA claim; DOC conducted a search that was reasonably
3 calculated to discover the requested documents and it need not have
4 conferred with Mr. Gronquist in order to clarify his request or advise
5 him that its search included a hand search of paper records at CRCC and
6 an electronic search of the OMNI employee-misconduct grievances.

7 Because the Court finds that DOC's searches were reasonably
8 calculated to find all responsive documents, the Court denies Mr.
9 Gronquist's Motion to Show Cause, ECF No. 84, which asks the Court to
10 order DOC to conduct another search of its entire electronic database
11 for all grievances during the time periods that Officer Cunningham
12 worked at the two facilities.

13 **2. Claims 2 and 3: Constitutionality of RCW 72.09.530, RCW**
14 **72.09.015(5), and the Mail Policy, and 42 U.S.C. § 1983**

15 Mr. Gronquist asserts both a facial and an as-applied challenge
16 to the constitutionality of two state statutes:

- 17 • RCW 72.09.530: "The secretary shall, in consultation with
18 the attorney general, adopt by rule a uniform policy that
19 prohibits receipt or possession of anything that is
20 determined to be contraband. The rule shall provide
21 consistent maximum protection of legitimate penological
22 interests, including prison security and order and deterrence
23 of criminal activity. The rule shall protect the legitimate
24 interests of the public and inmates in the exchange of ideas.
25 The secretary shall establish a method of reviewing all
26 incoming and outgoing material, consistent with
27 constitutional constraints, for the purpose of confiscating
28 anything determined to be contraband. The secretary shall
29 consult regularly with the committee created under RCW
30 72.09.570 on the development of the policy and implementation
31 of the rule."
- 32 • RCW 72.09.015(5): defines "contraband" for purposes of RCW
33 Chapter 72.09 as "any object or communication the secretary

determines shall not be allowed to be: (a) [b]rought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary."

Defendants ask the Court to rule that RCW 72.09.530 and RCW 72.09.015(5) are constitutional because: 1) these statutes do not impose a final prior restraint on lawfully obtained and true matters of public record in violation of Washington State Constitution article I, section 5 of the, 2) these statutes are not overbroad in violation of article I, section 5 of the Washington State Constitution and the First Amendment, and 3) the statutes sufficiently define terms consistent with the Fourteenth Amendment Due Process Clause - a protection that applies only to penal sanctions.

Rather than have the Court rule on these issues, Mr. Gronquist asks the Court to certify the following questions to the Washington Supreme Court:

1. Whether RCW 72.09.530 violates Article I, section 5, of the Washington State Constitution by creating an administrative censorship system that allows prison officials to impose final prior restraint censorships upon communications mailed to a prisoner in the absence of judicial superintendence?
2. Whether DOC orders imposing prior restraint censorships upon a plaintiff prisoner's receipt, review, and use of lawfully obtained, true, matters of public record revealing the misconduct of prison officials violates Article I, section 5 of the Washington State Constitution?
3. Whether Article I, section 5 of the Washington State Constitution provides greater protection to the free speech rights of prisoners than the First Amendment to the United States Constitution and, if so, what is the appropriate standard to review prisoner state constitutional free speech claims under?
4. Whether the word "contraband" used in RCW 72.09.530 and defined by RCW 72.09.015(5) is unconstitutionally vague

1 under the Due Process Clause of the Fourteenth Amendment
2 to the U.S. Constitution?

- 3 5. Whether RCW 72.09.530 and RCW 72.09.015(5)'s use of the
4 word "contraband" to define what may be censored is
5 overbroad in violation of Article I, section 5 of the
6 Washington State Constitution or the First Amendment to
7 the U.S. Constitution by sweeping within its ambit
8 lawfully obtained, true, matters of public record that
9 reveal the misconduct of state employees?

10 ECF No. 74 at 2-3. Mr. Gronquist submits that these questions, in
11 particular the first three questions, are matters of first impression
12 in Washington, and that the Washington Supreme Court, not this Court,
13 should resolve these questions. Defendants oppose certification,
14 contending that these issues can be decided under existing Washington
15 Supreme Court case law, including *State v. Gunwall*, 106 Wn.2d 54, 64
16 (1986), and *Livingston v. Ceden*, 164 Wn.2d 46 (2008).

