

CLYDE HILL POLICE DEPARTMENT

CRIMINAL RECORDS DISCLOSURE POLICY

Effective: July 2008

Dissemination of Criminal History Record Information

References: Chapters 10.97; 13.50;42.56; 46.52 RCW

A. PURPOSE.

To establish a comprehensive guideline for the privacy, security, and dissemination of Criminal History Record Information (records) maintained by Clyde Hill Police Department (department).

B. DEFINITIONS. (RCW 10.97.030)

1. Criminal History Records Information (records). Records including all information generated, collected, stored, or maintained by the department and information, including state or local records of arrest and conviction (rap) sheets obtained by the department from another agency and retained for the department's use are considered records. These records contain:

- a. An individual's name.
- b. The date and place of arrest, charge or detention.
- c. Notations of arrest, detention, indictments, information (see definition below), or other formal charges.
- d. Any disposition of arrest, charge or detention.
- e. The name of the arresting and/or charging agency.

2. Nonconviction Data. Nonconviction data are all records relating to an incident, which has not led to a conviction or other disposition adverse to the subject and for which proceedings are no longer actively pending. Nonconviction data includes:

- a. Police decisions not to charge or refer a case to the prosecutor.
- b. Prosecutorial decisions not to charge.
- c. Dismissals, except dismissals following probations, suspensions or deferral.
- d. Acquittals.

- e. Arrest information more than one year old with no related disposition and with respect to which the prosecutor will not certify in writing that proceedings are still pending,

3. Conviction Records. All records relating to an incident, which led to a conviction or other disposition adverse to the subject, are conviction records.

4. Conviction or Other Disposition Adverse to the Subject. Any disposition of charges except a decision not to prosecute, a dismissal, or an acquittal is a disposition adverse to the subject. A dismissal after probation, suspension or deferral is also a disposition adverse to the subject.

5. A Criminal Justice Agency (CJA). A court or a local, state or federal agency, which administers criminal justice pursuant to statute or executive order, is a criminal justice agency. Criminal Justice Agencies include sub units of noncriminal justice agencies if the sub unit allocates a substantial part of its annual budget to and has as its primary function the administration of criminal justice. The following agencies are considered criminal justice agencies:

- a. Washington State Patrol, including the State Identification Section.
- b. Foreign, state and local governmental law enforcement, prosecutorial and correctional agencies or departments.
- c. Courts at any level if they exercise criminal jurisdiction.
- d. Adult Corrections Division of the Department of Social and Health Services, including institutions, probation and parole services, and appropriate certified sub units.
- e. The Board of Prison Terms and Paroles.
- f. The Office of Information Systems of the Department of Social and Health Services, and any other agency that collects, stores and disseminates records.
- g. An agency or sub unit that has been certified as a criminal justice agency by the Washington State Patrol (WAC 446-20-060).
- h. Enforcement division of the liquor control board.
- i. Department of Labor and Industries crime victims compensation unit.
- j. State Fire Marshal.

6. Administration of Criminal Justice. The detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an accused person or criminal offenders is administration of criminal justice. The administration of

criminal justice includes criminal identification activities, the collection, storage and dissemination of records and the compensation of victims of crime. The administration of criminal justice does not include crime prevention activities as a sole function or criminal defense activities.

7. Disposition. The formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system is disposition. Statement of disposition is used interchangeably with disposition.

8. Dissemination. Disclosing records or the absence of records to any person or agency outside the department is dissemination.

Dissemination includes:

- a. Confirming the existence or nonexistence of records.
- b. Disclosing records to the subject thereof.

Dissemination does not include:

- a. Furnishing records to personnel of any criminal justice agency, which jointly participates with the department in the maintenance of a single record keeping department.
- b. Furnishing records of one Criminal Justice Agency to another for the purpose of processing a matter through the criminal justice system.
- c. Reporting an event to a record-keeping agency for the purpose of maintaining the record.

9. Information. A formal accusation or complaint, filed by a prosecuting attorney or other law officer, charging a person or corporation with some crime or violation of law.

10. Processed by the Criminal Justice System. All proceedings from arrest through correctional supervision and final disposition is being processed by the criminal justice system.

C. DISSEMINATION OF RECORDS. (RCW 10.97.040)

1. **All requests for records shall be responded to within five business days of receipt of the request in accordance with the City's Public Records Policy.**

2. All records about an arrest, detention, indictment, information, or containing other formal charges made after December 31, 1977 shall not be disseminated without a statement of disposition (disposition) unless:

- a. A disposition, having occurred within ten days before dissemination had not been formally reported to the department before dissemination; or

- b. Information has been received by the agency within the 72 hours immediately preceding the dissemination.

