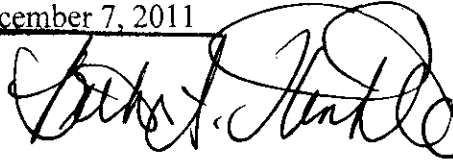


THE LAW OFFICES OF  
JAMES C. EGAN PLLC

**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 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)

**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**

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.**

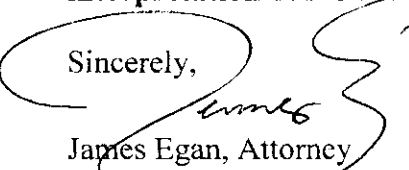
**"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper 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.EGANLAWOFFICES.COM](http://WWW.EGANLAWOFFICES.COM) / [info@eganattorney.com](mailto:info@eganattorney.com)  
TEL: (206) 749-0333 / 0353 Fax: (206) 749-5888 / Cell: (206) 795-3292 (J. Egan)

## James C. Egan

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**From:** Colin, Tricia [Tricia.Colin@seattle.gov] on behalf of SPD-PDR, SPD [SPD.SPD-PDR@seattle.gov]  
**Sent:** Wednesday, September 28, 2011 11:47 AM  
**To:** James C. Egan  
**Subject:** RE: Public Disclosure Request for All Complaints Against Brett Scheonberg, Corey Williams, Daniel Auderer and Casey Steiger  
**Attachments:** Egan ltr.pdf

Dear Mr. Egan:

Please see the attached in response to your public disclosure request.

Thank you,

Tricia Colin  
Administrative Specialist II  
Public Request Unit  
Seattle Police Department

**From:** James C. Egan [mailto:james@eganattorney.com]  
**Sent:** Friday, September 23, 2011 4:40 PM  
**To:** SPD-PDR, SPD  
**Cc:** James C. Egan  
**Subject:** Public Disclosure Request for All Complaints Against Brett Scheonberg, Corey Williams, Daniel Auderer and Casey Steiger

September 23, 2011

Dear SPD Public Disclosure Unit:

I would like the following

- 1) All complaints against Officer Brett Schoenberg (7429)
- 2) All complaints against Officer Corey Williams (7472)
- 3) All complaints against Officer Daniel Auderer (7499)
- 4) All complaints against Officer Casey Steiger (7503)

I would like the entire files on these, provided electronically (on a CD). I would like these files to include the OPA findings against them.

I would also like the following in-car videos reviewed by OPA in the following investigations of these four officers:

Last name	First name	Video date	Video time	Date Copied for OPA	Filename
Schoenberg	Brett	3/7/2009	10:49:41 PM	3/13/2009	7429@20090307224941
Williams	Corey	3/7/2009	10:51:49 PM	3/13/2009	7472@20090307225149

Auderer	Daniel	5/9/2009	9:32:00 PM	5/14/2009	7499@20090509213200
Auderer	Daniel	9/18/2009	8:10:34 PM	9/24/2009	7499@20090918201034
Steiger	Casey	9/18/2009	8:03:58 PM	9/24/2009	7503@20090918200358
Williams	Corey	4/15/2010	11:30:41 PM	5/5/2010	7472@20100415233041
Schoenberg	Brett	5/9/2010	1:28:45 AM	5/11/2010	7429@20100509012845
Schoenberg	Brett	5/9/2010	4:02:00 AM	5/11/2010	7429@20100509040200
Steiger	Casey	5/9/2010	2:15:21 AM	5/11/2010	7503@20100509021521
Schoenberg	Brett	4/24/2010	11:45:55 PM	5/28/2010	7429@20100424234555
Schoenberg	Brett	6/12/2010	2:08:32 AM	6/15/2010	7429@20100612020832
Auderer	Daniel	3/11/2010	2:07:32 AM	10/19/2010	7499@20100311020732
Schoenberg	Brett	3/11/2010	1:53:29 AM	10/19/2010	7429@20100311015329
Steiger	Casey	11/4/2010	10:43:14 PM	12/9/2010	7503@20101104224314
Steiger	Casey	11/4/2010	10:43:14 PM	12/9/2010	7503@20101104224314
Steiger	Casey	11/4/2010	11:05:33 PM	12/9/2010	7503@20101104230533
Schoenberg	Brett	11/4/2010	10:28:00 PM	12/9/2010	7429@20101104222800
Schoenberg	Brett	11/4/2010	10:43:24 PM	12/9/2010	7429@20101104224324
Williams	Corey	9/28/2010	11:46:51 PM	12/17/2010	7472@20100928234651
Auderer	Daniel	1/27/2011	8:35:14 PM	2/1/2011	7499@20110127203514
Schoenberg	Brett	2/22/2011	1:48:07 AM	2/24/2011	7429@20110222014807
Williams	Corey	2/22/2011	1:48:00 AM	2/24/2011	7472@20110222014800
Williams	Corey	2/21/2011	11:40:32 PM	4/17/2011	7472@20110221234032
Williams	Corey	2/21/2011	7:58:02 PM	4/17/2011	7472@20110221195802
Williams	Corey	2/21/2011	8:13:34 PM	4/17/2011	7472@20110221201334
Williams	Corey	2/21/2011	8:25:43 PM	4/17/2011	7472@20110221202543
Williams	Corey	2/21/2011	9:44:46 PM	4/17/2011	7472@20110221214446
Williams	Corey	2/19/2011	8:50:14 PM	4/26/2011	7472@20110219205014