17 RCW 2.60.020 permits federal courts to certify issues to the
18 Washington Supreme Court:

19 When in the opinion of any federal court before whom a
20 proceeding is pending, it is necessary to ascertain the local
21 law of this state in order to dispose of such proceeding and
22 the local law has not been clearly determined, such federal
23 court may certify to the supreme court for answer the question
24 of local law involved and the supreme court shall render its
25 opinion and answer thereto.

26 RCW 2.60.020. The decision to certify an issue to a state supreme court
lies within a district court's sound discretion. *Lehman Bros. v. Schein*,
416 U.S. 386, 391 (1974). But federal courts should only certify issues
after careful consideration because this procedure is "reserved for
state law questions that present significant issues, including those
with important public policy ramifications, and that have not yet been

1 resolved by the state courts." *Kremen v. Cohen*, 325 F.3d 1035, 1037
2 (9th Cir. 2003).

3 **a. Free Speech: overbreadth - prior restraint**

4 The free-speech issues raised by Mr. Gronquist are complicated and
5 multi-faceted given the many articulated free-speech analytical tests,
6 which are dependent on the type of speech, the forum, and the nature of
7 the restriction. The constitutional provisions at issue provide:

- 8 • First Amendment: "Congress shall make no law respecting an
9 establishment of religion, or prohibiting the free exercise
10 thereof; or abridging the freedom of speech, or of the press,
11 or the right of the people peaceably to assemble, and to
12 petition the Government for redress of grievances."
- 13 • Washington Constitution Article 1section 5: "Every person
14 may freely speak, write and publish on all subjects, being
15 responsible for the abuse of that right."

16 These rights extend to the right to receive information and ideas.
17 *Bradburn v. N.C. Reg'l Library Dist.*, 168 Wn.2d 780, 803 (2010). And
18 "[p]rison walls do not form a barrier separating prison inmates from
19 the protections of the Constitution." *Turner v. Safley*, 482 U.S. 78, 84
20 (1987).

21 Based on these free-speech principles, Mr. Gronquist contends that
22 DOC is violating prisoner's free-speech rights by imposing overbroad,
23 prior restraints on communications, i.e., treating documents that are
24 mailed to prisoners in response to a Public Records Act request as
25 contraband and thereby rejecting the documents.

1 In addition to these free-speech principles, the Court must also
2 consider that both the U.S. Supreme Court and the Washington Supreme
3 Court recognize that courts are "ill-equipped to deal with" the complex
4 problems facing prison administrators in regard to planning and
5 committing prison resources. *Turner*, 482 U.S. at 84-85 (citing *Procunier*
6 *v. Martinez*, 416 U.S. 396, 405 (1974)); *McNabb v. Dep't of Corrs.*, 163
7 Wn.2d 393, 406 (2008) ("*Turner* calls for judicial deference to the
8 decisions of prison administrators in light of their unique interest in
9 maintaining security and day-to-day order."). Therefore, judicial
10 restraint is to be accorded when reviewing prison regulations and
11 administrative policies. *Turner*, 482 U.S. at 84-95; *McNabb*, 163 Wn.2d
12 at 406 ("Consonant with *Turner* and the majority view amongst our sister
13 states, we conclude that the unique demands of prison administration
14 warrant judicial deference to prison administrative decisions.").

15 In order to serve both of these interests (the constitutional
16 rights of inmates, and deference to prison authorities as to the
17 maintaining of prison security), the U.S. Supreme Court formulated a
18 standard of review for prisoner's constitutional claims under the First
19 Amendment:

- 20 1. "There must be a valid, rational connection between the
21 prison regulation and the legitimate government interest put
22 forward to justify it";
- 23 2. "[W]hether there are alternative means of exercising the
24 right that remain open to prison inmates";

1 3. "[T]he impact accommodation of the asserted constitutional
2 right will have on guards and other inmates, and on the
3 allocation of prison resources generally"; and

4 4. Whether there are "obvious, easy alternatives" to the prison
5 regulation.

