

May 19, 2021

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County files nos. **V21011701, V21011772 & V21011773**

LORNA FISCHER

Animal Services Enforcement Appeal

Activity no.: A21000923 and A21001109

Appellant: **Lorna Fischer**

[REDACTED]
Redmond, WA 98053

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Lorna Fischer appeals three Regional Animal Services of King County (Animal Services) orders finding a variety of violations and requiring Ms. Fischer to remove her dog, Angie, from King County. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we partially grant and partially deny her appeal, including overturning one viciousness designation, upholding the other, and overturning the removal order. We also reduce the fines.

Background

2. On February 25, 2021, Jonathan Woodard filed a complaint with Animal Services, alleging that Ms. Fischer's dog had accosted him on the sidewalk the previous day. Ex. D2. Animal Services Ofc. Sylvia Reyes responded later that day and attempted to interview Ms. Fischer. As there was no answer at the Fischer residence, Ofc. Reyes posted Ms. Fischer's door with a door hanger, requesting contact by the following day. Ex. D3 at 003, n.1.
3. After Ms. Fischer failed to respond for several days, Ofc. Reyes tried contacting her once more on February 28. When that too proved unsuccessful, Ofc. Reyes issued, via certified mail, Notice of Violation and Order to Comply V21011701 asserting:
 - Unlicensed Unaltered Pet (KCC 11.04.030.A) \$250
 - Vicious Animal 1st Violation (KCC 11.04.230.H) \$500
 - Notice and Order for Confinement (KCC 11.04.290) \$0
 - Public Property Not Under Control (KCC 11.04.230.M) \$50Ex. D3 at 003, n.5; Exs. D4 & D5.
4. The order required Angie be secured when outside the home and only allowed off the property on a leash handled by a competent person. Ex. D4 at 001. It listed, in bold, March 25 as the appeal deadline, and explained that the consequences for failing to timely appeal were a waiver of a right to a hearing and the notice and order becoming final. Ex. D4 at 003.
5. On March 8, Mr. Woodard filed another complaint after Angie again got out and accosted him. Ex. D7. The following day a different officer unsuccessfully attempted to contact Ms. Fischer, and left a door hanger. Ex. D8 at 003, n.1. Ms. Fischer and that officer then traded voicemails. Ex. D8 at 003, n.2. Animal Services made several unsuccessful attempts later to contact her. Ex. D8 at 003, nn.3-8.
6. On March 22, Animal Services issued Ms. Fischer an order for her to remove Angie from the County, based on a failure to comply with the February 28 compliance order. Ex. D11. On March 25, Animal Services issued Ms. Fischer Notice of Violation and Order to Comply V21011772, asserting:
 - Unlicensed/Unaltered Pet (KCC 11.04.030.A) \$250
 - Vicious Animal at Large First Violation (KCC 11.04.230.I) \$500
 - Vicious Animal 2nd or Subsequent Violations (KCC 11.04.230.H) \$1000Ex. D9.
7. Only then did Ms. Fischer belatedly appeal V21011701 (due March 25, filed March 29). Ex. D6. The following day she appealed the removal order (V21011773). Ex. D13. Neither appeal listed the second notice and order (V21011772). On April 25, Ms. Fischer submitted a modified appeal statement, followed by other statements on April 29 and April 30. Exs. A1-A3.

