

# Records Maintenance and Release

## 807.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy.

## 807.2 POLICY

The Bellingham Police Department is committed to providing public access to records in a manner that is consistent with the Washington Public Records Act ([RCW 42.56.001](#) et seq.).

## 807.3 PUBLIC RECORDS OFFICER

The Chief of Police shall designate a Public Records Officer ([RCW 42.56.580](#)). The responsibilities of the Public Records Officer include, but are not limited to:

- (a) Managing the records management system for the Bellingham Police Department, including the retention, archiving, release and destruction of Bellingham Police Department public records.
- (b) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records.
  1. Rules and procedures for public inspection and copying shall be prominently displayed and made available to the public for inspection and copying ([RCW 42.56.040](#)).
- (c) Maintaining and making available for public inspection and copying an index of documents that provides identifying information of certain documents identified in [RCW 42.56.070](#) that are maintained by the Department.
- (d) Maintaining and updating the department records retention schedule including:
  1. Identifying the minimum length of time the Department must keep records.
  2. Identifying the department division responsible for the original record.
- (e) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- (f) Ensuring a current list containing every law that exempts or prohibits disclosure of specific information or records of the Department is available to the public ([RCW 42.56.070](#)).
- (g) Establishing rules regarding the processing of subpoenas for the production of records.
- (h) Ensuring the availability of a current schedule of fees for public records as allowed by law ([RCW 42.56.070](#); [RCW 42.56.120](#); [RCW 42.56.130](#)).
- (i) Ensuring that the business hours for record inspection or copying are posted on the department's website and made known by other means designed to provide the public with notice ([RCW 42.56.090](#)).

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- (j) Ensuring that the name and contact information of the Public Records Officer is visible to the public, including the department website and appropriate department publications ([RCW 42.56.580](#)).

### **807.4 PROCESSING REQUESTS FOR PUBLIC RECORDS**

Any department member who receives a request for any record shall route the request to the Public Records Officer or the authorized designee.

#### **807.4.1 REQUESTS FOR RECORDS**

The processing of requests for any record is subject to the following:

- (a) The Department is not required to create records that do not exist.
- (b) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.
  - (a) A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redaction. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
- (c) Requests to inspect or copy records shall be responded to promptly. Within five business days of receiving the request, one of the following responses shall be made ([RCW 42.56.520](#)):
  - 1. Providing the record.
  - 2. Providing the Internet address and link of the department website to the specific records requested.
    - (a) If the requester notifies the Department that access cannot be obtained through the Internet, then copies of the record shall be provided or the requester may view the records on the department computer.
  - 3. Acknowledging the receipt of the request and providing a reasonable estimate of time the Department will require to respond to the request. Additional time may be required to respond based upon:
    - (a) The need to clarify the intent of the request.
    - (b) The need to locate and assemble the information requested.
    - (c) Notification to third persons or agencies affected by the request.
    - (d) Determination whether any of the information requested is exempt.
  - 4. Acknowledging the receipt of the request and asking the requester for clarification if the request is not clear and providing the requester a reasonable estimate of the time that will be needed to respond if the request is not clarified. If the requester does not respond, and the entire request is unclear, the

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Department need not respond. If only part of the request is unclear, the Department shall respond to those portions of the request that are clear.

### 807.4.2 DENIALS

- (a) The denial shall be accompanied by a written statement that includes the specific exemption and a brief explanation of how the exemption applies to the withheld record ([RCW 42.56.210](#)).
- (b) Requests that are denied are subject to judicial review and the burden of proof is on the Department to show that the records requested are exempt or prohibited in whole or part by statute ([RCW 42.56.550](#)).

### 807.5 RELEASE RESTRICTIONS

Examples of release restrictions include:

- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any Bellingham Police Department record, including traffic collision reports, are restricted except as authorized by the Bellingham Police Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose ([18 USC § 2721](#); [18 USC § 2722](#)).
- (b) Personnel records that contain personal information to the extent that disclosure would violate privacy rights ([RCW 42.56.230](#); [RCW 42.56.250](#)).
- (c) Specific intelligence and specific investigative records regarding the discipline of a member of any profession where nondisclosure is essential for effective law enforcement or for the protection of any person's right to privacy ([RCW 42.56.240](#)).
- (d) Victim and witness information revealing the identity of persons who file complaints if disclosure would endanger the person's life, physical safety, or property ([RCW 42.56.240](#)).
- (e) Child victim and witness identity information including name, address, recordings, and photographs ([RCW 7.69A.030](#); [RCW 42.56.240](#)).
- (f) Concealed pistol license applications or information on the applications unless release is to law enforcement or corrections agencies under [RCW 9.41.070](#).
- (g) Information revealing the specific details of the alleged assault, identity, or contact information of a child victim of sexual assault who is under age 18. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative, stepchild, or step sibling of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Contact information includes phone numbers, email addresses, social media profiles, and usernames and passwords ([RCW 10.97.130](#); [RCW 42.56.240](#)).
- (h) Personal identifying information collected relating to local security alarm system programs and vacation crime watch programs ([RCW 42.56.240](#)).