6 *Turner*, 482 U.S. at 89-91 (internal citations and quotations omitted);
7 see also *Hudson v. Palmer*, 468 U.S. 517, 547 (1984) (Stevens, J.,
8 concurring) ("This Court has held that the First Amendment entitles a
9 prisoner to receive and send mail, subject only to the institution's
10 right to censor letters or withhold delivery if necessary to protect
11 institutional security, and if accompanied by appropriate procedural
12 safeguards.").

13 Mr. Gronquist submits that the federal *Turner* standard does not
14 apply to his Washington free-speech overbreadth and prior restraint
15 claims because article I, section 5 provides more protection for speech
16 activities than does the First Amendment. Mr. Gronquist aptly points
17 out that Washington courts have not specifically ruled on the issue of
18 what standard of review to apply under these circumstances. In fact,
19 the Washington Supreme Court specifically highlighted it was not asked
20 to rule on this issue in *Livingston v. Cedeno*, wherein the court ruled
21 that DOC's refusal to allow a prisoner access to public records, which
22 were sent to him in response to a PRA request, did not violate the PRA:
23 "Livingston has not challenged the reasonableness of the [DOC]'s mail
24 policy or the characterization of the record as 'contraband.'" 164 Wn.2d
25 46, 55 (2008).

1 Mr. Gronquist asks the Court to apply the six-factors⁷ set forth
2 by the Washington Supreme Court in *State v. Gunwall*, 106 Wn.2d 54, 64
3 (1986), to determine whether the Washington Supreme Court will apply a
4 less deferential standard to DOC's mail "contraband" policy than the
5 federal *Turner* standard. However, the Court need not engage in a *Gunwall*
6 analysis because Washington Supreme Court jurisprudence, including *City*
7 *of Seattle v. Huff*, 111 Wn.2d 923 (1989), *Bradburn v. North Central*
8 *Regional Library District*, 168 Wn.2d 789 (2010), and *Livingston*,
9 provides guidance as to the standard to apply in this circumstance –
10 the same standard as that utilized under the First Amendment.

11 As Washington jurisprudence recognizes, a Washington state prison
12 is a nonpublic forum. *Bradburn*, 168 Wn.2d at 813-14 (recognizing that
13 a public forum is a forum that the government makes open for use by the
14 public to assemble, express thoughts, and discuss public questions). In
15 *Huff*, the Washington Supreme Court ruled that when a nonpublic forum is
16 at issue, federal analysis applies. 111 Wn.2d at 928 (utilizing federal
17 standards to analyze a viewpoint neutral Seattle ordinance that
18 prohibited threats made during a telephone call). Therefore, article I,
19

20
21 ⁷ In *Gunwall*, the Washington Supreme Court set forth six factors that a court
22 considers when determining whether the Washington State Constitution
23 extends broader rights to Washington citizens than the U.S. Constitution:
24 1) the state constitution's textual language, 2) whether there are
25 significant differences in the texts of parallel provisions of the federal
26 and state constitutions, 3) state constitutional and common law history,
4) preexisting state law, 5) the state and federal constitution structural
differences, and 6) whether there are matters of particular state interest
or local concern. 106 Wn.2d at 61.

1 section 5 does not afford more protection than the First Amendment in
2 the confines of a prison – a nonpublic forum. See *id.*

3 As previously stated, *Turner* sets forth a deferential
4 constitutional standard of review in regard to prison management. The
5 federal analysis used to analyze a free-speech matter within the prison
6 setting. This deferential standard is consistent with the Washington
7 Supreme Court's holding in *Livingston*. While *Livingston* did not address
8 the First Amendment constitutional question, the Washington Supreme
9 Court's decision was rooted in the understanding that DOC "has broad
10 discretion to decide . . . [what] records may be allowed inside a
11 correctional institution" in light of "legitimate penological [safety]
12 interests." 164 Wn.2d at 52 & 54. This is because "[t]he primary
13 objective of the correctional system . . . is to provide the maximum
14 feasible safety' for the public, staff, and inmates." *Id.* at 52-53
15 (quoting RCW 72.09.010(1)).

16 Based on the language and holding in *Livingston* and because
17 Washington applies federal analysis to speech in nonpublic forums (a
18 prison), the Court determines that Washington state courts will apply
19 the federal *Turner* test to the free-speech issue before the Court:
20 whether RCW 72.09.530 and RCW 72.09.015(5) and the mail policy are
21 overbroad and constitute a prior restraint. Accordingly, the Court
22 decides it is unnecessary to certify Mr. Gronquist's third proposed
23 question: whether article I, section 5 of the Washington State
24 Constitution provides greater protection to the free-speech rights of
25 prisoners than the First Amendment. In this regard, Mr. Gronquist's
26 motion to certify is denied.