3. State records of arrest and conviction (rap sheets) may only be disseminated to other criminal justice agencies for criminal justice purposes.

4. If the criteria established in Section C of this policy are met, the following records may be disseminated without further restriction. If it is known that a conviction is on appeal then this information shall also be included in any dissemination.

- a. Conviction records; or
- b. Information about an incident for which a person is currently being processed by the criminal justice system.

5. Records including information concerning a felony or gross misdemeanor shall not be disseminated without first making an inquiry to the Washington State Identification Section (WSIS) to obtain the most current and complete information available, unless:

- a. Information is needed for the administration of criminal justice and there is not enough time for WSIS to respond to the request for current and complete information;
- b. The information requested is within the direct knowledge of the department (Clyde Hill Police Department case and Clyde Hill is known to have the most current information);
- c. The information requested was contained in a summary sheet issued by the WSIS to the department not more than 30 days before intended dissemination of the records;
- d. The information is contained solely within departmental files and is disseminated pursuant to statute, executive order, court rule, or court order; or
- e. The information is for the express purpose of research, evaluation, or statistical activities based upon information maintained in department files and the information is obtained through a contract with the department.

6. Records concerning a misdemeanor shall not be disseminated without first making an inquiry to the district court having jurisdiction for the most current disposition information available.

7. The statements of drivers, passengers or witnesses in traffic accident reports are considered confidential and shall not be released or disseminated pursuant to Chapter 46.52 RCW.

8. All requests for juvenile records should be directed to the King County Prosecutor's office, Juvenile Division. The City shall cooperate with this division of the King County Prosecutor's office and provide them with copies of originals of records if requested. The name and identifying information of a child victim of a sex crime who is under 18 years of age are to be kept strictly confidential unless there is written permission from the child or his/her guardian. (See Chapter 13.50 RCW, RCW 42.56.240(5), and RCW 10.97.130.)

9. Records concerning nonconviction data may be disseminated as follows:
(RCW 10.97.050)

- a. To another criminal justice agency such as the Washington State Patrol, for the administration of criminal justice.
- b. To another criminal justice agency for the purpose of the possible employment of the subject of the nonconviction data.
- c. To implement a statute, ordinance, executive order, or a court rule, decision or order which expressly authorizes or directs that nonconviction data be available or accessible for a specific purpose.
- d. To individuals and agencies pursuant to our contract with a criminal justice agency to provide services related to the administration of criminal justice. The contract shall expressly limit use of the records for only the stated purposes and ensure confidentiality and security of the information.
- e. Individuals and agencies pursuant to a contract for the express purpose of research, evaluation, or statistical activities. The contract shall limit use of the records for only the stated purposes and must ensure confidentiality and security of the information.

10. It shall be the responsibility of the Clyde Hill Police Department office manager to ensure that adequate records are maintained by the department concerning the dissemination of records. The office manager shall retain such dissemination records for not less than one year. These records shall include, but not be limited to, the following:

- a. To whom the records were disseminated.
- b. The date of dissemination.
- c. The name of the subject of the records.
- d. A brief description of the information disseminated.

11. The identity, last known address and other necessary information of the person(s) suspected of being responsible for the loss, damage or injury, without regard to suspect's age, and

despite whether charges have been filed, declined or dismissed may be given to persons who verify in writing that they have suffered physical loss, property damage, or injury that is compensable through civil action. (RCW 10.97.070)

D. NONCONVICTION DATA - VIEWING RECORDS. (RCW 10.97.080; Hudgens v. City of Renton, 49 Wn.2d 842 (1987))

1. Nonconviction data may be viewed provided that such "release" of information does not violate the provisions found in Chapter 42.56 RCW. A careful review of this statute should be made before the records are open to viewing. If in doubt, contact should promptly be made with the City Administrator or the City Attorney's office. **A response under Section C (1) above must be made within five business days of receipt of the public records request.**

2. If after reviewing these statutes, release is required and if the information is "questionable" or there is any concern on the part of the department, the department may contact in writing the subject of the records prior to release, inform the subject of the City's intent to release the records, and that the subject may pursue injunctive proceedings to attempt to stop the release of those records. In these cases, contact should also be made with the City Administrator and the City Attorney.

3. Records being reviewed must not leave the immediate control of the departmental representative providing the information.

4. No person may retain or reproduce any nonconviction information except for the purpose of challenge or correction, in accordance with Section F below.