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- (i) Certain criminal history record information as restricted by the Criminal Records Privacy Act ([RCW 10.97.040](#) et seq.).
- (j) Traffic collision reports except for what is authorized by [RCW 46.52.080](#) and [RCW 46.52.083](#).
- (k) Preliminary drafts, notes, recommendations, or intra-agency memorandums in which opinions are expressed, or policies formulated, or recommended ([RCW 42.56.280](#)).
- (l) Records that are relevant to a controversy (threatened, actual, or completed litigation) to which the Bellingham Police Department is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts ([RCW 42.56.290](#)).
- (m) Security records including but not limited to records relating to preparing and responding to criminal terrorist acts; vulnerability assessments and emergency and escape plans of secured facilities; information regarding infrastructure and security of computer and telecommunications networks; system security and emergency preparedness plans; and as further defined in [RCW 42.56.420](#).
- (n) Global positioning system data that indicates the location of a member's residence or of a public employee or volunteer ([RCW 42.56.240](#); [RCW 42.56.250](#)).
- (o) Information contained in a local, regional, or statewide gang database ([RCW 42.56.240](#)).
- (p) Body worn camera recordings that violate a person's right to privacy ([RCW 42.56.240](#)).
- (q) Personal identifying information, or information regarding citizenship or immigration status, of any victim of criminal activity or trafficking who is requesting certification for a U or T visa, except where allowed by law ([RCW 7.98.020](#)).
- (r) Personal identifying information about an individual's religious beliefs, practices, or affiliation ([RCW 42.56.235](#)).
- (s) Investigative records compiled by the Bellingham Police Department regarding possible unfair practices of discrimination under [RCW 49.60.010](#) et seq. or possible violation of other federal, state, or local laws or Bellingham Police Department internal policies during an active and ongoing investigation ([RCW 42.56.250](#)).
  - 1. Records may be released upon completion of the investigation as allowed under [RCW 42.56.250](#).
- (t) Any other information that may be appropriately denied by Washington law.

### **807.6 SUBPOENAS AND DISCOVERY REQUESTS**

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Public Records Officer for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

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Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the Prosecuting Attorney, City Attorney or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

### **807.7 RELEASED RECORDS TO BE MARKED**

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the department name and to whom the record was released.

Each audio/video recording released should include the department name and to whom the record was released.

### **807.8 TRAINING**

The Public Records Officer shall complete a training program consistent with the Attorney General's model rules within 90 days of assuming responsibilities for public records and complete refresher training as required ([RCW 42.56.152](#)).

### **807.9 SECURITY BREACHES**

Members who become aware that any Bellingham Police Department system containing personal information may have been breached should notify the Public Records Officer as soon as practicable.

The Public Records Officer shall ensure the required notice is given to any resident of this state whose unsecured personal information is reasonably believed to have been acquired by an unauthorized person ([RCW 42.56.590](#)).

Notice shall be given as soon as reasonably practicable but may be delayed if notification will impede a criminal investigation.

For the purposes of the notice requirement, personal information includes:

- (a) An individual's first name or first initial and last name in combination with any one or more of the following:
  - 1. Social Security number or the last four digits of the Social Security number
  - 2. Driver license number or Washington identification card number
  - 3. Full account number, credit or debit card number, or any required security code, access code, or password that would permit access to an individual's financial account
  - 4. Any data elements listed in [RCW 42.56.590](#) (e.g., date of birth, health insurance policy number, biometric data, email address, password)

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- (b) Any of the data elements listed above without the individual's first and last name if the data elements would enable a person to commit identity theft or if encryption, redaction, or other methods have not safeguarded the data element ([RCW 42.56.590](#)).

If the breach reasonably appears to have been made to protected information covered in the Protected Information Policy, the Public Records Officer should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

# Immigration Violations

## 417.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Bellingham Police Department regarding enforcement of immigration laws.

## 417.2 POLICY

It is the policy of the Bellingham Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status. As a result, members of the Bellingham Police Department shall not enforce federal immigration laws, i.e. those laws set forth in [Title 8 U.S. Code](#) (USC) or in the U.S. Immigration and Nationality Act (INA), except for those offenses that are criminal and serious in nature due to their classification as federal felonies.

## 417.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of city law enforcement will not result in city enforcement of federal civil immigration laws. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to civil immigration status, race, religion, creed, national origin, or lack of proficiency in speaking the English language. Members shall treat all individuals in a manner consistent with the United States and Washington Constitutions.

### 417.3.1 DETERMINATION OF IMMIGRANT STATUS

Determination of immigration status is within the jurisdiction and responsibility of the U.S. Customs and Border Protection (CBP) and/or Immigration and Customs Enforcement (ICE). Members shall not request documents relating to a person's civil immigration status or inquire into the immigration status of an individual unless necessary to investigate criminal activity (e.g. harboring, smuggling, terrorism). Members may continue to confirm identity under state law which lists valid forms of identification related to drivers' licenses and permit requirements [RCW 46.20.035](#).

## 417.4 ENFORCEMENT

An officer shall not detain any individual, solely for the purpose of determining immigration status. An Officer shall not take any individual into custody or hold an individual in custody solely for the purpose of determining immigration status or based solely on a civil immigration warrant, or an immigration hold request.



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An Officer may detain an individual or take an individual into custody based on a federal warrant only if the warrant is: (a) based on a violation other than those contained in [Title 8 U.S.C.](#) as misdemeanor offenses and (b) issued by a judge or judicial magistrate.

