

# THE LAW OFFICES OF JAMES C. EGAN PLLC

---

January 10, 2012

## PRESS RELEASE REGARDING NEW PUBLIC DISCLOSURE REQUEST

As many people are aware, the City of Seattle has sued me in King County Superior Court under 12-2-00938-4 SEA asking the Court to find that the 36 sound videos I requested should not be produced as they could possibly violate the unknown subjects' right to privacy if they were released.

I disagree with the City's self-protective legal analysis and am preparing to defend myself. This new request has no bearing on the lawsuit against me, though it may be referenced in future court proceedings.

Today's request does not concede in any way that the sound videos if released would violate the Privacy Act. Rather, it offers an opportunity for the City to comply in a limited way by asking that they produce the *same 36 videos without sound*. Today's request does not withdraw my prior request for the same videos with sound, or my participation in the lawsuit against me.

The City may either (a) provide the silent videos within 30 days under the Public Disclosure Act or (b) refuse under an obscure provision of the Privacy Act which holds that "no sound or video recording may be made duplicated... until final disposition of any criminal or civil litigation which arises from the events which were recorded." RCW 9.73.090(1)(c). The reason this is inapplicable is that the entire Privacy Act applies only to private communications. Further, there is no litigation that has arisen from any of the videos to my knowledge or theirs. To refuse the request would highlight the absurdity of their legal interpretation.

Important to note is that *the Public Disclosure Act specifically says, "In the event of a conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern."* City Attorney's perception of a conflict of laws is resolved by that section. Also, the same section holds that the "chapter shall be liberally construed and its exemptions narrowly construed to promote the public policy and to assure that the public interest will be fully protected." RCW 42.56.040

Also telling is the inconsistency of the City's own position that sound videos cannot be produced as a violation of an unknown subject's right to privacy. Without obtaining anyone's permission, the Police Department has released videos of John T. Williams' prior police encounters and Christopher Monfort's police encounters. Both videos were released with audio. The City did not seem concerned about the Privacy Act in those cases, nor in the hundreds of videos made for purpose of criminal litigation. The City ostensibly is more concerned with Privacy Rights than Civil Rights, despite the rather obvious self-protection exhibited by their position.

THE LAW OFFICES OF  
JAMES C. EGAN PLLC

January 10, 2012

Seattle Police Department  
610 Fifth Avenue  
Seattle, WA 98124-4926

RE: Public Disclosure Request for same 36 videos without audio (silent videos)

Dear SPD:

Without withdrawing any prior public disclosure requests or affecting the suit against me under City of Seattle v. James Egan, King County Superior Court 12-2-00938-4 SEA, I am making the following request:

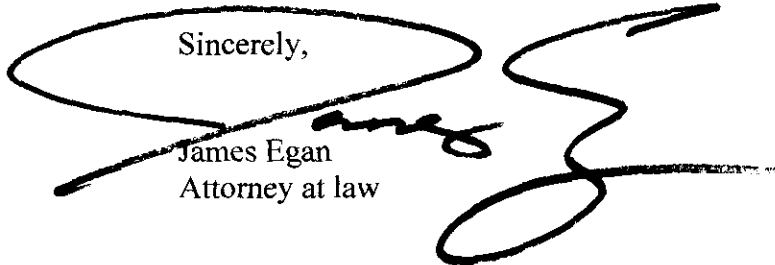
**Please provide the same 36 videos I requested on September 23, 2011, which are the subject of Seattle v. James Egan, with the entire audio redacted or deleted. Essentially, I am asking for 36 silent videos. It is my position that these 36 silent videos cannot possibly violate the Privacy Act since they contain no recorded oral communications.**

I expect these 36 videos to be copied using either Coban software or other video editing software that eliminates the audio on the copy made. I understand this is very easy to do with video editing software (including Ocean Systems and Adobe Premier). I will donate this software to SPD if necessary. Silent videos are probably quicker to create than the heavily edited, blacked out and redacted versions of police reports already created by SPD for other public disclosure requests.

These 36 videos presumably have already been identified for distribution over 3 months ago. Therefore, I would expect these 36 silent videos to be produced to me within 30 days.

For reference, the 36 videos are listed on the next page. Again, this particular public disclosure request has no bearing on the prior request for the same videos *with audio*, nor the lawsuit brought against me last week by the City, except that it may be referenced therein.

