

NO. 46081-5

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

TIMOTHY WHITE,

Appellant,

v.

CLARK COUNTY,

Respondent.

**AMICUS CURIAE BRIEF OF
THE SECRETARY OF STATE**

ROBERT W. FERGUSON
Attorney General

REBECCA R. GLASGOW
Deputy Solicitor General
WSBA #32886
PO Box 40100
Olympia, WA 98504
360-664-3027
RebecaG@atg.wa.gov
Office ID # 91087

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I. INTRODUCTION

The legislature has imposed strict procedures governing the processing, counting, and secure storage of voted ballots, including electronic or digital images of ballots. Washington's election statutes balance the need for precise and unhampered ballot processing that minimizes risk of accidental error, loss, or violation of ballot secrecy with the desire for robust public oversight. While the public can observe ballot processing and tabulation from start to finish, Washington's comprehensive election statutes, as well as the absolute ballot secrecy requirement in the Washington Constitution, prohibit copying and release of voted ballots or their digital images. This is especially true where, as here, the request is for production of ballot images before tabulation.¹

II. INTEREST AND IDENTITY OF AMICUS

As Washington's chief elections officer, the Secretary of State is particularly interested in maintaining the integrity of Washington elections by promoting correct application of Washington's strict election protocols and its absolute ballot secrecy requirement, while maintaining public oversight. The Secretary of State urges this Court to affirm.

¹ Mr. White submitted his request to several Washington counties, and it appears no county provided the records he requested. CP at 42-47; RP at 32. Mr. White also filed a public records claim against Skagit and Island Counties in Snohomish County Superior Court. The court upheld the counties' denial and Mr. White has appealed to Division One. *White v. Skagit & Island Counties*, No. 720287-I.

III. ARGUMENT

A. **Mr. White Cannot Now Rewrite His Request, and Clark County Presented Uncontroverted Evidence That Fulfilling the Request as Made Would Have Drastically Delayed Tabulation**

This Court should reject Mr. White's attempts to rewrite his public records request. *See* Appellant's Corrected Opening Br. at 40. He requested electronic or digital copies of voted ballots to be made and produced before tabulation. Mr. White submitted his public records request on the day after the 2013 general election, after ballot tabulation had already begun. *See* CP at 42. The subject line of Mr. White's email was "Public Records Act request for today's ballot image files before tabulation this afternoon." CP at 42.

He noted that his request "includes records created today which must be copied before tabulation this afternoon or shortly." CP at 43. Mr. White repeated that he wanted to obtain electronic or digital copies of voted ballots before the ballots were tabulated. CP at 45 (intending to "obtain a . . . digital ballot image file . . . *before the ballot is tabulated*;" "My intent is to request copies of the image files of ballots . . . , *before their votes are tabulated*."). While Mr. White said he was trying to avoid disrupting the election, he plainly requested "[p]rompt disclosure within the PRA's five-day period" because "the window to research and document a challenge is but two weeks. . . ." CP at 46.

Significantly, Mr. White also limited his request: “I am not requesting ballot image files of ballots already tabulated.” CP at 45. “I request copies of records in the same electronic or digital file formats in which they were created or received,” but also “in a format viewable on an up-to-date home computer.” CP at 46. Despite recent claims that paper copies of ballots are also responsive, Mr. White’s request expressly stated that he “does not seek to inspect or copy the paper ballots themselves,” nor “to obtain hard copies of ballot images.” CP at 46.

Mr. White assumed that he could simply obtain a copy of the electronic file that is transferred from the Ballot Now program to the tabulation computer. *See* CP at 46. But that data file contains no ballot images, only ones and zeros, and that file is not readable with software typically found on a home computer. CP at 119. It was undisputed that scanned images of ballots are “converted to a proprietary format that only Ballot Now can read and process. Upon conversion [for tabulation], the images cease to exist as separate image files that can be exported or copied.” CP at 119.

