



**LAW ENFORCEMENT—PRIVACY—RECORDING CONVERSATIONS—
Video And Audio Recording Of Communications Between Citizens And
Law Enforcement Officers Using Body Cameras Attached To Police
Uniforms**

1. **The Washington Privacy Act, RCW 9.73, does not require the consent of a law enforcement officer to use body cameras attached to police uniforms. A local collective bargaining agreement, however, might limit or prohibit such use.**
2. **Conversations between law enforcement officers and members of the public are not generally considered private for purposes of the Privacy Act.**
3. **As a general matter, the Privacy Act does not require a law enforcement officer to cease recording a conversation at the request of a citizen, because such conversations are not private to begin with.**
4. **In order to use a recording as evidence in a criminal or civil case, the recording would be subject to the same laws and rules governing all evidence, including the requirement that the chain of custody be established to prove no tampering has occurred. Laws relating to the retention and disclosure of public records, including records retention schedules, would govern retention and disclosure of recordings.**
5. **RCW 9.73.090 does not limit the use of body cameras to the use of such cameras in conjunction with vehicle-mounted cameras.**

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November 24,
2014

The Honorable Andy Billig
State Senator, District 3
PO Box 40403
Olympia, WA 98504-0403

Cite As:
AGO 2014 No. 8

Dear Senator Billig:

By letter previously acknowledged, you requested our legal opinion on five questions regarding body cameras attached to police uniforms. Your questions are below, along with brief versions of our answers.^[1] More detail follows in the body of the opinion. Of course, use of police body cameras raises a number of difficult policy questions, but Attorney General Opinions

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are not meant to resolve policy disputes, but rather to provide the most objective answer possible regarding the law as it currently stands. That is what we endeavor to do here.

1. In order to legally facilitate the use of body cameras attached to police uniforms, is it necessary to obtain the consent of the law enforcement officer who is a party to the intercepted conversation or is the consent of the officer obtained by virtue of the officer's employment?

Brief Answer: The Washington Privacy Act does not require officer consent because the Washington Supreme Court has recognized that a conversation between a police officer and a member of the public that occurs in the performance of the officer's duties is not private. A collective bargaining agreement, however, might affect whether police officers must consent to wearing or using body cameras.

2. Are intercepted conversations and video of actions that take place inside a private residence between law enforcement officers and private citizens private or public? What case law establishes what constitutes a private conversation?

Brief Answer: A conversation between a police officer and a member of the public that occurs in the performance of the officer's official duties is not private.^[2] Yet depending on the circumstances, a court could conclude that some intercepted conversations in a person's home involving parties other than police officers might be private and not subject to lawful recording under the Washington Privacy Act, absent a warrant or consent. Cases establishing what constitutes a private conversation are addressed below.

3. If a party objects to the interception and recording, would it be necessary for the law enforcement officer to cease intercepting and recording? If the officer continued to intercept and record once an objection was made by one of the parties to a private communication, would that action therefore subject the officer and the agency to criminal and civil liability?

Brief Answer: Because conversations between members of the public and police officers who are performing their official duties are not private, it would not violate the Washington Privacy Act to continue recording a conversation between an officer and a member of the public. An objecting party could simply decline to continue the conversation. Where an officer has placed a person under arrest, however, the officer should follow RCW 9.73.090(1)(b)'s requirements for recording conversations with suspects after arrest.

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4. What legal standards or rules of evidence establish the requirements for

preservation of intercepted private conversations or video evidence making such evidence available in its original format for a citizen seeking damages under RCW 9.73.030?

Brief Answer: In order to use a recording as evidence in a criminal or civil case, the recording would be subject to the same laws and rules governing all evidence, including the requirement that the chain of custody be established to prove no tampering has occurred. Record retention schedules would also govern how long a recording must be kept. Recordings and records about the recordings would be subject to discovery, as well as the Public Records Act and its exemptions. In establishing body camera systems, agencies should therefore give significant thought to how to categorize and store recordings.

5. Does RCW 9.73.090 limit the lawful interception of conversations via a body-mounted camera by law enforcement officers to only those interactions with citizens where the body camera is “operated simultaneously” with video cameras “mounted in law enforcement vehicles”? An example would be when an officer leaves a vehicle and enters a residence.

