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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE IDAHO PRESS CLUB, INC.,)	Case No. CV01-19-16277
)	
Petitioner,)	MEMORANDUM IN SUPPORT OF
vs.)	SPECIAL APPEARANCE PURSUANT
)	TO IDAHO RULE OF CIVIL
ADA COUNTY,)	PROCEDURE 4.1.(b) AND
)	MEMORANDUM IN SUPPORT OF
Respondent.)	MOTION TO DISMISS PURSUANT
)	TO IDAHO RULES OF PROCEDURE
_____)	12(b)(4), (5), (6)

COMES NOW, the Board of Ada County Commissioners and the Ada County Sheriff, by and through counsel, James K. Dickinson, Senior Deputy Ada County Prosecuting Attorney, specially appearing pursuant to Idaho Rule of Civil Procedure 4.1(b),¹ hereby submits this Memorandum in Support of its Motion for Special Appearance Pursuant to Idaho Rule of Civil Procedure (I.R.C.P.) 4.1(b) and Memorandum in Support of its Motion to Dismiss Pursuant to Idaho Rules of Civil Procedure 12(b)(4), (5), and (6).

¹ Because of the abbreviated time period in which this hearing was set, there is insufficient time to conduct motion practice prior to substantively responding. Consistent with that, all of the Board's and ACSO's filings, including the Response, Statement of Facts, Memorandum in Opposition, and Motion to Dismiss, as well as all supporting documents, are all filed by special appearance, so as not to waive arguments raised in the Motion to Dismiss. In the event the Court determines that the Petition is properly brought, and does not dismiss it, the Board and ACSO intend for all of the specially filed documents to be considered.

I.

INTRODUCTION

On September 3, 2019, the Idaho Press Club, Inc., (“IPC”) filed a Verified Petition (“Petition”) against “Ada County” (“County”) seeking disclosure of records responsive to three public records requests submitted by various media outlets to the Board of Ada County Commissioners (the “Board”) and a media email inquiry to the Ada County Sheriff’s Office (“ACSO”). The Board provided over 1,100 pages of records in response to the three requests, some of which were redacted to protect citizens’ privacy rights, the Board’s attorney-client privilege, and other exemptions. The IPC claims that privacy and privilege redactions are “arbitrary and capricious” and “have no basis” under the Idaho Public Records Act (the “Act”). Separately, the ACSO was emailing with a media outlet regarding a 911 transcript when the media outlet failed to return a call to ACSO. The IPC alleges that this exchange amounts to denial of a public records request, even though the media outlet never submitted a public records request. The IPC filed this action seeking disclosure of the records at issue, an order to show cause, and a request for declaratory relief. The IPC’s Petition is subject to dismissal for the below reasons.

To begin with, the IPC did not name or serve the proper Parties. Though the IPC named “Ada County” and served its Petition on the Ada County Clerk, it did not name or serve either of the decision-making elected bodies involved. The Board responded to all three of the public records requests, and the ACSO handled the email inquiry. Notably, the IPC neither named nor served either.

Next, the IPC lacks standing here. The IPC claims that it brings this action on behalf of its members, including the four individuals who sought the information at issue. Pet. at 2, ¶ 2.

However, the IPC did not submit any of the public records requests or the email inquiry at issue in this appeal. Because of this, and because this action requires four separate individualized reviews, the IPC lacks standing to appeal the denial of the requests and the inquiry made by other individuals.

Furthermore, the IPC's claims regarding the Board's fee are moot and subject to dismissal. Specifically, the IPC alleges that the Board misapplied the fee waiver of the Act and failed to provide enough details of its fee breakdown when responding to the first request, even though the Board completely waived the fees associated with that request. Because the Board provided the documents to the requestor free of charge, the IPC's allegations regarding the Board's fees under the Act are moot and should be dismissed.

