

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DISABILITY RIGHTS WASHINGTON,

No. 16-5329

Plaintiff,

vs.

COMPLAINT

SHERIFF CHUCK ATKINS, in his official
capacity; CHIEF RIC BISHOP, in his official
capacity; COMMANDER MIKE ANDERSON,
in his official capacity, and CLARK COUNTY
JAIL,

Defendants.

COMES NOW Plaintiff Disability Rights Washington by and through its attorney, and as
for its cause of action against Defendants Chuck Atkins, Ric Bishop, Mike Anderson, and the
Clark County Jail, states and alleges as follows.

I. PRELIMINARY STATEMENT

1. This civil rights action seeks injunctive and declaratory relief to enjoin Sheriff
Chuck Atkins, Chief Ric Bishop, Commander Mike Anderson, and Clark County Jail from
obstructing Disability Rights Washington's full, complete, and meaningful access to all records
necessary to investigate deaths in the jail over the last year. Disability Rights Washington, the
federally designated protection and advocacy system for people with disabilities in Washington
State, requested records pursuant to the federal Protection and Advocacy Acts, including the

1 Developmental Disabilities Assistance and Bill of Rights (DD) Act of 1975, 42 U.S.C. § 15041,
2 *et seq.*, the Protection and Advocacy for Individuals With Mental Illness (PAIMI) Act, 42 U.S.C.
3 § 10801, *et seq.*, and the Protection and Advocacy for Individual Rights (PAIR) Act 29 U.S.C. §
4 794e, *et seq.*, and the regulations promulgated pursuant to these statutes. Disability Rights
5 Washington made this request in order to investigate numerous death that have occurred at Clark
6 County Jail which is operated under the direction of Sheriff Atkins and the other defendants.

7 2. Under federal law, Disability Rights Washington is entitled to any records
8 necessary to complete a full investigation, including video recordings. When an investigation
9 involves a death, responses must be provided immediately, no later than 24 hours from the time
10 of the request.

11 3. In response to Disability Rights Washington's record request, the jail has
12 provided written records, but refuses to provide responsive video records unless Disability
13 Rights Washington agrees not to share the videos with anyone. The federal law that gives
14 protection and advocacy systems like Disability Rights Washington access to these records does
15 not contain any requirement that Disability Rights Washington agree to never share records with
16 anyone. In fact, the federal mandates expect that Disability Rights Washington will use the
17 information it receives to educate and advocate.

18 4. Defendants' continued resistance to the independent scrutiny of the protection and
19 advocacy system though its refusal to provide the requested video is an unnecessary,
20 unreasonable, and unlawful restriction on Disability Rights Washington's ability to effectively
21 protect the rights of people with disabilities.

Disability Rights Washington
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9. An award of monetary damages is inadequate as plaintiff suffers and will continue to suffer irreparable harm from defendants' actions, inactions, policies, and procedures and the violations complained herein.

Plaintiff

11. Plaintiff Disability Rights Washington, a nonprofit corporation duly organized under the laws of the State of Washington, is the statewide protection and advocacy system designated by the Governor of the State of Washington to protect and advocate for the legal and civil rights of those citizens of this state who have disabilities, pursuant to the DD Act, 42 U.S.C. § 15041, *et seq.*, the PAIMI Act, 42 U.S.C. § 10801, *et seq.*, and the PAIR Act, 29 U.S.C. § 794e. R.C.W. 71A.10.080 (2). DRW maintains offices in Seattle and Spokane at 315 5th Avenue South, Suite 850, Seattle, WA 98104, and 10 N. Post Street, Spokane, WA 99201.

13. In its capacity as the designated protection and advocacy system for the State of Washington, Disability Rights Washington is entitled to access all persons with disabilities,

1 individually or as a group, receiving services in the State of Washington and otherwise
2 confidential records of individuals as well as any other records necessary to conduct a full
3 investigation in order to adequately and meaningfully protect their rights pursuant to federal and
4 state statutes in regard thereto. 42 C.F.R. § 51.2

5 14. DRW has and will continue to suffer irreparable harm as a result of Defendants'
6 actions or inactions absent preliminary and permanent relief.