8. We went to hearing on May 12.

Hearing Testimony

Jonathan Woodard Testimony

9. Mr. Woodard testified that around 8:50 p.m. on February 24, he was walking on the sidewalk from his home to the community mailboxes. The sidewalk is on the same side of the street as Ms. Fischer's unit. A dog ran out from a grassy area between Ms. Fischer's unit and the mailboxes and started aggressively barking at him. He stepped off the sidewalk and into the road. The dog continued to approach, coming onto the sidewalk. As the dog continued to aggressively bark at him, he told the dog to "go home." The dog did not respond and continued to bark at him.¹
10. Mr. Woodard then yelled at the condo to get their dog. Ms. Fischer came out and called out to the dog; the dog went to her. She stated that she did not know that her dog had gotten out. Mr. Woodard felt scared because there was no one visibly with the dog. When he spoke with Animal Services on February 28, he only wanted Animal Services to educate Ms. Fischer.
11. This was not the first time Mr. Woodard interacted with dogs loose at the Fischer property. However, in those earlier encounters, that dog was not barking aggressively. Instead, that dog seemed friendly, sometimes jumping up on one of his family members.
12. Conversely, February 24 was the first time a dog attacked, and Mr. Woodard became shaken. While he had simply reported previous incidences to the Homeowners Association, February 24 was different enough that it warranted a report to King County.
13. On March 8 around 9:10 p.m., Mr. Woodard was walking from the community mailboxes back to his home. He felt nervous about passing Ms. Fischer's unit, so he walked out into the street and around a car that was parked on the street. He was about a car's width into the roadway. He passed the car and walked in the road, angling back towards the sidewalk, past the same grassy area in front of Ms. Fischer's unit.
14. The dog came from that grassy area and was barking aggressively. Similar to the previous incident, the dog came on the sidewalk and within two to three feet from him. He only had time to tell the dog to go home once before Ms. Fischer came out and grabbed the dog by the collar. Mr. Woodard asked why her dog was off it's leash again, but he heard no response from Ms. Fischer.
15. The dog was fairly close to him, but once Ms. Fischer got the dog by the collar, he started to back away. The dog then crouched down, preparing to pounce, and barked even more ferociously at him. In his opinion, if Ms. Fischer had not come out and

¹ Mr. Woodard's building number is 10786. The community mailboxes are in front of building 10732, between the red and white cars in exhibit D14. The grassy area where the dog came from in both incidents is the area between 10732 and 10772. In both incidents the dog came within two to three feet from him and left the grassy area and onto the sidewalk.

gained control of her dog, he could have been injured. He felt like he was stuck and that he could not turn his back to the dog.

Lorna Fischer Testimony

16. Ms. Fischer testified that her property line is past the grass by possibly four to six feet, though she agreed the sidewalk is public. Ms. Fischer saw Angie on the grass and not on the sidewalk in both incidents. On March 8, she heard her dog barking, so she went outside and that was when she saw her dog.
17. She was confused about the “threatening” door hanger left for her and that she only had a 24-hour deadline to respond. Ms. Fischer did not know if it was “real,” because she thought it might have been a scam. She received a letter with childlike handwriting and she did not know it was from Animal Services. What she received in the mail was pre-printed with an Animal Services’ return address.
18. Ms. Fischer is a medical assistant. After working her long hours, she drops dead and goes to bed. Ms. Fischer was ticketed on February 28 and she did not license her dog until March 19. When probed on this, Ms. Fischer stated that things do not happen too fast for her, and she has a lot going on in her life.
19. Ms. Fischer felt that the reason the incidents occurred is because her door latch was broken and her fence was down. Since the incidents, she has fixed the door, but the fence is still down. Angie did not scratch or hurt Mr. Woodard. She can understand why he would be scared, but dogs bark all the time. Court is inappropriate for just barking. Angie is not an aggressive or crazy animal. She is sweet and has not hurt anyone. She does have a loud bark. She felt sorry that it had to come to this.
20. Ms. Fischer closed by stating that Angie is not a vicious dog. She has never bit or hurt anyone. Angie got out twice in a one-week period, and since then Ms. Fischer has fixed the door. Angie getting out was an accident. During the two incidents, Angie did not bite Mr. Woodard; she just barked at him.
21. Angie was Ms. Fischer’s daughter’s dog, but Ms. Fischer ended up being Angie’s owner. She did not realize that by not responding to the Animal Services’ notices the situation would escalate. She apologized for her role in not taking this seriously and she also apologized for what happened. Ms. Fischer does not have money to pay for all the fines.

