

# CITY OF CLYDE HILL CRIMINAL HISTORY RECORDS INFORMATION POLICY

Adopted by Resolution No. \_\_\_\_

RCW Chapter 10.97, also known as the Criminal Records Privacy Act, governs the dissemination of “criminal history records information.” Criminal history records information (“CHRI”) is information contained in police department records that documents formal action against a person by the criminal justice system, including arrest, detention, criminal charges, verdicts, sentences, etc. (see below for full definition). This policy is intended to outline the Department’s procedures for disseminating CHRI.

## I. Applicability

This section does not apply to information regarding sex offenders, which is governed under RCW 4.24.550.

## II. Definitions

This policy follows the definitions in RCW Chapter 10.97. Some of those definitions have been copied here, for the reader’s convenience.

- a. **"Criminal history record information"** means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release. The term includes any issued certificates of restoration of opportunities and any information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:
  1. Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;
  2. Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;
  3. Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

4. Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;
  5. Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130;
  6. Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330;
  7. Announcements of executive clemency;
  8. Intelligence, analytical, or investigative reports and files.
- b. **"Criminal Justice Agency"** means: (a) a court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.
- c. **"Dissemination"** means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:
1. When criminal justice agencies jointly participate in the maintenance of a single recordkeeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;
  2. The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;
  3. The reporting of an event to a recordkeeping agency for the purpose of maintaining the record is not a dissemination.
- d. **"Nonconviction data"** consists of all criminal history record information 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. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered.

### III. Restrictions on Dissemination of Records Containing CHRI

Different restrictions apply to the Department's ability to disseminate records containing CHRI depending on the type of CHRI.

- a. **CHRI regarding convictions.** The Department may disseminate CHRI regarding convictions without restriction.<sup>1</sup>
- b. **Incidents Less than One-Year Old:** The Department can disseminate CHRI regarding an incident that is less than one-year old without any restriction, so long as the individual who is the subject of the CHRI is still being processed by the criminal justice system.
- c. **CHRI pertaining to an arrest, detention, information, or other formal criminal charge.**
  1. *Must Have Disposition Data.* Any CHRI containing formal charges unless the CHRI disseminated by the Department must also indicate the disposition of the charge (to the extent there is a final disposition).<sup>2</sup> A "disposition" means the formal conclusion of criminal proceedings (e.g., a decision not to prosecute, a conviction, a finding of not guilty by reason of insanity, an acquittal, etc.).<sup>3</sup> There are some exemptions and qualifications to this rule:
    - A. If the disposition has occurred within ten days of the dissemination and has not been reported to the Department, the Department can disseminate the CHRI without the disposition information.<sup>4</sup>
    - B. If the Department only received notice of the disposition within 72 hours of the dissemination, the Department can disseminate the CHRI without the disposition information.<sup>5</sup>
    - C. If the requestor is another criminal justice agency and the Department has not received disposition information regarding the requested CHRI from the Washington State Patrol or a court, the Department can disseminate specific facts within its direct knowledge without including disposition data.<sup>6</sup>

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<sup>1</sup> RCW 10.97.050(1).

<sup>2</sup> RCW 10.97.040.

<sup>3</sup> RCW 10.97.030(6).

<sup>4</sup> RCW 10.97.040.

<sup>5</sup> RCW 10.97.040.

<sup>6</sup> RCW 10.97.040.

2. Must Contact Washington State Patrol. When a requestor seeks CHRI related to a felony or gross misdemeanor, the Department must contact the Washington State Patrol to get the most up-to-date disposition information before disseminating the CHRI unless:
  - A. The request is urgent, the information is needed to further the administration of criminal justice, and the Washington State Patrol would not be able to respond in a timely manner;
  - B. All of the information sought is within the Department's direct knowledge;
  - C. The information is sought is in a CHRI summary from the Washington State Patrol that is less than 30 days old;
  - D. The Department is responding to a statute, executive order, court rule, or other court order that specifically request only information stored in the Department's files;
  - E. The request is for research purposes and the nature of the research limits the relevant data to that contained in the Department's own records;
  - F. The requestor is the subject of the CHRI and is seeking the CHRI under RCW 10.97.080.

d. **Non-Conviction Data:** CHRI regarding any incident that did not ultimately lead to a conviction or other disposition adverse to the subject is "non-conviction data." Non-conviction data is the most restricted category of CHRI. The Department's ability to disseminate non-conviction data depends on the identity of the requestor:

1. Dissemination to members of the public: The Department cannot give out copies or allow members of the public to make or keep or copy any CHRI containing un-redacted non-conviction data.<sup>7</sup> If a record contains both conviction and non-conviction data, the Department must redact the non-conviction data before disseminating copies to the public.<sup>8</sup> Members of the public may *view* un-redacted non-conviction data, however (assuming it is not exempt under another Public Records Act exemption).

