

NO. 43689-2-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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JOHN WORTHINGTON,  
Appellant

V.

WEST NET,  
Respondent

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**APPELLANT'S REPLY BRIEF**

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JOHN WORTHINGTON  
4500 SE 2<sup>ND</sup> PL  
RENTON, WA. 98059  
425-917-2235

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## I. INTRODUCTION

Worthington has consistently argued that WEST NET is subject to judicial review pursuant to RCW 42.56.550 ,as the functional equivalent of a public agency under the statutory definition of public agency outright or after applying the “Telford factors.” WEST NET has consistently taken the position that WEST NET is not an entity subject to suit under RCW 4.08, and was not the functional equivalent of a public agency under 42.56.010 (1). RP 6

Whether or not WEST NET is a municipal corporation pursuant to RCW 4.08 is moot because WEST NET meets the unambiguous statutory definition of a public agency pursuant to RCW 42.56.010 (1), due to the fact that WEST NET has a state and local board. In the alternative, WEST NET is the functional equivalent of a public agency that meets all the criteria listed in the “Telford factors.”

The trial court first ruled the “Telford factors” applied to WEST NET, (RP 11), then reversed its decision after being presented the WEST NET Interlocal agreement. Worthington reasserts his argument that the WEST NET Interlocal agreement, and the two acts of legislation authorizing it, does not create an opting out of the Washington State Public Records Act or the “Telford factors.”

The trial court rested its decision on untenable grounds and was manifestly unreasonable, because WEST NET satisfied the statutory definition of a public agency in the Washington State Public Records Act ( Heretofore, PRA) outright, or in the alternative, after meeting the criteria in the “Telford factors.”

## II. ARGUMENT

Washington State courts review agency actions taken or challenged under the PRA de novo. RCW 42.56.550 (3); Spokane Police Guild v. Wash. State Liquor Control Bd., 112 Wn.2d 30, 34–35, 769 P.2d 283 (1989). The PRA is regularly referred to as “a strongly worded mandate for broad disclosure of public records.” Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127, 580 P.2d 246 (1978); Yakima v. Yakima Herald–Republic, 170 Wn.2d 775, 790, 246 P.3d 768 (2011).

### A. WEST NET satisfies the statutory definition of “public agency” outright

WEST NET meets the statutory definition of a public agency in RCW 42.56.010 (1) outright, because it has a policy board, (CP 73-76) staffed by state and local employees, or under the catchall statutory definition of other local public agency as shown below:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

The trial court ruled as much in its initial decision as shown below:

“Now, while it's true that ordinary suits against county departments have to go against the county, the Public Records Act seems to me to

set out a different standard. The language there at 42.56.010 talks about any office, department, division, bureau, board, commission, or agency of a county, and in its definition includes "agencies."(RP.11)

Worthington made PRA requests to WEST NET, then WEST NET Policy Board member Dave White answered those requests, and even cited exemptions to those requests. WEST NET has mischaracterized Dave White's role as in the Kitsap County Sheriff's Office records department, when Dave White is actually a WEST NET Policy Board member. (CP 73-76) Not only did the WEST NET Policy Board respond via Mr. White, Worthington was never informed that his PRA requests were sent to the wrong place. RP 8.

RCW 42.56.010 (1) clearly contains the unambiguous language "board", and WEST NET has a policy board, so the PRA applies to WEST NET if the plain meaning of RCW 42.56.010 (1) is given effect. "In the absence of ambiguity, we will give effect to the plain meaning of the statutory language." (See In re Marriage of Schneider, 173 Wash.2d 353, 363, 268 P.3d 215 (2011).

The trial court's ruling to reverse its initial decision after properly determining the unambiguous language in RCW 42.56.010 (1) applied to WEST NET, was on untenable grounds and was manifestly unreasonable, because the trial court failed to give effect to the plain meaning in RCW 42.56.010 (1).