1 The Court now analyzes Mr. Gronquist's facial overbreadth and
2 prior-restraint challenges to the two Washington statutes and prison
3 mail policy. A prior restraint on speech is "the most serious and least
4 tolerable infringement on First Amendment rights." *Nebraska Press Ass'n*
5 *v. Stuart*, 427 U.S. 539, 559 (1975). A statute may be invalidated as
6 overboard if "a substantial number of its applications are
7 unconstitutional, judged in relation to the statute's plainly legitimate
8 sweep," *Wash. State Grange v. Wash. State Rep'n Party*, 552 U.S. 442,
9 449, n.6 (2008) (internal quotation marks omitted), or if there "no set
10 of circumstances exist under which" the statute would be valid, or the
11 statute lacks any "plainly legitimate sweep." *United States v. Stevens*,
12 559 U.S. 460, 473 (2010) (internal quotation marks omitted). An
13 overbreadth analysis requires the court to construe the challenged
14 statute to determine what the statute covers. *Stevens*, 559 U.S. at 474.

15 The language of RCW 72.09.530 and RCW 72.09.015(5) provides
16 considerable discretion to the DOC Secretary to adopt rules (or to
17 define contraband) consistent with the "maximum protection of legitimate
18 penological interests, including prison security and order and
19 deterrence of criminal activity." RCW 72.09.530. RCW 72.09.530 also
20 recognizes that prison mail policies must "protect the legitimate
21 interests of the public and inmates in the exchange of ideas." To
22 implement these statutory directives, DOC created and implemented the
23 DOC Policy 450.100 and its 39 unauthorized-mail categories.

24 To determine whether these statutes and the mail policy are
25 overbroad or unconstitutional prior restraints, the Court evaluates them
26 under the four *Turner* factors. See *Shakur v. Schiriro*, 514 F.3d 878,

1 884 (9th Cir. 2008) (summarizing *Turner* factors). As to the first *Turner*
2 factor, DOC has identified a valid, rational connection between these
3 statutes and its prison mail policy: the need to maintain the safety
4 and security of the offenders, staff, facilities, and public. DOC staff
5 inspect and read incoming and outgoing mail to prevent criminal activity
6 and to restrict the receipt of any material that threatens the security
7 and order of the facility. DOC considers mail that contains other
8 offender information to be mail that threatens the security and order
9 of the facility because if another offender receives such information
10 there is a possibility that information will be used to blackmail
11 offenders or staff or to target them for harassment or violence. These
12 are valid, rational reasons for RCW 72.09.530 and RCW 72.09.015(5) and
13 its implemented mail policy.

14 As to the second *Turner* factor, whether inmates have alternative
15 means of exercising their First Amendment free-speech right to receive
16 mail, the mail policy permits an inmate to have rejected mail sent to
17 an individual outside of the facility or to seek prior approval from
18 the superintendent or his designee to receive the mail. The mail policy
19 also establishes a multi-level appeal system to challenge a mail
20 rejection. Mr. Gronquist complains that this alternative is practically
21 ineffective because he sought to have his mother redact the other
22 offender's names and numbers from the public records but then when these
23 redacted records were returned that they were rejected again for being
24 redacted. Further, Mr. Gronquist contends that in order for him to be
25 able to pursue litigation that seeks to correct wrongdoings by prison
26 staff he must have access to the material – not his mother who is a lay

1 person. The Court recognizes that Mr. Gronquist's pre-lawsuit ability
2 to obtain and possess records pertaining to other inmates is restricted,
3 and that he is largely unable to take steps to remedy systemic wrongs
4 in the prison without litigation. However, Mr. Gronquist has the ability
5 to file grievances to seek relief for action taken against him by a
6 prison official, and the record reflects that he has exercised this
7 right. Further, once Mr. Gronquist files a lawsuit alleging a systemic
8 wrongdoing at the prison, Mr. Gronquist has the ability to ask the court
9 for leave to receive and possess grievances that contain other
10 offender's names and numbers.

