

WAPRO Spring 2024 Conference
Law Enforcement and Jail Records for Beginners - Q&A

1. **Our jail has stated that ANY video from inside of the jail facility is exempt from disclosure as it's inside a jail. It appears they are using a security exemption but don't have a specific example, however our PA seems a bit more iffy on that. What is your opinion/what exemptions do you use regarding?**

I agree that this is an appropriate application of the intelligence/security information exemption. See RCW 42.56.240(1) and also *Gaston v. State of WA Dept. of Corrections* (2018).

2. **What is your opinion on asking for ID when picking up a police report in-person? If they requested it online, the ID would not be requested.**

I would be hesitant to ask for an ID when releasing records in person for fear of violating RCW 42.56.080 which states “agencies shall not distinguish among persons requesting records,” and “no official format is required for making a records request.” Imagine the scenario if your agency requires an ID to pick up records in person, the requestor refuses to provide an ID, and you in turn refuse to release the requested records. You could be accused of silent withholding.

3. **Are jail records considered different/separate from prison records?**

Jails are operated locally at the city/county level and are for offenders sentenced to less than a year. Prisons are operated at the state or federal level and are for sentences of a year or more. So the only difference is where those records are held (city/county law enforcement agency, state Department of Corrections, or federal agency) and what laws that are subject to (PRA or FOIA).

4. **How do jail exemptions translate to a holding facility (where offenders are held for up to 6 hours until they're released or taken to the county jail)?**

Personally, I don't think RCW 70. 48.100 applies to temporary holding facilities as the person is only being detained and hasn't actually been booked into jail. RCW 70.48.100 specifically refers to “the records of a person confined in jail”. I'd ask your legal team for further clarification.

5. **Is there an RCW to redact the WA SID # or FBI # listed on records?**

No. While we tend to think of this as protected information along the lines of a SSN or driver's license number, in reality SID/FBI numbers are only available to LE. Even if the public did receive someone's SID/FBI number (perhaps from a WATCH request), they have no access to the databases that would decipher who that number belongs to; thus the number isn't considered personally identifiable information (PII).

WAPRO Spring 2024 Conference
Law Enforcement and Jail Records for Beginners - Q&A

6. **Do you have any advice about death certificates that are part of a file not provided by DOH? For example, a packet of information on an individual includes a death certificate. There is no open investigation and they are not protected individuals.**

I stand corrected - vital records including death certificates are exempt under RCW 42.56.365.

7. **Do you consider the jail records statute, RCW 70.48.100, aside from the jail register, to create a categorical exemption allowing the whole record to be withheld?**

Yes.

8. **Do you still redact jail calls or records if they are attached to a law enforcement record? Example: Jail call is an attachment to your agency case for theft.**

If the jail call is being used as part of a criminal investigation then it ceases to be exempt as a jail record and could be disclosed as part of the case/investigative record. See RCW 9.73.095(3)(b).

9. **As for the recorded conversations, the public cannot request the recordings, but are there ever transcripts kept of the calls that the public could request?**

If a transcript of a jail phone call is created, I would consider that a separate record that is not in of itself a jail record, so I'd consider it releasable.

10. **What if the inmate released a letter saying the phone call between the inmate and his father can be released to his father after his father requested the audio of the phone call?**

You could release the phone call in this scenario. See RCW 70.48.100(2)(g).

11. **What RCW are you using to redact a passport?**

See RCW 42.56.070(1), 5 USC §552(a), and RCW 42.56.050.

12. **What RCW is being used to redact deceased photos? How about suicide notes?**

Deceased - RCW 42.56.240 - (14) for BWC, (1) for all other records;

Suicide notes - RCW 42.56.050 as one of the few instances widely accepted as a right-to-privacy exemption; RCW 68.50.105 can be used for any autopsy records including autopsy photos and suicide notes included as part of the autopsy report.

13. **If an arrest goes through the courts and ends with non-conviction, could the offender's information be redacted from the police report?**

Maybe. See RCW 10.97.050 for details on removing non-conviction data.

14. **If someone asks for anonymity per RCW 42.56.240(2) and then they later asked for that anonymity to be removed, how do you all deal with that?**

WAPRO Spring 2024 Conference
Law Enforcement and Jail Records for Beginners - Q&A

Interesting question - I've neither encountered nor heard of this scenario. I would thoroughly document the rescinding of the non-disclosure request then would be comfortable not applying non-disclosure to future records requests.

15. Can I release mug shots of sex offenders regardless of their level?

No. Generally, mug shots are exempt under RCW 70.48.100. See RCW 4.24.550 for details on what information on sex offenders can be publicly released (photos can be released for Level III offenders).

16. When a report involves a non-disclosure subject, should you provide the report to other care agencies (i.e. courts, DCYF, attorney general, school districts, etc.) without redacting the non-disclosure subject or should you redact the non-disclosure subject?