7 **Defendants**

8 **A. Sheriff Chuck Atkins, in his official capacity**

9 15. Sheriff Chuck Atkins is sued in his official capacity as the elected Sheriff of
10 Clark County. Defendant Atkins's administrative office is located in Vancouver, Washington.

11 16. Defendant Atkins, in his official capacity, has at all times relevant herein acted
12 under color of state law and has exercised general responsibility, supervision, and oversight of
13 the policies, practices, and operations of the Office of the Sheriff of Clark County, of which the
14 corrections division and jail are a part. Defendant Atkins's responsibilities include overseeing all
15 staff, including those responsible for disclosure of information maintained by or otherwise
16 available to the jail.

17 **B. Chief Ric Bishop, in his official capacity**

18 17. Chief Ric Bishop is sued in his official capacity as the chief of the corrections
19 division of Clark County Sheriff's office. Defendant Bishop's administrative office is located in
20 Vancouver, Washington.

21 18. Defendant Bishop, in his official capacity, has at all times relevant herein acted
22 under color of state law and has exercised general responsibility, supervision, and oversight of
23 the policies, practices, and operations of the corrections division, of which the jail is a part.

1 Defendant Bishop's responsibilities include overseeing staff responsible for disclosure of
2 information maintained by or otherwise available to the jail.

3 **C. Commander Mike Anderson, in his official capacity**

4 19. Commander Mike Anderson is sued in his official capacity as the commander of
5 the Clark County Jail. Defendant Anderson's administrative office is located in Vancouver,
6 Washington.

7 20. Defendant Anderson, in his official capacity, has at all times relevant herein acted
8 under color of state law and has exercised general responsibility, supervision, and oversight of
9 the policies, practices, and operations of the corrections division, of which the jail is a part.
10 Defendant Anderson's responsibilities include overseeing staff responsible for disclosure of
11 information maintained by or otherwise available to the jail.

12 **D. Clark County Jail**

13 21. Defendant Clark County Jail is a county operated correctional facility housing
14 people charged with crimes or serving relatively short sentences, which includes numerous
15 people with disabilities, many of whom require specialized services or housing to be safe. As a
16 jail, its staff, facilities, and infrastructure are used to create and maintain records on the services
17 and people it serves and the actions of staff.

18 **IV. FACTUAL ALLEGATIONS**

19 22. At all times relevant herein, Disability Rights Washington has been, and is,
20 designated by the Governor of the State of Washington as the protection and advocacy system
21 for those citizens of this state who have mental, developmental, and physical disabilities.

22 23. Disability Rights Washington, like each of the protection and advocacy agencies
23 currently operating in the other forty-nine states, the federal protectorates (American Samoa, the

1 Commonwealth of the North Mariana Islands, Guam, Puerto Rico, and the United States Virgin
2 Islands), and the District of Columbia, operates under the mandates of the DD Act, 42 U.S.C. §
3 15041 *et seq.*, the PAIMI Act, 42 U.S.C. § 10801 *et seq.*, and the PAIR Act, 29 U.S.C. § 794e *et*
4 *seq.*

5 24. As a result of the extensive congressional hearings preceding each of the aforesaid
6 statutory enactments, Congress found that there had been an extensive history of unlawful
7 discriminatory segregation, extraordinary maltreatment, financial exploitation, neglect, and
8 physical abuse of individuals with disabilities throughout the United States.

9 25. The federal laws that established the protection and advocacy systems were
10 created in direct response to the need for independent advocacy services for individuals with
11 disabilities who were not getting adequate services from state operated programs. *See e.g.*, 42
12 U.S.C. § 10501 (11)-(12).