Brief Answer: No. While RCW 9.73.090 strictly governs the use of vehicle-mounted police cameras, it does not restrict the use of body-mounted cameras or recorders unless they are part of a vehicle-mounted system.

BACKGROUND

Police departments across the country and in Washington have begun to deploy police body cameras.^[3] These cameras typically attach to an officer’s lapel or cap. Varieties of cameras, and their related software and hardware packages, provide several options for recording, saving, and storing videos, and for maintaining the integrity of the audio and video files.^[4]

Officers in one out of every six departments nationwide are patrolling with body-mounted cameras.^[5] Law enforcement groups, as well as citizen groups like the American Civil Liberties Union, have endorsed the use of police body-mounted cameras with appropriate

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safeguards, concluding that such cameras have a number of benefits.^[6] For example, a 12-month study of one department found that officer-mounted cameras reduced use of force by 60 percent and reduced complaints against officers by 88 percent.^[7]

The City of Spokane is developing a police officer body camera program, with the support of the Spokane Mayor, the Spokane City Council, and the Spokane Use of Force Commission. The Washington Legislature has also appropriated funding for the Washington State Patrol to purchase body-mounted cameras.

ANALYSIS

A. Legal Background

Washington citizens' privacy is guarded by both constitutional and statutory provisions. Article I, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." This state constitutional provision generally provides greater protection for individual privacy than the Fourth Amendment to the United States Constitution. *State v. White*, 141 Wn. App. 128, 135, 168 P.3d 459 (2007). However, anything that is "voluntarily exposed to the general public and observable without the use of enhancement devices from an unprotected area is not considered part of a person's private affairs." *State v. Creegan*, 123 Wn. App. 718, 722, 99 P.3d 897 (2004) (internal quotation marks omitted) (quoting *State v. Jackson*, 111 Wn. App. 660, 683, 46 P.3d 257 (2002), *aff'd*, 150 Wn.2d 251, 76 P.3d 217 (2003) (quoting *State v. Young*, 123 Wn.2d 173, 182, 867 P.2d 593 (1994))). In addition, where one participant in a conversation has consented to the recording of a conversation (even where that participant is a police officer or confidential informant), the recording does not violate article I, section 7 or the Fourth Amendment. *State v. Clark*, 129 Wn.2d 211, 221, 916 P.2d 384 (1996); *Lopez v. United States*, 373 U.S. 427, 439, 83 S. Ct. 1381, 10 L. Ed. 2d 462 (1963).

The Washington Privacy Act, RCW 9.73, provides greater protection for private conversations and communications than the United States and Washington Constitutions. The Privacy Act is considered one of the most restrictive privacy statutes in the nation. *State v. Kipp*, 179 Wn.2d 718, 725, 317 P.3d 1029 (2014); *see also Clark*, 129 Wn.2d at 224. The Privacy Act provides that no individual or public agency can intercept or record a private

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conversation without first obtaining the consent of all of the parties to the conversation, unless an exception applies. RCW 9.73.030(1)(b).

There are several exceptions to the Privacy Act that allow some private conversations to be recorded with the consent of only one party, such as reports of emergencies, threats, and recordings permitted by warrant. *E.g.*, RCW 9.73.030(2), .040 (allowing warrant to protect national security, human life, and property from arson), .070(2) (exempting 911 calls), .090(2) (allowing warrant where probable cause exists to believe that the non-consenting party has committed, is engaged in, or is about to commit a felony). In addition, the Privacy Act governs only "audio recordings of private conversation, not photographs or soundless video recordings of persons' images." *Clark*, 129 Wn.2d at 215 n.1. Thus, video recordings made without sound are not regulated by the Privacy Act, except in limited circumstances where a person has already been arrested. *See* RCW 9.73.090(1)(b).

Recordings obtained in violation of RCW 9.73 are inadmissible in court with only limited exceptions. RCW 9.73.050; *see also State v. Cunningham*, 93 Wn.2d 823, 829, 613 P.2d 1139 (1980) (requiring compliance with RCW 9.73.090(1)(b) when a person is under arrest or in custody, and holding recordings that do not comply are inadmissible). In addition, anyone who violates the Privacy Act is subject to a claim for damages or criminal penalties. RCW 9.73.060, .080.

