Court of Appeals No. 43689-2-II

90037-0

WASHINGTON STATE SUPREME COURT

JOHN WORTHINGTON,
Appellant

V.

WEST NET,
Respondent

PETITION FOR REVIEW

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

ORIGINAL

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A. Identity of Petitioner

Appellant John Worthington respectfully asks this court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. Court of Appeals Decision

Worthington respectfully requests review of the Washington State Court of Appeals for Division II opinion dated January 28, 2014. Worthington also respectfully requests review of the Washington State Court of Appeals for Division II order denying his motion to reconsider entered on March 11,2014.

A copy of the January 28, 2014 decision is in the Appendix A, and a copy of the March 11, 2014 order denying petitioner's motion for reconsideration is in the Appendix B.

C. Issues Presented for Review

1. Whether the Washington State Court of Appeals for Division II erred in upholding the trial court's ruling that Respondents motion to dismiss should be granted because WestNET is not subject to the PRA or OPMA.

2. Whether the trial court and the Court of Appeals for Division II failed to give plain effect to the statutory meaning of RCW 42.56.010 (1).

3. Whether the trial court and the Court of Appeals for Division II failed to give plain effect to the statutory meaning of RCW 42.56.030.

4. Whether the Court of Appeals for Division I erred in dismissing Worthington's Motion to Reconsider by not applying the plain meaning of RCW 42.56.040 and RCW 42.56.580.

5. Whether the trial court erred in not converting the Respondents motion to dismiss into a motion for summary judgment once WestNET counsel brought up matters outside the original pleadings.

6. Whether the Court of Appeals for Division I violated the Washington State Constitution by creating a new law with a publish opinion.

D. Statement of the Case

This case arises out of appellant John Worthington's request for public records from the West Sound Narcotics Enforcement Team, (Hereafter "WestNET") pursuant to the Public Records Act, (Hereafter "PRA"), RCW Chapter 42.56. Worthington timely filed a petition for Judicial Review against WestNET, on December 8, 2011, alleging WestNET failed to provide privilege log for Worthington's February 5, 2010 PRA Request, and failed to provide Worthington with hundreds of PRA documents, while also redacting an entire document.

In Worthington's public records dispute with the Kitsap County Superior court, WestNET filed a motion to dismiss based on the claim WestNET was immune from suit. Worthington replied to the motion

to dismiss and argued WestNET met the criteria in RCW 42.56 outright and the "Telford factors." On April 23, 2012, the trial court agreed with Worthington and denied WestNET motion to dismiss. (CP 86)

WestNET filed a motion for reconsideration and claimed the WestNETinterlocal agreement had language that prevented WestNET from being subject to the PRA. On June 15, 2012, the trial court agreed that WestNET was immune from the PRA, and dismissed Worthington's case.

On June 22, 2012, Worthington filed a motion to reconsider, CP 96-99) which the court denied on June 27, 2012. (CP 100-102) Worthington filed a timely appeal of the trial courts orders to the Washington State Court of Appeals for Division II.

On January 28, 2014, the Washington State Court of Appeals for Division II ruled WestNET was not an "Agency" subject to Judicial Review under the PRA, nor was it an entity subject to suit. The ruling also requested Worthington to file requests with WestNET Affilliates. Worthington filed a timely Motion to Reconsider to that order entered on January 28, 2014, and that motion was denied on March 11, 2014.Worthington and Washington Association of

Prosecuting Attorneys filed Motions to Publish the January 28, 2014 unpublished opinion, and those motions were granted on March 11, 2014. Worthington files this timely petition for review on March 18,2014.

E. Argument Why Review Should Be Accepted

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court.

When construing statutes, the goal is to ascertain and effectuate legislative intent. Bylsma v. Burger King Corp., 176 Wash.2d 555, 558, 293 P.3d 1168 (2013); Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wash.2d 1, 9, 43 P.3d 4 (2002). In determining legislative intent, we begin with the language used to determine if the statute's meaning is plain from the words used and if so we give effect to this plain meaning as the expression of legislative intent. Manary v. Anderson, 176 Wash.2d 342, 350, 292 P.3d 96 (2013); Campbell & Gwinn, 146 Wash.2d at 9, 43 P.3d 4. The plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." Campbell & Gwinn, 146 Wash.2d at 11, 43 P.3d 4.

The Washington State Court of Appeals ruling in this case is

in conflict with multiple statutory interpretation decisions by the Washington State Supreme Court.

If the plain language of a statute is subject to only one interpretation, then our inquiry ends. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) (citing State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003)).