13 26. The Protection and Advocacy Acts (P&A Acts) require that each state, in
14 exchange for receipt of certain federal financial assistance, “effect a system to protect and
15 advocate for the rights of persons” with disabilities and further specify that these systems must
16 have the authority to investigate and pursue legal and other appropriate remedies for those
17 persons. The DD Act, 42 U.S.C. § 15041 *et seq.*, the PAIMI Act, 42 U.S.C. § 10801 *et seq.*, and
18 the PAIR Act, 29 U.S.C. § 794e *et seq.*

19 27. The Washington State legislature provided for such a system with the enactment
20 of R.C.W. 71A.10.080. Specifically, under the provisions of R.C.W. 71A.10.080 (1), the
21 designated protection and advocacy agency “shall have the authority to pursue legal,
22 administrative, and other appropriate remedies to protect the rights of the developmentally
23 disabled, and to investigate allegations of abuse and neglect.”

1 28. Disability Rights Washington, in accordance with its congressional mandates,
2 duties, and responsibilities as the designated protection and advocacy agency for Washington,
3 employs attorneys and advocates to provide protection and advocacy services to people in
4 Washington who have mental, developmental, physical, and sensory disabilities.

5 29. Disability Rights Washington's mandate to provide investigative and advocacy
6 services to individuals with disabilities extends to individuals residing in both private and
7 publicly-funded facilities.

8 30. Defendants administer Clark County's jail.

9 31. Jails are explicitly mentioned in a non-exclusive list of setting that are considered
10 a facility which "may include, but need not be limited to, hospitals, nursing homes, community
11 facilities for individuals with mental illness, board and care homes, homeless shelters, and jails
12 and prisons." 42 U.S.C.A. § 10802.

13 32. Disability Rights Washington has authority to initiate an investigation when it has
14 probable cause to suspect people with disabilities are being abused or neglected.

15 33. Disability Rights Washington's determinations of probable cause are controlled
16 by federal law which states:

17 (g) Determination of "probable cause" may result from P&A system monitoring
18 or other activities, including observation by P&A system personnel, and reviews
19 of monitoring and other reports prepared by others whether pertaining to
individuals with mental illness or to general conditions affecting their health or
safety.

20 42 C.F.R. § 51.31.

21 34. Here, Disability Rights Washington has relied upon its understanding of the terms
22 abuse and neglect as defined by the Protection and Advocacy Acts as well as its extensive
23

1 knowledge and experience with jail service delivery systems generally and its visits and review
2 of records from Clark County Jail to determine it has probable cause.

3 35. The federal laws that control Disability Rights Washington's investigations define
4 abuse as:

5 any act or failure to act by an employee of a facility rendering care or treatment
6 which was performed, or which was failed to be performed, knowingly,
7 recklessly, or intentionally, and which caused, or may have caused, injury or
8 death to a [sic] individual with mental illness, and includes acts such as—
9 (A) the rape or sexual assault of a [sic] individual with mental illness;
10 (B) the striking of a [sic] individual with mental illness;
11 (C) the use of excessive force when placing a [sic] individual with mental illness
12 in bodily restraints; and
13 (D) the use of bodily or chemical restraints on a [sic] individual with mental
14 illness which is not in compliance with Federal and State laws and regulations.

15 42 U.S.C.A. § 10802.

16 36. Neglect is defined as:

17 a negligent act or omission by any individual responsible for providing services in
18 a facility rendering care or treatment which caused or may have caused injury or
19 death to a¹ individual with mental illness or which placed a¹ individual with
20 mental illness at risk of injury or death, and includes an act or omission such as
21 the failure to establish or carry out an appropriate individual program plan or
22 treatment plan for a¹ individual with mental illness, the failure to provide
23 adequate nutrition, clothing, or health care to a [sic] individual with mental
illness, or the failure to provide a safe environment for a [sic] individual with
mental illness, including the failure to maintain adequate numbers of
appropriately trained staff.