Sincerely,

  
James Egan  
Attorney at law

**“SILENT” VIDEOS REQUESTED VIA PUBLIC DISCLOSURE ON 1-10-12**

| Document number | Officer last name | First name | Video date | Video time  | Date Copied for OPA | Filename            |
|-----------------|-------------------|------------|------------|-------------|---------------------|---------------------|
| 1)              | Schoenberg        | Brett      | 3/7/2009   | 10:49:41 PM | 3/13/2009           | 7429@20090307224941 |
| 2)              | Williams          | Corey      | 3/7/2009   | 10:51:49 PM | 3/13/2009           | 7472@20090307225149 |
| 3)              | Auderer           | Daniel     | 5/9/2009   | 9:32:00 PM  | 5/14/2009           | 7499@20090509213200 |
| 4)              | Auderer           | Daniel     | 9/18/2009  | 8:10:34 PM  | 9/24/2009           | 7499@20090918201034 |
| 5)              | Steiger           | Casey      | 9/18/2009  | 8:03:58 PM  | 9/24/2009           | 7503@20090918200358 |
| 6)              | Williams          | Corey      | 4/15/2010  | 11:30:41 PM | 5/5/2010            | 7472@20100415233041 |
| 7)              | Schoenberg        | Brett      | 5/9/2010   | 1:28:45 AM  | 5/11/2010           | 7429@20100509012845 |
| 8)              | Schoenberg        | Brett      | 5/9/2010   | 4:02:00 AM  | 5/11/2010           | 7429@20100509040200 |
| 9)              | Steiger           | Casey      | 5/9/2010   | 2:15:21 AM  | 5/11/2010           | 7503@20100509021521 |
| 10)             | Schoenberg        | Brett      | 4/24/2010  | 11:45:55 PM | 5/28/2010           | 7429@20100424234555 |
| 11)             | Schoenberg        | Brett      | 6/12/2010  | 2:08:32 AM  | 6/15/2010           | 7429@20100612020832 |
| 12)             | Auderer           | Daniel     | 3/11/2010  | 2:07:32 AM  | 10/19/2010          | 7499@20100311020732 |
| 13)             | Schoenberg        | Brett      | 3/11/2010  | 1:53:29 AM  | 10/19/2010          | 7429@20100311015329 |
| 14)             | Steiger           | Casey      | 11/4/2010  | 10:43:14 PM | 12/9/2010           | 7503@20101104224314 |
| 15)             | Steiger           | Casey      | 11/4/2010  | 10:43:14 PM | 12/9/2010           | 7503@20101104224314 |
| 16)             | Steiger           | Casey      | 11/4/2010  | 11:05:33 PM | 12/9/2010           | 7503@20101104230533 |
| 17)             | Schoenberg        | Brett      | 11/4/2010  | 10:28:00 PM | 12/9/2010           | 7429@20101104222800 |
| 18)             | Schoenberg        | Brett      | 11/4/2010  | 10:43:24 PM | 12/9/2010           | 7429@20101104224324 |
| 19)             | Williams          | Corey      | 9/28/2010  | 11:46:51 PM | 12/17/2010          | 7472@20100928234651 |
| 20)             | Auderer           | Daniel     | 1/27/2011  | 8:35:14 PM  | 2/1/2011            | 7499@20110127203514 |
| 21)             | Schoenberg        | Brett      | 2/22/2011  | 1:48:07 AM  | 2/24/2011           | 7429@20110222014807 |
| 22)             | Williams          | Corey      | 2/22/2011  | 1:48:00 AM  | 2/24/2011           | 7472@20110222014800 |
| 23)             | Williams          | Corey      | 2/21/2011  | 11:40:32 PM | 4/17/2011           | 7472@20110221234032 |
| 24)             | Williams          | Corey      | 2/21/2011  | 7:58:02 PM  | 4/17/2011           | 7472@20110221195802 |
| 25)             | Williams          | Corey      | 2/21/2011  | 8:13:34 PM  | 4/17/2011           | 7472@20110221201334 |
| 26)             | Williams          | Corey      | 2/21/2011  | 8:25:43 PM  | 4/17/2011           | 7472@20110221202543 |
| 27)             | Williams          | Corey      | 2/21/2011  | 9:44:46 PM  | 4/17/2011           | 7472@20110221214446 |
| 28)             | Williams          | Corey      | 2/19/2011  | 8:50:14 PM  | 4/26/2011           | 7472@20110219205014 |
| 29)             | Williams          | Corey      | 2/20/2011  | 12:42:54 AM | 4/26/2011           | 7472@20110220004254 |
| 30)             | Williams          | Corey      | 2/18/2011  | 11:34:06 PM | 4/26/2011           | 7472@20110218233406 |
| 31)             | Williams          | Corey      | 2/18/2011  | 11:51:48 PM | 4/26/2011           | 7472@20110218235148 |
| 32)             | Williams          | Corey      | 2/19/2011  | 1:16:27 AM  | 4/26/2011           | 7472@20110219011627 |
| 33)             | Auderer           | Daniel     | 5/4/2011   | 11:12:58 PM | 5/16/2011           | 7499@20110504231258 |
| 34)             | Steiger           | Casey      | 8/17/2010  | 12:27:51 AM | 5/19/2011           | 7503@20100817002751 |
| 35)             | Schoenberg        | Brett      | 8/17/2010  | 12:36:14 AM | 5/19/2011           | 7429@20100817003614 |
| 36)             | Auderer           | Daniel     | 7/20/2011  | 8:41:59 PM  | 7/26/2011           | 7499@20110720204159 |

12-10-11 11:37 AM

**THE LAW OFFICES OF JAMES C. EGAN PLLC**

605 FIRST AVENUE SUITE 400, SEATTLE, WA 98104 / [WWW.EGANATTORNEY.COM](http://WWW.EGANATTORNEY.COM) / [info@eganattorney.com](mailto:info@eganattorney.com)  
 TEL.: (206) 749-0333/0353 Fax: (206) 749-5888 / Cell: (206) 795-3292 (J. Egan)

## **Public Records Act Preamble**

### **RCW 42.56.030 Construction.**

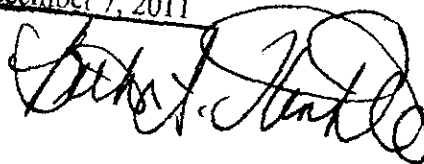
The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.