Central to our analysis, the Privacy Act's all-party-consent rule applies only to private communications or conversations. *Kipp*, 179 Wn.2d at 726; *see also Lewis v. Dep't of Licensing*, 157 Wn.2d 446, 458, 139 P.3d 1078 (2006) ("The statute clearly prohibits only the recording of *private* conversations."); *Clark*, 129 Wn.2d at 224. Whether a conversation is private for purposes of the Privacy Act depends on the particular facts and circumstances surrounding the conversation. *See Kipp*, 179 Wn.2d at 729-30. The Washington Supreme Court has given the term "private" its ordinary and usual meaning: "belonging to oneself . . . secret . . . intended only for the persons involved (a conversation) . . . holding a confidential relationship to something . . . a secret message: a private communication . . . secretly: not open to the public." *State v. Roden*, 179 Wn.2d 893, 899, 321 P.3d 1183 (2014) (alterations in original); *Clark*, 129 Wn.2d at 225 (alterations in original) (quoting *Kadoranian v. Bellingham Police Dep't*, 119 Wn.2d 178, 189-90, 829 P.2d 1061 (1992)).

In determining whether a particular conversation is private, the courts look to the subjective intentions of the parties and to other factors bearing on the reasonableness of the participants' expectations. *Roden*, 179 Wn.2d at 899. Conversations occurring, for example, on public roadways or in other public areas, are generally not private. *See Clark*, 129 Wn.2d at 231 (concluding that brief, routine conversations on public streets, even where they involved attempts to sell drugs, were not private).

Consent to recording is obtained under the Privacy Act "whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or

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transmitted[.]” RCW 9.73.030(3). To be effective under the Privacy Act, the announcement that a conversation is being recorded must also be recorded. RCW 9.73.030(3).

B. Application Of Washington’s Privacy Laws To Police Body-Mounted Cameras

1. In order to legally facilitate the use of body cameras attached to police uniforms, is it necessary to obtain the consent of the law enforcement officer who is a party to the intercepted conversation or is the consent of the officer obtained by virtue of the officer’s employment?

Washington state courts and the Ninth Circuit have consistently held that conversations between police officers and members of the public, when the officers are performing their official duties and are known to the other speakers to be performing their official duties, are not private conversations. *Kipp*, 179 Wn.2d at 732; *Lewis*, 157 Wn.2d at 460; *Johnson v. Hawe*, 388 F.3d 676, 682-83 (9th Cir. 2004). This is true even where someone other than the police officer has made the recording. *Johnson*, 388 F.3d at 679, 682-83; *State v. Flora*, 68 Wn. App. 802, 808, 845 P.2d 1355 (1992). Where a conversation is not private in the first instance, consent need not be obtained to record it under the Privacy Act unless a specific provision of the Act requires otherwise. *See, e.g.*, RCW 9.73.090(1)(c); *Lewis*, 157 Wn.2d at 461, 465 (requiring strict compliance with RCW 9.73.090(1)(c)'s notice requirement in traffic stops, even though recording those stops would not otherwise

violate the Privacy Act).[8] Police officers have been unsuccessful in raising Privacy Act challenges against the recording of their own official conversations with members of the public. *Johnson*, 388 F.3d at 682-83; *Flora*, 68 Wn. App. at 808.

However, law enforcement agencies should consider the potential effect of any collective bargaining agreement. If a law enforcement agency's collective bargaining agreement addresses audio or video recording and consent, then the agreement must be followed. *Wingert v. Yellow Freight Sys., Inc.*, 104 Wn. App. 583, 596, 13 P.3d 677 (2000), *aff'd*, 146 Wn.2d 841, 50 P.3d 256 (2002) (noting that as long as minimum statutory standards are used as a base, parties may bargain for terms that exceed those minimum statutory standards). Furthermore, if the law enforcement agency has a practice in place, the agency should consider whether bargaining would be required before adopting a different or contrary policy regarding body cameras. *King County v. Pub. Emp't Relations Comm'n*, 94 Wn. App. 431, 437, 972 P.2d 130 (1999) (stating that bargaining is required before a party to a collective bargaining agreement makes a change to a policy or practice affecting wages, hours, or working conditions); *see also Pullman Police Officers' Guild v. City of Pullman*, Decision 8086, 2003 WL 21419640, at *5 (Pub. Emp't Relations Comm'n 2003) (suggesting that a police chief's directive not to record certain interviews "could give rise to a duty to bargain").