In sum, the superior court properly understood Mr. White’s request to be for records that the County would have to “somehow convert or create” during tabulation. *See* CP at 122 (noting “potentially massively disruptive consequences of adopting plaintiff’s position and interpretation

of the PRA” “during the crucible of an election tabulation and certification deadline requirements”). CP at 122. While Mr. White may now wish that he had made a different request, he cannot rewrite his request on appeal. The adequacy and correctness of the County’s response must be measured with the actual request in mind.

It is also well-settled that public records responses must be evaluated in relation to when they are made, and public agencies need not create records in response to a public records request or treat public records requests as ongoing. *Fisher Broad. v. City of Seattle*, 180 Wn.2d 515, 522, 326 P.3d 688 (2014) (The Public Records Act does not require agencies to create a record that is nonexistent.); *Smith v. Okanogan County*, 100 Wn. App. 7, 13-14, 994 P.2d 857 (2000) (no duty to provide records that did not exist at the time of the request); CP at 45(acknowledging public agencies have “no continuing obligation” to treat a public records request as ongoing). The trial court properly found, based on the undisputed evidence, that responding to the request would have delayed tabulation so much that the county could not possibly certify results within 21 days as required. *See* CP at 122; RCW 29A.60.190.

Mr. White asserts that the ballot images could have been screen printed from the computer operating the Ballot Now software, but this argument ignores that his request plainly states he did not want hard

copies. Appellant's Second Revised Reply at 19; CP at 46. White did not present any evidence to establish that a county can export an image that would be readable on a home computer.

Mr. White also relies on *Fisher Broadcasting*, 180 Wn.2d at 524, to assert that if it is at all possible to create a responsive record in a readable format, then the agency must do so. That case does not go so far. Instead, the *Fisher Broadcasting* Court recognized that "whether a particular public records request asks an agency to produce [an existing record] or create a [new] record will likely often turn on the specific facts of the case," especially in this modern age of data storage in electronic databases. *Fisher Broad.*, 180 Wn.2d at 524; *see also* WAC 44-14-05001, -05002 (recognizing not all electronic records, especially large files or databases, are translatable). Here, the trial court found it uncontroverted that "[t]he scanned [ballot] images are converted to a proprietary format that only Ballot Now can read and process. Upon conversion, the images cease to exist as separate image files that can be exported or copied, which distinguishes them from conventional personal computing." CP at 119.

In sum, Mr. White cannot rewrite his request on appeal. The County presented uncontroverted evidence that it was impossible to respond to Mr. White's request as made especially in light of the law governing ballot tabulation and election certification.

B. The Legislature Has Provided for Public Oversight of Elections So Observers Can Quickly Identify Error, While Maintaining Strict Integrity of Ballot Processing and Tabulation

Washington's legislature has provided for citizen oversight of ballot processing and tabulation to facilitate transparency and the opportunity for timely election challenges, while also maintaining strict protocols to minimize the risk of fraud or mistake in vote counting. The political parties and other organizations can designate official observers whom the county auditors must allow to observe ballot processing. RCW 29A.40.100; RCW 29A.60.170. Before an election, observers and the public must be permitted to watch testing of vote tallying systems. RCW 29A.12.130. Once ballot processing begins, counting centers must be open to the public. RCW 29A.60.170; WAC 434-261-010. Anyone can watch, but only employees and those authorized by the county auditor can touch any ballot, ballot container, or vote tallying system. WAC 434-261-010. Party observers can call for a random check of ballot counting equipment. RCW 29A.60.170(3). Observers may also attend any recount, though they cannot handle ballots or record information about voters or votes. RCW 29A.64.041.²

² While Mr. White argues that the advent of centralized counting centers somehow reduced public participation, that is incorrect. Before Washington adopted an all vote-by-mail system, poll workers were generally paid, temporary election workers. *See, e.g., Loeffelholz v. Citizens for Leaders with Ethics & Accountability Now (C.L.E.A.N)*, 119 Wn. App. 665, 674, 82 P.3d 1199 (2004). Those workers now process

When election officials question the validity of a challenged or provisional ballot, or when the intent of the voter cannot be resolved, the county canvassing board determines how the votes will be counted. RCW 29A.60.050, .140. Meetings of the county canvassing board are open public meetings. Notice must be published, and the board must make any rules available to the public. RCW 29A.60.140(5); WAC 434-262-025. Where canvassing boards display a ballot, they cover any marks that could destroy absolute ballot secrecy. *See* Const. art. VI, § 6.

