

Trust Policy – January 26, 2021

I. PURPOSE

One Fairfax recognizes that the County's ethnic, racial, and linguistic diversity is a key source of its strength. The County is devoted to protecting the rights of all its residents, regardless of their immigration or citizenship status, and to ensuring they have an equal opportunity to participate in our economic vitality. The Public Trust and Confidentiality Policy (Trust Policy) is being issued to reaffirm current County policy, improve community health, welfare, safety and security and build trust by ensuring that immigrant residents can access County benefits and services without fear that the information they share will be disclosed to federal immigration officials. It is not an appropriate use of Fairfax resources to facilitate enforcement of federal immigration law, which is the sole responsibility of the federal government. Cooperation with civil administrative immigration enforcement is especially problematic because it lacks the constitutional protections of criminal law, and ICE civil detention requests are frequently issued in error. The County will comply with all federal or state law and regulations mandating cooperation with Immigration and Customs Enforcement (ICE) and other federal immigration officials, as well as valid judicial warrants and subpoena, but will otherwise restrict sharing of personal identifiable information that could be used to further immigration enforcement efforts.

II. DEFINITIONS

Administrative warrant: A document issued by an immigration enforcement official, including those from the United States Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE) or an administrative immigration judge (IJ), relating to suspected violations of immigration law. The term includes civil administrative warrants, administrative subpoenas, detainer requests, removal orders, database entries (e.g., from the National Crime Information Center) and any similar civil order for the arrest or detention of an individual or for information. An administrative warrant is not a criminal judicial warrant.

Department: All Fairfax County government agencies, departments, and other County personnel authorized to act on behalf of the County.

Citizenship or immigration status: Citizenship refers to whether a person is a citizen of the United States (including individuals who hold United States citizenship in addition to citizenship of another country) or is solely a citizen of another country (a "non-citizen"). Immigration status refers to the type of authorization a non-citizen has for their presence in the United States (e.g., lawful permanent resident, conditional permanent resident, visa holder, temporary protected status or undocumented, among other types of status). Perceived citizenship or immigration status refers to characteristics that suggest a person may be a non-citizen or of uncertain immigration status, such as actual or assumed place of birth, country of origin, ancestry, native language, looking or sounding "foreign", any other national origin indicator or absence of a social security number. These characteristics are separate from, and not included in the term "citizenship or immigration status."

Personal Identifiable Information: Any information that can be used to distinguish or trace an individual's citizenship, immigration status, national origin, race, ethnicity, language proficiency, religion, sexual orientation, gender identity, disability, age, place and date of birth, marital status, status of domestic violence or as a veteran; and status government identifiers (driver's license, biometric data such as fingerprints and facial features, social security/taxpayer

identification/passport/visa numbers, receipt of public assistance/services, housing records or tax records, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The term also includes information that can be used to identify, contact and/or locate a non-citizen or person of uncertain immigration status, including but not limited to: home/work address, means of contacting someone, and law enforcement information such as release date from incarceration.

Court order: An order entered by a state or federal court, not to include an administrative immigration court.

Criminal judicial warrant: A warrant issued by a state or federal court upon a finding of probable cause to believe a violation of a federal, state, or local criminal law has occurred.

Employee: Any person employed by or acting on behalf of the County or an department as defined herein as its employee, agent or representative.

Household member: A person's (1) immediate or extended family, (2) domestic partner or partner's immediate or extended family, (3) foster parent or child or the foster parent/child's immediate or extended family, (4) court-appointed legal guardian or the person subject to guardianship or (5) other person who regularly resides in the same residence as the person.

Immigration and Customs Enforcement (ICE): The federal law enforcement agency under the United State Department of Homeland Security (DHS) responsible for enforcement of immigration laws in the interior United States and for representation of the United States in administrative immigration proceedings. This definition shall also encompass any successor agency to ICE.

Immigration enforcement official: Any federal employee or agent engaged in immigration enforcement operations including but not limited to agents of ICE, DHS and the United States Department of Justice (DOJ).