Williams	Corey	2/20/2011	12:42:54 AM	4/26/2011	7472@20110220004254
Williams	Corey	2/18/2011	11:34:06 PM	4/26/2011	7472@20110218233406
Williams	Corey	2/18/2011	11:51:48 PM	4/26/2011	7472@20110218235148
Williams	Corey	2/19/2011	1:16:27 AM	4/26/2011	7472@20110219011627
Auderer	Daniel	5/4/2011	11:12:58 PM	5/16/2011	7499@20110504231258
Steiger	Casey	8/17/2010	12:27:51 AM	5/19/2011	7503@20100817002751
Schoenberg	Brett	8/17/2010	12:36:14 AM	5/19/2011	7429@20100817003614
Auderer	Daniel	7/20/2011	8:41:59 PM	7/26/2011	7499@20110720204159

Thank you. I recognize this is a large request, and so I would think the City could respond within 45 days instead of 30. Let me know if you have a different expected time frame or need clarity of the request.

James Egan



# City of Seattle

Seattle Police Department

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September 28, 2011

Law Offices of James Egan  
Attn: James Egan  
[james@eganattorney.com](mailto:james@eganattorney.com)

RE: Public Disclosure Request # P2011-3058

Dear Mr. Egan:

This letter is in response to your public disclosure request dated September 23, 2011 for information regarding OPA cases.

Pursuant to RCW 42.56.520, this is notification that we have received your public disclosure request, and we anticipate it may take up to two months from the date of this notification to respond. Therefore we anticipate a response to you on or about November 30, 2011

This additional time is used to research this request, collect responsive records, and/or prepare records for dissemination. **Please note: Seattle Police Department currently receives approximately 5,000 public disclosure requests annually. We are currently experiencing an even higher than usual workload.**

If you have any questions or need further assistance with this request, please contact the Public Disclosure Desk at 206-684-5481.

Sincerely,

John Diaz  
Chief of Police

A handwritten signature in black ink, appearing to read 'Tricia Colin'.

Tricia Colin  
Administrative Specialist II  
Public Request Unit

JD:tc



Seattle Police Department, 610 Fifth Avenue, PO Box 34986, Seattle, WA 98124-4986

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Accommodations for people with disabilities provided upon request. Call (206) 233-7203 at least two weeks in advance.

## James C. Egan

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**From:** Friend-Gray, Sheila [Sheila.Friend-Gray@seattle.gov] on behalf of SPD-PDR, SPD [SPD.SPD-PDR@seattle.gov]  
**Sent:** Wednesday, November 30, 2011 8:52 PM  
**To:** 'James C. Egan'  
**Subject:** Public Disclosure Request  
**Attachments:** P2011-3058.pdf

PDR # P2011-3058

Mr. Egan:

This email is in further response to your public disclosure request dated September 23, 2011 for copies of all complaints against the following officers:

Brett Schoenberg, Corey Williams, Daniel Auderer and Casey Steiger. In addition, you also asked for copies of 36 specific in-car videos. A copy of your request is attached to this email.

In response to your request for copies of the 36 specific videos the Department will not be able to release copies of any of these videos to you. 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.

In response to your request for copies of all complaints filed against the four officers listed above, the Department has identified 22 internal investigation files. One of those files is IIS 10-0385, in which our records show that you received a copy of this file in September. If you need another copy, please let us know. Also, one of the 22 cases, is IIS 11-0320 and it is currently open. This case is under active investigation non-disclosure is essential to effective law enforcement. (RCW 42.56.240(1).) Explanation: The contents of an active investigation are categorically exempt in their entirety. See *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997) and *Cowles Publishing Co. v. Spokane Police Department*, 139 Wn.2d 472 987 P.2d 620 (1999).

Following is a list of the IIS cases that are responsive to your request:

IIS 10-0385 – already provided to you in response to another request, please advise if you need another copy.

IIS 11-0320 – open and active investigation – denied at this time pursuant to RCW 42.56.240(1).

PIR 09-0513 – records are ready for pick up

PIR 10-0137 – records are ready for pick up

SR 10-0506 – records are ready for pick up

PIR 11-0210 – records are ready for pick up

IIS 09-0111

SR 10-0093

IIS 11-0046

PIR 11-0372

SR 11-0332

IIS 10-0228

PIR 10-0547

IIS 11-0061

IIS 11-0087

PIR 09-0079

IIS 10-0200

PIR 10-0032

PIR 10-00547  
SR 10-0564  
IIS 11-0222

For your first installment we have four IIS cases that have been scanned to a CD and it is available at the Public Request Unit front counter, 1<sup>st</sup> floor of the Seattle Police Headquarters, 610 Fifth Avenue. Our hours are Monday through Friday 8:00 AM to 5:00 PM.

