



FAIRFAX COUNTY TRUST POLICY GENERAL DIRECTIVES

GENERAL COUNTY DIRECTIVES TO PROTECT COMMUNITY MEMBERS PERSONAL INFORMATION AND PROHIBIT VOLUNTARY COOPERATION WITH FEDERAL CIVIL IMMIGRATION ENFORCEMENT

PURPOSE

The Public Trust and Confidentiality Policy (Trust Policy) was enacted 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 civil immigration officials. It contains specific standards to ensure that employees do not voluntarily cooperate with enforcement of federal civil immigration laws, and prohibits collecting, accessing, or sharing personal identifiable information about community members unless required to do so by law or to fulfill an agency's mission.

These County Directives are designed to ensure that the Trust Policy is applied uniformly by all county agencies, establishing expectations for agency implementation, including deadlines for task completion, and directing the publication of agency-specific standards for information collection and disclosure to ensure transparency and build trust.

I. GENERAL STANDARDS FOR AGENCIES AND EMPLOYEES

All County officials and employees will review and become familiar with the Trust Policy and comply with all its terms. As an aid to uniform interpretation, the key provisions are summarized here:

A. Who needs to comply? The Trust Policy applies to all Fairfax County government agencies, departments, and other County personnel authorized to act on behalf of the County. Any person employed by or acting on behalf of the County or a department as its employee, agent or representative must comply with its requirements. This includes part time workers and contract workers to the extent they are classified as employees under Fairfax County personnel regulations.

B. Limits on Information Collection, Accessing and Sharing – The Trust Policy establishes strict limits on sharing of personal identifiable information:

1. Citizenship and Immigration Status Information. Employees are not allowed to 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 (b) has been authorized by the individual or guardian. Nothing in the Trust Policy shall be construed to conflict with federal law.

2. Other Personal Identifiable Information. Employees cannot request, access in County records/databases, or disclose to any person or entity any other personal

identifiable information unless the action is (a) required by valid state or federal law or regulation, judicial warrant, court order or subpoena; or (b) has been authorized by the person or guardian. In addition, however, such information may be requested, accessed or disclosed if (c) it is required to fulfill the mission or obligations of the Fairfax County department and disclosure is limited to the recipients necessary to fulfill such mission or obligation. This determination of necessity is to be made in accordance with Agency Standards, as discussed below.

3. FOIA responses. All County departments shall ensure public disclosure and transparency by complying with the Virginia Freedom of Information Act. Disclosure that is mandatory under FOIA satisfies the “required by law” standard of the Trust Policy and therefore is permissible. Where a record custodian has the discretion to disclose or not disclose information, such disclosure is permissible under the Trust Policy only if (i) the subject of the information (or guardian) has consented to its disclosure or (ii) within the discretion of the agency director its disclosure is necessary to fulfill the mission or obligations of the department and disclosure is limited to the recipients necessary to fulfill such mission or obligation.

4. Public information services. The County recognizes and supports the need for maximum transparency of information to the public. Nothing in this policy should be construed to prevent communication about County policies and actions on its website, through press releases, etc. While informing the public, however, employees must be mindful of the Trust Policy’s limitation on dissemination of personal identifiable information. Only the minimum amount of personal identifiable information necessary should be disclosed.

5. Limits on accessing information. Within an agency, employees’ access to databases and files should be limited to those employees who have a need to know the personal identifiable information in question to perform their job. Other agencies’ employees should only be given access to such files where it is necessary to perform specific functions, e.g., fulfill audits, cross-county services etc.

6. 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.

7. Demographic data for program evaluation. Nothing in the policy 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.

C. Limits on other forms of voluntary cooperation

1. Access to Public Facilities and Resources Prohibited. Employees and agents acting on the county’s behalf (such as volunteers and contractors) 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.

2. 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.

3. 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. Employees 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.

4. 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.

5. 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.

6. Response to Judicial and Administrative Warrants. Employees must refer all Trust Policy related administrative or judicial warrants, court orders and subpoenas received by the department to the Office of the County Attorney for determination on whether compliance is required. 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, employees must 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. Department or Agency Trust Policy Points of Contact will be responsible of keeping track of these requests.

II. PROCEDURES AND RESPONSIBILITIES UNDER THE TRUST POLICY

A. Department Heads and Managers

1. Agency Standards: Departments must develop standards for all program and services which involve information collection or disclosure which identify the types of Personal Identifiable Information that may and may not be collected, accessed, or disclosed. The Standards shall be published on the Fairfax County website. Guidance for the development of the standards is discussed below in section III.

