



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**

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August 8, 2023

**VIA U.S. MAIL AND E-MAIL**

Tammy White  
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**RE: City of Kent's Compliance with the Keep Washington Working Act**

Dear Counsel:

The Attorney General's Office (AGO) is committed to protecting the civil rights of everyone in the State of Washington. This includes ensuring that units of local government comply with state law designed to protect vulnerable individuals from being targeted by law enforcement based on their status as members of a protected class, such as national origin, citizenship, or immigration status. *See* RCW 49.60.030(1). We write to advise you of concerns that the AGO has regarding the City of Kent's compliance with the Keep Washington Working Act (KWW), RCW 10.93.160.

We understand that since approximately December 2022, the City has been corresponding with the Northwest Immigrant Rights Project and American Civil Liberties Union of Washington concerning the City's compliance with KWW. We also understand that the City has agreed to clarify or revise some of its policies at the Kent City Jail to align with the requirements of KWW, and we appreciate the City's willingness to make those changes.

However, it has come to our attention that the City has asserted that the 1963 Vienna Convention on Consular Relations requires Kent City Jail staff to collect place of birth and citizenship information of arrestees during the booking process. As you know, the Legislature directed the Attorney General to publish model policies, guidance, and training recommendations for law enforcement agencies on how they can comply with KWW. Indeed, the AGO's KWW Guidance for State and Local Law Enforcement Agencies specifically addresses the consular notification

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requirements under the Vienna Convention and other international treaties and how to comply with such requirements while also complying with KWW. *See* AGO Model Policy III.C. I have enclosed a copy of our office's KWW Guidance for your review.

Under KWW, the City is required to adopt policies consistent with the AGO's guidance or notify our office that it is not doing so, state the reasons why, and provide the AGO with a copy of its policies that ensure compliance with KWW. RCW 43.10.315. The City's policies are not consistent with the AGO's guidance and the City has not satisfied the requirements of RCW 43.10.315. Further, the City's policies are insufficient to ensure the City's compliance with KWW, as required under RCW 43.10.315.

RCW 10.93.160(4)(a) provides that the Kent Police Department "may not . . . [i]nquire into an individual's immigration or citizenship status, or place of birth" unless "there is a connection between such information and an investigation into a violation of state or local criminal law." We understand the City's position to be that complying with this requirement of KWW would run afoul of the Vienna Convention and, consequently, our country's compliance with the treaty. That is an incorrect understanding of the law and provides no basis to disregard KWW's constraints.

There is no conflict between KWW's prohibition on the inquiry into, and collection of, immigration or citizenship status, and the Vienna Convention. That is because nothing in the Vienna Convention requires that law enforcement agencies affirmatively inquire as to the nationality, or immigration status, of an arrestee, and KWW specifically prohibits such an inquiry. This prohibition under KWW on affirmative inquiries about immigration status in no way prevents the City from fulfilling its duties under the Vienna Convention in circumstances where a detained person volunteers their citizenship or immigration status or makes a request that a foreign consul be notified of their detention.

What is more, KWW requires state and local law enforcement agencies to notify persons detained, in writing, of (1) the individual's right to refuse to disclose their nationality, citizenship, or immigration status; and (2) the fact that disclosure of their nationality, citizenship, or immigration status may result in civil or criminal immigration enforcement, including removal from the United States. RCW 10.93.160(9)(a).

To ensure compliance with KWW, we recommend that the City update its policies to include the following:

- Require that City of Kent law enforcement members inform every person taken into detention, verbally and in writing within 72 hours, of their rights to refuse to disclose information regarding their nationality, citizenship, or immigration status and that such

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information could lead to civil or criminal immigration enforcement. *See* AGO Policy Section C(1); Legal Section (B).

- Prohibit City of Kent law enforcement members from asking questions regarding a person's immigration or citizenship status, or place of birth, unless the information is related to an investigation into a state or local criminal matter. *See* AGO Policy Section A(3); RCW 10.93.160(4)(a), (9)(b).
- Require City of Kent law enforcement members to immediately contact a specified designee upon becoming aware that a person in custody is a foreign national. *See* AGO Policy Section C(2).
- Provide direction to City of Kent law enforcement members for (1) determining when consular notification is required and how to provide consular notification; (2) notifying a foreign consul without delay if an individual is a national of one of 56 mandatory notification countries or if the person requests their consul be notified; and (3) permitting the consul to access the person and forward any communication from the foreign national to the person's consular officers without delay. *See* AGO Policy Section C(2)(a)-(c).

We appreciate the City's interest in complying with its obligations under the Vienna Convention, and the City can do so while also complying with KWW. Accordingly, we request that the City end its practice of law enforcement members collecting places of birth and citizenship information of arrestees during the booking process. Please let us know by September 1, 2023, if the City will agree to modify its booking processes as we request. We would be happy to discuss this issue if you wish to meet to address the AGO's concerns.

We look forward to hearing from you and appreciate your attention to this matter.

Sincerely,



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