E. DELETION OF NONCONVICTION RECORDS. (RCW 10.97.060)

1. Nonconviction records are generally used to respond to criminal history inquiries from other agencies. These records can also be used to identify the individual who is the subject of the records. Records consisting solely of nonconviction data are subject to deletion from departmental files. Deletions of nonconviction records will not be made except at the written request of the subject of such records.

2. Nonconviction records will not be deleted if:

- a. The disposition of the record was a deferred prosecution or similar diversion of the alleged offender which has not become nonconviction data, or
- b. The subject of the record has had a prior felony or gross misdemeanor conviction, or
- c. The subject of the record has been arrested or charged with another crime in the intervening period, or

- d. The subject of the record is a fugitive, or
- e. The case is under active prosecution according to current written certification by the prosecuting attorney.

3. Nonconviction records qualify for deletion if they meet the requirements of this paragraph. If any of the circumstances of paragraph E (2) above are present, nonconviction records may not be deleted.

- a. The record is maintained in the type of file identified in paragraph E (1) above, and
- b. Two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to the defendant, or
- c. Three years have passed from the date of arrest or the issuance of a citation or warrant for an offense for which a conviction was not obtained.

4. Any record may be deleted or modified by court order pertaining to a particular case, individual or event.

- a. All such court orders shall be referred, with a copy of the record concerned, to the City Attorney before taking any action on the subject record.
- b. Upon notification from the City Attorney, the department shall take such action as the court order directs unless the City Attorney requests that the record be forwarded to her/his office for purposes of appeal.

F. CHALLENGES OF RECORDS. (RCW 10.97.080)

1. Any person who believes he/she is or may be the subject of records maintained by the department may, by appropriate request, review such records. This right to access and to review records does not include the right to review information contained in intelligence, investigative or similar files when nondisclosure is necessary for effective law enforcement.

2. Requests for review of records are to be made during normal business hours and in writing on a form provided at the department. These requests for review shall be made by the person whose file is subject to review. The requesting person must provide suitable identification. Suitability of identification shall be determined by the department supervisor.

3. An appointment will be made for the requested review of the records during normal business hours within five working days from the date of the request.

4. The subject of records must appear to personally review the records, however, he/she may be accompanied by counsel, an interpreter or other person designated by the subject.

5. All challenges to the records are to be reviewed by the departmental supervisor before either correction or refusal to correct is made.

6. Records maintained by the department may be challenged on the basis of accuracy, completeness or legal basis for being maintained. This challenge may be made in whole or in part by the subject of the record. All challenges shall clearly identify the record being challenged and shall be made during normal business hours and submitted on forms provided by the department.

7. If the record being challenged originated from another Washington agency the department shall:

- a. Supply the subject with the address of the originating agency.
- b. Forward a copy of the challenge to the originating agency along with a copy of the challenged record.
- c. Check departmental records to ensure that the records are correctly recorded.

8. If the department originally submitted or generated the record being challenged, then the Clyde Hill Police Department shall acknowledge receipt of the challenge within ten business days of receipt. Within an additional ten business days of acknowledgment of receipt, the department shall amend any records found inaccurate, incomplete or maintained in violation of the law. If the department fails to amend the records it shall inform the subject challenging the records, in writing, of the department's refusal to amend, its reasons for refusal and the procedures for appeal of the refusal.

9. If the department, as originating agency, corrects or amends challenged records, it shall provide to the subject the names of all noncriminal justice agencies or persons to which the incorrect records were disseminated. The department shall also disseminate to everyone who has been provided copies of the incorrect data within the previous one year, corrected or amended records.

10. If the department determines that it has generated significantly inaccurate but unchallenged records it shall correct these records and disseminate corrected records to everyone who has received these erroneous records within the preceding one year and also disseminate corrected records to the subject of these records.

G. REVIEW OF REFUSAL TO AMEND RECORDS.

1. The subject of the challenged records which the department has refused to amend or correct may request review of this refusal by the Clyde Hill Chief of Police. All requests for review must be made in writing and within twenty days of the subject's receipt of the refusal to amend.

2. The Chief of Police shall make a final determination of the challenge within thirty days of the date review was requested unless the review period is extended an additional thirty days for good cause. This extension of an additional thirty days shall only be made in extremely

extenuating circumstances and only with the concurrence of the Clyde Hill City Administrator/Clerk.

3. The subject of the challenged records shall be notified in writing of the final decision of the Chief of Police. All refusals shall be reported to the Clyde Hill City Administrator/Clerk along with reasons for this refusal.