Finally, the county auditor must prepare and make publicly available detailed reports that precisely reconcile the number of ballots received, counted, and rejected, including specific accounting for various ballot types (for example, provisional ballots). RCW 29A.60.235. Public oversight of ballot processing and tabulation from start to finish, along with public reconciliation reports, allow a public check on all elections.

If a registered voter believes that there has been fraud or error, he or she can contest the election under RCW 29A.68, but the contest must be filed within 10 days of official certification. RCW 29A.68.011. The election contest is the singular method for challenging an election,

and tabulate ballots at a centralized counting center where public observation is invited. Mr. White has offered no evidence, nor can he, to suggest that centralized processing, under party observer and public oversight, is somehow more likely to allow fraud or mistake. In fact, centralized processing is more accurate and dependable, especially with precise ballot reconciliation. RCW 29A.60.235; WAC 434-261-110, -140.

assuring an opportunity for the correction of fraud or error, but also promoting the public interest in the finality of elections. RCW 29A.68; *Reid v. Dalton*, 124 Wn. App. 113, 122, 100 P.3d 349 (2004) (“public interest demands that any challenge to the validity of the election be speedily filed and resolved”). Thus, Washington courts have consistently upheld and applied the clear time limit for election contests. *Reid*, 124 Wn App. at 122; *see also State ex. rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 898, 969 P.2d 64 (1998). Real time public observation of ballot processing and counting ensures that any registered voter can obtain the information they need to contest an election within the strict time limit.

C. Handling of Ballots and Election Software Is Precisely Regulated to Avoid Fraud and Mistake, and Election Statutes Do Not Permit Officials to Create and Disclose Electronic Copies of Ballots

RCW 42.56.070 allows an agency to deny a public records request if an “other statute” “prohibits disclosure of specific information or records.” Washington’s elections statutes and regulations strictly govern the handling and storage of all ballots (the statutory definition of which includes electronic or digital copies) to prevent fraud and unintentional mistakes in ballot processing and counting. Fulfilling Mr. White’s request would have required elections officials to violate these statutes. Thus, they are “other statutes” prohibiting disclosure.

If another statute or statutory scheme prohibits an agency from complying with a request, that is a valid exemption under the Public Records Act even where the Public Records Act is not specifically mentioned. *See Progressive Animal Welfare Soc'y. (PAWS) v. Univ. of Washington*, 125 Wn.2d 243, 263-64, 884 P.2d 592 (1994); *see also Hangartner v. City of Seattle*, 151 Wn.2d 439, 453, 90 P.3d 26 (2004). The *PAWS* Court found that an anti-harassment statute was an “other statute” prohibiting disclosure even though it did not specifically state that certain records were confidential or private. *PAWS*, 125 Wn.2d at 263-64. Instead, the anti-harassment statute more generally protected animal researchers. So long as a statutory protection is properly invoked, it can justify non-disclosure even if it does not specifically invoke the Public Records Act or personal privacy. *See id.*; *see also Nw. Gas Ass'n v. Utils. & Transp. Com'n*, 141 Wn. App. 98, 168 P.3d 443 (2007) (upholding an exemption based on government interest in protecting against terrorism). Washington’s election laws prohibit copying or disclosure of voted ballots to preserve election integrity, a vital government interest.