42 U.S.C.A. § 10802.

37. Public reports from multiple media sources indicate there have been multiple
deaths in the Clark County Jail.

38. On March 22, 2015, Mycheal Lynch, a 32 year old Vancouver resident, died from
a homicide in Clark County Jail after a restraint incident.

<http://www.columbian.com/news/2015/apr/16/clark-county-jail-inmate-death-homicide-lynch/>

1 39. On March 30, 2015, Douglas E. Mayhugh, a 35 year old Longview resident, died
2 from suicide in the Clark County Jail of asphyxia due to hanging.

3 [http://www.seattletimes.com/seattle-news/inmates-death-in-clark-county-jail-is-ruled-a-suicide-](http://www.seattletimes.com/seattle-news/inmates-death-in-clark-county-jail-is-ruled-a-suicide-by-hanging/)
4 [by-hanging/](http://www.seattletimes.com/seattle-news/inmates-death-in-clark-county-jail-is-ruled-a-suicide-by-hanging/)

5 40. On February 27, 2016, Daniel J. Fisher, a 33 year old Vancouver resident, died
6 from suicide in the Clark County Jail of asphyxia due to hanging.

7 [http://www.oregonlive.com/pacific-northwest-](http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/04/clark_county_jail_reports_seco.html)
8 [news/index.ssf/2016/04/clark_county_jail_reports_seco.html](http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/04/clark_county_jail_reports_seco.html)

9 41. In light of these deaths of inmates who may have needed additional services to
10 avoid homicide and suicide in the Clark County Jail, and in conjunction with previous records it
11 had received from Defendants regarding suicides in previous years and jail policies, and an on-
12 site visit to the facility on March 7, 2016 in which Disability Rights Washington attorneys and
13 staff interviewed jail staff and inmates, and took video and photographic recordings of various
14 jail settings, Disability Rights Washington determined it had probable cause to suspect possible
15 abuse and neglect of individuals with disabilities affected by Defendants services or lack thereof.

16 42. On April 13, Disability Rights Washington sent a request for:

- 17 1. List of inmate deaths from 3/31/2015 to present, names of said inmates, and the
18 determined causes of death;
- 19 2. Jail records, inmate health records, and any other investigative records of the
20 inmate who died after restraint in March of 2015;
- 21 3. Jail records, inmate health records, and any other investigative records of the
22 inmate who died from suicide on 3/30/2015;
- 23 4. Jail records, inmate health records, and any other investigative records of the
 inmate who died from suicide on 2/27/2016;
5. Jail records, inmate health records, and any other investigative records of
 additional inmates, if any, who died from suicide between 3/30/2015 and
 present;

1 6. The names and contact information of the individuals who have attempted to
2 commit suicide, and, if applicable, the legal guardian of each individual who
attempted to commit suicide while being detained at Clark County Jail from
1/1/2015 to present; and

3 7. Any updated jail policies or procedures regarding suicide precautions,
4 assessment, and screening since March of 2015.

5 43. That request informed Defendants that the definition of records included “written
6 or in another medium, draft or final, including handwritten notes, electronic files, *photographs or*
7 *video* or audio tape records....” 42 C.F.R. § 51.41(c) (emphasis added).

8 44. The request also informed Defendants that federal statute provides 24 hours to
9 respond.

10 45. Defendants have provided written records, but refuse to provide video records
11 unless Disability Rights Washington agrees to not show anyone else the videos.

12 46. It is now three weeks since that request was made, and subsequent to that request
13 another death occurred in Clark County jail.

14 47. On April 22, 2016, Dustin M. Graves, a 23 year old Battle Ground resident, died
15 from suicide in the Clark County Jail of asphyxia due to hanging.