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In addition, conversations that occur when an officer is not on duty—for example, a phone call to a family member during a break, or an off-duty conversation with a partner—would not be part of his or her official duties, and courts could treat these conversations as private, depending on the circumstances. *See Flora*, 68 Wn. App. at 807-08. Recording of private, off-duty conversations would require the officer's and other participants' consent.

2. Are intercepted conversations and video of actions that take place inside a private residence between law enforcement officers and private citizens private or public? What case law establishes what constitutes a private conversation?

The Washington Supreme Court recently reiterated that a communication is private "(1) when parties manifest a subjective intention that it be private and (2) where that expectation is reasonable." *Kipp*, 179 Wn.2d at 729. Factors influencing the reasonableness of the privacy expectation include "the duration and subject matter of the communication, the location of the communication and the presence or potential presence of third parties, and the role of the nonconsenting party and his or her relationship to the consenting party." *Id.* Ultimately, the reasonableness of the expectation of privacy depends on all of the facts and circumstances of each case. *Id.* The presence or absence of a single factor is not conclusive. *Clark*, 129 Wn.2d at 227.\

Subject matter of the conversation: Inconsequential or non-incriminating conversations generally lack the expectation of privacy under the Privacy Act. *Kipp*, 179 Wn.2d at 730. In contrast, an incriminating statement is the type of subject matter that weighs in favor of privacy. *See id.*; *but see Clark*, 129 Wn.2d at 231 (concluding that brief conversations attempting to sell drugs that began on public streets were not private and explaining that conversations about illegal activities can be either private or not private for purposes of the Privacy Act).

Location: A conversation in a private home, where privacy is given “maximum protection,” is more likely to be deemed private. *Kipp*, 179 Wn.2d at 731.[9] Notably, however, the *Kipp* Court did not conclude that all conversations occurring in a private home are private for purposes of the Privacy Act. *See id.* at 731-32; *see also Clark*, 129 Wn.2d at 226 (holding business transactions conducted with the public are not private, even where a transaction occurs inside a private home). Instead, the Court emphasized that every conversation must be analyzed on a case-by-case basis, considering factors like who was present and whether others were intentionally excluded from the conversation. *Kipp*, 179 Wn.2d at 732.

Roles of participants: In *Kipp*, the Court again acknowledged that where the conversation involves a police officer performing his or her official duties, the conversation is not protected under the Privacy Act. *Kipp*, 179 Wn.2d at 732. Similarly, where a party to the

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conversation is a public official or stranger, the conversation is much less likely to be considered private. *Kipp*, 179 Wn.2d at 732. The *Kipp* Court discussed these factors even where the conversation at issue in that case occurred in a private home. *See id.* Thus, the Court’s reasoning in *Kipp* assumes both that (1) not all conversations occurring in private homes are necessarily private for purposes of the Privacy Act, and (2) the rule that a conversation with an on-duty police officer is not private survives, even where the conversation occurs in a private home. *See Kipp*, 179 Wn.2d at 732.

Where the police officer is not a participant in the conversation, however, the analysis is slightly less clear. For example, an officer’s body-mounted camera could intercept and record a conversation between two or more other individuals in a private home. Cases to date holding that conversations with on-duty police officers are not private have all involved conversations directly with police officers.

That said, the Washington Supreme Court has strongly indicated that a conversation between two other parties is not private where they know a police officer is present. *See Lewis*, 157 Wn.2d at 465 (“the same factors that indicate that a driver does not have a reasonable expectation of privacy with an officer during a traffic stop conversation also indicate there is no reasonable expectation of privacy in other conversations that same driver might have in the presence of the officer during a traffic stop, such as with his passenger or with another party over a cellular phone”). Thus, in a situation where the conversation is between two other parties but a police officer is obviously present, it seems extremely unlikely that a court would deem the conversation private, but there is not yet a bright-line rule to that effect. In those circumstances, a court might need to analyze the conversation first to determine whether it was private under the factors discussed above. *See Kipp*, 179 Wn.2d at 729. And if the individuals were somehow unaware of the officer’s presence in the home, a court would almost certainly need to analyze the factors above to determine whether it was private.

