

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASHINGTON ELECTION INTEGRITY
COALITION UNITED, a Washington State
Nonprofit Corporation; et al.,

Plaintiffs,

vs.

JULIE ANDERSON, Pierce County Auditor;
PIERCE COUNTY; et al.,

Defendants.

NO. 3:21-cv-05726-RAJ

DEFENDANTS' MOTION TO DISMISS
WEICU'S COMPLAINT

NOTED ON CALENDAR:
NOVEMBER 19, 2021

I. RELIEF REQUESTED

COME NOW Defendants Pierce County Auditor Julie Anderson and Pierce County, by and through their attorneys, Pierce County Prosecuting Attorney Mary E. Robnett, and Deputy Prosecuting Attorneys Daniel R. Hamilton and Soojin Kim, and move under Federal Rule of Civil Procedure 12(b)(6) to dismiss the complaint of Plaintiff “Washington Election Integrity Coalition United” (hereinafter “WEICU”). This motion is brought pursuant to FRCP 12(b)(6) and is based on the Complaint’s failure to state a claim upon which relief can be granted. It is supported by the face of the complaint, the declaration of defense counsel Soojin Kim, and the legal analysis below.

II. STATEMENT OF FACTS

On September 21, 2021, a *pro se* suit against Auditor Anderson and Pierce County was filed by self-described “Citizen Plaintiffs” to obtain “declaratory relief,” an “injunction” and “damages for

1 violations of their civil rights” because they claimed, without any supporting fact, that their “equal
 2 protection, due process and free speech rights under the Washington State and United States Consti-
 3 tutions” were violated by the Pierce County Auditor allegedly “using an uncertified voting system,
 4 allowing or facilitating vote flipping, additions and/or deletions, and allowing or facilitating party
 5 preference tracking and/or ballot identification,” as well as was providing voters “open sleeves” for
 6 their ballots rather than a “security envelope.” *See* Dkt. 1-2 at 2, 4-10, 13-16; *but see* Dkt. 11. Addi-
 7 tionally a “nonprofit corporation” – Plaintiff Washington Election Integrity Coalition United (herein-
 8 after “WEICU”) – “[i]n order to prove (or disprove) Plaintiffs' allegations herein,” brought as part of
 9 that same suit a “Public Records Act action to compel Defendants to provide access to public records
 10 from the Election [sic] for a full forensic audit.” Dkt. 1-2 at 2, 11. Specifically, WEICU’s Complaint
 11 asserts “because the documents requested are public records, but also ... prove (or disprove) the alle-
 12 gations herein,” the Court should “unseal the ballots under RCW 29A.60.110, as Plaintiff WEICU
 13 stands ready, willing and able to conduct a full forensic audit of the requested public records in coor-
 14 dination with Jovan Hutton Pulitzer,¹ inventor of kinematic artifact detection and Maricopa county
 15 Arizona ballot auditor of 2020 General Election 2.1 million ballots.” *Id.* at 12-13; *see also pp.* 17-18.

16 WEICU alleges its Public Record Act (hereinafter “PRA”) suit is based on the fact that “[i]n Au-
 17 gust 2021” it “submitted a records request to Auditor requesting original ballots, ballot images,
 18 spoiled ballots, adjudication records, ballot envelopes, and returned ballots for the Election,” but the
 19 “County denied one or more of the requested documents” as “exempt under RCW 42.56 citing RCW
 20 29A.60.110 and/or *White v. Clark County*, 199 Wn.App., 929 (2017).” *Id.* at 11. The Complaint then
 21 argued: 1) “[c]ontrary to the PRR Denial, RCW 29A.60.110 does not prohibit ballot review and ex-
 22 pressly permits *court ordered* review of ballots;” 2) though “White ... relies on WA State Constitu-
 23

24 ¹ “Fact check: Arizona early votes falsely cited as evidence of voter fraud,” 7/23/21 USA Today, <https://www.usatoday.com/story/news/factcheck/2021/07/23/fact-check-arizona-early-votes-dont-prove-claims-voter-fraud/7993652002/>

1 tion Article 6, Section 6 as grounds for refusing access to ballots, ... that provision actually guaran-
 2 tees secrecy only in the preparation and deposit of ballots, and says nothing about secrecy following
 3 an election” and supposedly is “contrary to Article 1, Section 19 of the Washington State Constitu-
 4 tion” *Id.* at 11-12 (emphasis added).

