

January 25, 2019

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

King County Courthouse  
516 Third Avenue Room 1200  
Seattle, Washington 98104  
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[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**ORDER OF DISMISSAL**

SUBJECT: Regional Animal Services of King County file no. **V18008796**

**DUANE PEARSON**

Animal Services Enforcement Appeal

Activity no.: A18005015

Appellants: **Duane and Annette Pearson**  
10104 SE 204th Street  
Vashon, WA 98070  
Telephone: (206) 714-6918  
Email: [pearson.annette@gmail.com](mailto:pearson.annette@gmail.com)

King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
21615 64th Avenue S  
Kent, WA 98032  
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Regional Animal Services of King County (RASKC) issued a violation notice to the Pearsons on October 30, 2018. By law, appeals of such decisions must be “received by the department” within 24 days of the “date of issuance of the decision.” KCC 20.22.080.B. The Pearsons’ appeal was thus due to RASKC by November 24.

Animal Services does not dispute that the Pearsons did not actually receive the violation notice until November 9, two weeks before the due date. Wanting more information, the Pearsons filed a public disclosure request on November 13. They did receive the documents until November 27, the same day they sent in their appeal, which RASKC received on November 29. RASKC filed a motion to dismiss the appeal as untimely, and we held a motion hearing yesterday.

The code and our rules contemplate the scenario where someone requests more information during the appeal window. The pertinent portion of KCC 20.22.080 states that:

E. In order that a person contemplating an appeal has the necessary information on which to base the appeal, during the time between the issuance of the decision and the deadline for delivering an appeal, the department or division shall:

1. Respond to inquiries concerning the facts and process of the decision; and

2. Make available any files that detail the facts on which the department or division based its ruling.

F. If a department or division is unable to comply with subsection E. of this section, the examiner may authorize ***an amendment to an appeal statement*** to reflect information subsequently made available to the appellant.

Our pertinent Examiner Rule (IV.D.2) phrases it thusly:

If, at least seventy-two (72) hours before the appeal deadline, an appellant requested from the County relevant information and has not timely received such, the appellant may include with the appeal statement a notice that such statement is incomplete, the matters subject to the outstanding information request, the date of the request, the County employee to whom the request was directed, and the nature and relevance of the information solicited. Under such circumstances, the examiner shall authorize ***an appeal amendment***, consistent with the deadlines for timely appeal processing.

Thus, not having received a response to a records request allows an appellant to later file an *amended* appeal statement to reflect newly-obtained information. It does not, however, postpone the initial appeal deadline. And the consequences of a failing to file that initial appeal by the deadline are stark. “If a person fails to timely deliver the appeal statement... The office of the hearing examiner does not have jurisdiction to consider the appeal and the decision of the department or division becomes final and unreviewable.” KCC 20.22.080.H

We have tried to avoid just the scenario presented today by writing in our *Hearing Examiner Guide: Animal Services Enforcement Appeals* that:

When RASKC mails a decision, the clock starts ticking on the date RASKC mails it, not on the date you actually receive it. ... Untimely appeals are barred—there is no flexibility. This may not seem fair, but it is the law.

...

If you are not sure about exactly what to say, make sure you still get an appeal, even if imperfect, delivered to RASKC by the deadline. If you get your initial appeal to RASKC on time, the examiner has authority to later allow you, before the hearing, to modify or add to the issues you originally raised. But, the examiner has no authority to hear an appeal if your original appeal statement did not arrive

at RASKC on time. Whatever you do, make sure RASKC receives your appeal by the deadline!<sup>1</sup>

That did not happen here. The Pearsons did not send their initial appeal in until after the appeal window closed and the violation notice became final and unreviewable.

In many scenarios, an examiner has a fair amount of discretion and flexibility. For example if an appeal is timely but inadequate in content, an examiner “may” dismiss the appeal, but alternatively “may” allow a party to clarify the appeal issues. KCC 20.22.090.B. Requiring clarification, instead of dismissal, is almost always the approach we choose in such a scenario. However, untimely appeal statements are decidedly different. The examiner “shall” (not “may”) dismiss an untimely appeal. KCC 20.22.090.A. There is no alternative option an examiner can select. KCC 20.22.080.H.

We thus DISMISS the Pearsons’ appeal.

DATED January 25, 2019.



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David Spohr  
Hearing Examiner

### **NOTICE OF RIGHT TO APPEAL**

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *February 25, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

DS/lid

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<sup>1</sup> [https://kingcounty.gov/independent/hearing-examiner/~//media/independent/hearing-examiner/documents/hearings%20guides/ANIMAL\\_6,-d-,2018.ashx?la=en](https://kingcounty.gov/independent/hearing-examiner/~//media/independent/hearing-examiner/documents/hearings%20guides/ANIMAL_6,-d-,2018.ashx?la=en) at 1-2 (bold, underscore, and color in original).

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V18008796**

**DUANE PEARSON**  
Animal Services Enforcement Appeal

I, Liz Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED January 25, 2019.



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Liz Dop  
Legislative Secretary

**Eykel, Chelsea**

Regional Animal Services of King County

**Newcomb, Daniel Mead**

Hardcopy

**Pearson, Duane/Annette**

Hardcopy