Issues Presented

22. On February 24, was Angie:
 - A. on “public property not under control by the owner or other competent person,” with “under control” being defined as “either under competent voice control or competent signal control, or both, so as to be restrained from approaching any bystander or other animal and from causing or being the cause of physical property damage when off a leash or off the premises of the owner,” KCC 11.04.020.AA, .230.M;

- B. unaltered and unlicensed, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered; and
 - C. vicious, defined as “Having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation,” with, “Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises” being a nuisance? KCC 11.04.020.BB, .230.H.
23. On March 8 was Angie:
- A. still unlicensed (see code citations, above);
 - B. again vicious (see code citations, above); and
 - C. a vicious dog running at large, defined as, “Any vicious animal or animal with vicious propensities that runs at large at any time it is off the owner’s premises and not securely leashed on a line or confined and in the control of a person of suitable age and discretion to control or restrain the animal”? KCC 11.04.230.I.
24. Should Angie be removed from the County under KCC 11.04.290.A.3, which states:
- Failure to comply with any requirement prescribed by the manager [*in the February 28, 2021, confinement order*] constitutes a misdemeanor. Such an animal shall not be kept in unincorporated King County after forty-eight hours after receiving written notice from the manager. Such an animal or animals found in violation of this section shall be impounded and disposed of as an unredeemed animal and the owner or keeper of the animal or animals has no right to redeem the animal or animals?
25. In answering those, we do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. For those matters or issues raised in an appeal statement, Animal Services bears the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed. KCC 20.22.080.G; .210.B.

Analysis

Credibility

26. We found Mr. Woodard credible. One thing we scrutinize is whether the complainant is unduly sensitive, over-blowing things an objective observer would not. There was nothing dramatic in his presentation. And he seemed to grasp the distinction between dogs bounding up to him—and even on him—in a friendly, if annoying, manner (as other dogs from the Fischer household had done previously), versus Angie’s altogether different behavior, which triggered his first-ever call to Animal Services.

27. We did not find Ms. Fischer credible.
28. In her March 30 appeal, Ms. Fischer blamed Mr. Woodard for “harassing” her with his complaints, and tried to justify Angie’s response as due to Mr. Woodard walking at night with no flashlight. Ex. D13. Again, Mr. Woodard was doing no more than walking on a public sidewalk on February 24 and a public street on March 8, when her dog accosted him. In her April 23 follow-up, she claimed that Animal Services was wasting judicial resources and fueling Mr. Woodard’s “desire to hurt other people,” and again blamed Mr. Woodard for not having a flashlight. Ex. A1 at 001, 003. On April 29, she asserted that Mr. Woodard should “consider moving.” We discuss below whether Angie’s aggression towards Mr. Woodard on one or both occasions qualify as “vicious” and warrants removal, but Ms. Fischer’s display of denial was impressive.
29. Similarly, she tried to shift responsibility to Animal Services. She disparaged Animal Services for assuming she was guilty before even talking with her. Ex. A2 at 002. Again, the record is clear that Animal Services *tried* to talk with her the same date it received the complaint, leaving a notice for her and requesting a call back. Ex. D3 at 003 n.1. Ms. Fischer decided to treat that notice as a joke, and she complained at hearing that the request for a call back was not “nice.” An official door hanger from an investigating officer, in bright orange, with pre-printed information on how to license and the need for contact, is not an invitation to a garden party, for which one would expect social niceties; instead, it is an official inquiry about a potentially serious violation.
30. It is also clear from the notes and the testimony that after the first incident, Mr. Woodard just wanted Animal Services to speak to Ms. Fischer to prevent a repeat. And Ofc. Reyes seemed inclined to just talk with and counsel Ms. Fischer, instead of issuing a violation. Ex. D3 at 003, n.2. Yet Ms. Fischer elected to ignore that official notice requesting a callback; Ms. Fischer did not call on February 25 or 26 or 27 or 28. Ofc. Reyes tried one more time, unsuccessfully, to contact Ms. Fischer, before issuing the first violation notice. Ex. D3 at 003, n.3; Ex. D4.
31. To make matters worse, Ms. Fischer then failed to appeal that notice by the March 25 deadline clearly stated in Animal Services violation notice, instead getting in her appeal four days late. Ex. D4 at 003; Ex. D6. She caught a break when Animal Services elected to accept her late filing and not file a motion to dismiss her appeal as untimely. Ex. D3 at 004, n.6. So not only did Ms. Fischer set things in motion by not initially responding to Animal Services and likely avoiding a viciousness designation even being issued, Animal Services then cut her a break on allowing her to challenge that violation after she missed the appeal deadline.
32. At hearing, at times she seemed to get that February 24 and March 8 were about much more than just barking, yet at other times she return to form that Angie was not being “aggressive” to Mr. Woodard (despite the overwhelming evidence to the contrary) and it was a matter of “just barking.” She then tried to shift responsibility and to point to all the other dogs in the neighborhood that get out and bark.