5 Like the claims of the “Citizen Plaintiffs” with which WEICU’s claim was included to support,²
 6 WEICU’s allegations fail to state a claim upon which relief may be granted against either the Auditor
 7 or Pierce County. Defendants therefore now move to dismiss WEICU’s claim under FRCP 12(b)(6).³

8 III. ANALYSIS

9 A complaint must allege against each named defendant "enough facts to state a claim to relief
 10 that is plausible on its face" so as to "raise a right to relief above the speculative level" *Bell Atlan-*
 11 *tic Corp. v. Twombly*, 550 U.S. 544, 545, 561-63, 578 (2007). A claim has "facial plausibility" when
 12 the party seeking relief "pleads *factual content* that allows the court to draw the reasonable inference
 13 that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550
 14 U.S. at 556) (emphasis added). It "requires more than labels and conclusions, and a formulaic recita-
 15 tion of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. The “plausibility
 16 standard ... asks for more than a *sheer possibility* that a defendant has acted unlawfully” so that
 17 “[w]here a complaint pleads facts that are ‘merely consistent with’ a defendant's liability, it ‘stops
 18 short of the line between possibility and plausibility of ‘entitlement to relief.’” *See Iqbal*, 556 U.S. at
 19 678 (quoting *Twombly*, 550 U.S. at 557)(emphasis added). This is “a context-specific task that re-
 20 quires the reviewing court to draw on its judicial experience and common sense,” so that “where the
 21 well-pleaded facts do not permit the court to infer more than the mere *possibility* of misconduct, the

22 _____
 23 ² On October 13, 2021, the Auditor and Pierce County moved under FRCP 12(b) to dismiss the claims of the “Citizen
 24 Plaintiffs” and noted it for hearing on November 12, 2021. *See* Dkt. 11. WEICU’s claim was not included in that motion
 because its suit had not been properly initiated and it was not represented by Counsel at that time. *See id.* at 2 n. 2; Dkt. 6.
³ On October 17, 2021, counsel for WEICU entered a notice of appearance, *see* Dkt. 25, and on October 21, 2021, counsel
 for these Defendants met and conferred with WEICU’s counsel concerning this dismissal motion. *See* Kim Dec.

1 complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* at 679.

2 Accordingly, the idea "that a court must accept a complaint's allegations as true is inapplicable to
3 threadbare recitals of a cause of action's elements, supported by mere conclusory statements." *See id.*
4 at 678; *see also Twombly*, 550 U.S. at 555, 557 (holding that "a conclusory allegation ... does not
5 supply facts adequate to show illegality," and that Courts are not "bound to accept as true a legal con-
6 clusion couched as a factual allegation"). In short, "conclusory allegations of law and unwarranted
7 inferences are insufficient to defeat a motion to dismiss." *Adams v. Johnson*, 355 F.3d 1179, 1183
8 (9th Cir.2004) (internal quotation marks and citation omitted); *see also Iqbal*, 556 U.S. at 679-80;
9 *Vasquez v. L.A. Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266
10 F.3d 979, 988 (9th Cir. 2001). Likewise, a Court is "not required to accept as true conclusory allega-
11 tions which are contradicted by documents referred to in the complaint," *Steckman v. Hart Brewing*,
12 143 F.3d 1293, 1295-96 (9th Cir. 1998) (citing *In re Stac Elecs. Secs. Litig.*, 89 F.3d 1399, 1403 (9th
13 Cir.1996), *cert. denied*, 520 U.S. 1103 (1997)), or “contradicted ‘by more specific allegations in the
14 Complaint,’” *see DPWN Holdings (USA), Inc. v. United Air Lines, Inc.*, 747 F.3d 145, 151–52 (2d
15 Cir. 2014)(quoting *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1095 (2d Cir.1995); *Barberan v.*
16 *Nationpoint*, 706 F.Supp.2d 408, 424 (S.D.N.Y.2010); *In re Livent, Inc. Noteholders Secs Litig.*, 151
17 F.Supp.2d 371, 405 (S.D.N.Y.2001)), or “contradicted by facts established by reference to any docu-
18 ments ... upon which it necessarily relies; the Court also need not accept as true allegations that con-
19 tradict facts judicially noticed by the Court." *See Iletto v. Glock, Inc.*, 194 F. Supp. 2d 1040, 1045,
20 1061 n.4 (C.D. Cal., 2002), *rev'd in part on other grounds*, 349 F.3d 1191 (9th Cir. 2003) (complaint
21 dismissed). *See also Branch v. Tunnell*, 14 F. 3d 449, 454 (9th Cir., 1994)(dismissing complaint be-
22 cause contrary "documents whose contents are alleged in a complaint and whose authenticity no party
23 questions, but which are not physically attached to the pleading, may be considered in ruling on a
24 Rule 12(b)(6) motion to dismiss"); *Iacoponi v. New Amsterdam Casualty Co.*, 379 F.2d 311, 312 (3rd

1 Cir. 1967), *cert. denied*, 389 U.S. 1054 (1968)(a federal court can take judicial notice of state records
2 in deciding a Rule 12 (b)(6) motion to dismiss); FRE 201(d)(“The court can take judicial notice at
3 any stage of the proceeding.”)