III. STANDARDS TO PROTECT CONFIDENTIALITY AND ENHANCE PUBLIC TRUST

A. Requesting, Accessing or Disclosing Information Prohibited

1. *Citizenship or immigration status.* No employee shall request, record, access in County records or disclose to any person or entity the citizenship or immigration status of an individual, unless the action is (a) required by valid state or federal law, or regulation, judicial warrant, court order or subpoena or complies with 8 U.S.C. § 1373(a), which states that "[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual" or (b) has been authorized by the individual or guardian. Nothing in this Trust Policy shall be construed to conflict with federal law.
2. *Other personal identifiable information.* No employee shall request, access in County records/databases or disclose to any person or entity any personal identifiable information unless the action is (a) required by valid state or federal law or regulation, judicial warrant, court order or subpoena; (b) has been authorized by the person or guardian; or (c) is required to fulfill the mission or obligations of the Fairfax department and disclosure is limited to the recipients necessary to fulfill such mission or obligation.

The determination of necessity shall be made in accordance with agency specific directives and subject to supervisory approval.

3. Law enforcement. General Orders (including General Order 604, Immigration Status, Citizenship, and National Origin), SOPs, and other internal policies, which affirm and reiterate FCPD's responsibility to promote and facilitate community trust by not enforcing federal civil immigration laws and statutes, nor participating in the service of administrative immigration warrants, control FCPD policy and procedure. Specifically, General Order 604 is found to be in compliance with this policy. As with other County agencies, FCPD policies will be reviewed to ensure that they conform with the Trust Policy in accordance with the standards set forth above in A1 and A2.
4. *Exceptions.* (a) *Protections or benefits:* If the citizenship or immigration status of an individual is relevant to protections or benefits accorded them under state or federal law or regulation or required by any international treaty, an agency employee may notify the person of the relevant protection or requirement and provide them the opportunity to voluntarily disclose their citizenship or immigration status. (b) *Demographic data for program evaluation.* Nothing in this section is intended to prevent the collection and publication of data, other than citizenship and immigration status, useful to program evaluation (e.g. disparity studies), so long as the underlying data is kept confidential and not disclosed outside the County. Nothing herein shall be construed to restrict the sharing of de-identified aggregated data outside the County.

B. Access to Public Facilities and Resources Prohibited

Employees shall not provide access to any County facilities, property surrounding any facility, equipment, records or databases or funds not accessible to the public unless mandated by federal or state law or regulation, criminal judicial warrant, court order or subpoena specifying the information or individuals sought.

C. Use of County Funds for Civil Immigration Enforcement Prohibited

Employees shall not utilize County resources (including but not limited to facilities, equipment, cell phones, office supplies, radios, emails, databases and employee time while on-duty) to directly or indirectly provide access to any personal identifiable information to immigration enforcement officials, unless the employee's action is expressly authorized under this Trust Policy.

D. Threats or Conditioning Action Based on Citizenship or Immigration Status Prohibited

Employees shall not threaten, coerce, or intimidate anyone based on their citizenship or immigration status, actual or perceived, or the actual or perceived citizenship or immigration status of a member of the person's household. Employee shall not condition the provision of County benefits, opportunities or services on actual or perceived citizenship or immigration status unless required by state or federal law or regulation or court order.

E. Facilitation of Civil Immigration Enforcement Prohibited

Employees shall neither participate in nor facilitate civil immigration enforcement operations, unless otherwise required by a valid state or federal law, criminal judicial warrant, court order or subpoena deemed valid by the department's legal counsel in consultation with the County Attorney.

F. Participation in Federal Registries Prohibited

No County resources may be used to assist in the investigation or enforcement of any federal program requiring registration of individuals based on citizenship, immigration status, race, national or ethnic origin, language proficiency, gender, gender identity, sexual orientation, religion, disability or age.