Unless immigration status is relevant to another criminal offense or investigation (other than misdemeanor offenses contained in [Title 8 U.S.C.](#)), the fact that an individual is suspected of being an undocumented person shall not be the sole basis for contacting, stopping, questioning, interrogating, investigating, detaining or arresting the individual. For example, investigation into violations of harboring or trafficking may be a basis for determining immigration status.

Officers shall not use any city funds or resources solely to enforce civil or administrative federal immigration laws. Nor shall officers use any city funds or resources solely to enforce misdemeanor offenses contained in [Title 8 U.S.C.](#) "Enforce" includes stopping, questioning, interrogating, investigating or arresting an individual and also includes assisting with such activities.

The Bellingham Police Department does not participate in U.S. Immigration and Customs Enforcement ([ICE](#)) [287 \(g\)](#) Program. The Department does not have a Warrant Service Officer (WSO) model agreement with ICE.

### 417.4.1 SWEEPS AND FAIR/IMPARTIAL POLICING CONSIDERATIONS

The Bellingham Police Department does not conduct sweeps or other concentrated efforts to detain suspected individuals who are in violation of civil federal immigration laws or misdemeanor offenses contained in [Title 8 U.S.C.](#)

When enforcement efforts are increased in a particular area, equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnicity, age, gender, sexual orientation, religion, socioeconomic status or other group.

The disposition of each contact (e.g. warning, citation, arrest), should not be affected by such factors as race, ethnicity, age, gender, sexual orientation, religion or socioeconomic status.

### 417.4.2 IDENTIFICATION

Whenever any individual is reasonably suspected of an infraction or criminal violation (misdemeanor or felony), the investigating officer should take reasonable steps to determine the person's identity through valid identification or other reliable sources.

Arrests, Identifications, and Bookings of persons of questionable immigration status shall be conducted in the same manner as those for any other person and in accordance with Policy 413 (Citation Releases Policy), and without regard to immigration status.

### 417.4.3 CIVIL VS. CRIMINAL FEDERAL OFFENSES

An individual who is unlawfully present in the United States is not subject to criminal penalties solely for being undocumented. Rather, such offenses are punishable by civil penalties enforced by ICE and Customs and Border Protection. Enforcement regarding improper entry into the United



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States, which is subject to criminal penalties under section [8 USC § 1325\(a\)](#) is the responsibility of ICE and Customs and Border Protection.

### 417.4.4 IDENTIFICATION CONFIRMATION

If a circumstance requires verification of someone's identity via Department of Homeland Security service forms, for example to investigate a crime or to confirm identity in connection with drivers' licenses and permit requirements, and the individual cannot provide the forms or provided forms need to be confirmed, then identification may be determined through any of the following sources:

- (a) A law enforcement officer who is authorized by the federal government under [8 USC § 1357](#) to verify or ascertain an individual's immigration status (sometimes referred to as a [287\(g\)](#) certified officer). The Bellingham Police Department does not have a current [287 \(g\)](#) agreement with the Department of Homeland Security.
- (b) Immigration and Customs Enforcement (ICE)
- (c) U.S. Customs and Border Protection (CBP)

### 417.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

The Bellingham Police Department does not operate its own jail but rather uses the Whatcom County jail as its primary correctional facility. The Whatcom County jail determines its notification policies and procedures. Bellingham Police Departments members shall not detain individuals who are otherwise ready to be released solely for the purpose of notification of Customs and Border Protection or ICE. Immigration officials may seek to interview suspected undocumented persons who have been booked into jail on criminal charges.

### 417.6 ICE REQUEST FOR ASSISTANCE

"Requests" by ICE, or any other federal agency, for assistance from this department shall be directed to a supervisor and the Bellingham Police Department shall comply with the provisions of [State Engrossed Second Substitute Senate Bill 5497 \(Keep Washington Working Act\)](#) which relate to enforcement, cooperation, assistance regarding federal registration and surveillance programs. shall be in compliance with [\(RCW 10.93.160\)](#).

Members of the Bellingham Police Department are prohibited from using agency funds, facilities, property, equipment, or personnel to investigate, enforce, cooperate with, or assist in the investigation or enforcement of any federal registration surveillance programs or any other laws, rules, or policies that target Washington residents solely on the basis of race, religion, immigration status, citizenship status, national origin or ethnic origin.

No section of this policy is intended to limit or prohibit any officer from: (1) sending to, or receiving from, federal immigration authorities the citizenship or immigration status of a person or maintaining such information, or exchanging the citizenship or immigration status of an individual with any other federal, state, or local government agency, in accordance with [8 U.S.C. Sec 1373](#); or (2) Complying with any other state or federal law.

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Nothing in this policy prohibits the collection, use or disclosure of information that is: (a) required to comply with state or federal law; (b) in response to a lawfully issued court order; (c) necessary to perform departmental duties, functions or other business as permitted by statute or rule, conducted by the agency that is not related to immigration enforcement; (d) required to comply with policies, grants, waivers, or other requirements necessary to maintain funding; or (e) in the form of de-identified or aggregated data, including census data.

If any part of this policy is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the city, the conflicting part of this policy is inoperative solely to the extent of the conflict, and this finding does not affect the operation of the remainder of this policy.