Lastly, the IPC's request for declaratory judgments must also be dismissed. The IPC seeks an order from the Court requiring Ada County to comply with the response times set forth in the Act, presumably for future public records requests. Next, the IPC requests an order from the Court requiring Ada County to comply with the fee waiver provisions of the Act, again, presumably for future public records requests. Finally, the IPC requests an order from the Court requiring Ada County, in the future, to prepare privilege logs to provide requesting parties when the denial or partial denial of a request is based upon a privilege under Idaho Code § 74-104(1), even though the Act contains no such requirement. However, the Act declares that the "sole remedy" for requestors is to initiate proceedings to compel disclosure of the withheld records. Notably, the Act does not create any right to declaratory relief. Thus, the IPC's prayer for declaratory judgment should be dismissed.

II.

LEGAL STANDARD

When considering a motion to dismiss, the non-moving party is entitled to have all inferences from the record and pleadings viewed in his/her favor, and only then may the question be asked whether a claim for relief has been stated. *Idaho Schs. For Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993). Further, “The issue is not whether the [party] will ultimately prevail, but whether the party is entitled to offer evidence to support the claims.” *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002).

III.

ANALYSIS

A. Insufficient Service of Process.

Pursuant to I.R.C.P. 4.1(b) Ada County appears specially to contest process pursuant to I.R.C.P. 12(b)(4) and the sufficiency of the service of process pursuant to I.R.C.P. 12(b)(5). In an abundance of caution, Ada County appears specially in all of the filings with the Court in response to IPC’s Petition due to the compressed nature of these proceedings and the inability to engage in proper motion practice.

The IPC has filed this Petition against “Ada County” challenging responses the Board and the ACSO provided with regard to three (3) separate requests for public records and one (1) email inquiry. The IPC failed to name the Board and ACSO as parties and failed to serve them. The Petition acknowledges that the three (3) requests in question were made to and answered by the Board. Pet. at p. 6, ¶ 6; p. 7, ¶ 8; p. 5, ¶¶ 15, 17; p. 24, ¶¶ 24, 25; p. 9, ¶ 34. The Petition asserts that the email inquiry was directed to and answered by the ACSO. Pet. at p. 10, ¶¶ 40-41.

Counties in Idaho are created by the Constitution, are governed by the county commissioners. Idaho Constitution, Article XVIII, Section 6. The powers of counties are exercised only by the county commissioners, or their agents and officers, or the authority of law. Idaho Code § 31-602. The County Commissioners and the Sheriff are separate Constitutional officers, each with their own Constitutional and statutory authority.² These Constitutional officers act independently by and through their employees. It is insufficient to name and serve only Ada County when the records requests and inquiry were made to and processed by employees of the Board and ACSO.³

Because IPC failed to name and serve the proper parties, Ada County moves this Court to dismiss IPC's Petition pursuant to I.R.C.P 12(b)(4) and (5).

B. Standing.

The IPC lacks standing to bring an action compelling disclosure of the requested records under Title 74 of the Idaho Code. An organization lacks standing to seek judicial review on behalf of its members if either the claim or the relief requested requires the participation of individual members in the lawsuit. Here, because the IPC seeks this Court's determination into the specifics of each of three records requests and an inquiry, this lawsuit requires those requestors' participation. Without such participation, the IPC cannot set forth the individualized proof that is necessary for a court to compel disclosure of records. Because of this, the instant action must be dismissed.

In order to file any judicial review, the plaintiff must have standing to assert the claims and to seek the relief sought. As the Idaho Supreme Court has opined, "It is a fundamental tenet

² Idaho Constitution Article XVIII Section 6, Title 31 Chapters 7, 8, & 22 Idaho Code.

³ If the Court finds that the ACSO should have been party to this appeal, and if the Court finds that ACSO was properly named and served by the IPC, then this matter should be dismissed as to ACSO for IPC's failure to post a bond as required by Idaho Code § 6-610(2).

of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing. *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 124, 15 P.3d 1129, 1132 (2000). If a party lacks standing, the court cannot reach the merits of the case. *Miles v. Idaho Power Co.*, 116 Idaho 635, 637, 778 P.2d 757, 759 (1989). The Idaho Supreme Court has noted that the doctrine is imprecise and difficult to apply. *Id* at 641, 778 P.2d at 763 (citing *Valley Forge College v Americans United*, 454 U.S. 464, 102 S. Ct. 752, 70 L.Ed.2d 700 (1982)). Standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated. *Van Valkenburgh* at 124, 15 P.3d at 1132; *Boundary Backpackers v. Boundary County*, 128 Idaho 371, 375, 913 P.2d 1141, 1145 (1996) (quoting *Miles* at 639, 778 P.2d at 761).