A. The decision is in conflict with the plain meaning of RCW 42.56.010(1)

The plain meaning of RCW 42.56.010 (1) has only one interpretation that shows the legislature wanted "all" state, and "all" local agencies subject to the PRA and OPMA. The statute also includes the language "every" or "any" in describing entities subject to the PRA. As shown below:

> (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.

What the trial court and Washington State Court of Appeals for Division II rulings did, was create an exception to this statute, without any clear language to support that exception. Their interpretation contradicts the above-quoted plain language.

The two previous courts in this case ruled that WestNET, even though they themselves and the courts determined they were in fact governmental,[1]were not subject to the plain language in this statute.

Both courts erred when they failed to give effect to the plain meaning of RCW 42.56.010 (1).These rulings are in conflict with several Washington State Supreme Court rulings on giving effect to the plain meaning of a statute.

The Trial court and Washington State Court of Appeals decisions also rendered language in RCW 42.56.010 (1) meaningless. Now there is an unlisted exception to the statute that now allows an agency, office or board to be excluded from the definitions which were intended to include all, every or any agency.

Generally, the Washington State Supreme Court interprets statutes so that all language is given effect with no portion rendered meaningless or superfluous.(See City Of Seattle v. State,136 Wn.2d 693 (1998).) "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless

[1] "Here, however, the question to be addressed is not whether the function of WestNET is governmental (which it clearly is). Respondent's reply brief PAGE 10. Respondents also admitted WestNET was "public" and "governmental". RP 21. (The question that should be addressed is whether WestNET can be a secret governmental function.

or superfluous." Whatcom County v. City of Bellingham, 128 Wash.2d 537, 546, 909 P.2d 1303 (1996). The rulings in this case are in conflict with several Washington State Supreme Court rulings on rendering portions of statutes meaningless or superfluous. A "court cannot read into a statute that which it may believe the legislature has omitted, be it an intentional or inadvertent omission." Auto. Drivers & Demonstrators Union Local 882 v. Dep't of Ret. Sys., 92 Wash. 2d 415, 421, 598 P.2d 379, 382-83 (1979) (citations omitted). See also Vita Food Prods., Inc. v. State, 91 Wash. 2d 132, 587 P.2d 535 (1978) (court may not add words to statute even if it believes the legislature intended something else but failed to express it); Duke v. Boyd, 133 Wash. 2d 80, 942 P.2d 351 (1997). Because "'plain language does not require construction,'" we need not consider outside sources if a statute is unambiguous. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003) (quoting State v. Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994)).

B. The decision is in conflict with the plain meaning of RCW 42.56.030

The trial court and the Washington State court of appeals also failed to give effect to the plain meaning of RCW 42.56.030, when they allowed RCW 10.93, and RCW 39.34, to govern RCW 42.56,

despite the clear language of RCW 42.56.030.[2] Plain meaning standard in Washington State.[3] See, e.g., Davis v. Dep't of Licensing, 137 Wash. 2d 957, 964, 977 P.2d 554, 556 (1999). See also State v. Enstone, 137 Wash. 2d 675, 680, 974 P.2d 828, 830 (1999); State v.Chapman, 140 Wash. 2d 436, 998 P.2d 282 (2000); Hendrickson v. State, 140 Wash. 2d 686, 2 P.3d 473 (2000).

It should be presumed the legislature had full knowledge the language in RCW 42.56.030, RCW 10.93, and RCW 39.34. "the legislature is presumed to enact laws with full knowledge of existing laws." Thurston County v. Gorton, 85 Wn.2d 133, 138, 530 P.2d 309 (1975).

Both courts ultimately erred when allowing two statutes and an interlocal agreement to govern the PRA. Their rulings conflicted with the previous Washington State Supreme Court statutory interpretation rulings that are argued above.

C. The decision is in conflict with plain meaning of RCW 42.56.040,RCW42.56.070 and RCW 42.56.580

The trial court and the Washington State court of appeals also

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[2] "In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern."

[3] Philip A. Talmadge, A New Approach to Statutory Interpretation in Washington.

failed to give effect to the plain meaning of RCW 42.56.040, RCW 42.56.070, and RCW 42.56.580, and also conflicted with the previous statutory interpretation decisions argued above.

WestNET Affiliate Jurisdictions were required to appoint a public records officer, and publish its rules and procedures for making public records requests. Since they did not follow the law and publish or prominently display those procedures, Worthington was not required to resort to filing records requests or PRA lawsuits with Affiliate Jurisdictions.