1. “Ballot” is defined to include electronic or digital copies

The legislature has adopted a broad definition of “ballot” that includes not just paper copies of ballots: “‘Ballot’ means. . . [a] physical or electronic record of the choices of an individual voter in a particular

primary, general election, or special election.” RCW 29A.04.008(1)(c). Electronic or digital copies of ballots are “ballots” within the meaning of Washington’s election statutes and regulations. RCW 29A.04.008(1)(c). This broad definition alone distinguishes Washington from other states Mr. White discusses, including California, Colorado, and Minnesota. Cal. Elec. Code § 301 (2014); Minn. Stat. § 200.02 (2014) (no definition).³

Mr. White attempts to limit the definition of “ballot” to only the original voted ballot, reading “or” in RCW 29A.04.008 as an “exclusive disjunctive.” *See Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 528, 243 P.3d 1283 (2010) (exclusive disjunctive appears, for example, when someone offers “tea or coffee,” meaning “not both”). However, the Washington Supreme Court has also read “or” as an “inclusive disjunctive,” meaning one or more things are included: he has not seen “‘wolves or bears . . . in that part of the country.’” *Lake*, 169 Wn.2d at 528. (quoting *Webster’s Third New International Dictionary* 1585 (2002)).

To read “or” in the definition of “ballot” as exclusive, thereby excluding copies of ballots, would not be consistent with the overall context of the ballot security statutes. For example, where a ballot is damaged or where votes are cast using something other than a ballot,

³ Washington’s definition incorporating electronic ballot images distinguishes *Marks v. Koch*, 284 P.3d 118, 123 (Colo. App. 2011), where the court had to turn to a dictionary definition of “ballot.”

election statutes and regulations provide for a precise ballot duplication process so that votes can be read by scanning machines. RCW 29A.60.125; WAC 434-261-005(2), -045, -075. In those circumstances, both the original and duplicate are “ballots” requiring secure storage. RCW 29A.60.125; WAC 434-261-045. Thus, read in context, “or” in the definition of “ballot” is inclusive, especially for purposes of applying security requirements. Electronic or digital copies of ballots meet the statutory definition of “ballot.”

2. Strict statutes and regulations requiring ballot security do not allow elections officials to create electronic copies of ballots during processing and tabulation

Washington’s election statutes and regulations prohibit copying scanned ballots during ballot processing and tabulation. Clark County’s Response Brief accurately recites the Washington laws that strictly govern the handling of ballots from the moment they are placed in a drop box or received in the mail to the moment they are secured in sealed containers for the statutory secure storage period prior to destruction. Clark County’s Resp. Br. at 13-15. When ballots are not (1) being taken from their envelopes and manually checked, (2) duplicated for proper scanning (under RCW 29A.60.125 or WAC 434-261-075), (3) inspected by the canvassing board, or (4) tabulated, they must remain at all times in secure storage. RCW 29A.40.110(2); RCW 29A.60.125 (“Original and duplicate

ballots must be sealed in secure storage at all times, except during duplication, inspection by the canvassing board, or tabulation.”⁴ “Secure storage must employ the use of numbered seals and logs, or other security measures that will detect any inappropriate access.” WAC 434-261-045. “Ballots *and ballot images* may only be accessed in accordance with RCW 29A.60.110 and 29A.60.125.” WAC 434-261-045 (emphasis added).⁵

These strict protocols necessarily prohibit election workers from taking any other action affecting ballots, especially during processing and tabulation. This legislative judgment makes sense because each time ballots are handled, there is the potential to misplace, damage, or lose some ballots, something that occurred in the historically close 2004 Gregoire/Rossi election. The same risk of loss or deletion of electronic files would arise from manipulation of election machine software or hardware to accomplish a collateral task like creating readable images of

⁴ Mr. White asserts that rejected ballots that are not counted are not subject to the sealing requirements, but that is incorrect. Appellant’s Corrected Opening Br. at 28. All ballots, including any duplicates, must be held in secure storage unless they are being processed or tabulated. RCW 29A.60.125; WAC 434-261-045, -120. Rejected ballots would not be removed from storage for tabulation, but they remain in secure storage through the statutory secure storage period. *See* WAC 434-261-120.

⁵ The Washington legislature has specifically delegated to the Secretary of State the authority, as the state’s chief election officer, to make reasonable rules for the orderly, timely, and uniform conduct of elections. RCW 29A.04.611. The Secretary must create rules establishing standards and procedures “to ensure the accurate tabulation and canvassing of ballots,” “to prevent fraud,” to ensure the security of ballots, and to “guarantee the secrecy of ballots” in all circumstances. RCW 29A.04.611(9), (11), (13), (33), (34), (39). Where the legislature has specifically delegated this authority, the resulting regulations carry the weight of the legislative delegation. Thus WAC 434-261-045 can serve as a legitimate source of the prohibition against disclosure.

ballots to respond to a public records request, not to mention the severe delay in tabulation this task would cause. This interest in following precise procedures goes beyond simply preserving a chain of custody to preserving the integrity of the election itself.