IV. ACCEPTABLE IDENTIFICATION DOCUMENTS

- A. Unless required by federal or state law or regulation or an explicit funding requirement, in order to provide County services or benefits, employees shall accept a combination of documents to verify an individual's identification and an address or other information sufficient to reasonably demonstrate the individual's residence or address, including but not limited to:
 - 1. A photo identity document (ID) issued by a state and/or foreign government (such as a driver's license, passport or consular identification documents) or by a pre-approved non-profit organization.
 - 2. Presentation of such alternate form of ID shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a driver's license or state identification card.
- B. This section does not apply to completion of federal I-9 forms or similar federal or state forms requiring a specific form of identification or license under defined circumstances.

V. RESPONSIBILITIES

- A. Employees
 - 1. Maintain strictest confidentiality of all personal identifiable information, in accordance with Chapter 16 of the County's Personnel Regulations.
 - 2. Comply with the standards set forth in this Trust Policy.
 - 3. Department heads shall refer all Trust Policy related administrative or judicial warrants, court orders and subpoenas received by their department to the Office of the County Attorney for determination on whether compliance is required.
 - 4. Follow directives established by their departments and the County for determination of whether an action is required by valid state or federal law or regulation, necessary to fulfill the mission or obligations of the Fairfax department and/or appropriately limited in scope. Unless the directives expressly authorize the type of request, access or disclosure involved, employees shall obtain approval of the Department Head prior to granting any access to personal identifiable information.
 - 5. Within 48 hours of the receipt of an administrative warrant, court order, subpoena or other civil immigration request to detain or provide information about an individual, advise the subject of such request. Where the request is in writing, the subject of the request shall be provided with a copy of the request.
- B. The County Attorney's Office
 - 1. Department heads will contact the Office of the County Attorney with any legal questions about whether information requested under this Trust Policy should be provided.

2. When asked by a department head, OCA will determine if the County's compliance with the presented request is mandatory under this Trust Policy, in order to comply with federal or state law or regulation, criminal judicial warrant, court order or subpoena specifying the information or individuals sought. Information release pursuant to a regulation shall be granted only if OCA determines the regulation was issued within the issuer's scope of authority. Information release based upon a judicial warrant, court order, or subpoena shall be limited to the scope and parameters of the document directing release. Otherwise, the County will initiate proceedings to quash the request or take other appropriate action to protect the information.
3. Work with the Department to provide the necessary information.

C. Department Heads and Managers

1. Ensure Department wide implementation and compliance for this procedure with this Policy, to include directives identifying the types of confidential information that may and may not be collected or disclosed pursuant to section III. The directives shall be published on the Fairfax County website.
2. Address violations of this Policy by utilizing the appropriate disciplinary actions for violations of this Policy, as appropriate in Chapter 16 of the County's Personnel Regulations or other disciplinary procedures.
3. Review all forms used in relation to Fairfax County benefits, opportunities, or services, including law enforcement services and actions, for compliance with the confidentiality requirements of this Trust Policy. Within 120 days of the policy's effective date, (a) any questions regarding citizenship, immigration status or country of birth, other than those required by state or federal law, shall be deleted and (b) questions regarding other confidential personal information shall be deleted or modified to conform to this policy.
4. Monitor current and future federal grants and contracts, as well as contracts with private data brokers, that request disclosure of personal identifiable information and what information is required to be shared under this Trust Policy.
5. Within six months of the Trust Policy's effective date, Department heads and managers will conduct a review to ensure that their department employees are following the terms of this Trust Policy.

D. The County Executive

1. The County Executive will review Departmental actions under Sections V C 3 and 4 above and confirm compliance with this Trust Policy to the Board of Supervisors.
2. Promptly establish a procedure for approval of non-profit groups whose IDs may be used under section IV and list approved IDs on the County website.

VI. SEVERABILITY

The provisions of this policy are severable. If any section, provision or phrase of the policy is held invalid by a court of competent jurisdiction, the declared invalidity shall not affect the remainder. The County intends that this policy would have been adopted had such invalid component not been included.