If an in-home conversation were private, a court would then analyze whether any of the exceptions in the Privacy Act applied. Two relevant exceptions might support recording, even where a conversation between non-police individuals occurred in a private home. First, if an officer seeks a warrant before entering the home, the officer could seek the court’s permission to record without consent, as contemplated in the Privacy Act. *E.g.*, RCW 9.73.040, .090. Second, if an officer properly announced her

presence and that she was recording, any ongoing conversation occurring after that announcement would be deemed consensual under the Privacy Act. RCW 9.73.030 (3).

Finally, the Fourth Amendment requires police actions in execution of a warrant inside a person's home to be related to the objectives of the authorized intrusion. *Wilson v. Layne*, 526 U.S. 603, 613, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999) (finding Fourth Amendment violation where reporters accompanied officers into a home to execute a warrant and took photographs for their own, private purposes). As a result, agency policies should articulate legitimate law enforcement purposes, like evidence preservation and officer accountability, supporting recordings inside private homes.

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In sum, the Washington Supreme Court has held that a conversation with a police officer performing an official duty is public, and the Court's reasoning extends to a conversation with a police officer occurring in a private home. Interception of a conversation between other, non-police parties in a private home may be deemed private, depending on the circumstances. In those cases, police may be able to rely on the warrant or consent exceptions to the Privacy Act, also depending on the circumstances.

3. If a party objects to the interception and recording, would it be necessary for the law enforcement officers to cease intercepting and recording? If the officer continued to intercept and record once an objection was made by one of the parties to a private communication, would that action therefore subject the officer and the agency to criminal and civil liability?

The Privacy Act provides for both criminal and civil liability for its violation. It is a gross misdemeanor to intercept or record a private conversation in violation of the Privacy Act. RCW 9.73.080. The Privacy Act also provides for civil liability for violations, including damages for injury to a person's business or reputation. RCW 9.73.060.^[10]

That said, it is not a violation of the Privacy Act to record a non-private conversation, and Washington courts have made clear that conversations with police officers are not private. *See, e.g., Kipp*, 179 Wn.2d at 732; *Lewis*, 157 Wn.2d at 460. Courts have never suggested that an objection to recording turns a public conversation into a private one (an objection would be relevant only to whether consent had been granted to record an otherwise private conversation). Thus, where a conversation is not private because it is occurring in a public place or because it includes a police officer performing his or her official duties, an objection from one party should not trigger liability under the Privacy Act because the Act does not apply to non-private conversations. Even if a conversation would otherwise be private, consent would be considered obtained if the police officer announced to the other parties on the recording that the conversation was being recorded. RCW 9.73.030(3). Thus, a police officer who continues recording a conversation between the officer and a citizen despite an objection would not likely face liability.

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After a police officer has arrested a person, however, different rules apply. The Privacy Act contains specific requirements for recording suspects who have been arrested. The Privacy Act provides that video or sound recordings of conversations with arrested persons must include on the recording: (1) a statement that a recording is being made, (2) the beginning and end time of the recording, (3) a statement to the arrested person informing him of his constitutional rights. RCW 9.73.090(1)(b). Such recordings may only be used for valid police or court activities. RCW 9.73.090(1)(b).

Finally, this opinion addresses specific legal questions. We recognize that there may be differing opinions as a policy matter regarding when officers should be permitted or required to cease recording an interaction with a member of the public. Some express concerns that allowing officers to stop recording gives officers too much discretion and may allow them to avoid accountability. In contrast, others point out that cameras may chill open communication from victims in sensitive cases involving, for example, domestic violence or sex crimes. One commenter suggests that officers should be permitted to turn off recordings inside a person's home if the request to stop recording is itself recorded. Such considerations are not definitively resolved under current law, and they will need to be addressed either by the legislature or by law enforcement agencies in developing policies surrounding police body-mounted cameras.