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<sup>7</sup> See RCW 10.97.080.

<sup>8</sup> *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 298, ¶ 39, 259 P.3d 190 (2011).

2. Dissemination to the subject of the non-conviction data. The Department can disseminate copies of non-conviction data held by the Department to the person who is the subject of the non-conviction data.<sup>9</sup> Any person who is or who believes he or she may be the subject of criminal records held by the Department can review and challenge that data under the procedures outlined in Section V.
3. Dissemination to a Criminal Justice Agency. The Department may disseminate non-conviction data to another criminal justice agency if:
  - A. The agencies have a contract for provision of criminal justice administration services, and the contract specifically authorizes the receiving agency to access CHRI (the contract does not need to state that non-conviction data is included in CHRI)<sup>10</sup>;
  - B. The dissemination is necessary to implement a statute, ordinance, executive order, or court rule or order that specifically refers to non-conviction data and orders that it be made available<sup>11</sup>; or
  - C. The requesting agency will use the non-conviction data for the administration of criminal justice or for evaluating potential employment of the subject of the non-conviction data.<sup>12</sup>
4. Dissemination to a Juvenile Justice Agency. The Department may disseminate non-conviction data to a juvenile justice agency for any purpose associated with employment of the subject of the CHRI. The Department should inquire about the purpose of the juvenile justice agency's request before dissemination.<sup>13</sup>
5. Dissemination to Researchers. The Department may disseminate non-conviction data to individuals and agencies if the express purpose of the request is research, evaluative, or statistical activities. If the Department disseminates non-conviction data to researchers, it must first have an agreement with the researcher that limits the researcher's use of the non-conviction data.<sup>14</sup>

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<sup>9</sup> RCW 10.97.080.

<sup>10</sup> RCW 10.97.050(5).

<sup>11</sup> RCW 10.97.050(4).

<sup>12</sup> RCW 10.97.050(3).

<sup>13</sup> RCW 10.97.050(3).

<sup>14</sup> RCW 10.97.050(6).

#### IV. Disclosure of Information to Victims.

Notwithstanding either prohibition above (the requirement that CHRI contain disposition data and the prohibition on disseminating non-conviction data), the Department may disseminate information about crimes or suspected crimes to victims in order to help the victims get redress through a civil suit. This information can include the identity of suspects and any other information that the Department reasonably believes would help the victim bring civil suit. The criminal investigation for the incident need not have led to formal charges for the Department to disseminate the information to victims.

#### V. Procedures for Deleting Non-Conviction Data.

- a. **Requests for Deletion.** Any person who is the subject of non-conviction data maintained by the Department may request that the Department delete non-conviction data from Department files that are commonly used for background checks.<sup>15</sup> These requests must be in writing.
  
- b. **Deletion of Non-Conviction Data.** If requested by the subject of the data, the Department will delete non-conviction data maintained by the Department if it has been two years since the entry of a disposition favorable to the defendant or three years since the date of arrest, citation, or warrant for the offense described in the non-conviction data, unless:
  1. The defendant is a fugitive;
  2. The case is under active prosecution;
  3. The disposition favorable to the defendant was a deferred prosecution or similar diversion;
  4. The subject of the non-conviction data has a prior conviction for a felony or gross misdemeanor; or
  5. The subject of the non-conviction data has been arrested for another crime during the intervening period.<sup>16</sup>

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<sup>15</sup> RCW 10.97.060.

<sup>16</sup> RCW 10.97.060.

## VI. Procedures for Viewing or Copying CHRI

- a. **In-Person Review:** Any person may inspect records containing CHRI that are held by the Clyde Hill police department by making a public records request and arranging a time to inspect the records in-person at the Police Department's offices at 9605 NE 24th Street, Clyde Hill, WA 98004 during the Department's normal business hours (8:30 am to 5:00 pm Monday through Friday, excluding legal holidays). The requestor may review CHRI at Police Department premises for no more than thirty minutes—if the requestor needs more time to review their records, they must request a copy (see below). The requestor must inspect the CHRI in an area of the Police Department Offices designated by the Department.
- b. **Copying.** A requestor may obtain copies of records containing CHRI by submitting a public records request. If the CHRI includes non-conviction data and the requestor is not the subject of the CHRI, the non-conviction data will be redacted. If the requestor is the subject of the CHRI and seeks un-redacted non-conviction data, the requestor must submit the Request to Copy CHRI with Un-redacted Non-conviction Data form in Exhibit A. The requestor must also verify his or her identity by presenting a valid driver's license or state ID issued by the Department of Licensing or a valid passport to the Department at its offices during its normal business hours at a time mutually agreed on by the Department and the requestor. The Department may also require fingerprinting and charge the appropriate fingerprinting fee. If the requestor requires assistance in requesting records, the requestor may designate an agent on the request form to assist him or her. The agent must produce the required identification along with the requestor. The Department will charge requestors for copies under the fees for ordinary Public Records Act requests.