4 A. COMPLAINT STATES NO PRA CLAIM AGAINST AUDITOR OR PIERCE COUNTY

5 The PRA does not require disclosure where a public record falls within a statutory exemption.
6 *Gender v. Batiste*, 174 Wn.2d 244, 251 (2012)(citing RCW 42.56.070(1)). *See, e.g., also Gipson v.*
7 *Snohomish Cty.*, 194 Wn.2d 365, 370 (2019)(“An exempt record, like a nonexistent record, is not
8 available for inspection, and an agency is not obligated to produce it.”); *White v. Clark Cty.* (“*White*
9 *I*”), 199 Wn.App. 929, 934 (2017), *rev. denied*, 189 Wn.2d 1031 (2018)(dismissing PRA action
10 seeking post-tabulation production of original voters’ ballots because “an agency may lawfully with-
11 hold production of records if a specific exemption applies.”)(quoting *White v. Clark Cty.* (“*White I*”),
12 188 Wn.App. 622, 630 (2015)(dismissing PRA action seeking pre-tabulation production of copies of
13 voters’ ballots)). Indeed, “the PRA *prohibits* disclosure where an enumerated exemption applies.”
14 *Stetson v. Washington State Dep't of Corr.*, 5 Wn.App.2d 1053 at *2 (2018)(citing *White II.*, 199 Wn.
15 App. at 934))(emphasis added). Thus where “information is exempted from public inspection,” a
16 “records request is satisfied when an agency receives a public records request, identifies a legitimate
17 exemption under the PRA at that time, and clearly notifies the requester that the request will be
18 treated in accordance with that exemption.” *Gipson, supra.* *See also Green v. Pierce Cty.*, 197 Wn.2d
19 841, 852 (2021)(“In its response to Green's PRA request, Pierce County properly identified the type
20 of records and the applicable exemption. Therefore, Pierce County has satisfied its burden”).

21 Accordingly, PRA suits are properly dismissed under Rule 12(b)(6) for failure to state a claim
22 where there is a valid exemption or a failure to demonstrate an improper response. *See e.g. Sutton v.*
23 *Ruiz*, 13-CV-5064-TOR, 2014 WL 1671492, at *8 (E.D. Wash. 2014) (“Since Plaintiff's claim for vi-
24 olations of the Washington Public Records Act fails as a matter of law, that claim will be dismissed

1 with prejudice” under FRCP 12(b)(6)); *West v. Chushkoff*, C10-5547-RBL, 2011 WL 2412948, at *2
 2 (W.D. Wash. 2011) (“Plaintiff fails to state a claim upon which relief can be granted” on PRA claim.
 3 Defendants' Motion to Dismiss all claims under Fed.R.Civ.P. 12(b)(1) and (12)(b)(6) is GRANTED,
 4 and Plaintiff's claims are DISMISSED, in their entirety, WITH PREJUDICE.”); *Gronquist v. State*,
 5 177 Wn. App. 389 (2013) (PRA suit dismissed under Rule 12(b)(6) because requested material was
 6 exempt from disclosure under RCW 42.56.240); *Bartz v. State Dept. of Corrections Public Disclo-*
 7 *sure Unit*, 173 Wn. App. 522, 540 (2013) (where plaintiff failed to show agency "inadequately re-
 8 sponded to his PRA request, he failed to establish a controversy in issue, making dismissal ... with
 9 prejudice proper under CR 12(b)(6)”). As shown below, the face of the Complaint confirms both De-
 10 fendants’ assertion of a valid exemption and WEICU’s failure to demonstrate an improper response.

