



SENT VIA ELECTRONIC MAIL

May 12, 2022

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Chief Flo Simon
Bellingham Police Dept.
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Alan Marriner
City Attorney
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Bellingham, WA 98225

What-Comm 911
City Hall
210 Lottie Street,
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**RE: Implementation of the Keep Washington Working Act
Cease and Desist Inconsistent Policies – Confirmation Requested**

Dear Sheriff Elfo, Mr. Richey, Chief Simon, and Mr. Marriner,

We write to support your compliance with the Keep Washington Working Act (RCW 10.93.160).

The state legislature passed the Keep Washington Working Act ("KWW") to address the "substantial and compelling interest in ensuring the state of Washington remains a place where the rights and dignity of all residents are maintained and protected." S.B. 5497 § 1(3). To that end, KWW contains several provisions that prevent state and local law enforcement agencies and jails from participating in civil immigration enforcement actions carried out by U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP).

Keep Washington Working (RCW 10.93.160) prohibits information sharing with immigration enforcement authorities.

KWW prohibits law enforcement from sharing *nonpublicly available personal information about an individual*, including individuals subject to community custody pursuant to RCW 9.94A.701 and 9.94A.702, to federal immigration authorities in a noncriminal manner, except as required by state and federal law. RCW 10.93.160(5).

Under Section 4 of KWW, local law enforcement agencies (“LEAs”) are specifically prohibited from the following practices:

Providing ICE/CBP “non-publicly available” personal information, such as an individual’s home address.

The Attorney General’s Office (“AGO”) has further provided guidance that “personal information” includes names, addresses, driver’s license numbers, GPS coordinates and location.

KWW also prohibits LEAs from entering or renewing a contract for the provision of language services from federal immigration authorities as well as the acceptance of any language services from such for free or otherwise. RCW 10.93.160(13). The law expressly prohibits law enforcement agencies from utilizing or accepting language services from immigration enforcement including federal immigration authorities. This prohibition is reinforced by the AGO, which instructs LEAs to use the “[district Communications Center ‘Language Line’] or other approved resources for any language services necessary to perform duties...[P]ersonnel shall not utilize or accept language services from any person engaged in, or intending to engage, in immigration enforcement, including federal immigration authorities. [P]ersonnel shall presume that federal immigration authorities are engaged in immigration enforcement.”

The What-Comm contract requiring information sharing with CBP violates KWW as do specific incidents of information sharing and interpretation requests.

While it is unclear if the County or the City of Bellingham have intentionally violated KWW, it does appear that agreements relating to What-Comm Communications includes a provision that violates KWW by its plain terms. For example, the City of Bellingham’s 2019 Inter-Local Agreement with Whatcom County for What-Comm Communications provides: “The City shall provide direct call transfer service to the U.S. Border Patrol Center Dispatch Center in Blaine through which all emergency calls for police service within the corporate boundaries of Sumas shall be directed for dispatching.” See attached.

Additionally, there have been several interactions between law enforcement agencies in Whatcom County and ICE and CBP, taking place through the What-Comm (Whatcom County’s 911 Dispatch Center) and the Customs and Border Patrol (“CBP”) Dispatch Center that may violate KWW.

Records indicate at least 28 interactions between law enforcement and border patrol between November 2020 and June 2021 and 30 interactions between January 2022 and February 2022. These included police-initiated contact resulting in the sharing of a person’s personal information, and they also include requests for interpretation services, in potential violation of KWW. For example:

- 2/3/21: At the request of the Whatcom County Sheriff's Office, 911 dispatch contacted CBP dispatch to ask if a unit was available to provide language translation.
- 2/19/21: At the request of Blaine Police Department, 911 dispatch contacted CBP dispatch for a "cover officer" for a physical domestic dispute, where a person's identity and home address may have been shared.
- 5/20/21: 911 Dispatch contacted CBP Dispatch to see if any units were in the Sumas area for an officer requesting Code 2 assistance, where a person's identity and location information may have been shared.
- 6/13/2021: 911 Dispatch communicated with CBP Dispatch twice regarding having CBP's Search and Rescue respond to assist with a suicidal subject in the Blaine area, where a person's identity and location information may have been shared.
- 6/29/21: At the request of Lynden PD, 911 dispatch contacted CBP dispatch to ask if a CBP agent was available to translate for a Spanish-speaker.
- 10/26/21: Blaine resident called 911 to ask for help for friends that crossed Mexico to Texas and needed rescue – dispatch transferred to CBP station in Texas based on need of language line.
- 2/7/22: At the request of Whatcom County Sherriff's Office dispatch contacted CBP dispatch to ask for CBP assistance with a robbery, potentially sharing identifying information and location information.

The incidents above suggest that various law enforcement agencies violated KWW when, through What-Comm, they contacted CBP, presumably sharing personal information including identity information, personal information relating to the dispatch call, as well as home addresses, and/or the location of the respective individuals. The various requests sent through What-Comm for language services each serve as separate violations of the law.

Such shared information could have given CBP information it would not otherwise have absent coordination with local law enforcement, and it might have enabled CBP and ICE to respond and to arrive at the correct location to question individuals and to take civil immigration enforcement actions, as a result. This is exactly the kind of conduct prohibited by state law.

Considering the What-Comm contract, referenced above, and the examples of potential violations of the statute included here, we respectfully request that you take every action to comply with KWW. Please immediately update your contract to bring it into compliance and stop sharing dispatch information with immigration authorities to ensure there is no further violation of the statute.

If you have exculpatory information that makes clear that the contract itself, and the incidents above, are not violative of the statute, or that you have taken measures to correct any such violations please provide that information to us at your earliest convenience, and **no later than June 17, 2022**, so that we may resolve our inquiry without need for further intervention.

If you have further questions about the concerns raised in this letter, we urge you to contact Enoka Herat, eherat@aclu-wa.org, Police Practices and Immigration Counsel for the ACLU-WA.

Sincerely,

s/ Antoinette M. Davis

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