Idaho courts have followed the United States Supreme Court's direction in determining when an association has standing to seek judicial relief on behalf of its members. *Beach Lateral Water Users Ass'n v. Harrison*, 142 Idaho 600 (2006). The Court has set forth a three-part test for determining associational standing. *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). In that case, the Court held that an association has standing to seek judicial relief on behalf of its members if it meets the following three requirements:

(a) [I]ts members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Id. An association must meet all three prongs in order to have standing on behalf of its members. *See id.*

It appears that the third prong of the *Hunt* test is at issue in this case. In interpreting the third prong, the U.S. Supreme Court has held as follows:

[W]hether an association has standing to invoke the court's remedial powers on behalf of its members depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. Indeed, in all cases in which we have expressly recognized standing in associations to represent their members, the relief sought has been of this kind.

Id. at 343. To that end, the Court ruled in one case that an association composed of construction firms lacked standing to seek damages for the profits and business lost by its members, holding that “whatever injury might have been suffered is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof.” *Int’l Union, United Auto., Aerospace and Agr. Implement Workers of America v. Brock*, 477 U.S. 274, 287 (1986) (citing *Warth v. Seldin*, 422 U.S. 490, 515 (1975)). Because of this, “[e]ach member therefore had to be a party to the suit, and the association lacked standing to proceed on [any member’s] behalf.” *Id.*

Similarly, the Idaho Supreme Court ruled that an association of property owners lacked standing to seek an order quieting title in its members’ interest in a shared easement. *Beach Lateral Water Users Ass’n v. Harrison*, 142 Idaho 600 (2006). In that case, a person had blocked the easement at issue, and the association sought both injunctive relief and an order quieting title to the easement in the property owners’ favor. *Id.* at 604. The Court ruled that the association only had standing to seek injunctive relief, but otherwise lacked standing. *Id.* at 604-05. Because the owners—and not the association—owned the properties at issue, the owners’ participation was required in the quiet title action and the association “was not in a position to ask the district court to quiet title to the . . . easement in its favor.” *Id.* Because of this, the association failed the third prong of the *Hunt* analysis, and as a result, lacked standing to bring that claim. *Id.*

The IPC cannot meet the third factor of the *Hunt* test because the claim asserted and the relief requested both require the participation of the individual requestors in this lawsuit. As a preliminary matter, IPC alone filed the instant action. Notably, however, IPC did not submit any of the concerned public records requests. Not one of the three requests or inquiry indicated that it was made in the name of or on behalf of IPC. Further still, IPC is not even mentioned or referenced in any of the requests. In its Petition, IPC even acknowledges that the public records requests at issue were made “by *members* of the Idaho Press Club”—and not by the IPC itself. Pet. at P. 3, ¶ 5. Despite this fact, IPC asserts that this court has jurisdiction over this matter because the four requestors happen to be members of the Club. This assertion is incorrect.

Like the association in the *Beach Lateral Water Users Ass’n* case above, the IPC has not merely limited its request for relief to injunctive or declaratory relief. In its Petition, the IPC seeks relief that is particular to each of the four individual requestors. For instance, the IPC requests “[a]n order under Idaho Code § 74-116(1) that Respondent disclose all of the public records that the IPC⁴ requested in an unredacted form or show cause why it should not do so. . .,” and requests attorney fees, costs, and civil penalties allowed under the Act for failure to provide such records Pet. at p. 11, ¶¶ 1-2; p. 12, ¶¶ 6-8. To determine whether any one requestor is entitled to additional records from the County requires a specific inquiry into each request—an inquiry that cannot happen in the absence of the requestors themselves. Because of this, the IPC lacks standing to request such relief, and its claim seeking disclosure of the requested records must be dismissed.