11 As a matter of law: “There are three sources of PRA exemptions: (1) enumerated exemptions con-
 12 tained in the PRA itself, (2) an ‘other statute’ that exempts or prohibits disclosure, and (3) the Wash-
 13 ington Constitution.” *See White II*, 199 Wn. App. at 934 (citing “*White I*”, 188 Wn.App. at 630-31).
 14 The “other statute” exemption is applicable here and established by RCW 42.56.070(1) which pro-
 15 vides a public record is not required to be disclosed where “the record falls within the specific ex-
 16 emptions of ... this chapter, or *other statute* which exempts or prohibits disclosure of specific infor-
 17 mation or records.” *See White II*, 199 Wn. App. at 934 (emphasis added). For this reason, it is well
 18 settled that a PRA requestor “is not entitled to disclosure of the requested [ballots] because ... both
 19 RCW 29A.60.110 and WAC 434-261-045 create an ‘other statute’ exemption that applies to election
 20 ballots even after the minimum 60-day retention period after tabulation” *White II*, 199 Wn. App. at
 21 932. As the Washington Courts have explained, the “constitutional mandate for a secret ballot is im-
 22 plemented by statutes codified in Title 29A RCW.” *White v. Skagit Cty.*, 188 Wn.App. 886, 892
 23 (2015). Specifically, RCW 29A.60.110 provides in pertinent part:

24 (1) Immediately after their tabulation, all ballots counted at a ballot counting center must

1 be sealed in containers that identify the primary or election and be retained for at least
 2 sixty days or according to federal law, whichever is longer.

3 (2) In the presence of major party observers who are available, ballots may be removed
 4 from the sealed containers at the elections department and consolidated into one sealed
 5 container for storage purposes. The containers *may only be opened by the canvassing
 board* as part of the canvass, to conduct recounts, to conduct a random check under
 RCW 29A.60.170, to conduct an audit under RCW 29A.60.185, or by *order of the supe-
 rior court in a contest or election dispute*.

6 (Emphasis added). *See also White v. Skagit Cty.*, 188 Wn.App. at 892 (“[a]fter opening the return en-
 7 velopes, the county canvassing board shall place all of the ballots in secure storage until processing”
 8 and “[i]mmediately after tabulation, i.e. counting, all ballots must be sealed in containers from which
 9 they may be re-moved only in narrowly specified circumstances.”)(quoting RCW 29A.40.110(2);
 10 RCW 29A.60.110)). Similarly, WAC 434-261-045 provides in pertinent part: “Voted ballots and
 11 voted electronic ballot images *must remain* in secure storage *except during processing, duplication,
 12 resolution, inspection by the canvassing board, or tabulation*” and “*may only be accessed in accord-
 13 ance with RCW 29A.60.110 and 29A.60.125.*” (emphasis added).

14 PRA requests are not listed as an exception to this “other statute” protection, and WEICU neither
 15 is a “canvassing board” nor had obtained such an order at the time of its request. *See e.g. Gipson, su-
 16 pra.* (a “records request is satisfied when an agency ... identifies a legitimate exemption under the
 17 PRA *at that time*”)(emphasis added). As a matter of law: “Once the agency identifies the record and
 18 exemption, the burden shifts to the person seeking an exception to that exemption.” *Green v. Pierce
 19 Cty.*, 197 Wn.2d 841, 851 (2021)(citing RCW 42.56.210(2); *Oliver v. Harborview Med. Ctr.*, 94 Wn.
 20 2d 559, 567-68 (1980)(holding that the patient has the burden to prove an exception to the medical
 21 records exemption)); *Resident Action Council v. Seattle Housing Authority*, 177 Wn.2d 417, 433
 22 (2013)(where a record is exempt from disclosure the “burden shifts to the party seeking disclosure” to
 23 show the exception) (citing *Oliver, supra.*). Thus, absent an order it would be improper and a viola-
 24 tion of RCW 29A.60.110 and WAC 434-261-045 to release the ballots. Further, because the Com-

1 plaintiff expressly concedes “Plaintiffs are not seeking de-certification of the Election,” *see* Dkt.
2 1-2 at 3, WEICU *could not* under the express terms of the statute obtain an “order of the superior
3 court in a *contest or election dispute*” even if it had tried. *See* RCW 29A.60.110 (emphasis added).