Generally, requests from other juvenile justice/care agencies fall under RCW 13.50, so non-disclosure doesn't apply. As a best practice, it wouldn't hurt to notify the receiving agency of the non-disclosure request should they receive a public disclosure request for the records.

17. What if the care agency requests the reports through GovQA? Does this make a difference in redacting or not?

No, a request from a juvenile justice/care agency would still be processed under RCW 13.50 regardless of how it was received.

18. When you have CPS or DCYF asking for juvenile records from your LE agency, what kind of proof (if any) do you require from them to prove that they are handling a case involving that juvenile?

Assuming the request comes from an official government email address and/or on agency letterhead, I would take them at their word. You can also ask the requester for the specific RCW or WAC that permits them to get the records unredacted if that information wasn't included in their original request.

19. What about re-disclosure by another public agency that receives the records? Many times there is nothing specific that tells us not to disclose. Can we use the same redaction standards? For juveniles, what if we aren't a juvenile justice agency?

This is a tricky question with no good answer. Best practice would be for you to notify the receiving agency of the non-disclosure request regardless of whether the receiving agency is a juvenile justice/care agency. Whether or not the receiving agency honors the request for non-disclosure for subsequent public records requests is up to them.

20. Can you confirm that 911 calls are retained for 90 days and then destroyed?

Yes, the minimum retention period is 90 days. See the Emergency Communications (911) Records Retention Schedule. If you have a copy of a 911 call on a case file/evidence, you

WAPRO Spring 2024 Conference
Law Enforcement and Jail Records for Beginners - Q&A

would retain it until disposition of the entire case file.

DISPOSITION AUTHORITY NUMBER (DAN)	DESCRIPTION OF REMORDS	RETENTION AND DISPOSITION ACTION
EM50-29-01 Rev. 0	911 CONVERSATIONS – MASTER RECORDINGS Master audio recordings of activity processed through Public Safety Answering Points (PSAP), statewide default answering points, or other emergency answering points pursuant to 47 CFR § 64 Subpart AA .	Retain for 90 days after conclusion of dispatch action <i>then</i> Destroy.

21. Would you consider BAC video from a police department (in the holding area) a record and be required to be retained until the DUI case has met retention?

Yes, absolutely. I believe this falls under Case Files –Other Cases(Routine) which includes “Case reports and files assembled by law enforcement in the course of investigating any incident that is not covered by a more specific records series.”

22. What benefits in record access, if any, is available to the media?

See RCW 42.56.250(1)(h) - “The news media, as defined in RCW 5.68.010(5), shall have access to the photographs and full date of birth” (whereas usually the photograph and year of birth are withheld).

23. Should the 911 call be redacted if non-disclosure is not requested at the time of the call but the PDA box is checked on the police report. Does non disclosure have to be requested at the time of reporting on the taped 911 line? Should we be looking at the police report when determining redactions when only the 911 audio has been requested?

Yes, if non-disclosure was requested by a victim/suspect at the time of the incident (whether that be during the initial 911 call or first contact with an officer), then non-disclosure should be applied to all records for that case. In a perfect world, agencies would have procedures in place for flagging records for nondisclosure across various systems (CAD, RMS, BWC, etc.) regardless of where the request originated, but this often isn’t the case.

24. Do you redact all juveniles in videos/surveillance or BWC?

RCW 42.56.240(14)(a)(iv) applies specifically to BWC and is not valid for other types of video/surveillance. I would redact all juveniles - both those identified in the report and anyone else who obviously and reasonably resembles a juvenile, but some agencies only redact juveniles that are specifically identified in the report.

RCW 7.69A.030(4) would generally apply to other types of records and specifies that a juvenile’s name, address, and photograph are protected. Agencies have interpreted “photograph” to apply to still images from non-BWC video/surveillance. Contact your legal team for further clarification.

WAPRO Spring 2024 Conference
Law Enforcement and Jail Records for Beginners - Q&A

25. In body BWC redactions, deceased bodies are redacted, but what about blood, etc.?

In general, just the deceased's body (all body parts) is redacted. Pools of blood may be gross, but I wouldn't redact them.

26. Do law enforcement/jail records retain their specific exemptions once they have been released to another agency (such as the prosecutor's office?)

For law enforcement records, some exemptions may still apply. For example, I would expect things like video of a jail interview room or identifying information for child victims of sexual assault to still be redacted. However, the prosecutor's office certainly couldn't claim the open investigation exemption. With regards to the non-disclosure exemption, we await guidance from a court or the Legislature if a request for non-disclosure extends beyond the original holder of the record.

For jail records, the state Supreme Court has confirmed that "the statute does not limit the exemption to records only in the possession of the jail...the exemption extends to the jail records despite the jail forwarding the records to another government agency." See *Zabala v. Okanogan County* (2018) and *Cowles Publishing Co. v. Spokane PD* (1999).

27. Has your agency received requests for cell phones that have been extracted by law enforcement? If so, how did you handle those records?