4. What legal standards or rules of evidence establish the requirements for preservation of intercepted private conversations or video evidence making such evidence available in its original format for a citizen seeking damages under RCW 9.73.030?

The Privacy Act contains some provisions related to retention and disclosure of recordings covered by the Act. All communications recorded pursuant to the Privacy Act's warrant exception in RCW 9.73.090(2) must be retained "for as long as any crime may be charged based on the events or communications or conversations recorded." Because most body camera videos would not likely be made pursuant to the warrant exception, however, this provision would rarely apply to such videos. Similarly, as to video recordings made by cameras mounted in police vehicles and corresponding audio recordings, it is a misdemeanor to "knowingly alter[], erase[], or wrongfully disclose[] any [such] recording in violation of RCW 9.73.090(1)(c)[.]" RCW 9.73.080(2).

That said, video recordings made by police body-mounted cameras would qualify as public records. As such, the recordings must be retained according to the public entity's applicable record retention schedule. *See* Washington State Archives, *Law Enforcement Records Retention Schedule* (Jan. 2013) (Schedule), available at http://www.sos.wa.gov/_assets/archives/RecordsManagement/Law_Enforcement_RRS_v6.201_Jan_2013.pdf.^[11] The retention schedule for law enforcement agencies addresses recordings from mobile units, which

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are retained according to whether the recording captures an incident likely to lead to prosecution or litigation. Schedule at 50. Recordings that do not capture such

incidents must be retained for 90 days, while recordings capturing such incidents must be retained until the matter is resolved or until all appeals are exhausted. Schedule at 50.[12]

Law enforcement agencies must also comply with the requirement that records relevant to litigation or reasonably anticipated litigation must be preserved until the litigation is complete. *See, e.g., Leon v. IDX Sys. Corp.*, 464 F.3d 951, 959 (9th Cir. 2006); *Zubulake v. UBS Warburg, LLC*, 220 F.R.D. 212, 217-18 (S.D.N.Y. 2003). Of course, to the extent that recordings become evidence in a criminal case, they should be treated according to the same safeguards that govern any other evidence in a criminal case.

With regard to disclosure, recordings and records about recordings from police cameras are subject to both the Public Records Act and discovery. *See generally Fisher Broadcasting–Seattle LLC v. City of Seattle*, 180 Wn.2d 515, 326 P.3d 688 (2014). In establishing body camera systems, agencies should therefore give significant thought to how to categorize and store recordings. Restrictions on public disclosure of investigative records would apply to the extent that a recording meets the requirements of that statute. See RCW 42.56.240. Moreover, the Public Records Act permits public agencies to give notice to a person that a requested record pertains to, so that he or she can seek an injunction prohibiting disclosure. RCW 42.56.540. As explained below, however, specific restrictions on disclosure of video from vehicle-mounted cameras would not apply to body-mounted cameras absent a change in the Privacy Act.

5. Does RCW 9.73.090 limit the lawful interception of conversations via a body-mounted camera by law enforcement officers to only those interactions with citizens where the body camera is “operated simultaneously” with video cameras “mounted in law enforcement vehicles”? An example would be when an officer leaves a vehicle and enters a residence.

RCW 9.73.090(1)(c) directly addresses “[s]ound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles.” This provision specifically governs cameras mounted in law enforcement vehicles and their corresponding audio recordings. There is some indication that the Washington Legislature intended to expand the ability to use recordings from these types of cameras when it enacted this section. See H.B. Rep. on H.B. 2903, 56th Leg., Reg. Sess. (Wash. 2000), available at <http://law.filesexp.leg.wa.gov/biennium/1999-00/Pdf/Bill%20Reports/House/2903.HBR.pdf>. Yet the Washington Supreme Court has read this provision to create an additional set of requirements that police officers must follow, regardless of whether the recorded conversations are private. *Lewis*, 157 Wn.2d at 462.