The Respondents argued that this issue was Dicta and not an issue raised at the trial court or the Court of Appeals. However, the issue was raised at the trial court by the court itself,[4] by Worthington,[5] and the Respondents themselves.[6] In the trail court, the Respondents were specific in their arguments that Worthington should have filed his lawsuit against Kitsap County. Later on appeal the Respondents expanded their argument to include other WestNET Affilliate Jurisdictions.[7]

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[4] RP 26
[5] RP 23
[6] RP 24
[7] "Plaintiff is not without legal recourse for any alleged improper action taken by any member agency which retains accountability for its actions per the Interlocal Agreement." (PAGE 10 Respondent's reply brief.)

As shown above, the issue of filing the PRA lawsuit against "Affilliate Jurisdictions" arose in the trial court and was briefed in the Washington State Court of Appeals. Worthington was entitled to argue that the Respondents failed to follow the PRA and appoint a public records officer, and publish its public records procedures, and the matter should have been addressed in Worthington's Motion to Reconsider. "Appellate courts stand in the shoes of the trial court when reviewing declarations, memoranda of law, and other documentary evidence." Ameriquest Mortg.Co. v. Office of Attorney Gen. of Wash. ("Ameriquest *11'),* 177 Wn.2d 467,478,300 P.3d 799 (2013) Clarke v. Tri-Cities Animal Care & Control Shelter, 144 Wn. App. 185 (2008).

In deciding whether Worthington was adversely affected by the failure of WestNET Affiliate Jurisdictions to publish their public records officer and public records procedures, one only has to consider the fact that now Worthington's public records requests are effectively time barred, and his remedies are now foreclosed.[8]

Worthington was also entitled to cite Resident Action Council

[8] The records requested are from 2007, and are not required to be retained for 7 years.

(RAC) v. Seattle Housing Authority, 177 Wn.2d 417 (2013), and reference the finding that RCW 42.56.040 (1) and RCW 42.56.040 (2) were requirements for the PRA, and the ruling that requestors were not required to resort to procedures not published. Since this issue was before both the trial court and the Washington State Court of Appeals this case should have been treated as stare decisis, and adhered to. The Washington State Court of Appeals erred when they failed to grant Worthington's motion to reconsider.

D. The Telford factors should have been applied if WestNET was not clearly public

This case is not entirely a case of first impression. In Clarke v. Tri-Cities Animal Care & Control Shelter, 144 Wn. App. 185 (2008), the requestor was not required to file the PRA complaint against Affilliate Jurisdictions." In that case the instrument of the "Affilliate Jurisdictions" was held to the standards of the PRA, and the interlocal agreement between multiple jurisdictions did not prevent the application of the PRA to the "governmental" entity. Thus, (in the case of agencies not clearly public due to their status as coordinating agencies, See WSAC) "we engage in a Telford analysis to determine whether TCAC is an "other local agency" subject to the PDA. "Under Telford, we conclude that TCAC is the functional equivalent

of a public agency." Clarke v. Tri-Cities Animal Care & Control Shelter, 144Wn. App. 185 (2008).both the trial court and the Washington State Court of Appeals rulings conflicted With Washington State Supreme Court rulings on this issue

E. **The ruling will lead to an absurd result.**

The rulings in this case will lead to an absurd result were affiliate jurisdictions can avoid the PRA, its statutory requirements and the intent of the legislature simply by writing language that the "governmental" agency they are creating is immune from suit. Courts avoid interpreting a statute that leads to an absurd result. (See SEIU Healthcare 775NW v. Gregoire, 229 P.3d 774 (2010).The Washington State Court of Appeals and the trial court's decision leads to an absurd result and is in conflict with previous rulings of the Washington State Supreme Court to avoid interpreting a statute in a way that leads to an absurd result. Both the trial court and the Washington State Court of Appeals rulings conflicted with Washington State Supreme Court rulings on this issue of interpreting statutes in a way that leads to absurd results.

In this case we have an agreement that intended to create an

agency.[9] The respondents themselves agreed their "agency" was "governmental", and further defined as a "drug enforcement agency."[10] Yet this "governmental agency is somehow immune from meeting the criteria of the PRA and OPMA outright, or the Telford factors.