⁴ As noted above, the IPC made no public records request. Thus, it appears that by “public records that Petitioner requested,” the IPC instead seeks disclosure of public records that its members requested.
MEMORANDUM IN SUPPORT OF SPECIAL APPEARANCE PURSUANT TO IDAHO RULE OF CIVIL PROCEDURE 4.1.(b) AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO IDAHO RULES OF PROCEDURE 12(b)(4), (5), (6) – PAGE 8

C. Exclusive Remedy

The IPC's request for declaratory judgment on future public records requests must also be dismissed because no such cause of action exists under Idaho law. The "sole remedy" provided under the Act is to seek disclosure of withheld records; as noted above, the IPC lacks standing to pursue that one remedy.

In addition to requesting disclosure of records, the IPC also prays for declaratory judgments pursuant to the Chapter 12, Title 10 Idaho Code. Specifically, the IPC seeks declaratory judgments requiring Ada County to do the following: (1) "comply with the mandatory response timeframes" in the Act; (2) "comply with the fee waiver criteria" in the Act, "to demonstrate the basis for the rates it charges to public records requests, and properly inform the public of the Acts provisions concerning fee waivers and what may be charged for record request, including on its website"; and (3) "demonstrate its entitlement to [claimed] privilege[s] by preparing a privilege log, or otherwise carry its heavy burden on non-disclosure." Pet. at p. 11, ¶ 3; p. 12, ¶¶ 4-5. The IPC is not entitled to any such relief here.

Public records appeals are authorized by Idaho Code § 74-115. That statute explicitly states that "[t]he *sole remedy* for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court. . . to compel the public agency or independent public body corporate and politic to make the information available for public inspection. . ." Idaho Code § 74-115(1) (emphasis added). Courts are constrained to provide only the relief set forth in the Act—disclosure of records improperly withheld and reasonable costs and attorney fees for requests or refusals that are frivolous. Idaho Code §§ 74-115, 74-116(2), Mem. of Findings of Fact and Conclusions of Law and Judgment at 12-13, *Howe v. City of Boise*, Case No. 98224

(Idaho Dist. Ct. 4th 1995), *Henry v. Taylor*, 152 Idaho 155, 161 (2011), *Donoval v. City of Sun Valley*, 2014 WL 3587369 at *4-6 (Idaho Ct. App. 2014).

Only two potential remedies exist under the Act. As noted by the Idaho Supreme Court:

If the court finds that the public official's decision to refuse disclosure is not justified, *it shall order* the public official to make the requested disclosure. If the court determines that the public official was justified in refusing to make the requested record available, *he shall return* the item to the public official without disclosing its content and shall enter an order supporting the decision refusing disclosure.

Wade v. Taylor, 156 Idaho 91, 320 P.3d 1250 at 101-102; 1260-1261 (internal citations omitted).

Thus, the Court ruled that it was constrained to “either order disclosure of the public record, or uphold the exemption and return the public record.” *Id.*

Idaho courts have continuously denied requestors' attempts to seek relief for public records issues that fall outside the ambit of Title 74, Chapter 1, Idaho Code. For example, in *Henry*, the Idaho Supreme Court denied Plaintiff's request to conduct additional discovery into the requested records and the existence of additional records. *Henry*, 152 Idaho at 161. In that case, Plaintiff had conceded that he had received the requested records; thus, the Court held that he had “received the relief to which he is entitled with respect to examining the public records requested.” *Id.* The Court likewise denied the Plaintiff's request for attorney fees under Title 12 of the Idaho Code because such relief fell outside the Act's exclusive remedy. *Id.* at 161-62.

The Court reasoned,

Idaho Code section 9-344(2)[, now codified as 74-116(2),] sets forth the standard for awarding reasonable costs and attorney fees in actions pursuant to the Public Records Act. To base an award on some other statute would be contrary to the legislature's intent in including in the Act an attorney fee provision with a specified standard for awarding attorney fees in proceedings to enforce compliance with the Act. That statute is the exclusive basis for such an award. Therefore, Idaho Code sections 12-117 and 12-121 do not apply.