33. Ms. Fischer exhibited a thorough state of denial and lack of objective awareness. We appreciate Ms. Fischer’s service on the front lines as a medical provider during Covid. It has been a stressful 14 months for everyone, but we can only imagine the toll it is taken on a healthcare provider like Ms. Fischer. But that did not make her presentation any more credible.
34. However, as we have written in decisions countless times before, a viciousness designation is fundamentally about the dog, not about the owner. It is not a proxy for how much or how little care an owner is exercising or how objective an owner’s view of reality is. Typically, we write that in the context of upholding a viciousness designation where the dog blew through the safeguards a responsible and self-aware owner had in place. Today, we write that in the opposite context. For as much of a hole as Ms. Fischer dug herself, we still need to determine whether Angie met the code criteria for the various violations.

V21011701 (related to February 24 altercation)

35. We start with the minor violations related to the February 24 altercation.
36. Angie was on the public sidewalk as she got within a few feet of Mr. Woodard. She was on public property and not under control sufficient to be restrained from approaching a bystander. KCC 11.04.020.AA, .230.M. We sustain this violation.
37. There is no question that Angie was not licensed until after the second violation. However, Angie was altered at the time, so the base penalty for an unlicensed but altered pet is \$125, not \$250.
38. As to the critical viciousness designation, an actual bite is neither necessary nor always sufficient. Per KCC 11.04.020.BB, the issue is whether the animal performed an act “endangering the safety of any person...including, *but not limited to*, biting a human being or attacking a human being or domesticated animal without provocation.” So, it is broader than actual bites. Conversely, a viciousness designation requires not only having “exhibited” vicious behavior, but also that the animal “constitutes a danger to the safety of persons.” KCC 11.04.230.H. So, exhibiting vicious behavior once is not the entire inquiry.
39. Where an animal stops short of actually biting a person, we are left to make inferences. Was the animal simply, say, asserting territory and trying to bluff away a perceived threat, with no intention to do more? Can we really conclude that the dog constitutes a danger, or was it just a one-off bad day, and maybe a dog being startled? We have typically required more than a single instance of close-up aggression to uphold a viciousness designation. While Angie’s actions on February 24 would have, standing alone, been enough to qualify her as “potentially dangerous” if we employed the State’s two-tier system—Angie “approache[d] a person upon the streets, sidewalks, or any public grounds in a menacing fashion,” RCW 16.08.070(1)—under the County code we do not find that, standing alone, Animal Services’ February 28 designation of Angie as vicious was warranted.