### **417.7 CERTIFICATIONS FOR U OR T NON-IMMIGRANT STATUS (VISA)**

Federal law allows for issuance of U Non-immigrant Status (U Visa), to victims and witnesses of certain qualifying crimes pursuant to [Title 8 USC § 1101 \(a\)\(15\)](#) (U) and T Non-immigrant Status (T Visa) for certain qualifying victims of human trafficking (pursuant to [Title 8 USC § 1101\(a\)\(15\)\(T\)](#)).

Consistent with [RCW 7.98](#) and federal law, upon the request of the victim or their representative, a certifying official with the Bellingham Police Department shall:

- (a) Make a determination on U.S. Citizenship and Immigration Services form I-918 supplement B or relevant successor certification form, whether the victim was a victim of criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that criminal activity; or
- (b) make a determination on U.S. Citizenship and Immigration Services form I-914 supplement B or relevant successor certification form, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of eighteen, whether he or she has complied with any reasonable request from law enforcement in any related investigation or prosecution of the acts of trafficking in which he or she was a victim and
- (c) keep written documentation regarding the number of victims who requested certifications, the number of certification forms that were signed, the number of certification forms that were denied, and the number of certifications that were withdrawn, which must be reported to the Office for Victims of Crime annually; and
- (d) ensure the completion of the certification, if appropriate, occurs within 90 days of the request or 14 days of the request if the victim is in federal immigration removal proceedings or in any case where the victim's children would lose any benefits by virtue of having reached the age of 21 within 90 days of receiving the certification request, no later than 14 days before date the victim or child turn 21, whichever is earlier (requests for expedited certification must be raised by the victim; and

U and T petitions for non-immigrant status, supplemental certification forms, and supporting documents shall be reviewed by the Chief of Police for approval or denial of the certification request consistent with state and federal law. If applicable, the Department's affirmative determination shall provide specific details regarding the nature of the crime investigated or prosecuted and a

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detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of criminal activity.

Additional considerations when reviewing a U or T certification request:

- If a certification is denied, the investigations Lieutenant should notify the requestor of the reason(s) for the denial and provide an opportunity for reconsideration to ensure the agency has all pertinent information.
- A current investigation, the filing of charges, and a prosecution or conviction are not required for a victim to request and obtain the certification from a certifying official.
- Consistent with state law, the Bellingham Police Department may only withdraw the certification if the victim unreasonably refuses to provide information and assistance related to the investigation or prosecution of the associated criminal activity when reasonably requested by the Department.
- The Department shall develop a language access protocol for limited English proficient and deaf or hard of hearing victims of criminal activity.
- The Department shall reissue any certification within 90 days of receiving a request from the victim, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service provider.
- The Department shall not disclose personal identifying information or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless required to do so by federal law, a court order, or written authorization from the victim, or if a minor victim, from the victim's parent or guardian. This subsection does not apply to the Department's obligation pursuant to *Brady v. Maryland*.

### **417.8 TRAINING**

The Administrative Services Sergeant shall ensure that all appropriate members receive policy review through training bulletins.

## Limited English Proficiency Services

### 331.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with limited English proficiency (LEP) ([42 USC § 2000d](#)).

#### 331.1.1 DEFINITIONS

Definitions related to this policy include:

**Authorized interpreter** - A person who has been screened and authorized by the Department to act as an interpreter and/or translator for others.

**Interpret or interpretation** - The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.

**Limited English proficient (LEP)** - Any individual whose primary language is not English and who has a limited ability to read, write, speak or understand English. These individuals may be competent in certain types of communication (e.g., speaking or understanding) but still be LEP for other purposes (e.g., reading or writing). Similarly, LEP designations are context-specific; an individual may possess sufficient English language skills to function in one setting but these skills may be insufficient in other situations.

**Qualified bilingual member** - A member of the Bellingham Police Department, designated by the Department, who has the ability to communicate fluently, directly and accurately in both English and another language. Bilingual members may be fluent enough to communicate in a non-English language but may not be sufficiently fluent to interpret or translate from one language into another.

**Translate or translation** - The replacement of written text from one language (source language) into an equivalent written text (target language).

### 331.2 POLICY

It is the policy of the Bellingham Police Department to reasonably ensure that LEP individuals have meaningful access to law enforcement services, programs and activities, while not imposing undue burdens on its members.

The Department will not discriminate against or deny any individual access to services, rights or programs based upon national origin or any other protected interest or right.

### 331.3 LEP COORDINATOR

The Chief of Police shall delegate certain responsibilities to an LEP Coordinator. The LEP Coordinator shall be appointed by, and directly responsible to, the Deputy Chief of Services or the authorized designee.