16 <http://www.columbian.com/news/2016/apr/25/clark-county-jail-suicide-victim-idd-as-battle->
17 [ground-man/](http://www.columbian.com/news/2016/apr/25/clark-county-jail-suicide-victim-idd-as-battle-ground-man/)

18 48. This delay highlights the urgency of timely production of records as Defendants
19 continue to operate a correctional facility and serve countless people with disabilities every day.

20 49. Disability Rights Washington attempted to resolve this issue without resorting to
21 litigation over several phone and email exchanges with Defendants’ counsel. *See e.g.* Letter from
22 David Carlson , Director of Legal Advocacy, Disability Rights Washington, to Jane Vetto,
23

1 Senior Deputy Prosecuting Attorney, Civil Division Clark County Prosecutor's Office (May 3,
2 2016) a true and correct copy of which is attached as Exhibit 1.

3 50. As a result of Defendants' refusal to follow federal law, DRW has been denied
4 access to conduct a full and meaningful investigation and has been unable to fulfill its federal
5 mandate to investigate possible abuse and neglect of individuals with disabilities.

6 51. Defendants not only refuse to provide the video without restrictions on how
7 Disability Rights Washington may use it, Defendants also refuse to provide their actual reason
8 for denial or delay as required by federal law. 42 CFR § 51.43. Instead their written response is:
9 "The Jail videos are different from other records and unrestricted release of those records
10 exposes guards and inmates to unacceptable risks." See Email string terminating in email from
11 Stacie Siebrecht, Associate Director of Legal Advocacy, Disability Rights Washington, to Chris
12 Horne, Chief Civil Deputy Prosecuting Attorney, Civil Division Clark County Prosecutor's
13 Office (May 3, 2016) a true and correct copy of which is attached as Exhibit 2. There is no
14 factual support for Defendants' conclusion and most importantly, no legal support for violating
15 federal law.

16 52. Defendants have been made aware of Disability Rights Washington's federal
17 authority to obtain relevant videos, when Disability Rights Washington is investigating abuse
18 and neglect.

19 53. Defendants' refusal to provide the videos frustrate the federally mandated
20 functions and duties of the protection and advocacy system. As described in the foregoing
21 paragraphs, Plaintiff attempted, on multiple occasions, to resolve its access issue with the
22 Defendants. These attempts have proven unsuccessful.

56. Plaintiff has no adequate remedy at law.

57. Violation of DRW's Rights under 42 U.S.C. § 1983; 42 U.S.C. § 10541, *et seq.*, 42 U.S.C. § 10801 *et seq.*, and 29 U.S.C. § 794e.

58. Wherefore, plaintiff Disability Rights Washington respectfully prays to the Honorable Court for the following relief:

B. For an order declaring that Defendants' actions and inactions, as described

, violate Plaintiff's rights under the Developmental Disabilities Assistance and Bill

ts (DD) Act of 1975, 42 U.S.C. § 15041, *et seq.*, the Protection and Advocacy for

iduals With Mental Illness (PAIMI) Act, 42 U.S.C. § 10801, *et seq.*, and the

tion and Advocacy for Individual Rights (PAIR) Act 29 U.S.C. § 794e, *et seq.*, and

regulations promulgated pursuant to these statutes;

1 C. For an Order directing Defendant to immediately provide plaintiff
2 Disability Rights Washington with all video records responsive to its April 13, 2016
3 request;

4 D. For an Order directing Defendant to adhere to the P&A Acts in responding
5 to Disability Rights Washington's access requests;

6 E. For an Order directing Defendant to pay Plaintiff's reasonable attorney
7 fees and costs associated with enforcing Plaintiff's rights in this action; and

8 F. For an Order granting Plaintiff such other and further relief as this Court
9 deems just and proper.

10 Dated this 4th day of May, 2016.

11 Respectfully Submitted,

12 DISABILITY RIGHTS WASHINGTON

13 By: /s/David R. Carlson
14 David R. Carlson, WSBA # 35767
15 Attorney for Plaintiff
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