40. We note that, while we do not accord deference to agency opinions, this was the direction the investigating officer was initially leaning, seeking to work things through with Ms. Fischer instead of issuing a viciousness violation. Ex. D3 at 003, n.2. While Ms. Fischer set things on a different procedural course by choosing not to respond to Ofc. Reyes' request for a conversation, our overturning the initial viciousness designation simply returns us to the substantive spot we would have been in had Ms. Fischer initially been more responsive.

V21011772 (related to March 8 altercation)

41. Although neither of Ms. Fischer's appeals listed V21011772 as an order being protested, the content of her appeal statements seems to cover it, and there is no unfair surprise in including it.
42. Angie was still not licensed on March 8. As Angie was altered, the base penalty is \$125, not the listed \$250.
43. Because Animal Services had previously designated Angie as vicious, it cited her not with being on public property not under control (a \$50 violation) as it had on February 28, but as being a vicious animal running at large (a \$500 violation). Because we overturn the February 28 viciousness designation on which the March 25 vicious-animal-at-large violation was based, we overturn the KCC 11.04.230.I violation as well.
44. That leaves the viciousness designation. And this round we consider not just the events of March 8, but March 8 on top of February 24. Not only does Angie charging at Mr. Fischer again mean that February 24 was no one-off aberration, but there is one additional factor that makes March 8 more serious. On February 24 Angie retreated immediately after Ms. Fischer called her, meaning her ferocity level was not so high that a simple recall could not easily break the spell to get her to voluntarily leave the scene. Conversely, on March 8, even *after* Ms. Fischer came out and grabbed Angie, Angie was still trying to get at Mr. Woodard, barking even more ferociously and looking like she might try to lunge. While we did not find the events of February 24, standing alone, a sufficient basis for a viciousness designation, in conjunction with March 8, we find that Angie endangered a person and constitutes a danger. We uphold Angie's March 25 viciousness designation.

V21011773 Removal Order

45. We share Animal Services' concern that Ms. Fischer is not really grasping the severity of the situation, and thus may not be inclined to take the steps to ensure that Angie stays contained. However, Animal Services' removal order was based on Ms. Fischer failing to comply with the February 28 compliance order, which was itself predicated on Angie being declared vicious after the February 24 altercation. *See* Ex. D11 at 003-04; KCC 11.04.290.A.3. Because we overturn the February 28 viciousness designation, there was no valid confinement order for Ms. Fischer to fail to comply with on March 8. We thus overturn the removal order.

46. We note that because Animal Services was seeking removal (V21011773) as the remedy, for the March 8 violation, its March 25 filing (V21011772) did not re-list the standard confinement terms that accompany a viciousness designation as it had on February 28 (V21011701). Ex. D9. *See also* KCC 11.04.290.A.1 (“An animal, declared by [Animal Services] to be vicious, may be harbored, kept or maintained in King County only upon compliance with those requirements prescribed by [Animal Services]”). We will incorporate the compliance terms from the February 28 order in our decision below, so there is no confusion going forward.
47. We are not ordering Ms. Fischer to fix the fence, but given the potential consequences from Angie getting loose again, violating the confinement terms (see below), and potentially drawing another removal order, it would behoove Ms. Fischer to fix the fence to provide a second layer of defense, in case Angie accidentally gets out again.