The responsibilities of the LEP Coordinator include, but are not limited to:

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- (a) Coordinating and implementing all aspects of the Bellingham Police Department's LEP services to LEP individuals.
- (b) Developing procedures that will enable members to access LEP services, including telephonic interpreters, and ensuring the procedures are available to all members.
- (c) Ensuring that a list of all qualified bilingual members and authorized interpreters is maintained and available to each supervisor and Deputy Director. The list should include information regarding the following:
  - 1. Languages spoken
  - 2. Contact information
  - 3. Availability
- (d) Ensuring signage stating that interpreters are available free of charge to LEP individuals is posted in appropriate areas and in the most commonly spoken languages.
- (e) Reviewing existing and newly developed documents to determine which are vital documents and should be translated, and into which languages the documents should be translated.
- (f) Annually assessing demographic data and other resources, including contracted language services utilization data and community-based organizations, to determine if there are additional documents or languages that are appropriate for translation.
- (g) Identifying standards and assessments to be used by the Department to qualify individuals as qualified bilingual members or authorized interpreters.
- (h) Periodically reviewing efforts of the Department in providing meaningful access to LEP individuals, and, as appropriate, developing reports, new procedures, or recommending modifications to this policy.
- (i) Receiving and responding to complaints regarding department LEP services.
- (j) Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to department services, programs and activities.

### **331.4 FOUR-FACTOR ANALYSIS**

Since there are many different languages that members could encounter, the Department will utilize the four-factor analysis outlined in the U.S. Department of Justice (DOJ) Guidance to Federal Financial Assistance Recipients, available at the DOJ website, to determine which measures will provide meaningful access to its services and programs. It is recognized that law enforcement contacts and circumstances will vary considerably. This analysis, therefore, must remain flexible and will require an ongoing balance of four factors, which are:

- (a) The number or proportion of LEP individuals eligible to be served or likely to be encountered by department members, or who may benefit from programs or services within the jurisdiction of the Department or a particular geographic area.

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- (b) The frequency with which LEP individuals are likely to come in contact with department members, programs or services.
- (c) The nature and importance of the contact, program, information or service provided.
- (d) The cost of providing LEP assistance and the resources available.

### **331.5 TYPES OF LEP ASSISTANCE AVAILABLE**

Bellingham Police Department members should never refuse service to an LEP individual who is requesting assistance, nor should they require an LEP individual to furnish an interpreter as a condition for receiving assistance. The Department will make every reasonable effort to provide meaningful and timely assistance to LEP individuals through a variety of services.

The Department will utilize all reasonably available tools, such as language identification cards, when attempting to determine an LEP individual's primary language.

LEP individuals may choose to accept department-provided LEP services at no cost or they may choose to provide their own.

Department-provided LEP services may include, but are not limited to, the assistance methods described in this policy.

### **331.6 WRITTEN FORMS AND GUIDELINES**

Vital documents or those that are frequently used should be translated into languages most likely to be encountered. The LEP Coordinator will arrange to make these translated documents available to members and other appropriate individuals, as necessary.

### **331.7 AUDIO RECORDINGS**

The Department may develop audio recordings of important or frequently requested information in a language most likely to be understood by those LEP individuals who are representative of the community being served.

### **331.8 QUALIFIED BILINGUAL MEMBERS**

Bilingual members may be qualified to provide LEP services when they have demonstrated through established department procedures a sufficient level of skill and competence to fluently communicate in both English and a non-English language. Members utilized for LEP services must demonstrate knowledge of the functions of an interpreter/translator and the ethical issues involved when acting as a language conduit. Additionally, bilingual members must be able to communicate technical and law enforcement terminology, and be sufficiently proficient in the non-English language to perform complicated tasks, such as conducting interrogations, taking statements, collecting evidence or conveying rights or responsibilities.

When a qualified bilingual member from this department is not available, personnel from other City departments, who have been identified by the Department as having the requisite skills and competence, may be requested.

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### **331.9 AUTHORIZED INTERPRETERS**

Any person designated by the Department to act as an authorized interpreter and/or translator must have demonstrated competence in both English and the involved non-English language, must have an understanding of the functions of an interpreter that allows for correct and effective translation, and should not be a person with an interest in the department case or investigation involving the LEP individual. A person providing interpretation or translation services may be required to establish the accuracy and trustworthiness of the interpretation or translation in a court proceeding.

Authorized interpreters must pass a screening process established by the LEP Coordinator which demonstrates that their skills and abilities include:

- (a) The competence and ability to communicate information accurately in both English and in the target language.
- (b) Knowledge, in both languages, of any specialized terms or concepts peculiar to this department and of any particularized vocabulary or phraseology used by the LEP individual.
- (c) The ability to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.
- (d) Knowledge of the ethical issues involved when acting as a language conduit.

#### **331.9.1 SOURCES OF AUTHORIZED INTERPRETERS**

The Department may contract with authorized interpreters who are available over the telephone. Members may use these services with the approval of a supervisor and in compliance with established procedures.

Other sources may include:

- Qualified bilingual members of this department or personnel from other City departments.
- Individuals employed exclusively to perform interpretation services.
- Contracted in-person interpreters, such as state or federal court interpreters, among others.
- Interpreters from other agencies who have been qualified as interpreters by this department, and with whom the Department has a resource-sharing or other arrangement that they will interpret according to department guidelines.

Other sources shall not include:

- Federal immigration authorities such as Immigration Customs Enforcement (ICE) and/or Customs and Border Protection (CBP)



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### **331.9.2 COMMUNITY VOLUNTEERS AND OTHER SOURCES OF LANGUAGE ASSISTANCE**

Language assistance may be available from community volunteers who have demonstrated competence in either monolingual (direct) communication and/or in interpretation or translation (as noted in above), and have been approved by the Department to communicate with LEP individuals.