The physical cell phone itself is evidence and not releasable under the PRA. Records extracted from the phone may be releasable, but it would be on a case by case basis. I'd consult your legal team, prosecutor, investigations unit, and evidence unit for further information or to discuss a specific request.

28. Would exemptions apply to facility maintenance records for jails and/or precincts?

No, "jail records" refers to "records of a person confined in jail" per the RCW, not any records held by a jail.

29. Should an interview room in a jail be visually redacted?

Yes. I would absolutely count that as intelligence information under RCW 42.56.240 (1).

30. Our jail creates bail/bond forms that are then filed with the court. Would these be considered jail records?

My opinion is that these would not be jail records as they're publicly filed with the court. Booking information such as the offender's name, date/time of booking, and offense are already releasable.

31. Our Police Department generally treats active investigations as categorically exempt. We've recently had push back on this from a requester who simply needed a copy of the police report they filed related to fraud to provide to their insurance. Is the police

WAPRO Spring 2024 Conference
Law Enforcement and Jail Records for Beginners - Q&A

report categorically exempt in this case?

Investigations are generally considered active up until they are sent to the prosecutor for a charging decision. However, just because a case is listed as active in your RMS does not mean that it is truly active - some agencies will leave cases that are property crimes with no suspects/evidence as open/active in their RMS when in reality there is no further investigation. As long as there is truly an active investigation (suspects, evidence, assigned investigator/officer, follow-ups, etc.), I would be comfortable categorically exempting the case.

32. What are the RCWs for redacting DV and sexual assault victims/witnesses?

RCW 42.56.240(14)(a)(vi) - DV victim/witness, sexual assault victim/witness *for BWC only*

RCW 7.69A.030(4) - juvenile victim/witness (regardless of crime)

RCW 42.56.240(2) - victim/witness if disclosure would cause harm or if non-disclosure was requested

RCW 26.44.187 - child forensic interviews

33. What if a person didn't request non-disclosure on case #1, but upon related cases they request non-disclosure. The following cases would be not disclosed but case #1 would not change. Is that correct?

Correct. Non-disclosure doesn't apply retroactively.

34. Are there any exemptions that apply to ALPR (Automatic License Plate Readers)?

I don't believe so. RCW 46.63.170(i) specifically applies to automated traffic safety cameras and exempts "all photographs, microphotographs, or electronic images, or any other personally identifying data prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public." Automated traffic safety cameras are defined in the RCW as being used "for issuance of notices of infraction," so ALPRs don't meet the criteria here.

35. Should queries showing the name, driver's license number, license plate, etc. be redacted from a CAD report or is it okay to only redact the returns from ACCESS? Is vehicle owner information exempt?

This is a tricky one. ACCESS returns that are copied and pasted into the CAD report should be redacted under RCW 46.12.635, 18 UCS § 2721, and RCW 42.56.070. However, driver's license numbers may still be redacted under RCW 42.56.230(5) and RCW 9.35.005 even if the information was not received directly from DOL. Disclosure of the names and addresses of individual vehicle owners is prohibited in most circumstances by RCW 46.12.635, although there are a number of exceptions.

In my dispatch experience, dispatchers were instructed to copy/paste information from

WAPRO Spring 2024 Conference
Law Enforcement and Jail Records for Beginners - Q&A

the vehicle return only and then on a separate line type in the name of the registered owner ("R/O Mouse, Mickey M."). Legal counsel's theory was that the information from the vehicle return would be redacted, so just listing the registered owner's name on a separate line couldn't be tied to a specific vehicle.

36. Should all juvenile info be redacted from a CAD report, even if a police report was not generated?

I would still redact juvenile witnesses/victims (RCW 7.69A.030(4)), juvenile victims of sexual assault (RCW 42.56.240(5), 10.97.130, and RCW 10.52.100), and potentially juvenile information if related to non-criminal records such as truancy (RCW 13.50.100).

37. What is the RCW that dictates what information is required to be included in the public jail roster?

RCW 70.48.100.

38. How is the general public supposed to know to ask for non disclosure if they are not informed? Regarding nondisclosure, is it the person's responsibility to know they can request it, or is the agency supposed to inform them?

Great question with no good answer. There's no requirement for LE agencies to notify people about their rights to nondisclosure even though such rights exist. Very similar to Miranda rights before Miranda v. Arizona.

39. Where is the archives that handles law enforcement records and as disclosure is removed for archived records, who has access?

Per the retention schedule, records pertaining to certain sex offenses are to be archived at the Washington Association of Sheriffs and Police Chiefs (WASPC) in Olympia. In addition, once received by WASPC, the record is no longer publicly disclosable. See RCW 40.14.070(2)(b) and (c). All other archival LE records are sent to the State Archives.

40. Would you redact a minor's date of birth?

Not necessarily. RCW 7.69A.030(4) specifically mentions a juvenile's name, address, and photo are protected. Assuming those elements are redacted, the DOB would not need to be. In fact, leaving the DOB visible can help the requestor grasp that the person is indeed a juvenile.