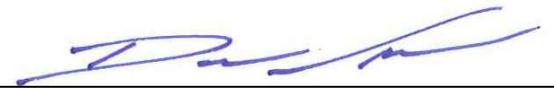
Penalty

48. Several of the penalties fall away as a matter of law.
- A. For V21011701 (related to February 24), we sustain the public-property-not-under-control, \$50 violation. As Angie was altered, the \$250 penalty drops to \$125. And as we overturned the initial viciousness designation, there is no corresponding penalty.
- B. For V21011772 (related to March 8), the basic licensing penalty is again \$125, not \$250. As we overturn the vicious-animal-at-large violation, there is no corresponding penalty. And the viciousness violation we sustain is a *first* viciousness violation, meaning \$500 is not doubled to \$1000.
- C. And for V21011773, we overturn the removal order, so there is no potential penalty to discuss.
49. That leaves \$50 for the not-under-control, \$500 for viciousness, and \$250 combined for the licensing violations. We typically do not reduce basic \$50 violations, and we follow that course here. As Ms. Fischer was on notice that Angie had gotten loose and accosted Mr. Woodard, and had even received a February 28 notice and order with \$800 in penalties (in case there was any doubt that this was a serious matter), and yet still did not fix the door that allowed Angie to escape again on March 8 and again threaten Mr. Woodard, we do not reduce the \$500 penalty. Finally, even though Ms. Fischer was pressing her luck by not licensing Angie until well after the second incident, where a person licenses their pet between the time of the violation and the date of our hearing, we typically reduce the licensing penalty. We will reduce each \$125 violation to \$50 each.
50. Thus, the cumulative penalty is not the \$3,550 listed in the various notices, but \$650.

DECISION:

1. For V21011701, we deny Ms. Fischer’s appeal as to the on-public-property-not-under-control and licensing violations, and we grant it as to the viciousness violation. The penalty associated with V21011701 is \$100.
2. For V21011772, we deny Ms. Fischer’s appeal as to the viciousness and licensing violations, and grant it as to the vicious-animal-at-large violation. The penalty associated with V21011772 is \$550. In addition, from this point forward:
 - A. Secure Angie in a fenced area suitable for her size when unattended and outside the home. Lock all passages with a padlock to prevent accidental release.
 - B. Restrain Angie using a leash no more than eight feet long, with a collar or harness, when taking Angie off your property. A competent and capable person must handle Angie at all times when attended outside.
 - C. If not already completed, microchip Angie and provide the microchip number to the King County Animal Licensing Office (206) 296–2712 by **June 18, 2021**.
 - D. Keep Angie current on her rabies vaccination.
3. For V21011773, we grant Ms. Fischer’s appeal of the removal order.

ORDERED May 19, 2021.



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 *June 18, 2021*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

MINUTES OF THE MAY 12, 2021, HEARING IN THE APPEAL OF LORNA FISCHER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS. V21011701, V21011772, and V21011773

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Jonathan Woodard, and Lorna Fischer. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record by Animal Services:

Exhibit no. D1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D2	Online Complaint form of February 24, 2021 incident by Jonathan Woodard, dated February 25, 2021
Exhibit no. D3	RASKC investigation report no. A21000923
Exhibit no. D4	Notice of violation no. V21011701-A21000923, issued February 28, 2021
Exhibit no. D5	Proof of Service
Exhibit no. D6	Appeal V210117701, received March 29, 2021
Exhibit no. D7	Online Complaint form of March 8, 2021 incident by Jonathan Woodard, dated March 8, 2021
Exhibit no. D8	RASKC investigation report no. A21001109
Exhibit no. D9	Notice of violation no. V21011772-A21001109, issued March 25, 2021
Exhibit no. D10	Proof of Service
Exhibit no. D11	Notice and order for removal no. V21011773-A21001109, issued March 21, 2021
Exhibit no. D12	Proof of Service
Exhibit no. D13	Appeal V21011772 & V21011773, received March 30, 2021
Exhibit no. D14	Map of subject area

The following exhibits were offered and entered into the record by the appellant:

Exhibit no. A1	Response to recent letter regarding additional issues for appeal
Exhibit no. A2	Response to “Exhibit 1” from Sylvia Reyes
Exhibit no. A3	Further pertinent information regarding Angie barking

DS/lo

May 19, 2021

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

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County files nos. **V21011701, V21011772 & V21011773**

LORNA FISCHER

Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** 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 May 19, 2021.



Lauren Olson
Legislative Secretary

Bain, Michael

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Fischer, Lorna

Hardcopy

Fischer, Taylor

Hardcopy

Woodard, Jonathan

Hardcopy