Where qualified bilingual members or other authorized interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department members must carefully consider the nature of the contact and the relationship between the LEP individual and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

While family or friends of an LEP individual may offer to assist with communication or interpretation, members should carefully consider the circumstances before relying on such individuals. For example, children should not be relied upon except in exigent or very informal and non-confrontational situations.

### **331.10 CONTACT AND REPORTING**

While all law enforcement contacts, services and individual rights are important, this department will utilize the four-factor analysis to prioritize service to LEP individuals so that such services may be targeted where they are most needed, according to the nature and importance of the particular law enforcement activity involved.

Whenever any member of this department is required to complete a report or other documentation and interpretation services are provided to any involved LEP individual, such services should be noted in the related report. Members should document the type of interpretation services utilized and whether the individual elected to use services provided by the Department or some other identified source.

### **331.11 RECEIVING AND RESPONDING TO REQUESTS FOR ASSISTANCE**

The Bellingham Police Department will take reasonable steps and will work with the Department of Human Resources to develop in-house language capacity by hiring or appointing qualified members proficient in languages representative of the community being served.

#### **331.11.1 EMERGENCY CALLS TO 9-1-1**

Department members will make every reasonable effort to promptly accommodate LEP individuals utilizing 9-1-1 lines. When a 9-1-1 call-taker receives a call and determines that the caller is an LEP individual, the call-taker shall quickly determine whether sufficient information can be obtained to initiate an appropriate emergency response. If language assistance is still needed, the language is known and a qualified bilingual member is available in What-Comm, the call shall immediately be handled by the qualified bilingual member.

If a qualified bilingual member is not available or the call-taker is unable to identify the caller's language, the call-taker will contact the contracted telephone interpretation service and establish a three-way call between the call-taker, the LEP individual and the interpreter.

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Dispatchers will make every reasonable effort to dispatch a qualified bilingual member to the assignment, if available and appropriate. Dispatchers shall not dispatch immigration authorities, including Immigration and Customs Enforcement (ICE) and/or Customs and Border Protection (CBP), for language assistance.

While 9-1-1 calls shall receive top priority, reasonable efforts should also be made to accommodate LEP individuals seeking routine access to services and information by utilizing the resources listed in this policy.

### **331.12 FIELD ENFORCEMENT**

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve LEP individuals. The scope and nature of these activities and contacts will inevitably vary. Members and/or supervisors must assess each situation to determine the need and availability of language assistance to all involved LEP individuals and utilize the methods outlined in this policy to provide such assistance.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to request consent to search if the officer is unable to effectively communicate with an LEP individual.

If available, officers should obtain the assistance of a qualified bilingual member or an authorized interpreter before placing an LEP individual under arrest.

### **331.13 INVESTIGATIVE FIELD INTERVIEWS**

In any situation where an interview may reveal information that could be used as the basis for arrest or prosecution of an LEP individual and a qualified bilingual member is unavailable or lacks the skills to directly communicate with the LEP individual, an authorized interpreter should be used. This includes interviews conducted during an investigation with victims, witnesses and suspects. In such situations, audio recordings of the interviews should be made when reasonably possible. Identification and contact information for the interpreter (e.g., name, address) should be documented so that the person can be subpoenaed for trial if necessary.

If an authorized interpreter is needed, officers should consider calling for an authorized interpreter in the following order:

- An authorized department member or allied agency interpreter
- An authorized telephone interpreter
- Any other authorized interpreter

Any *Miranda* warnings shall be provided to suspects in their primary language by an authorized interpreter or, if the suspect is literate, by providing a translated *Miranda* warning card.

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The use of an LEP individual's bilingual friends, family members, children, neighbors or bystanders may be used only when a qualified bilingual member or authorized interpreter is unavailable and there is an immediate need to interview an LEP individual.

### **331.14 CUSTODIAL INTERROGATIONS**

Miscommunication during custodial interrogations may have a substantial impact on the evidence presented in a criminal prosecution. Only qualified bilingual members or, if none is available or appropriate, authorized interpreters shall be used during custodial interrogations. *Miranda* warnings shall be provided to suspects in their primary language by the qualified bilingual member or an authorized interpreter.

Custodial interrogations of a juvenile, or custodial interrogations related to a felony crime must be recorded electronically. Other custodial interrogations should be recorded whenever reasonably possible to ensure that translations during custodial interrogations are accurately documented and are admissible as evidence.

### **331.15 BOOKINGS**

When gathering information during the booking process, members should remain alert to the impediments that language barriers can create. In the interest of the arrestee's health and welfare, the safety and security of the facility, and to protect individual rights, it is important that accurate medical screening and booking information be obtained. Members should seek the assistance of a qualified bilingual member whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by an LEP individual.

### **331.16 COMPLAINTS**

The Department shall ensure that LEP individuals who wish to file a complaint regarding members of this department are able to do so. The Department may provide an authorized interpreter or translated forms, as appropriate. Complaints will be referred to the LEP Coordinator.

Investigations into such complaints shall be handled in accordance with the Personnel Complaints Policy. Authorized interpreters used for any interview with an LEP individual during an investigation should not be members of this department.

Any notice required to be sent to an LEP individual as a complaining party pursuant to the Personnel Complaints Policy should be translated or otherwise communicated in a language-accessible manner.