The Respondents claim that member agencies cannot bind each other for actions of other participating members, yet WestNET manages to decide on its financial matters by having the WestNET Advisory Board settle those issues and bind the other participating members just fine. Worthington argued that since the WestNET Affiliate Jurisdictions failed to appoint a public records officer or publish its public records procedures, the Advisory Board is the representative body for WestNET for PRA and OPMA purposes. Indeed the WestNET Advisory Board is acknowledged as the representative body for WestNET.[11]

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[9] Section 1 definitions
"Agency" and "agencies" mean the member agencies of the Drug Task Force, those being the Sheriff department of Kitsap, Pierce and Mason Counties and the Cities of Bainbridge Island, Bremerton, Part Orchard, Poulsbo, Shelton and the Washington State Patrol and Naval Criminal Investigative Service.
[10] "Drug Task Force" means a drug enforcement agency created by this agreement.
[11] Advisory Board" means the representative body for the drug task force and shall consist of the Chiefs of Police of the Cities of Bainbridge Island, Bremerton, Port Orchard, Poulsbo and Shelton, the Sheriffs and Prosecutors of the Counties of Kitsap, Pierce and Mason, and the Chief of the Washington State Patrol and Supervisor in charge of the Naval Criminal Investigative Service

The respondents want the Affiliate Jurisdictions to be the controlling agencies under the PRA, yet the Advisory Board appoints a task force Coordinator to supervise daily operations[12], which would include daily public records operations. What the Respondents have done is describe a command a control of WestNET by the Affiliate Jurisdictions, when the Agreement puts an advisory board in command and control of a task force coordinator.[13]Clearly the agreement spells out a command and control from within WestNET for all policy guidance.[14], and puts the advisory board in command of all WestNET operations.

Either the WestNET Affiliate Jurisdictions omitted its public records officer and public records procedures because they thought the advisory board was the representative body or they were trying to avoid the PRA and the OPMA so they could "operate confidentially and without public input," so they could create a secret police.

If the "representative body" meant the advisory board represented

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[12] The Advisory Board shall appoint a Task Force Coordinator to supervise the daily operations of the Task Force according to this Agreement and the Operating Rules of the Task Force.
[13] CP 000130
[14] "The Advisory Board shall meet at least quarterly, provide policy and procedural guidance to the Task Force coordinator and supervisors"

WestNET in every situation except PRA and OPMA related situations, they left that language out and the courts would be assuming such language existed. As it has been pointed out in Worthington's briefs, the WestNET Advisory Board member Dave White received the request and responded to the request. CP 33.

The Respondents were effectively able to use a section of the Interlocal Agreement dealing with liabilities on employee negligence to include the conduct of handling public records and WestNET negligence involving agency decisions. Both courts accepted this stretch to include the PRA and OPMA and they created an absurd result when doing so.

Both courts also created a scenario where PRA requestors can extract fees from multiple jurisdictions for the same PRA violation. Imagine a PRA case with substantial fees being assessed against multiple jurisdictions for the same violation. For the sake of limiting astronomical fees from being assessed, the Washington State Supreme Court should fix this absurd result.

(2) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

A. Maintaining control of the instruments we create

The public should be informed about its "governmental" entities

and the conduct in which they propose to engage in. In this case you have a law enforcement agency that has been created to "operate confidentially and without public input." Instead of following the state and federal sunshine laws, the WestNET Interlocal Agreement declared it would violate all sunshine laws so it could achieve its purpose. This language is tantamount to admitting to illegal behavior and should be void ab initio and deemed unenforceable by both the trial court, the Washington State Court of Appeals and now by the Washington State Supreme Court.

This published opinion now allows the creation of a "governmental" entity, that can in effect "operate confidentially and without public input[15]." In terms of the language in both the PRA and OPMA this result is the epitome of absurd interpretation of a statute.

When a "governmental" entity wishes to operate confidentially and without public input, it is declaring that violations of sunshine laws will take place under that agreement. Since section 2 of the WestNET Interlocal agreement[16] intended to break state laws, it

[15] CP000127

[16] In order to accomplish this purpose the task force and advisory board does and must operate confidentially and without public input.

should be considered illegal , void ab initio and unenforceable for public policy concerns. (See United States v. Bovard v. American Horse Enterprises (1998) (the court refused to enforce the contract for public policy concerns.) Since the rulings themselves rely on an illegal contract or agreement they should also be considered void ab initio and unenforceable.[17]

The Washington State Supreme Court should not allow a "governmental" entity to openly declare in an agreement that they intend to operate "confidentially and without public input." An Agreement like that sets out to violate sunshine laws right out of the gate, and that is exactly what the "governmental" WestNET policy Board did. They refused to acknowledge the language in both the PRA and the OPMA. Still to this day nearly 15 years after the formation of the current WestNET entity, they have refused to appoint a public records officer and publish their public records procedures, nor have they bothered to schedule one single open public meeting. This flies in the face of both the PRA and OPMA[18], and relinquishes

[17] *Black's Law Dictionary* defines "void" as: "An agreement is said to be 'void ab initio' if it has at no time had any legal validity." The dictionary further goes on to define void *ab initio* a **Void ab initio.** A contract is null from the beginning if it seriously offends law or public policy

control of the very instruments we created to the instruments themselves, contrary to the stated language in the sunshine statutes.