4 Any “argument that even greater transparency would promote public confidence in elections is a
5 matter of policy for the legislature to consider” and “is not supported by the statutes as they are cur-
6 rently written” which do not “allow[] every member of the public to inspect images of every ballot
7 cast” since “[b]allot boxes are not to be opened nor votes recounted ‘on mere suspicion and on mere
8 demand.’” *White v. Skagit Cty.*, 188 Wn.App. at 897 (quoting *Quigley v. Phelps*, 74 Wash. 73, 81
9 (1913)). Further: “The statutes that regulate the handling of ballots do not manifest a legislative intent
10 to facilitate public inspection of voted ballots” but “manifest a legislative intent *to protect ballot se-*
11 *crecy* by maintaining the integrity of ballot processing and tabulation,” and such protection of ballots
12 as “exempt from the Public Records Act is rooted in the constitutional mandate for ballot secrecy and
13 the implementing statutes.” *Id.* at 897, 904. Indeed, such protection of ballot secrecy and integrity
14 from such requests – like the request made by WEICU here – exists because free and fair elections
15 require it. As Washington courts have explained:

16 Releasing voted ballots for general public inspection would risk revealing the identity of in-
17 dividual voters. According to a declaration from the elections director in the Office of the
18 Secretary of State, voters sometimes place identifying marks on ballots contrary to voting
19 instructions, for example by signing their names when making corrections or by writing
20 comments about their intent. Each time ballots are handled, there is the potential to mis-
place, damage, or lose them. And as the elections director explains, where there is low turn-
out in a small precinct, even a ballot devoid of identifying marks can be tied back to a voter
by comparing it with voters credited with returning ballots on particular dates.

21 *Id.* at 895. Thus, the “exemption is necessary to protect the ‘vital governmental function’ of secret
22 ballot elections.” *Id.* at 898 (quoting RCW 42.56.210(2)).

23 WEICU lastly cites *Rogers v. Hood*, 906 So. 2d 1220, 1223 (Fla. Dist. Ct. App. 2005) and *Marks*
24 *v. Koch*, 284 P.3d 118, 122 (Colo. App. 2011) to argue “courts outside of Washington State have

1 ruled that ballots are public records and subject to inspection.” Dkt. 1-2 at 12. However, the *Rogers*
2 case concerned “whether *unused ballots* ... are public records under the *relevant statutory and consti-*
3 *tutional provisions*” of *Florida*, see 906 So. 2d at 1221 (emphasis added), and Washington’s Courts
4 hold such foreign cases (including *Marks* specifically) “are not persuasive in our interpretation of
5 Washington law, as they were decided within different statutory frameworks and under different fac-
6 tual circumstances,” but “in Washington, all ‘ballots,’ including copies, are exempt from production
7 under the Public Records Act by Title 29A RCW—an ‘other statute.’” See *White v. Skagit*, 199 Wn.
8 App. at 897-98 (citing *Marks*, *supra.*). See, also, e.g. *Citizens Oversight, Inc. v. Vu*, 35 Cal. App. 5th
9 612, 619, 247 Cal. Rptr. 3d 521 (Cal. Ct. App. 2019), *rev. denied* (Aug. 14, 2019)(“Other states have
10 addressed this issue and in each case, the decision is based upon the particular language of the stat-
11 utes governing counting and maintenance of the ballots,” but in California “the Legislature has ex-
12 empted ballots from disclosure under the CPRA”); *Sumner v. New Hampshire Sec’y of State*, 168
13 N.H. 667, 671, 136 A.3d 101, 105 (2016)(noting some foreign cases such as *Marks* allow access to
14 ballots, but “our statutes exempt cast ballots from our Right-to-Know Law” so “we find those cases
15 unpersuasive”); *In re Decision v. State Bd. of Elections*, 153 N.C.App. 804, 570 S.E.2d 897, 898
16 (2002)(where state statute “provides that ballot boxes shall be opened only ‘upon the written order of
17 the county board of elections or upon a proper order of court,” such is a “‘clear statutory exemption
18 or exception’ to the [Public Records] Act and provides the exclusive method for accessing ballots.”)

19 The face of the instant Complaint not only confirms that Defendants declined to produce ballots
20 based on a valid exemption to the PRA, but also confirms Defendants’ response to WEICU’s request
21 was proper. Specifically, the Complaint admits Defendants advised that WEICU was denied disclo-
22 sure of ballots because such are “exempt under RCW 42.56 citing RCW 29A.60.110 and/or *White v.*
23 *Clark County*, 199 Wn.App., 929 (2017) (“PRR Denial”; “White Case”).” Dkt. 1-2 at 11. Our Courts
24 hold that even where only “images of voted ballots were withheld, county’s explanation that ‘RCWs

1 29A.60.125, 29A.60.110 and WAC 434-261-045 ... require ballots to remain in secure storage unless
 2 opened by a court or canvassing for a specific authorized purpose' *was sufficient.*" *Benitez v. Skagit*
 3 *Cty.*, 193 Wn. App. 1026 (2016) (quoting *White v. Skagit Cty.*, 188 Wn.App. at 900)(emphasis added).