**B. Worthington properly identified WEST NET as the functional equivalent of a public agency subject to the PRA.**

Worthington argued it was not necessary to prove WEST NET was a municipality as defined in RCW 4.08, and that it was only necessary to prove WEST NET was the functional equivalent of a public agency as defined by the statute or after the “Telford factors” had been applied. RP 8

**a. Functional Equivalent Analysis**

In Telford v. Thurston County Bd. of Comm'rs, 95 Wn. App. 149, 162, 974 P.2d 886, review denied, 138 Wn.2d 1015, 989 P.2d 1143 (1999), the Washington State Court of Appeals for Division II held that the four-factor balancing test is more appropriate for evaluating an entity's status under the PRA.” The four factors used to evaluate an entity's status under the PRA are: (1) the entity's governmental function, (2) the entity's government funding, (3) government control over the entity, and (4) the entity's origin.”

Telford, 95 Wn. App. at 162-63

“Whether an entity has authority to make and implement decisions may be relevant to determining whether that entity's records should be available to the public, but it has no relation to the misappropriation of public funds.” To the extent that such a consideration is relevant, it can be considered under the “government function” factor, And the status of an entity's employees, insofar as it sheds any light on legislative intent, can be considered under the “government funding” factor.” (See Telford v. Thurston County Bd. of Comm'rs, 95 Wn. App.

149, 162, 974 P.2d 886, review denied, 138 Wn.2d 1015, 989 P.2d 1143 (1999).

### 1. Governmental Function

The function of WEST NET is to provide for and regulate the joint efforts of the City, County, State, and Federal law enforcement to combat violations of the Uniform Controlled Substances Act. WEST NET has a public duty to enforce both the Washington State Uniform Controlled Substances Act, and the United State Uniform Controlled Substances Act. The Washington State Patrol has been assigned to WEST NET to supervise the task force, and has additional responsibilities under RCW 43.43.655 (3), to coordinate federal, state, and local inter-jurisdictional narcotic investigations. These duties are not delegated in any form to the private sector, and WEST NET has the authority to make policies which are enforced state wide. As shown above, WEST NET meets the criteria in the government function test.

### 2. Government Funding

WEST NET is funded mostly by Washington State funds, in the form of a state matching portion of a federal Justice Assistance Grant (JAG). WEST NET is not a private enterprise supported by private funds operating at arms length, it is a public enterprise registered with Dunn and Bradstreet as a public entity that spends public funds and is subject to being audited by the Washington State Auditor's office.

To allow WEST NET to allocate a block of public funds to be spent

entirely at the discretion of the inter- governmental association, as if the funds were private, would violate the clear intent of the PRA, to allow the public to maintain control of the instruments they create. As shown above, WEST NET meets the criteria in the government funding test.

### 3. Government Control

There is no outside government control of WEST NET, and WEST NET'S financial records are subject to audit by the State Auditor. WEST NET is completely controlled by appointed State, county, City and federal officials, and there is no private sector involvement or membership. WEST NET is supervised by the Washington State Patrol and monitored by the Public Safety Unit in the Washington State Department of Commerce. As shown above, WEST NET is under complete government command and control and meets the criteria in the government control test.

### 4. Entities' Origin

WEST NET was formed by State, county, city and federal officials acting in their official capacities in the furtherance of State, county, city and federal business pursuant to two statutes, RCW 39.34, the "Interlocal Cooperation Act", and RCW 10.93, the "Mutual Aid Peace Officers Powers Act." Those Acts were used to create an inter-government association. That inter-governmental association was then recognized by the Legislature as coordinating agencies to carry out state and federal policy , and were sent state matching funds which were

deposited in a dedicated “WEST NET fund” registered with Dunn and Bradstreet to pay for those activities. As shown above, WEST NET meets the criteria in the entities origin test.

**b. Balancing of Factors**

WEST NET has no characteristics of private entities, and their essential functions and attributes are those of a public agency. They serve a public purpose, are publicly funded, are run by government officials, and were created by government officials. Analyzing these factors in the context of the intent of the PRA and the other relevant statutes reinforces the conclusion that the inter-governmental association WEST NET is public.

