

May 2, 2023

Tammy White
City Attorney
City of Kent

Via email at twhite@kentwa.gov

Cc: Bob Ferguson
Attorney General
State of Washington
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: City of Kent Policies Implicating the Keep Washington Working Act

Ms. White:

Thank you for your January 13, 2023, email responding to our letter raising concerns with the City's compliance with the Keep Washington Working Act (KWW). We appreciate that you intend to review the Kent Police Department's policies to determine whether they comply with KWW. However, we are concerned with statements in your response and write to emphasize the changes that are necessary to ensure compliance with the law.

First, your email states that the City intends to continue collecting place of birth and citizenship information "to comply with notification requirements under the Vienna Convention." This is not a basis to avoid KWW's clear language, which explicitly instructs that the Kent Police Department "may not . . . [i]nquire into or collect information about an individual's immigration or citizenship status, or place of birth." RCW 10.93.160(4)(a). Notably, the only exception is where "there is a connection between such information and an investigation into a violation of state or local criminal law." *Id.* No exception exists in those instructions to permit compliance with an international treaty.

More importantly, KWW explicitly addresses your concern. RCW 10.93.160(9)(a) states as follows:

To comply with all treaty obligations, *including consular notification* . . . , state and local law enforcement agencies must explain in writing:

- (i) The individual's right to refuse to disclose their nationality, citizenship, or immigration status; and
- (ii) That disclosure of their nationality, citizenship, or immigration status

may result in civil or criminal immigration enforcement, including removal from the United States.

Accordingly, the City should address its concerns regarding its compliance with the Vienna Convention through the means set out in KWW: by providing appropriate written notice to detained persons. Notably, the Attorney General has provided guidance for law enforcement agencies that expressly addresses this matter.¹ We have included a copy of that guidance with this letter. As that guidance explains, “the [Vienna] Convention does not require inquiry into, or retention of, immigration or citizenship status.” AG Guidance at 16. KWW therefore complies with the Convention by limiting the information collected in the first instance and requiring warnings prior to the collection of this information.

In light of this guidance and state law, we urge you to update the City’s policy and ensure that it complies with KWW. The guidance referenced in the prior paragraph contains model policies from the Attorney General that comply with the requirements of KWW and may serve as a useful reference point for you.

Second, the City errs in its response regarding transfers and providing publicly available release information to federal immigration authorities. As an initial matter, your email asserts that the City may lawfully require detained persons to provide citizenship and immigration status information and share that information with a requesting immigration authority. For the reasons stated above, the City is incorrect that it must collect that information in the first place. To the contrary, the City is currently violating state law by continuing to collect that information without providing the necessary written warnings that disclosure is not required and that any responses regarding citizenship and immigration status may be used against them. We request that you immediately cease this practice.

In addition, your email states that “only when ICE presents jail staff with a warrant signed by a judge does the jail contact ICE to coordinate an inmate’s transfer and transportation to federal custody.” We urge the City to codify that policy in the Police Department manual, which does not currently reflect that requirement. *See* Kent PD Policy Manual §§ 2.70, 2.110. The Attorney General’s guidance again provides a helpful model that carefully tracks the requirements under state law, and we recommend that the City adopt this approach.

Your email appears to suggest that jail employees have received ICE warrants signed by a judge. Following your email, we submitted a public records request to the City of Kent, requesting any “warrants signed by a judge that the Kent Police Department and or Kent City Jail received from U.S. Immigration and Customs Enforcement (ICE) or any other immigration agency (including Customs and Border Protection and Border Patrol) within the time period of 01/01/2021 - 12/31/2022.” On March 10, 2023, the City of Kent’s Public Records Center responded, stating that “no records have been located.” The discrepancy between your email and the records inquiry suggests that jail employees are not in fact coordinating only when they receive a warrant signed

¹ Keep Washington Working Act Guidance, Model Policies, and Training Recommendations for State and Local Law Enforcement Agencies, Washington State Office of the Attorney General, May 2020, https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/Office_Initiatives/KWW/KWW%20LEA%20Model%20Guidance.pdf (“AG Guidance”).

by a judge, but instead may be doing so when they receive ICE forms, like an I-200 (an administrative warrant signed by an ICE officer) or an I-247 (an ICE detainer signed by an ICE officer). This underscores the need to update the City's policy and explain that change to police and jail employees. We also request that you confirm that jail employees are not mistakenly assuming that immigration warrants are signed by a judge. In fact, most immigration warrants are simple administrative warrants signed by an ICE officer and are not reviewed by any judge.

To the extent the City is relying on administrative warrants or detainers to facilitate transfer of individuals to ICE, the City is exposing itself to liability for damages and attorneys' fees under 42 U.S.C. § 1983, which provides a cause of action for civil rights violations. We have repeatedly filed lawsuits over the failure of Washington state law enforcement agencies to follow KWW and the Fourth Amendment requirements that govern police officer conduct, resulting in significant payouts. *See, e.g., Rios v. Pierce County*, 22-cv-05021 (W.D. Wash.) (settlement agreeing to dismiss case for \$17,500, after County violated KWW by holding an individual for two hours beyond release while jail waited for immigration officials to take custody of plaintiff); *Mendoza Garcia v. Okanogan County*, 19-cv-0340 (E.D. Wash.) (settlement agreeing to dismiss case for \$50,000, after jail continued to detain plaintiff based solely on administrative immigration detainer); *Ahumada-Meza v. City of Marysville*, 19-cv-01165 (W.D. Wash.) (settlement agreeing to dismiss case for \$85,000, after jail continued to detain plaintiff based solely on administrative immigration detainer); *Olivera Silva v. Campbell*, 17-cv-03215 (E.D. Wash.) (plaintiff accepted offer of judgment of \$10,000 in damages and court awarded \$141,986.70 in attorneys' fees, after jail continued to detain plaintiff based solely on administrative immigration detainer).

Finally, in regards to sharing booking photos with immigration enforcement agencies, we urge you to put in policy that this practice is prohibited unless the photo is used for a criminal investigation by the requesting agency. The Attorney General's model policy again provides helpful language on this point: the law enforcement agency "shall presume any federal immigration authority acting on official duty to be engaged in [civil] immigration enforcement." AG Guidance at 6. This is because ICE's primary law enforcement duties, particularly ICE's office of Enforcement and Removal Operations (ICE ERO), are to enforce *civil* immigration laws and not criminal laws.

We look forward to hearing your response. Please let us know if you have any questions. We ask that you provide a response by May 30, 2023.

Sincerely,

s/ Matt Adams

s/ Enoka Herat

s/ Aaron Korthuis

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