4 As was long ago recognized Washington's Supreme Court:

5 If the public interest would suffer from ... ["ballot boxes" being "opened and the votes
 6 recounted on mere suspicion and on mere demand,"] if the mischiefs resulting therefrom
 7 would be great and widespread, as seems to us inevitable, and if it does not appear that
 8 such a course is necessary to the reasonable preservation of the purity of the ballot, then
 9 the courts are not warranted in adopting that course, in the absence of a statute so direct-
 10 ing. It is certainly not asking too much of a person who by a sweeping wholesale charge
 11 of deliberate misconduct on the part of every election officer of his county ... to require
 12 him to show in advance some slight evidence of fraud or malconduct of such officers,
 13 reasonably calculated to overcome the universal prima facie presumption of the regularity
 and correctness of official action. It will not do to say that the contestant if unsuccess-
 ful pays the costs. The taxable costs of such a proceeding are insignificant as compared
 with the actual expense to the public direct and indirect. While every good citizen must
 concur in the sentiment that no price is too great to be paid for a pure ballot, we can
 hardly conceive that it is necessary to the purity of the ballot that the court, upon a mere
 assertion of an impalpable suspicion, may be used as a dragnet with which to fish for evi-
 dence without any antecedent showing of the slightest circumstance tending to impeach
 the official count.

14 *Quigley*, 74 Wash. at 81. Therefore, WEICU's baseless PRA suit should be dismissed as contrary
 15 both to well settled Washington precedent and to that state's vital interests in protecting secure and
 16 secret ballot elections.

17 B. AUDITOR'S DISMISSAL SEPARATELY PROPER BECAUSE SHE IS NOT AN "AGENCY"

18 Dismissal of Auditor Anderson also is separately proper because on its face the PRA authorizes
 19 suits only against an "agency" -- not against an official. *See e.g.* RCW 42.56.010(1), (3); RCW
 20 42.56.520; RCW 42.56.550. Hence, when the State Supreme Court in *Nast v. Michels*, 107 Wn.2d
 21 300 (1986), applied the PRA's definitional language so as to determine to whom it applied, it held --
 22 relying in part upon the plain text of the PRA -- that courts were exempt because, among other things,
 23 the PRA's definitions did not "specifically include" them. *Id.* at 306. So too, the PRA's definition of
 24 "agency" does not include the terms "office holder," "official," "public employee," or any particular

1 governmental position or natural person. Washington's courts hold it is the Legislature's role to re-
2 write a statute rather than that of the courts. *Sheehan v. Central Puget Sound Regional Transit Au-*
3 *thority*, 155 Wn.2d 790, 816 (2005).

4 WEICU's naming of Auditor Anderson as a PRA defendant is thus contrary to the express terms
5 of the PRA statute and the rules of statutory construction, and thus is another ground for her dismis-
6 sal.

7 IV. CONCLUSION

8 It has been shown that under FRCP 12(b)(6) the Complaint fails to state a claim against either Au-
9 ditor Anderson or Pierce County upon which the Court can find a violation of the PRA. Accordingly,
10 Defendants Auditor Julie Anderson and Pierce County respectfully request the Court dismiss with
11 prejudice WEICU's Complaint against them.

12 DATED this 28th DAY day of October, 2021.

13 MARY E. ROBNETT
14 Prosecuting Attorney

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CERTIFICATE OF SERVICE

On October 28, 2021, I hereby certify that I electronically filed the foregoing DEFENDANTS' MOTION TO DISMISS WEICU'S COMPLAINT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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On October 28, 2021, I delivered a true and accurate copy of the foregoing to the USPS, postage prepaid, with appropriate instruction to forward the same to the following:

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6 DATED this 28th day of October, 2021.

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PROPOSED
ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS WEICU'S
COMPLAINT

THIS MATTER having come on regularly before the above-captioned Court upon
Defendants' Motion to Dismiss WEICU's Complaint, the Court having considered the records
and files herein it is hereby:

ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Dismiss
WEICU's Complaint is GRANTED.

IT IS FURTHER ORDERED that all of Plaintiff WEICU' claims against Defendants
Pierce County and Julie Anderson are dismissed WITH PREJUDICE.

DATED this _____ day of November, 2021.

THE HONORABLE RICHARD A. JONES

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Presented by:

MARY E. ROBNETT
Prosecuting Attorney

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