## VII. Procedures for Challenging CHRI

When a person believes that his or her CHRI held by the Department is inaccurate or incomplete, the person may challenge the CHRI.

Challenging CHRI generated by the Department.<sup>17</sup> If the subject of CHRI maintained by the Department wishes to challenge the accuracy or completeness of the CHRI, the subject must submit the CHRI Challenge Form attached in Exhibit B to the Department. The subject must also verify his or her identity by presenting a valid driver's license or state ID issued by the Department of Licensing or a valid passport to the Department at its offices during its normal business hours at a time mutually agreed on by the Department and the requestor. The Department may also require fingerprinting and

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<sup>17</sup> See WAC 446-20-120 through 160.

charge the appropriate fingerprinting fee. All CHRI challenges under this section will be governed under the Washington State Patrol's regulations in WAC 446-20-140 through 160.

- c. Challenging CHRI generated by another agency and contained in the Department's records. If the CHRI the requestor is attempting to challenge was generated by another agency, the Department will provide the requestor with the challenge form attached in Exhibit B, as well as the address of the generating agency, so that the challenge may mail their challenge request to the generating agency.

### **VIII. Records Log.<sup>18</sup>**

The Department must maintain a log of every dissemination of CHRI, except disseminations simply indicating that no responsive records exist. The agency must retain log entries for at least one year. The log must include:

- a. The identity of the recipient;
- b. The date of the dissemination;
- c. The person who is the subject of the CHRI;
- d. A brief description of the CHRI disseminated.

This requirement may be satisfied by entering requests and disseminations in the Department's general public record request log.

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<sup>18</sup> See RCW 10.97.050(7)



**Exhibit A**

**REQUEST TO COPY CHRI CONTAINING UNREDACTED NONCONVICTION DATA**

Requestor's Name: _____	Requestor's Address: _____
Requestor's Phone: _____	Requestor's Email: _____
Date of Request: _____	Time of Request: _____

I, \_\_\_\_\_ [name], request copies of my criminal history record information maintained in the Clyde Hill Police Department's records with unredacted non-conviction data. I am submitting this request

- By mail
- In person

I was born on \_\_\_\_\_ [date], in \_\_\_\_\_ [place of birth]. To confirm my identity, I am willing to provide one of the following forms of identification to the Clyde Hill Police Department for the Department's inspection at the Department's offices at 9605 NE 24th Street, Clyde Hill, WA 98004 during the Department's normal business hours (8:30 am to 5:00 pm Monday through Friday, excluding legal holidays) at a time mutually agreed upon by me and the Department:

- Valid driver's license or other photo ID issued by the State Department of Licensing
- Valid Passport

I am also willing to submit fingerprints along with a \$15.00 fingerprinting fee in addition to the above identification if requested.

Because I am unable to read ; I do not understand English ; or I otherwise need assistance in reviewing my record ; I designate and consent that \_\_\_\_\_ [name], whose address is \_\_\_\_\_, act as my agent and assist me in examining my criminal history record information. My agent agrees to produce the same identification required of me to the Department to verify that he or she is the person identified on this form.

\_\_\_\_\_  
Signature or Mark of Requestor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature or Mark of Agent (if Applicable)

\_\_\_\_\_  
Date

<b>For Police Department Use Only</b>		
		<b>Staff Initials</b>
<b>Name of staff person reviewing request:</b>		
<b>Date request received:</b>		
<b>Form of ID produced:</b>		
<b>Date ID produced:</b>		
<b>ID sufficient?</b>		

**Exhibit B**

**CHRI CHALLENGE FORM  
(REQUEST FOR MODIFICATION OF CHRI)**

Agency Generating the CHRI: _____	Agency Case Number: _____
Agency Address: _____	Date of Request: _____

I, \_\_\_\_\_ [challenger name], hereby acknowledge review this \_\_\_\_\_ [date] of CHRI bearing agency number \_\_\_\_\_ or SID number \_\_\_\_\_, consisting of \_\_\_\_\_ page(s) and identified as \_\_\_\_\_ [document title]. I challenge the following specific portion(s) of the CHRI as being inaccurate or incomplete, and request the following modifications

Agency	Case No.	Date	Charge	Requested Change

I further request that, if such modifications are determined to be valid, that the agency advise all other agencies that have received copies of the incorrect CHRI of the modifications.

\_\_\_\_\_  
Signature of Challenger

\_\_\_\_\_  
Date