Id. at 162. Even more recently, the Court has affirmed that the Act provides the only pathway to seek attorney fees in public records actions. *Wade*, 156 Idaho at 102.

The Idaho Fourth Judicial District Court, too, has refused to expand the “sole” remedy allowed under the Act. In *Howe*, Judge Carey denied a request for a declaratory or injunctive relief “commanding [governmental entities] to comply with all future requests and prohibiting them from asking questions,” stating as follows:

By its own terms the public records act does not contemplate injunctive or declaratory relief concerning requests that might be made in the future. Furthermore, the court has no way of knowing whether future requests will require disclosure and the extent to which disclosure may be required. Each request must be judged on its own merits.

Id. at 13.

The IPC cannot seek declaratory relief in this case. As noted by Judge Carey above, “the public records act does not contemplate injunctive or declaratory relief concerning requests that might be made in the future.” *Id.* Instead, the Act contemplates one “sole remedy”: it allows requestors to file an action “to compel the public agency. . . to make the information available for public inspection.” Idaho Code § 74-115(1).

Similarly, the Act does not provide authority for a consolidated appeal of separate public records requests by separate individuals. IPC brings four distinct appeals in its Petition. Each request is unique, requests different records, was submitted on different dates and was responded to on different dates. Each requesting party has the individual right to appeal in accordance with the Act whereby the Court can hear the parties and review the exempt and partially exempt records related to that specific request. Combining appeals is not authorized by the Act, does not accomplish any measure of judicial economy, serves to increase the burden on the Board and

ACSO, and conflates issues and exemptions that are unique to each request and the records germane to each request.

IPC has failed to set forth a legally supportable, actionable and understandable basis upon which declaratory relief may be granted. I.R.C.P. 12(b)(6) requires the Court to dismiss IPC's prayer for declaratory judgements.

D. Charging and Waiver of Fees.

IPC complains in one of the four requests for public records, the Sewell request, that the fees were not waived as requested and that Ada County failed to provide a more specific breakdown of the fees. Because the fees were waived, the issue is moot and should be dismissed.

The Idaho Supreme Court has held that, "an issue is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome." *Idaho County Property Owners Ass'n., Inc. v. Syringa Gen. Hosp. Dist.*, 119 Idaho 309, 315, 805 P.2d 1233, 1239 (1991). IPC's Petition concedes at Pet. at p. 5, ¶ 15, that Ada County waived the fee for this request. Ada County was not required to provide a more specific breakdown for a fee it did not impose.

I.R.C.P. 12(b)(6) requires a court to dismiss a claim when a party fails to set forth a legally supportable, actionable and understandable basis upon which legal relief can be granted. Because IPC's issues related to fee waiver and fee breakdown, these issues must be dismissed.

IV.

CONCLUSION

IPC did not submit any of the public records requests, yet it is attempting to appeal and has no standing to pursue this action. Further, the Act does not provide authority for IPC to

pursue a consolidated appeal based upon distinct requests made by separate individuals. The three (3) public records requests were made to the Board of Ada County Commissioners, yet IPC did not name the Board in their petition nor serve the Board. The inquiry for the 911 transcript was made to the ACSO, yet IPC likewise neither named nor served ACSO. Furthermore, the request for declaratory judgments should be dismissed as such relief is not a remedy available under the Act. Finally, IPC's appeal as it relates to charging of fees and waiver of fees in the Sewell request is moot because the Board waived the fee. The Board and ACSO respectfully request that its Motion to Dismiss be granted.

DATED this 25th day of September 2019.

JAN M. BENNETTS
Ada County Prosecuting Attorney

By: /s/ James K. Dickinson
James K. Dickinson
Senior Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September 2019, I served a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF SPECIAL APPEARANCE PURSUANT TO IDAHO RULE OF CIVIL PROCEDURE 4.1.(b) AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO IDAHO RULES OF PROCEDURE 12(b)(4), (5), (6) to the following person(s) by the following method:

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 /s/ Chyvonne Tiedemann
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