11 As to the third *Turner* factor (the impact accommodating the
12 constitutional right will have on guards, other inmates, and prison
13 resources), Unauthorized Mail potentially poses a safety risk to the
14 facility staff and other inmates. If Unauthorized Mail is not considered
15 contraband and the mail is permitted to be received and possessed by
16 inmates, the prison will need to retain additional staff and officers
17 to ensure that the information contained in the mail is not used in a
18 way that is dangerous or harmful to staff and other inmates.

19 As to the final *Turner* factor, there are no obvious, easy
20 alternatives to the mail policy. As the Supreme Court and Washington
21 Supreme Court have both recognized, managing and operating a prison
22 facility safely is not an easy task. Restricting the access of the
23 materials and information listed as "Unauthorized Mail" eases DOC's
24 difficult management task. The Court must defer to DOC to make this
25 assessment.

1 After weighing the *Turner* factors, the Court denies Mr. Gronquist's
2 facial challenge to RCW 72.09.530, RCW 72.09.015(5), and the DOC mail
3 policy. See *Wolff v. McDonnell*, 418 U.S. 539, 575-76 (1974) (permitting
4 prison review procedure whereby officers are present when legal mail is
5 opened to ensure there is no contraband). These statutes and the mail
6 policy are not facially overbroad or an unconstitutional prior restraint
7 - they are not applied in a substantial number of unconstitutional
8 manners, there are circumstances under which the statutes and mail
9 policy are valid, and the statutes and mail policy serve a legitimate
10 penological interest. Prison administration is a complicated task.
11 Although prisoners retain their constitutional right to receive mail,
12 this constitutional right is limited by the prison's need to
13 appropriately maintain order. This is legitimately done by restricting
14 an inmate's receipt of documents pertaining to other offenders without
15 prior superintendent approval or court permission. Defendants are
16 granted summary judgment as to Mr. Gronquist's facial overbreadth and
17 prior-restraint challenges.

18 Because *Turner* and its progeny and the above-listed Washington
19 jurisprudence provide the Court with sufficient guidance to resolve Mr.
20 Gronquist's facial challenges, the Court declines to certify his first,
21 second, and fifth proposed questions. Mr. Gronquist's motion to certify
22 is denied in this regard.

23 **b. 42 U.S.C. § 1983**

24 In addition to his facial overbreadth and prior restraint
25 constitutional challenges, Mr. Gronquist asserts an as-applied
26 constitutional challenge pursuant to 42 U.S.C. § 1983, alleging that

1 Defendants violated his free-speech rights under the First Amendment
2 and article I, section 5 of the Washington State Constitution by
3 rejecting the majority of his public records because they contained
4 another offender's information or were altered.

5 As set forth above, the Court finds the mail policy serves DOC's
6 legitimate interest in ensuring the safety of other inmates and the
7 staff at DOC. Mr. Gronquist could have sought advance permission from
8 the superintendent to possess the grievances against Officer Cunningham
9 brought by other inmates; he did not do so. DOC does not argue that Mr.
10 Gronquist has appropriately used the information contained in grievances
11 and other records. Regardless, the Court finds that DOC did not violate
12 Mr. Gronquist's free-speech rights by rejecting both the unredacted and
13 redacted public-records documents. Each of his appeals were considered.
14 And although each appeal was denied, the Court finds that the decisions
15 to uphold the rejection of the mailed records were based on a legitimate,
16 penological interest of maintaining prison security.

17 For these reasons, Defendants are granted summary judgment on Mr.
18 Gronquist's third claim, brought under 42 U.S.C. § 1983, for
19 unconstitutional prior restraint on speech.