Elections officials are subject to criminal penalties if they violate election laws, including laws requiring ballot security. RCW 29A.84.680 (gross misdemeanor to willfully violate RCW 29A.40, setting protocols for processing ballots, and requiring secure storage). *See also* RCW 29A.84.420(2) (disclosing information allowing a person to identify who voted a ballot), .540 (improperly removing ballot from voting center or ballot drop location), .560 (tampering with voting machine or device).

Mr. White plainly asked for electronic or digital copies of ballots to be made pre-tabulation, but because Washington's election statutes and regulations do not allow for such copying, this court can end its analysis here and affirm the superior court. RCW 29A.40, RCW 29A.60, and RCW 29A.84 are "other laws" that prohibit elections officials from making electronic copies of ballots, "in a format viewable on an up-to-date home computer," "*before the ballot is tabulated.*" CP at 220-21; *see also* RCW 42.56.070; *PAWS*, 125 Wn.2d at 261-64. Further, the Public Records Act does not require agencies to create records that do not already exist. *Fisher Broad.*, 180 Wn.2d at 522.

3. Post-tabulation, only the canvassing board can access ballots and only for limited purposes defined in statute

Even if this Court were to interpret Mr. White's request to ask that electronic copies be created post-tabulation, Washington's election statutes and regulations require *immediate* secure storage of ballots and ballot images after tabulation, leaving no room for creation of copies of ballots. RCW 29A.60.110; WAC 434-261-045. Post-election, ballots can be removed from secure storage and handled only by elections officials and only for very limited purposes. RCW 29A.60.110; RCW 29A.84.540 (only elections officials can ever touch ballots or ballot containers). Ballots are destroyed months or years later after the required retention period. Allowing for release or private re-tabulation would violate RCW 29A.60.110 and RCW 29A.84.540 and defeat the legislature's purpose to quickly resolve election contests to promote election finality.

“Ballots *and ballot images* may only be accessed in accordance with RCW 29A.60.110 and 29A.60.125.” WAC 434-261-045 (emphasis added). RCW 29A.60.110 provides that “[i]mmmediately after their tabulation, all ballots counted at a ballot counting center must be sealed in containers that identify the primary or election and be retained for at least sixty days or according to federal law [22 months for ballots cast for federal elections], whichever is longer.” RCW 29A.60.110 (emphasis

added); 52 U.S.C. § 20701; WAC 434-262-200. The definition of “ballot” includes electronic or digital copies. RCW 29A.04.008(1)(c). Thereafter, by statute, only the canvassing board can access ballots, and only in four specific circumstances: “[1] as part of the canvass, [2] to conduct recounts, [3] to conduct a random check under RCW 29A.60.170, or [4] by order of the superior court *in a contest or election dispute.*” RCW 29A.60.110 (emphasis added). Mr. White has not shown, nor can he, that any of these circumstances justified accessing ballots to respond to his request.

This Court must evaluate whether the county properly denied Mr. White’s request when it was made. *See Smith v. Okanogan County*, 100 Wn. App. 7, 13-14, 994 P.2d 857 (2000). Unlike the requesters in Vermont and Michigan that Mr. White refers to, Mr. White made his request before the end of the statutory secure storage period. *Price v. Town of Fairlee*, 190 Vt. 66, 26 A.3d 26, 32 (2011) (explaining that ballots could not have been released had a public record request been made within Vermont’s 90-day statutory preservation period); *Op. Att’y Gen. 7247* (Mich. 2010), 2010 WL 2710362, at *8 (Michigan ballots could not be released within the statutory period during which ballots must be kept in secure, sealed containers).⁶ Thus, even in states where the legislature has

⁶ The Minnesota regulation that Mr. White refers to applies only to challenged ballots in recounts, and the regulations simply permits, but does not require, the election official to make photocopies. Minn. R. 8235.0800 (2015).

permitted disclosure of voted “ballots,” disclosure can occur only where a request is made after the statutory sealing period has expired.