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RCW 9.73.090(1)(c) requires officers using vehicle-mounted cameras to be in uniform, and it restricts the duplication and use of recordings made from these cameras. The provision limits when a recording can be turned off. RCW 9.73.090(1)(c) also requires that the officer notify any person being recorded that a sound recording is being made unless there are exigent circumstances, regardless of whether the conversation would be considered private under the law. Even so, this provision is

specifically limited to vehicle-mounted cameras, and would not apply to body-mounted cameras unless the legislature expressly extended it.

The body-mounted microphones connected to a vehicle-mounted camera might travel with an officer away from a vehicle, for example into a private home. If the microphone worn by the officer is connected to a vehicle-mounted camera, then the specific requirements for vehicle-mounted cameras would apply.

We trust that the foregoing will be useful to you.

ROBERT W.
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*Attorney
General*

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WROS

[1] We have answered your questions in a slightly different order than you presented them, for the ease of explaining questions two and three in context of the analysis. We also paraphrased question 1 to facilitate presentation in this order.

[2] This opinion assumes officers with body-mounted cameras will be in uniform or otherwise easily identifiable to the public as police officers.

[3] Spokane Office of Police Ombudsman, *2011 Annual Report* (Feb. 20, 2012), Attachment G: *Body Worn Video and Law Enforcement*, available at <http://www.spdombudsman.com/wp-content/uploads/2012/02/Attachment-G-Body-Camera-Report.pdf> (Attach. G); City of Spokane, Resolution No. 2013-0069 (Sept. 23, 2013) (approving purchase of a police body camera system).

[4] Attach. G.

[5] Tami Abdollah, *Officers' Body Cameras Raise Privacy Concerns*, Associated Press, Mar. 15, 2014, <http://bigstory.ap.org/article/officers-body-cameras-raise-privacy-concerns> (last visited Nov. 6, 2014).

[6] http://www.cops.usdoj.gov/html/podcasts/the_beat/01-2014/TheBeat-012014_Chitwood.txt (last visited Nov. 6, 2014) (transcript of podcast); ACLU, Chris Rickerd, *Strengthening CBP with Use of Body-Worn Cameras* (Oct. 25, 2013, updated June 27, 2014), https://www.aclu.org/sites/default/files/assets/14_6_27_aclu_handout_re_body-worn_cameras_for_cbp_final.pdf (last visited Nov. 6, 2014); ACLU, Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All* (Oct.

2013), https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf (last visited Nov. 6, 2014).

[7] Police Found., Tony Ferrar, *Self Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force* 8 (Mar. 2013), <http://www.policefoundation.org/content/body-worn-camera> (last visited Nov. 6, 2014).

[8] Of course, the fact that a conversation with a police officer performing his or her official duties is not private for purposes of the Privacy Act does not necessarily mean that recordings of such conversations will be admissible. Constitutional principles, including Fourth Amendment principles, and the rules of evidence would still govern admission of any recordings as evidence.

[9] This opinion assumes that the police officer has legally entered the private residence. Of course, article I, section 7 and Fourth Amendment principles governing when a police officer can lawfully enter a private residence apply and could affect admissibility of any evidence, including video and audio recordings, collected inside.

[10] In addition to these statutory provisions, Washington courts have recognized a common law action may be brought for invasion of privacy, basing liability on “the publication of a private matter that would be highly offensive to a reasonable person and is not a legitimate concern to the public.” *Adams v. King County*, 164 Wn.2d 640, 661, 192 P.3d 891 (2008) (discussing *Reid v. Pierce County*, 136 Wn.2d 195, 212-13, 961 P.2d 333 (1998)). In *Reid*, the Washington Supreme Court allowed this common law action where law enforcement had improperly disclosed autopsy photos of the plaintiffs’ close family members, also in violation of a specific statute requiring only limited disclosure. The common law action for invasion of privacy depends upon improper disclosure of a private matter, however, and it would not be available based solely on the act of recording. *Adams*, 164 Wn.2d at 661; *Reid*, 136 Wn.2d at 212-13.

[11] RCW 40.14.060(1) provides: “Any destruction of official public records shall be pursuant to a schedule approved under RCW 40.14.050.” The retention schedules are approved by the State Records Committee using procedures established in RCW 40.14.

[12] Depending on what type of incident is recorded, other categories appearing on the record retention schedule may also apply.