20 **c. Vagueness Challenge**

21 Mr. Gronquist also claims that his due-process rights under the
22 Fourteenth Amendment and Washington State Constitution article I,
23 section 3 were violated because RCW 72.09.530 and RCW 72.09.015(5) are
24 unconstitutionally vague. In support of his void-for-vagueness
25 argument, Mr. Gronquist cites to *Kolender v. Lawson*, 461 U.S. 352, 357
26 (1983). *Kolender* however recognizes that the void-for-vagueness

1 doctrine is used to challenge a penal sanction: "the void for vagueness
2 doctrine requires that a penal statute define the criminal offense with
3 sufficient definiteness that ordinary people can understand what conduct
4 is prohibited and in a manner that does not encourage arbitrary and
5 discriminatory enforcement." *Id.* at 356. The Second Circuit applied the
6 void-for-vagueness doctrine to a prison disciplinary rule when the
7 inmate was charged with an anti-contraband rule. *Farid v. Ellen*, 593
8 F.3d 1233 (2d Cir. 2010 (analyzing whether a prison rule, which the
9 plaintiff was charged with violating, was unconstitutionally vague).

10 Mr. Gronquist was not charged or infracted in regard to the
11 rejected public records. Instead, he was merely prevented from having
12 them while at the prison. The void-for-vagueness doctrine does not apply
13 to this situation. Defendants' summary-judgment motion is granted in
14 this regard. And Mr. Gronquist's motion to certify his void-for-
15 vagueness claim to the Washington Supreme Court is denied.

16 **3. Claim 4: Retaliation**

17 Defendants ask the Court to find that Mr. Gronquist failed to
18 present evidence to support his retaliation claim under 42 U.S.C. §
19 1983. As an inmate pursuing a First-Amendment-based retaliation claim,
20 Mr. Gronquist must establish: 1) that he was subjected to adverse
21 action, 2) because of 3) his protected conduct and 4) Defendants' action
22 chilled his exercise of his First Amendment rights, and 5) Defendants'
23 action did not reasonably advance a legitimate correctional goal. See
24 *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2004). To prove the
25 "because of" prong, Mr. Gronquist must establish that his protected
26 conduct played a "substantial part" in Defendants' decision to engage

1 in adverse action. See *Mt. Healthy City Sch. Dist. Bd. of Educ. v.*
2 *Doyle*, 429 U.S. 274, 285 (1977).

3 Mr. Gronquist submitted sufficient evidence that he engaged in a
4 protected activity, i.e., he filed grievances regarding the lack of
5 toilet paper and Officer Cunningham's and Owens' loud, "lengthy tirade"
6 headcount warnings over the intercom system. However, Mr. Gronquist did
7 not clearly identify the adverse action taken against *him* by Officers
8 Cunningham and Owens following the filing of these grievances and later
9 grievances.

10 The Court's review of the record elicits that Mr. Gronquist claims
11 that Officer Cunningham called him a "fucking rat" in front of other
12 inmates and was verbally rude to him, and that in October 2015, he was
13 demoted from a two-man cell in the H-Unit to a four-man cell in I-Unit.
14 Although verbally abusive language is unacceptable behavior from a
15 corrections officer, whose purpose is to maintain order by modelling
16 appropriate behavior, this level of verbal harassment and abuse is not
17 sufficient by itself to constitute adverse action. See *Oltarzewski v.*
18 *Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987) (citing *Collins v. Cundy*,
19 603 F.2d 825, 827 (10th Cir. 1979) (finding that sheriff's vulgar threat
20 to hang the inmate and laughing at him was not sufficient adverse
21 action)). And Mr. Gronquist fails to show that his transfer to a
22 different cell more than a year after he filed the initial grievances
23 was in retaliation for these grievances. See *Villiarimo v. Aloha Island*
24 *Air, Inc.*, 281 F.3d 1054 (9th Cir. 2002) (finding that a nearly 18-
25 month lapse between the protected activity and the adverse action was
26 too remote by itself to give rise to an inference of causation). Further,

1 there is no evidence that Officers Cunningham and Owens were responsible
2 for this housing change. *See Pratt v. Rowland*, 65 F.3d 802, 807 (9th
3 Cir. 1995) (looking at whether the individuals responsible for a cell
4 reassignment were the same individuals as who engaged in the alleged
5 retaliatory conduct).