B. The public would not want a secret police

The people in enacting the original PDA, the legislature in amending it, and the courts in interpreting it, have been keenly aware that agencies' self-interest in non-disclosure would lead to attempts to circumvent the PRA. See PAWS II, 125 Wn.2dat 259; Hearst Corp. v. Hoppe, 90 Wn.2d 123, 131,580 P.2d 246 (1978). When you declare that your intent is to operate confidentially and without public input, you are most definitely trying to avoid the PRA and OPMA.

The public would most certainly not tolerate this situation and allow the creation of a secret police that could determine for themselves what laws it wishes to follow. It is no wonder that these multi-jurisdictional drug task forces have been able to operate lawlessly and in secret for so long. Either nobody knows what WestNET is doing, or whoever is supposed to be watching is turning the other cheek[19]. After years of selling unregistered guns at trade

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[18] While it may be necessary for them to operate secretly when they are in the act of selling unregistered confiscated guns or confiscated grow equipment, they could hide that conduct in the executive session portion of their open public meetings)

[19] Washington State Department of Commerce (formerly CTED)

shows[20] and seizing medical marijuana for the DEA without property seizure receipts or without due process[21], or setting up drug trade organizations with informants[22], it is time for the public to be informed of what Washington State Multi-Jurisdictional Drug Task forces are up to.

C. **Interlocal Agreement was not part of original pleadings**

Furthermore, the trial court should have been required to convert the motion to dismiss to a motion for summary judgment pursuant to rule 12 (c)[23] once the WestNET counsel presented the WestNET Interlocal Agreement, which was not part of the original pleadings. This case should have been remanded on that issue alone. Emphasis on the word "shall"[24]The Respondents took full advantage of bringing the WestNET Interlocal Agreement in late after the original pleadings were ready for judgment and after judgment had been rendered. This

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[20] http://www.seattleweekly.com/2013-03-20/news/roy-alloway-s-2-000-gun-salute

[21] Worthington v. Washington state Attorney General et al No. 68979 -7-I, No 895074

[22] http://www.rawstory.com/rs/2014/03/07/ex-seattle-police-officer-allegedly-recruited-strippers-in-scheme-to-become-drug-kingpin/

[23] RP 15

[24] If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

denied an opportunity for the public to get stringent scrutiny and a thorough adversarial testing which would have taken place under a proper summary judgment briefing and hearing process.

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved

The Washington State Court of Appeals essentially created a law When they added words and removed words from RCW 42.56. This Published opinion violates Article II Section I of the Washington State Constitution, legislative powers where vested. The ruling also violates Article II Section 18, Style of laws. The PRA and OPMA had been written to govern 'all" other acts. Now RCW 10.93 and RCW 39.34 will be allowed to govern 42.56, thanks to this published opinion.

F. Conclusion

Worthington respectfully requests review be granted because the petition meets at least 3 of the criteria in outlined in RAP 13.4 (b).

Respectfully submitted this 18TH day of March 2014.

BY John Worthington

John Worthington Pro Se /Petitioner
4500 SE 2ND PL.
Renton WA.98059

Declaration of Service

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

1. PETITION FOR REVIEW

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

PAM LOGINSKY
WAPA
206 10TH AVENUE SE
Olympia, WA. 98501

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

Executed on this 18TH day of March, 2014.

BY John Worthington

John Worthington Pro Se /Petitioner
4500 SE 2ND PL.
Renton WA.98059

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOHN WORTHINGTON, Appellant, v. WESTNET, Respondent.	No. 43689-2-II UNPUBLISHED OPINION

JOHANSON, A.C.J. — John Worthington appeals from the superior court's CR 12(b)(6) order dismissing his complaint against WestNET. Worthington claims that WestNET is a public agency or the "functional equivalent" of a public agency and that it is bound by the Public Records Act (PRA), chapter 42.56 RCW. We hold that WestNET is not a separate legal entity subject to suit. Thus, we affirm.