[2007 c 197 § 2; 2005 c 274 § 283; 1992 c 139 § 2. Formerly RCW 42.17.251.]

THE LAW OFFICES OF  
JAMES C. EGAN PLLC

**MAILED**

December 7, 2011



Chief of Police John Diaz  
Seattle Police Department  
PO Box 34986  
Seattle, WA 98124

**RE: Requested disclosure of videos of Officers Schoenberg, Steiger, Auderer, Williams**

Dear Chief Diaz

On September 23, 2011, I asked for copies of 36 in-car videos that were preserved and copied for the Office of Professional Accountability where I clearly identified the video date, time and even the file name.

On September 28, 2011, a letter from SPD's Tricia Colin stated a response was anticipated on or about November 30 (2 months from my request), and "this additional time is used to research this request, collect responsive records, and/or prepare records for dissemination."

On November 30, 2011, I did not get any of the videos. Rather, I got an email from Sheila Friend-Gray which read in part,

"Pursuant to RCW 9.73.090(1)(c), no sound or video recording may be duplicated and made available to the public until final disposition of any litigation which arises from the incidents that were recorded. The subject of the video or his or her attorney may receive a copy of the video prior to final disposition of related litigation. Explanation: Disclosure of information is statutorily prohibited and would violate the subject's right to privacy"

Your office apparently believes that disclosure (1) is statutorily prohibited and (2) would violate the subject's right to privacy. Both are erroneous interpretations of RCW's.

First, disclosure is not "prohibited," but rather is mandatory under the Public Disclosure Act, which provides damages for non-disclosure. The cited RCW 9.73.090(1)(c) is only applicable when litigation has actually arisen from recorded incidents, which is not reported to be the case with any of these videos. The language of the statute does not say, "litigation which might arise," but rather says, "which arises." If civil or criminal litigation currently exists, I agree that section applies. However, if civil litigation did not arise (yet) from the incidents and may not arise at all, *that section of the statute does not apply*. It may be that civil litigation would never arise from an incident at all, such as a video showing a police cruiser bumping into another on city property because a parking brake was not properly set; would you still maintain that the video could not be produced because there is no "final disposition of any litigation" from the incident? Even if civil litigation *might possibly* arise from the incident, you must produce the requested video and audio pursuant to the Public Disclosure Act, which reads:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. RCW 42.56.040--

42.56.030

These audio-visual recordings of public officers and detainees are clearly public records:

"Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated. RCW 42.56.010, emphasis added.

Further, "conversations between traffic stop detainees and police officers are not private conversations." Lewis v. State Department of Licensing 157 Wn. 2d 446, 139 P.3d 1078 (Wash. 2006) The State Supreme Court has adopted the dictionary definition of "private" as "belonging to one's self... secret... intended only for the persons involved (a conversation) ...holding a confidential relationship to something... a secret message: a private communication... secretly: not open or in public." Lewis at 458, 1083 quoting Kadoranian v. Bellingham Police Dept. 119 Wash.2d 178, 190, 829 P. 2d 1061 (1992).

Presumably, the vast majority of these reviews by the Office of Professional Accountability did not involve "private" conversations by officers in uniform. After all, would the OPA be requesting video of conversations these officers may have had with their wives or friends? The "subject" is not identified by Ms. Friend-Gray, but I will assume they are often traffic detainees, who were advised they were being recorded, and hence were not having a "private" conversation with the uniformed police officer. This is not "highly offensive to a reasonable person" to disclose, since presumably the complainants to the OPA expected disclosure to investigators of related videos in reviewing their public complaint. RCW 42.56.050.

Your current reading of RCW 9.73.090(1)(c) is to thwart the Public Disclosure Act and prevent any reasonable attempt to determine the conduct of the government and performance of officers regardless of whether any litigation exists. **I am asking you to produce the requested videos within the next two weeks, or I will be seeking statutory damages at the maximum level based on the Public Disclosure Act, which trumps the exceedingly broad, self-protective interpretation of RCW 9.73.090(1)(c) recently provided by your office.**

Sincerely,

  
James Egan, Attorney

THE LAW OFFICES OF JAMES C. EGAN PLLC

605 FIRST AVENUE SUITE 400, SEATTLE, WA 98104 / [www.ecglaw.com](http://www.ecglaw.com) / [jegan@ecglaw.com](mailto:jegan@ecglaw.com)  
TEL: (206) 749-0333 / 0353 Fax: (206) 749-5888 / Cell: (206) 795-3292 (J. Egan)