6 Mr. Gronquist also provided declarations from other inmates who
7 stated that Officer Cunningham commented that he was issuing
8 disciplinary infractions in relation to headcounts because "people are
9 complaining about how we are doing our counts" and therefore "everyone
10 is going to pay." *See Muldrow Dec.*, ECF No. 88 at 2. There is no evidence
11 submitted, however, that Officer Cunningham or Officer Owens advised
12 the other inmates that it was Mr. Gronquist who had complained about
13 the headcounts. *Cf. Valandingham v. Bojorquez*, 866 F.2d 1135, 1137-40
14 (9th Cir. 1998) (identifying that the prison officers told other inmates
15 that the plaintiff was a snitch). And even if there was a casual
16 retaliatory connection between Mr. Gronquist's protected activities and
17 the officers' issuance of infractions against the other inmates, this
18 was not adverse action taken against Mr. Gronquist.

19 Therefore, even if Officer Cunningham's and Officer Owen's conduct
20 would chill or silence a person of ordinary firmness from future First
21 Amendment activities, Mr. Gronquist's retaliation claim fails to survive
22 summary judgment because he failed to present evidence that he was
23 subjected to an adverse action by Defendants because of his protected
24 activity. *See Brodheim v. Cry*, 584 F.3d 1262, 1271 (9th Cir. 2009)
25 (setting forth standard). For this reason, the Court grants Officers
26 Cunningham and Owens summary judgment as to Mr. Gronquist's retaliation

1 claim. Further, the Court grants Defendants Penrose, George, Hicks,
2 Uttecht, and Warner summary judgment on this retaliation claim as well
3 because there is no evidence that these Defendants personally
4 participated in any retaliatory action against, or decision making as
5 to, Mr. Gronquist because he filed grievances. Because summary judgment
6 is granted in these Defendants' favor, the Court need not analyze
7 Defendants' request for qualified immunity.

8 Lastly, the Court grants Superintendent Uttecht summary judgment
9 as to Mr. Gronquist's claim that Superintendent Uttecht fostered a
10 policy or custom that permitted Officer Cunningham to retaliate against
11 inmates who file grievances at CRCC and improperly appointed Lt. Penrose
12 to investigate the grievance – a grievance which named Lt. Penrose as
13 one of the retaliating officials. An unconstitutional policy or custom
14 may be found either 1) in an affirmative proclamation of policy or 2)
15 in the official's failure to take remedial steps after violations. *Gomez*
16 *v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001). Mr. Gronquist has not
17 identified an affirmative proclamation of policy. And there is no
18 indication that Superintendent Uttecht was responsible for appointing
19 Lt. Penrose as the individual who would investigate Mr. Gronquist's
20 retaliation-based grievance—a grievance that named Lt. Penrose as well.
21 Rather, Mike McCourtie assigned Lt. Penrose as the investigator. And
22 the records reflect that Lt. Penrose interviewed relevant staff, Mr.
23 Gronquist, and other offenders when appropriate. Mr. Gronquist was able
24 to appeal this decision, and he did so. These records do not reflect a
25 custom of turning a blind-eye to complaints.

1 Mr. Gronquist also contends that Superintendent Uttecht also
2 fostered a policy that permitted Officer Cunningham to retaliate against
3 Mr. Gronquist and other individuals for filing grievances. However, as
4 stated above, there is insufficient evidence to survive summary judgment
5 that Officer Cunningham retaliated against Mr. Gronquist, or other
6 individuals, for filing grievances. Mr. Gronquist has submitted
7 insufficient evidence that Superintendent Uttecht has turned a blind
8 eye to wrongdoings by officers and staff at CRCC.

9 For these reasons, Defendants are granted summary judgment as to
10 retaliation: Claim 4.

11 **D. Conclusion**

12 For the above-given reasons, **IT IS HEREBY ORDERED:**

13 1. Defendants' Motion for Summary Judgment Pursuant to Fed. R.
14 Civ. P. 56, **ECF No. 17**, is **GRANTED**.

15 2. Mr. Gronquist's Motion to Certify, **ECF No. 74**, is **DENIED**.

16 3. Mr. Gronquist's Motion to Show Cause, **ECF No. 84**, is **DENIED**.

17 4. The Clerk's Office is to enter **judgment** in Defendants' favor
18 with prejudice.

19 5. All pending dates and deadlines are **STRICKEN**.

20 6. This file shall be **CLOSED**.

21 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
22 Order and provide copies to Mr. Gronquist and counsel.

23 **DATED** this 20th day of May 2016.

24 s/Edward F. Shea
25 EDWARD F. SHEA
26 Senior United States District Judge