FACTS

Worthington sued WestNET—the West Sound Narcotics Enforcement Team, a regional task force created to combat drug-related crime in western Washington—complaining of a PRA violation. WestNET moved for dismissal under CR 12(b)(6), asserting that Worthington had failed to state a claim upon which relief could be granted because the complaint (1) failed to identify WestNET in any capacity and (2) under no set of facts could Worthington identify WestNET as a separate legal entity subject to suit. On reconsideration after initially denying

WestNET's motion, the superior court considered WestNET's "Interlocal Drug Task Force Agreement" (Interlocal Agreement), which outlined the framework by which several public entities had jointly endeavored to enforce controlled substance laws.[1] The superior court found that WestNET was not an entity that exists for PRA purposes and, thus, Worthington had failed to state a claim against an existing legal entity, a flaw fatal to his claim. Accordingly, the superior court dismissed Worthington's suit.

ANALYSIS

Worthington argues that WestNET is an agency or the "functional equivalent" of an agency, subject to the PRA, and that WestNET's Interlocal Agreement does not shield it from the PRA. Worthington, however, has not demonstrated that WestNET is an independent legal entity with the capacity to be sued, so we hold that WestNET is not an agency or the functional equivalent of one.[2]

We review de novo a superior court's order on a motion to dismiss for failure to state a claim upon which relief can be granted. *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994), *cert. denied*, 515 U.S. 1169 (1995). A court should dismiss a claim under CR 12(b)(6) if it appears beyond a reasonable doubt that no facts exist that would justify recovery. *Cutler*, 124 Wn.2d at 755.

In 2009, Kitsap, Pierce, and Mason Counties, along with the cities of Bainbridge Island, Bremerton, Port Orchard, Poulsbo, and Shelton, and the Washington State Patrol and Naval

[1] Interlocal agreements are governed by chapter 39.34 RCW, the Interlocal Cooperation Act.

[2] The Interlocal Agreement provides that the Kitsap County Prosecutor's Office will represent WestNET's affiliated agencies in real and personal property forfeitures and drug nuisance abatement proceedings initiated by WestNET-affiliated personnel. The Kitsap County Prosecutor's Office is handling this case as well.

Criminal Investigative Service entered into an Interlocal Agreement, a "cooperative agreement[ ] for their mutual advantage" in fighting drug-related crime. Clerk's Papers (CP) at 126. The parties signed the Interlocal Agreement pursuant to RCW 39.34.030(2), which provides that "two or more public agencies may enter into agreements with one another for joint or cooperative action." This statute also provides that an interlocal agreement need not establish a separate legal entity to conduct the joint or cooperative undertaking. *See* RCW 39.34.030(4).

Under the Interlocal Agreement, the member jurisdictions established WestNET "to provide for and regulate the joint efforts of the City, County, State and Federal law enforcement," and in forming, "[t]he parties [to the Interlocal Agreement] do not intend to create . . . a separate legal entity subject to suit." CP at 127. The Interlocal Agreement provided that the WestNET advisory policy board would be a representative body with members from the program's various participating jurisdictions. It also provided that each jurisdiction must pay its own costs associated with its officers and equipment involved in WestNET, and each participating member jurisdiction constitutes an independent contractor that lacks authority to bind other parties to the Interlocal Agreement or other parties' employees. Additionally, any personnel assigned to WestNET "shall be considered employees of the contributing agency, which shall be solely and exclusively responsible for that employee."[3] CP at 128. Finally, the Interlocal Agreement provides that WestNET personnel will conform to their individual

[3] The Interlocal Agreement cites RCW 10.93.040, which provides that any liability or claim arising through the exercise of an officer acting within her or his duty becomes the commissioning agency's responsibility unless the officer acts under another agency's direction and control or unless the liability is otherwise allocated under a written agreement between the primary commissioning agency and another agency.

agency's rules and regulations, and any disciplinary actions will be the individual agency's responsibility.

Based on these Interlocal Agreement provisions, WestNET is not its own legal entity subject to suit.[4] If Worthington seeks records of WestNET activities, he must file PRA requests with WestNET's affiliate jurisdictions.

Worthington's only argument is that because WestNET has a policy board, WestNET itself is a "board" and thus an agency under the definition set forth in RCW 42.56.010(1)[5] and subject to the PRA. Indeed, WestNET does have a "WestNET Policy Board" that meets regularly to discuss WestNET business. But WestNET's policy board does not necessarily qualify WestNET as a "board" or agency under the PRA because, as it is configured, WestNET does not appear to be an independent legal entity at all.