If it was determined after a judicial review that WEST NET owed penalties for failing to comply with the PRA, WEST NET could pay the costs under RCW 42.56.550 (4) from the “WEST NET fund”, without having to assign negligence on the part of any individual agencies. WEST NET can operate within the PRA without hampering its efforts to enforce drug laws by utilizing the numerous exemptions to the PRA and executive sessions. WEST NET should also be subject to the Open Public Meetings Act to allow the public to monitor how public funds are being spent.

**C. The trial court rested its decision on untenable grounds and was manifestly unreasonable.**

Abuse of discretion occurs where the trial court's decision rests on

untenable grounds or untenable reasons. Kleyer v. Harborview Med. Ctr., 76 Wash.App. 542, 545, 887 P.2d 468 (1995). The trial court's decision violated the statutory heart and soul of the PRA, by yielding the sovereignty of the people to an agency that served them, and by letting WEST NET participating agencies decide what is good for the people to know and what is not good for them to know.

The trial court has allowed WEST NET to claim a rogue existence outside of the control of the people, and allowed them to contort the two statutes that were used to create WEST NET to govern the PRA contrary to law. The trial courts decisions are untenable on statutory grounds and was manifestly unreasonable as shown below in RCW 42.56.030:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

**D. The federal courts have ruled inter-governmental associations are subject to judicial review**

The trial court's decision that the WEST NET Interlocal Agreement prevented a judicial review was inconsistent with the previous federal ruling in Hervey v. Estes. In *Hervey*, The U.S. Ninth Circuit Court of Appeals, cautioned that although the Tahoma Narcotics Enforcement Team (TNET) was not an entity

subject to suit in a 1883 civil rights action, its actions were not beyond judicial review as shown below:

*“We caution that TNET's actions are not beyond judicial review. If, as the record indicates, TNET is designed to function as an informal association of various governmental entities setting joint policies and practices for conducting drug investigations and raids,” \*\*\*\*\**


(Hervey v. Estes, 65 F.3d 784, 792 (9th Cir 1999)

As shown above the U.S. Ninth Circuit Court of Appeals considered an intergovernmental association to be subject to judicial review. Furthermore, In Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 401 n. 20, 99 S.Ct. 1171, 1177 n. 20, 59 L.Ed.2d 401 (1971) and Peters v. Delaware River Port Authority, 16 F.3d 1346, 1349-52 (3d Cir.), cert. denied, 513 U.S. 811, 115 S.Ct. 62, 130 L.Ed.2d 20 (1994), the Supreme Court and Third Circuit concluded that intergovernmental agencies were entities subject to suit. In both cases, however, the agencies were created or approved by acts of state legislatures. WEST NET has a similar pedigree to those agencies because of the “WEST NET fund”, because it was formed pursuant to two acts of legislation, and because the legislature tasked the WSP to supervise WEST NET, as well as coordinate, state and federal resources. Accordingly, WEST NET would be subject to suit based on the criteria considered above by the Supreme Court and Third Circuit. The Washington State Court of Appeals for Division II need not consider this however, since WEST NET meets both the statutory definition of a public agency outright or in the alternative the criteria in the “Telford factors.

### III. CONCLUSION

Based on the foregoing arguments, Worthington respectfully request that the Washington State Court of Appeals for Division II, reverse the trial court's orders and remand this case back to the trial court to properly apply the PRA to WEST NET.

**Respectfully** submitted on this 15<sup>TH</sup> day of March, 2013

BY 

John Worthington  
4500 SE 2<sup>ND</sup> PL.  
Renton WA.98059

## Declaration of Service


I declare that on the date and time indicated below, I caused to be served  
Via U.S. Mail to WEST NET, a copy of the documents and pleadings listed below  
upon the attorney of record for the defendants herein listed and indicated below.

### 1. APPELLANT'S REPLY BRIEF

IONE GEORGE  
WEST NET  
614 Division Street MS-35A  
Port Orchard, WA 98366

I declare under penalty of perjury under the laws of the United States that the  
foregoing is True and correct.

Executed on this 1<sup>ST</sup> day of March, 2013

BY   
John Worthington pro se /Appellant  
4500 SE 2<sup>ND</sup> PL.  
Renton WA.98059