The four files that are ready to be picked up are PIR 09-0513, PIR 10-0137, SR 10-0506 and PIR 11-0210.

***The copying fee for this installment of four IIS files is \$16.30 for 163 pages scanned to a CD @ \$0.10/page.***

If you are unable to pick up your request, please send a check payable to the City of Seattle for \$17.90 (to cover copying fee and postage) with a copy of this email to:

Seattle Police Department  
Attn: Public Request Unit  
PO Box 34986  
Seattle, WA 98124-4986

In regards to the four IIS files that are ready for pick up, redactions have been applied throughout the files pursuant to the following exemptions:

**Unsubstantiated Employee Investigation:** Disclosure of the identity of the subject of an unsubstantiated investigation of an employee would violate that individual's right to privacy. RCW 42.56.230(2). See, *Bellevue John Does 1-11 v. Seattle Times*, 164 Wn.2d 199, 183 P.3d 139 (2008). See also, *Bainbridge Island Police Guild v. City of Puyallup*, \_\_\_ Wn.2d \_\_\_, 259 P.3d 190 (2011) (holding that it would be a violation of privacy to release the identity of a police officer who was the subject of an unsubstantiated internal investigation). Explanation: Releasing the identity of the subject of an unsubstantiated investigation could violate the subject's right to privacy.

**DOL Records:** Records contain information that was received from the State Department of Licensing (DOL), disclosure of which is restricted or prohibited. Disclosure of an individual vehicle owner's name and address, driver's license number and VIN to third parties is limited under RCW 46.12.635 (See also, 18 USC § 2721). Criminal justice agencies in Washington State, such as SPD, have access to DOL vehicle records through the Washington State Patrol "A Central Computerized Enforcement Service System" (ACCESS). ACCESS procedures provide that criminal justice agencies have access to DOL vehicle records for criminal justice purposes and prohibit communication or dissemination to private individuals or companies for other than criminal justice purposes. While SPD is prohibited from providing this information to you, you correctly observe that RCW 46.12.635 allows certain individuals, businesses and government agencies access to it. Your request for access, however, must be directed to DOL. We direct you to the State Department of Licensing website (<http://www.dol.wa.gov/>), forms section, for a "Vehicle/Vessel Information Disclosure Request."

RCW 46.52.130 prohibits release to third parties of abstract and certified copies of driving records. Driver's license photographs and medical or disability information is "highly restricted personal information" and may not be released to third parties under 18 USC § 2721. Explanation: Disclosure of information is statutorily restricted/prohibited and would violate the subject's right to privacy. The information could be used identity theft, fraud or other criminal activity.

**WACIC Information:** Washington Crime Information Center (WACIC) is a centralized state computerized index of criminal justice information (i.e., criminal record history information, fugitives, stolen properties, missing persons) associated with the National Crime Information Center (NCIC) available to Federal, state, and local law enforcement and

other criminal justice agencies for law enforcement purposes. Information obtained from WACIC/NCIC is exempt from disclosure under RCW 42.56.070 and RCW 43.43.710. Explanation: Dissemination is statutorily prohibited.

**Privacy:** Record includes information the non-disclosure of which is essential for the protection of any person's right to privacy. (RCW

42.56.240(1) as defined by RCW 42.56.050). Explanation: Disclosure of the information would be highly offensive to a

reasonable person and is of no legitimate interest to the public.

**Social Security Numbers:** Record contains Social Security Numbers. Social Security Numbers of agency employees, volunteers, and

their dependents are specifically exempt.(RCW 42.56.250(3)). Social Security Numbers of all individuals are also exempt under

Federal law. (26 U.S.C. § 6103, another statute under RCW 42.56.070) Statutorily prohibit: Disclosure of SSN's is prohibited by Federal

statute and SSN's could be used for identity theft, fraud or other criminal activity.

**Toxicology/Field Sobriety Tests:** Results of toxicology and field sobriety tests submitted to at the request of a police officer are protected. RCW

46.61.506(5) and (7) and/or RCW 70.02.020. Explanation: Disclosure of information is statutorily prohibited and would violate the subject's right to privacy.

The Department is withholding one CD with in-car video from PIR 11-0210 and one CD with in-car video from SR 10-0506 pursuant to the following exemption:

**In-Car Video:** 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.

You may file a written appeal of this response with the Chief of Police within ten (10) business days from the date of this letter. Please include your name and address and a copy of this letter together with a brief statement identifying the basis of the appeal. Please mail or deliver your appeal to:

Chief of Police  
Seattle Police Department  
PO Box 34986  
Seattle, WA 98124-4986

***At this time the Department anticipates having your next installment ready on or about January 4, 2012.***

If you have any questions, you can contact the Public Disclosure Desk at 206-684-5481.

Thank you,  
Sheila

*Sheila Friend Gray*  
Public Request Unit Manager  
Seattle Police Department  
206-733-9313  
[Sheila.FriendGray@Seattle.gov](mailto:Sheila.FriendGray@Seattle.gov)