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[4] Worthington cites federal cases for the proposition that intergovernmental organizations are subject to judicial review. For example, he quotes dicta from *Hervey v. Estes*, 65 F.3d 784, 792 (9th Cir. 1995), but mischaracterizes the court's opinion by failing to include the full passage:

> 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, *its component members may be sued and may be subject to joint and several liability for any constitutional violations.*

(Emphasis added.) *Hervey* suggests that a plaintiff claiming constitutional violations could sue "component members" of the intergovernmental group, not the group as an independent entity. Worthington's other cases similarly involve distinguishable scenarios. *See Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 401, 99 S. Ct. 1171, 59 L. Ed. 2d 401 (1979) (involving interstate compact creating "an agency comparable to a county or municipality"); *Peters v. Delaware River Port Auth. of Pa. & N.J.*, 16 F.3d 1346, 1351-52 (3rd Cir.) (involving intergovernmental group that maintained independent power to enter into contracts, set and collect tolls, and hold property), *cert. denied*, 513 U.S. 811 (1994).

[5] "Agency" includes all state and 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.

Worthington contends, in the alternative, that we should perform a *Telford* balancing test to determine whether WestNET was the "functional equivalent" of a public agency subject to the PRA. *See Telford v. Thurston County Bd. Of Comm'rs*, 95 Wn. App. 149, 161-66, 974 P.2d 886, *review denied*, 138 Wn.2d 1015 (1999). But his reliance on *Telford* is misplaced because *Telford* and its progeny analyze whether a *private* entity is the "functional equivalent" of a public agency. Here, no one suggests that WestNET is a private entity.

We hold that WestNET is not a separate legal entity subject to suit. Accordingly, the superior court properly dismissed Worthington's complaint for failure to state a claim. Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, A.C.J.
JOHANSON, A.C.J.

We concur:

Bjorgen, J.
BJORGEN, J.

Maxa, J.
MAXA, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOHN WORTHINGTON,

Appellant,

v.

WESTNET,

Respondent.

No. 43689-2-II

ORDER DENYING MOTION FOR RECONSIDERATION AND GRANTING MOTIONS TO PUBLISH

This matter having come before this court on the appellant's motion for reconsideration and appellant's and third party Washington Association of Prosecuting Attorneys' motions to publish the unpublished opinion filed January 28, 2014; and the court having considered the motions, the files, and the record herein, it is hereby

ORDERED, that the motion for reconsideration is denied; and it is further

ORDERED, that the motions to publish are granted.

DATED this 11TH day of MARCH, 2014.

Johanson A.C.J.
JOHANSON, A.C.J.

We concur:

Bjorgen, J.
BJORGEN, J.

Maxa, J.
MAXA, J.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOHN WORTHINGTON, Appellant, v. WESTNET, Respondent.	No. 43689-2-II UNPUBLISHED OPINION

JOHANSON, A.C.J. — John Worthington appeals from the superior court's CR 12(b)(6) order dismissing his complaint against WestNET. Worthington claims that WestNET is a public agency or the "functional equivalent" of a public agency and that it is bound by the Public Records Act (PRA), chapter 42.56 RCW. We hold that WestNET is not a separate legal entity subject to suit. Thus, we affirm.

FACTS

Worthington sued WestNET—the West Sound Narcotics Enforcement Team, a regional task force created to combat drug-related crime in western Washington—complaining of a PRA violation. WestNET moved for dismissal under CR 12(b)(6), asserting that Worthington had failed to state a claim upon which relief could be granted because the complaint (1) failed to identify WestNET in any capacity and (2) under no set of facts could Worthington identify WestNET as a separate legal entity subject to suit. On reconsideration after initially denying

WestNET's motion, the superior court considered WestNET's "Interlocal Drug Task Force Agreement" (Interlocal Agreement), which outlined the framework by which several public entities had jointly endeavored to enforce controlled substance laws.[1] The superior court found that WestNET was not an entity that exists for PRA purposes and, thus, Worthington had failed to state a claim against an existing legal entity, a flaw fatal to his claim. Accordingly, the superior court dismissed Worthington's suit.

ANALYSIS

Worthington argues that WestNET is an agency or the "functional equivalent" of an agency, subject to the PRA, and that WestNET's Interlocal Agreement does not shield it from the PRA. Worthington, however, has not demonstrated that WestNET is an independent legal entity with the capacity to be sued, so we hold that WestNET is not an agency or the functional equivalent of one.[2]

We review de novo a superior court's order on a motion to dismiss for failure to state a claim upon which relief can be granted. *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994), *cert. denied*, 515 U.S. 1169 (1995). A court should dismiss a claim under CR 12(b)(6) if it appears beyond a reasonable doubt that no facts exist that would justify recovery. *Cutler*, 124 Wn.2d at 755.

In 2009, Kitsap, Pierce, and Mason Counties, along with the cities of Bainbridge Island, Bremerton, Port Orchard, Poulsbo, and Shelton, and the Washington State Patrol and Naval

[1] Interlocal agreements are governed by chapter 39.34 RCW, the Interlocal Cooperation Act.