### **331.17 COMMUNITY OUTREACH**

Community outreach programs and other such services offered by this department are important to the ultimate success of more traditional law enforcement duties. This department will continue to work with community groups, local businesses and neighborhoods to provide equal access to such programs and services.

# Bias-Based Policing

## 401.1 PURPOSE AND SCOPE

This policy provides guidance to Bellingham Police Department members that affirms the Bellingham Police Department's commitment to policing that is fair and objective. Nothing in this policy prohibits the use of specified characteristics in law enforcement activities designed to strengthen the Bellingham Police Department's relationship with its diverse communities (e.g., cultural and ethnicity awareness training, youth programs, community group outreach, partnerships) ([RCW 43.101.410](#)).

### 401.1.1 DEFINITIONS

Definitions related to this policy include:

**Bias-based policing** - An inappropriate reliance on actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement.

## 401.2 POLICY

The Bellingham Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law.

## 401.3 RACIAL- OR BIAS-BASED PROFILING PROHIBITED

Racial- or bias-based profiling is strictly prohibited. However, nothing in this policy is intended to prohibit an officer from considering factors such as race or ethnicity in combination with other legitimate factors to establish reasonable suspicion or probable cause (e.g., suspect description is limited to a specific race or group).

### 401.3.1 OTHER PROHIBITIONS

The Bellingham Police Department also condemns the illegal use of an individual or group's attire, appearance, or mode of transportation, including the fact that an individual rides a motorcycle or wears motorcycle-related paraphernalia, as a factor in deciding to stop and question, take enforcement action, arrest, or search a person or vehicle with or without a legal basis under the United States Constitution or Washington State Constitution ([RCW 43.101.419](#)).

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Additionally, members shall not collect information from a person based on religious belief, practice, or affiliation unless permitted under state law. Members shall not ([RCW 42.60.020](#); [RCW 42.60.030](#)):

- (a) Provide or disclose to federal government authorities personally identifiable information about a person's religious belief, practice, or affiliation unless the member is being questioned as a witness to a crime.
- (b) Assist federal government authorities in compiling personal information about a person's religious belief, practice, or affiliation.
- (c) Investigate or enforce any requirement that a person register with the federal government or a federal agency based on religion.

### **401.4 MEMBER RESPONSIBILITY**

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial- or bias-based profiling to a supervisor.

#### **401.4.1 REASON FOR DETENTION**

Officers detaining a person shall be prepared to articulate sufficient reasonable suspicion to justify the detention, independent of the individual's membership in a protected class.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview card), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention, as applicable.

Nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

#### **401.4.2 REPORTING TRAFFIC STOPS**

Each time an officer makes a traffic stop, the officer shall report any demographic information required by the Department ([RCW 43.101.410](#)).

### **401.5 SUPERVISOR RESPONSIBILITY**

Supervisors shall monitor those individuals under their command for any behavior that may conflict with the purpose of this policy and shall handle any alleged or observed violation of this policy in accordance with the Personnel Complaints Policy.

- (a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
- (b) Supervisors should periodically review MDC data and any other available resource used to document contact between officers and the public to ensure compliance with this policy.
  - 1. Supervisors should document these periodic reviews.

## *Bias-Based Policing*

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2. Documentation that captures a potential instance of racial- or bias-based profiling should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
  - (d) Supervisors should ensure that no retaliatory action is taken against any member of this department who discloses information concerning racial- or bias-based profiling.

### **401.6 STATE REPORTING**

Subject to any fiscal constraints, the Deputy Chief of Operations should review available data related to traffic stops, including demographic data, existing procedures, practices and training, as well as complaints. The data should be analyzed for any patterns or other possible indicators of racial- or bias-based profiling and included in an annual report for the Washington Association of Sheriffs and Police Chiefs ([RCW 43.101.410\(3\)](#)).

### **401.7 TRAINING**

Each member of this department will be required to complete an approved refresher training course every five years, or sooner if deemed necessary, in order to keep current with changing community trends ([RCW 43.101.410](#)).

# Suspected Hate Crimes

## 320.1 PURPOSE AND SCOPE

The Bellingham Police Department recognizes and places a high priority on the rights of all individuals guaranteed under the Constitution and the laws of this state. When such rights are infringed upon by violence, threats or other harassment, the Bellingham Police Department will utilize all available resources to see that justice is served under the law. This policy has been developed to provide members of the Bellingham Police Department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

## 320.2 DEFINITIONS

**Bias Incident** - Offensive derogatory comments directed at a person's sexual orientation, race, or other protected status which cause fear and/or concern in the targeted community during a non-criminal incident.

**Bodily injury, physical injury, or bodily harm** - Physical pain or injury, illness, or an impairment of physical condition.

**Crime with bias elements** - An event in which a crime is committed that is not based on bias and during the crime the suspect does or says something directed at the victim's protected status or group. (For example, a Robbery where the perpetrator uses a racial slur. The primary motivation for the crime is the Robbery, the racial slur is secondary).

**Gender expression or identity** - Having, or being perceived as having, a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth ([RCW 9A.36.080](#)).

**Hate Crime** - A crime motivated by prejudice. When a perpetrator targets and commits a crime against a person because they are a member (or perceived member) of a certain group.

**Malice and maliciously** - To import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

**Reasonable person** - A reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same gender expression or identity, or the same mental, physical, or sensory disability as the victim ([RCW 9A.36.080](#)).

