



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Civil Rights Division
800 Fifth Avenue • Suite 2000 • MS TB 14 • Seattle WA 98104
(206) 464-7744

September 20, 2023

VIA E-MAIL

Randy Flyckt
Adams County Prosecutor
210 West Broadway Avenue
Ritzville, WA 99169

RE: Adams County Sheriff's Response to Public Records Request No. 23-121

Dear Mr. Flyckt:

I write regarding the Adams County Sheriff's Office's response to Public Records Request No. 23-121. After reviewing the records produced, I have concerns with the Sheriff's Office's compliance with the Public Records Act (PRA) and the Keep Washington Working Act (KWW). I identify the background of my request and my concerns with the response from the Sheriff's Office below.

On April 10, 2023, I submitted a public records request to the Sheriff's Office seeking:

All written communications between employees of your agency and the U.S. Department of Homeland Security, including Immigration and Customs Enforcement (ICE) and/or Customs and Border Protection (CBP), during the period from January 1, 2022 through April 10, 2023. This may include emails, memos, meeting minutes, or any other documentation of communication between the requested parties, including emails exchanged with any address ending in @ice.dhs.gov or @cbp.dhs.gov.

On June 1, 2023, I received the Sheriff's Office response by email¹ with a 771-page PDF titled "Redacted" that contains redacted records, and a one-page PDF titled "Redactions 23-121," which states in part:

Due to the nature of some of the crimes discussed and the fact that some of the emails requested contain non-conviction data, the names and identifying information for private individuals were redacted under RCW 42.56.050: A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the

¹ I have enclosed a copy of the email and its attachments for your reference.

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person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

The response email stated the request was “closed” and included a copy of the request noted as having been “completed” on June 1, 2023. The response does not identify that any records were withheld. I have three concerns with the production from the Sheriff’s Office.

First, it appears that the Sheriff’s Office withheld a substantial number of records responsive to request No. 23-121, and may have altered or deleted the metadata of some original email files to remove certain information and attachments before producing them. For example, a January 25, 2023, email from Corrections Deputy Mason Boyes to ICE officer Lonnie R. Miller and other recipients includes “NEW INCUSTODY FORM.docx” as an attachment, but the attachment was not produced. A March 12, 2023 email from Corporal Evan Armstrong to CBP agent Caleb R. Sullivan includes a probable cause statement as an attachment but again, the attachment was not produced, and all identifying information about the individual named in the statement is redacted. Similarly, a March 16, 2023, email from Corrections Deputy Trina Oviatt with the subject “NEW IN CUSTODY LIST,” to Adams County courts and ICE officer Lonnie R. Miller indicates that an attachment is included, but the name of the document in the attachment field appears to have been removed entirely.

It also appears that the Sheriff’s Office has not withheld or redacted information, or asserted RCW 42.56.050 as an exemption, in response to other requests seeking the same records. Agencies may not distinguish between requestors and must make disclosable records available to “any person.” RCW 42.56.080. Nevertheless, as the above examples illustrate, the Sheriff’s Office in many cases *proactively shared* the same records sought by request No. 23-121 in un-redacted form to ICE and CBP, without any concern for the privacy of the individuals whose information was contained in the records produced to those agencies. I also understand the Sheriff’s Office produced the same records sought by request No. 23-121, with no withholding, exemptions, or redactions, to the UW Center for Human Rights. The Sheriff’s Office must be consistent in the manner in which it asserts any exemption under the PRA.

Second, the Sheriff’s Office has not identified any of the records it determined are exempt under RCW 42.56.050,² and withheld from production in response to request No. 23-121. Under the law, “an agency withholding or redacting any record must specify the exemption *and* give a brief explanation of how the exemption applies to the document.” *Sanders v. State*, 169 Wn.2d 827, 846, 240 P.3d 120 (2010) (citing RCW 42.56.210(3)). Our office requires document-specific information to understand the full extent to which the Sheriff’s Office has asserted the exemption, including how many documents were withheld under the exemption, and whether invocation of the exemption as to any particular document appears proper.

² The Sheriff’s Office has not articulated an independent basis to assert the PRA’s privacy exemption. RCW 42.56.050 provides that it does not “create any right of privacy beyond those rights that are specified in [the PRA] as express exemptions from the public’s right to inspect, examine, or copy public records.” The Sheriff’s conclusory assertion that the records “would be highly offensive to a reasonable person” and are “not of legitimate concern to the public” is insufficient to justify redacting and/or withholding records. *See e.g., King Cnty. v. Sheehan*, 114 Wn. App. 325, 344, 57 P.3d 307 (2002) (“Under Washington’s Act, *both* a privacy interest *and* a lack of legitimate public interest must be present to establish this exemption.”).

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Finally, the response to request No. 23-121 underscores our concerns regarding whether the Adams County Sheriff's Office complies with KWW. In our November 22, 2022, letter to Sheriff Wagner, we identified several practices that appeared to be in violation of KWW, such as the proactive sharing of non-public, personal identifying information about detained persons with federal immigration authorities through "new in custody" lists. In light of the Sheriff's Office's invocation of RCW 42.56.050 as a basis to exempt these same "new in custody" lists from public disclosure, it appears that the lists are the type of "non-public" information KWW prohibits local law enforcement from sharing with federal immigration authorities. The Sheriff's Office cannot proactively share non-public information with federal immigration authorities for the apparent purpose of alerting them to when certain individuals are in custody, while also declining to provide that same information to the Attorney General's Office.

We request that the Adams County Sheriff's Office take the following actions upon receipt of this letter:

- 1) Within 21-days, disclose all records responsive to request No. 23-121 that were withheld under RCW 42.56.050, and produce any records that the Sheriff's Office determines may have been improperly withheld;
- 2) Immediately cease sharing non-publicly available personal information with federal immigration authorities, except as required by state or federal law, as required by KWW; and
- 3) Implement the revisions to Adams County Sheriff's Office Policy 428.4 (Immigration Violations – Enforcement) and Policy 428.6 (Information Sharing) described in our November 22, 2022, letter.

Please note that the Sheriff's Office must retain all records responsive to request No. 23-121—even those scheduled for destruction under any retention schedule—until they have been disclosed and produced. *See* RCW 42.56.100.

Please feel free to contact me with any questions, or if you wish to schedule a meeting to discuss the above issues.

Sincerely,



EMILY C. NELSON
Assistant Attorney General
206-342-6405
emily.nelson@atg.wa.gov

Encl.