Finally, RCW 29A.60.110 strictly dictates when ballots can be accessed and by whom, and Washington’s statute contains no exception for when the secure storage period is over. Significantly, this section limits any additional tabulation or examination of ballots to the canvassing board. RCW 29A.60.110; *see also* RCW 29A.60.125. After the secure storage period, Washington ballots are destroyed according to retention schedules validly created under RCW 40.14.050. Such ongoing restrictions to ballot access reflect the State’s interest in the finality of elections and in ballot secrecy. But this Court need not reach that issue because the question before the court is whether the county properly denied Mr. White’s public record request at the time when it was made.

4. Neither RCW 42.17A nor RCW 29A.04.230 makes electronic copies of ballots disclosable

Mr. White points to RCW 42.17A.001 to show the legislature intended ballots to be public to promote transparency. Second Revised Reply at 3. But RCW 42.17A addresses political campaign and lobbying contributions, not the handling of ballots. RCW 42.17A.001(1).

Mr. White also asserts that RCW 29A.04.230 requires public disclosure of ballot images. Second Revised Reply at 6-7. But this reading

misunderstands the statute’s plain language, which places a duty on the Secretary of State, not counties. RCW 29A.04.230 (“The secretary . . . shall keep records of elections held for which . . . she is required by law to canvass the results [and] make such records available to the public upon request.”). The Secretary’s role in canvassing statewide and multi-county elections is simply to aggregate results submitted by the counties. RCW 29A.60.250; .260; RCW 29A.04.013 (“canvassing” includes examining subtotals and cumulative totals to determine official returns). Under no circumstances does she take possession of ballots. RCW 29A.04.230 does not establish digital copies of ballots are disclosable.

In sum, Washington’s election statutes are other statutes that prevent elections officials from creating new electronic copies of voted ballots during tabulation. Secure ballot storage and ballot destruction requirements, along with principles of election finality, prevent later copying and release. The county properly denied Mr. White’s request.

D. Article VI, section 6 Requires Absolute Secrecy of the Ballot, and Redaction Alone Would Not Eliminate the Risk of Improper Disclosure of a Voter’s Identity

Article VI, section 6 of the Washington Constitution guarantees every voter “*absolute* secrecy in preparing and depositing his ballot,” the strictest language found among state constitutions at the time of its

adoption. Const. art. VI, § 6. (emphasis added).⁷ Dictionaries existing in 1889 defined “absolute” as “not subject to exception.”⁸ The purpose of this provision was to procure ballot secrecy, regardless of the form of the ballot. *See State v. Carroll*, 78 Wash. 83, 85-86, 138 P. 306 (1914).

Washington’s election statutes also require absolute ballot secrecy. RCW 29A.04.611(11), (34), (39) (preserving ballot secrecy in all circumstances, but especially where small precinct returns might sacrifice it); RCW 29A.08.625 (secrecy of provisional ballots); RCW 29A.60.230 (small precincts or limited returns); RCW 29A.60.160 (county auditors must preserve); RCW 29A.12.080 (voting systems must preserve); RCW 29A.40.110 (absolute secrecy for military and overseas voters).

Releasing ballots or ballot images could compromise ballot secrecy. For example, often counties must create several different ballot formats to account for local districts with varying boundaries, and it is not uncommon for a small number of voters to receive a particular ballot type. Release of voters’ ballots in a low turnout election could reveal, for example, that all voters receiving a particular ballot type voted for or against one candidate or ballot measure, thereby revealing how voters in a

⁷ See also Erik Van Hagen, *The Not-So-Secret Ballot: How Washington Fails to Provide a Secret Vote for Impaired Voters as Required by the Washington State Constitution*, 80 Wash. L. Rev. 787, 801-03 nn.115-120 (2005) (listing examples).