[2] The Interlocal Agreement provides that the Kitsap County Prosecutor's Office will represent WestNET's affiliated agencies in real and personal property forfeitures and drug nuisance abatement proceedings initiated by WestNET-affiliated personnel. The Kitsap County Prosecutor's Office is handling this case as well.

Criminal Investigative Service entered into an Interlocal Agreement, a "cooperative agreement[ ] for their mutual advantage" in fighting drug-related crime. Clerk's Papers (CP) at 126. The parties signed the Interlocal Agreement pursuant to RCW 39.34.030(2), which provides that "two or more public agencies may enter into agreements with one another for joint or cooperative action." This statute also provides that an interlocal agreement need not establish a separate legal entity to conduct the joint or cooperative undertaking. *See* RCW 39.34.030(4).

Under the Interlocal Agreement, the member jurisdictions established WestNET "to provide for and regulate the joint efforts of the City, County, State and Federal law enforcement," and in forming, "[t]he parties [to the Interlocal Agreement] do not intend to create . . . a separate legal entity subject to suit." CP at 127. The Interlocal Agreement provided that the WestNET advisory policy board would be a representative body with members from the program's various participating jurisdictions. It also provided that each jurisdiction must pay its own costs associated with its officers and equipment involved in WestNET, and each participating member jurisdiction constitutes an independent contractor that lacks authority to bind other parties to the Interlocal Agreement or other parties' employees. Additionally, any personnel assigned to WestNET "shall be considered employees of the contributing agency, which shall be solely and exclusively responsible for that employee."[3] CP at 128. Finally, the Interlocal Agreement provides that WestNET personnel will conform to their individual

[3] The Interlocal Agreement cites RCW 10.93.040, which provides that any liability or claim arising through the exercise of an officer acting within her or his duty becomes the commissioning agency's responsibility unless the officer acts under another agency's direction and control or unless the liability is otherwise allocated under a written agreement between the primary commissioning agency and another agency.

agency's rules and regulations, and any disciplinary actions will be the individual agency's responsibility.

Based on these Interlocal Agreement provisions, WestNET is not its own legal entity subject to suit.[4] If Worthington seeks records of WestNET activities, he must file PRA requests with WestNET's affiliate jurisdictions.

Worthington's only argument is that because WestNET has a policy board, WestNET itself is a "board" and thus an agency under the definition set forth in RCW 42.56.010(1)[5] and subject to the PRA. Indeed, WestNET does have a "WestNET Policy Board" that meets regularly to discuss WestNET business. But WestNET's policy board does not necessarily qualify WestNET as a "board" or agency under the PRA because, as it is configured, WestNET does not appear to be an independent legal entity at all.

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[4] Worthington cites federal cases for the proposition that intergovernmental organizations are subject to judicial review. For example, he quotes dicta from *Hervey v. Estes*, 65 F.3d 784, 792 (9th Cir. 1995), but mischaracterizes the court's opinion by failing to include the full passage:

> 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, *its component members may be sued and may be subject to joint and several liability for any constitutional violations*.

(Emphasis added.) *Hervey* suggests that a plaintiff claiming constitutional violations could sue "component members" of the intergovernmental group, not the group as an independent entity. Worthington's other cases similarly involve distinguishable scenarios. *See Lake Country Estates, Inc. v. Tahoe Reg'l Planning Agency*, 440 U.S. 391, 401, 99 S. Ct. 1171, 59 L. Ed. 2d 401 (1979) (involving interstate compact creating "an agency comparable to a county or municipality"); *Peters v. Delaware River Port Auth. of Pa. & N.J.*, 16 F.3d 1346, 1351-52 (3rd Cir.) (involving intergovernmental group that maintained independent power to enter into contracts, set and collect tolls, and hold property), *cert. denied*, 513 U.S. 811 (1994).

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We hold that WestNET is not a separate legal entity subject to suit. Accordingly, the superior court properly dismissed Worthington's complaint for failure to state a claim. Affirmed.

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Johanson, A.C.J.

JOHANSON, A.C.J.

We concur:

Bjorgen, J.

BJORGEN, J.

Maxa, J.

MAXA, J.

OFFICE RECEPTIONIST, CLERK

From: john worthington <worthingtonjw2u@hotmail.com>
Sent: Tuesday, March 18, 2014 10:42 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: PETITION FOR REVIEW WORTHINGTON V WESTNET
Attachments: PETITION FOR REVIEW WORTHINGTON V. WESTNET.pdf

Please file this Petition for Review with the court.
Thank you

John Worthington