**Sexual orientation** - Heterosexuality, homosexuality, or bisexuality ([RCW 9A.36.080](#)).

**Threat** - To communicate, directly or indirectly, the intent to cause bodily injury immediately or in the future to any other person or to cause physical damage immediately or in the future to the property of another person.



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### **320.3 CRIMINAL STATUTES**

#### **320.3.1 HATE CRIME OFFENSES**

A person is guilty of a hate crime offense if he/she maliciously and intentionally commits one of the following acts because of his/her perception of the victim's race, color, religion, ancestry, national origin, ethnicity, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability ([RCW 9A.36.080](#)):

- (a) Causes physical injury to the victim or another person.
- (b) Causes physical damage to or destruction of the property of the victim or another person.
- (c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under the circumstances.

Prima facie acts of hate are described in [RCW 9A.36.080\(2\)](#).

#### **320.3.2 THREATS TO BOMB OR INJURE PROPERTY**

It is unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any governmental property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated ( [RCW 9.61.160](#)).

#### **320.3.3 FEDERAL JURISDICTION**

The federal government has the power to investigate and prosecute bias-motivated violence by giving the U.S. Department of Justice jurisdiction over crimes of violence where the perpetrator has selected the victim because of the person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability ([18 USC § 245](#)).

### **320.4 CIVIL STATUTES**

In addition to the criminal penalty provided in [RCW 9A.36.080](#) for committing a hate crime offense, the victim may bring a civil cause of action for the hate crime offense against the person who committed the offense. A person may be liable to the victim of the hate crime offense for actual damages, punitive damages of up to one hundred thousand dollars, and reasonable attorneys' fees and costs incurred in bringing the action ([RCW 9A.36.083](#)).

### **320.5 PREVENTING AND PREPARING FOR LIKELY HATE CRIMES**

While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by:

- (a) Making an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes to form and cooperate with prevention and response networks.

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- (b) Providing victim assistance and follow-up as outlined below, including community follow-up.
- (c) Educating community and civic groups about hate crime laws.

### **320.6 PROCEDURE FOR INVESTIGATING HATE CRIMES AND BIASED INCIDENTS**

Whenever any member of this Department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Officer(s) will be promptly assigned to contact the victim, witness, or reporting party to investigate the matter further as circumstances may dictate.
- (b) A supervisor shall be notified of the circumstances as soon as practical.
- (c) Once "in progress" aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of present suspects, etc.), the assigned officer(s) will take all reasonable steps to preserve available evidence that may tend to establish that a hate crime was involved.
- (d) The assigned officer(s) and supervisor should take reasonable steps to ensure that any such situation does not escalate further.
- (e) Depending on the situation, the assigned officer(s) or supervisor may request additional assistance from detectives or other resources to further the investigation.
- (f) The assigned officer(s) will interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
- (g) If Officers are able to develop probable cause for a Hate Crime or a Crime with Bias, an arrest should be made.
  - 1. If there is no crime, but the reported event appears to have a bias element, the event SHALL be documented.
  - 2. If Officers are not able to make a determination because the case requires further follow-up, the Investigations Unit Supervisors should be notified via e-mail.
- (h) The assigned officer(s) will include all available evidence indicating the likelihood of a hate crime in the relevant report(s). All reports will be completed and submitted by the assigned officer(s) before the end of the shift.
- (i) Any report that is determined to be a hate Crime, a Crime with Bias, or a Bias Incident should have the SBI box marked in Longarm.

#### **320.6.1 INVESTIGATION UNIT RESPONSIBILITY**

All cases marked with the SBI flag will then be reviewed by the Investigations Unit Supervisors. The Investigations Supervisor will then:

- (a) Assign the case to a Detective for follow-up (or),
- (b) Complete the Hate Crime worksheet confirming the disposition of the case.

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If a case is assigned, the assigned detective will be responsible for following up on the reported hate crime as follows:

- (a) Complete the Hate crime worksheet.
- (b) Coordinate further investigation and work with other agencies, as appropriate.
- (c) Maintain contact with the victim(s) and other involved individuals as needed.

### **320.6.2 HATE/BIAS CRIMES COORDINATOR**

The Deputy Chief of Operations shall be designated as the Bellingham Police Departments Hate/Bias Crimes Coordinator.

In his/her absence, the Chief of Police will assign this function.

The Hate/Bias Crimes Coordinator is responsible for the following:

- Maintain statistical data on suspected hate crimes and tracking as indicated and report such data to the Washington Association of Sheriff's and Police Chiefs (WASPC) ([RCW 36.28A.030](#)).
- The Coordinator will maintain a liaison with community groups and City and County departments regarding Hate/Bias Crimes.
- The Coordinator will ensure adequate investigative follow up on each Hate/Bias Crime and assist with prosecution matters when necessary, and will maintain a complete file of all Hate/Bias Crimes.
- The Coordinator will cause a monthly recap of activity to be distributed to the designated supervisors in this department.
- The Coordinator will act as a resource for media relations, and will be the resource/referral person for victims, assuring victims are contacted through follow up.

### **320.7 TRAINING**

All members of this department will receive CJTC approved training on hate crime recognition and investigation ( [RCW 43.101.290](#)).