⁸ “[P]lain meaning of ‘absolute’ secrecy, according to dictionaries in use at the time of ratification, is secrecy . . . not subject to exceptions.” *Id.* at 799.

small geographic area voted. Significantly, this problem would not be apparent to an election official who is simply reviewing thousands of ballot pages for redaction. Similarly, release of subtotaled votes cast by precinct, city, and district boundaries, in conjunction with release of lists of voters who have returned their ballots, would risk connection of a voter to a particular ballot. CP at 76-77; RCW 29A.40.130. Finally, Mr. White also requested ballots submitted by military and overseas voters and by disabled voters voting on accessible voting units. CP at 44. In some counties these types of ballots are cast by a very small number of voters.

Moreover, it is not uncommon for voters to make marks on ballots, making it possible to trace the ballot to a voter, including comments, explanations of intent, initialing corrections, or writing themselves in as a candidate. CP at 76-77. It would be impossible for elections officials to review the tens of thousands of pages necessary to redact the records requested, pre-tabulation, and certify the election on time. . Washington's absolute voter secrecy laws are "other statutes" justifying the county's denial of Mr. White's request. RCW 42.56.070. And where another statutory scheme provides the exclusive means for public access to records, like the statutes governing ballot access, that scheme's procedures govern, and the PRA's requirements do not apply. *See, e.g., Wright v. State*, 176 Wn. App. 585, 599, 309 P.3d 662 (2013).

E. Mr. White Has the Burden to Show Lack of Vital Government Interest Supporting the Ballot Security and Secrecy Provisions

Mr. White also asserts that under RCW 42.56.210(2), the County must show that these exemptions are necessary to protect an individual's right of privacy or a vital government function. But under RCW 42.56.210, it is the requester's burden to convince the court that the asserted exemption is unnecessary to serve one of these interests. *See Oliver v. Harborview Med. Ctr.*, 94 Wn.2d 559, 567-68, 618 P.2d 76 (1980) (burden on the party seeking disclosure to establish exemption is clearly unnecessary). Here, complying with Mr. White's request would require the County to violate ballot secrecy and security, both of which are vital to the integrity of elections. Mr. White did not provide any evidence to show that application of ballot security and secrecy laws did not serve a vital government interest. Thus, RCW 42.56.210(2) does not warrant reversal of the superior court.

IV. CONCLUSION

This Court should affirm the superior court and conclude that the County properly denied Mr. White's request.

RESPECTFULLY SUBMITTED this 14th day of April 2015.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to read "Rebecca Glasgow", written in a cursive style. The signature is positioned above the typed name of the signatory.

REBECCA R. GLASGOW, WSBA #32886
Deputy Solicitor General
PO Box 40100
Olympia, WA 98504
360-664-3027
RebecaG@atg.wa.gov
Office ID # 91087

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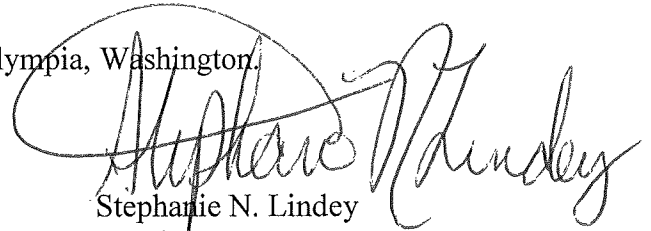
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Knoll D. Lowney
Marc Zemel
Smith & Lowney, P.L.L.C
2317 East John Street
Seattle, WA 98112
knoll@igc.org
marcz@igc.org

Jane Vetto
Clark County Prosecuting Attorney
Civil Division
1300 Franklin Street, Suite 380
Vancouver, WA 98666-5000
Jane.vetto@clark.wa.gov

William John Crittenden
300 E. Pine Street
Seattle, WA 98122
Wjcrittenden@comcast.net

DATED this 14th day of April 2015, at Olympia, Washington.



Stephanie N. Lindey
Legal Secretary

WASHINGTON STATE ATTORNEY GENERAL

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knoll@igc.org

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stephaniell@atg.wa.gov