2. Training: Department heads and managers will implement training to ensure employees understand and can effectively implement the Trust Policy. The program must include training of all current employees and new hires. The Department shall maintain records verifying that employees have successfully completed the necessary training.

3. Compliance Review: Department heads must annually conduct a review to ensure that their department employees are following the terms in the Trust Policy and affirm publicly on the county website.

4. County Resources: Department heads must implement adequate measures to assure that no county resources (including but not limited to facilities, equipment, cell phones, office supplies, radios, emails, databases and employee time while on-duty) are used to directly or indirectly provide access to any personal identifiable information to immigration enforcement officials or their contractors, unless the employee's action is expressly authorized under this Trust Policy.

5. Legal Issues: Department heads will contact the Office of the County Attorney with any legal questions about whether information requested may be provided under the Trust Policy.

6. Discipline: Department heads will ensure that violations of this Policy are addressed and as appropriate will follow applicable disciplinary procedures.

7. Forms Review: Department heads shall verify that all forms used in relation to Fairfax County programs, services, procedures, and actions, comply with the limits placed on collection of information under the Trust Policy. Any questions regarding citizenship, immigration status or country of birth, other than those required by state or federal law, shall be removed. Questions regarding other confidential personal information shall be removed or modified to conform to this policy. As part of the annual compliance review process, the department head shall affirm that no revisions to existing forms have occurred, or new forms have been added that violate the information collection limits of the Trust Policy.

8. Grant and Contract Review: The department will identify current federal grants and contracts, as well as contracts with private data brokers, that request disclosure of personal identifiable information. To the extent permissible by law, future grants and contracts will limit disclosure of personal identifiable information to that permitted by the Trust Policy. Contracts will prohibit disclosure to third parties unless such disclosure is otherwise required by law.

9. Complaint Process and Protection from Retaliation: Department heads are responsible for encouraging employees and community members to report possible violations of the Trust Policy and for ensuring that no retaliation occurs against such a complainant. Fairfax County will use a confidential process for complaint reporting by employees and community members and permit anonymous complaints. All such reports will be reviewed by the Director of Immigrant Community Affairs for resolution.

B. Employees

1. Handling of Personal Identifiable Information: Employees are required to limit collection, accessing, recording and disclosure of personal identifiable information in accordance with the Trust Policy and specific agency standards.

a. Employees shall make the determination of necessity in accordance with agency standards, which will explain whether an action is required by law or necessary to fulfill an agency's mission or obligations. These standards will also explain how to limit dissemination to only those recipients who must receive the information to fulfill those obligations.

b. If the agency standard does not explicitly authorize the type of request, access or disclosure involved, employees are required to obtain approval of the department head prior to granting access to personal identifiable information.

C. The Office of the County Attorney

When asked by a department head, the Office of the County Attorney 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 released pursuant to a regulation shall be granted only if Office of the County Attorney determines the regulation was issued within the issuer's scope of authority. Information released based upon a judicial warrant, court order, or subpoena shall be limited to the scope and parameters of the document directing release, including limiting the recipients to those expressly authorized by the request. Otherwise, the County will initiate proceedings to quash the request or take other appropriate action to protect the information.

D. County Executive

1. The County Executive will review departmental actions to comply with the Trust Policy and confirm compliance with the Board of Supervisors annually. The statement of compliance will be made available on the County website.

2. The County Executive will establish a procedure for approval of nonprofit groups whose methods of identification may be used under section IV of the Trust Policy and list approved methods of identification on the County website.

III. AGENCY STANDARD TO LIMIT AVAILABILITY OF PERSONAL IDENTIFIABLE INFORMATION

The following are the minimum requirements for an Agency Standard.

A. Overall Standards for Collection and Disclosure. The Agency Standard will provide a roadmap to employees about information collection and dissemination. It informs employees about what actions are permissible and provides assurance to the public that personal

identifiable information will be protected to the maximum extent possible under law and as needed to fulfill the agency's mission. It is to include the following elements:

1. Identify programs and services. Identify all agency programs/services/activities that collect, access, or share personal identifiable information (PII) about individuals or families.

2. Identify types of PII. For each such program, service, or activity, identify the principal types of PII that commonly are collected, accessed, or shared, for example, information related to citizenship or immigration status, such as place of birth, protected status information such as ethnicity, government identifiers such as SSNs and biometric data, locator information such as addresses and law enforcement information such arrests or release from jail.

3. Identify reason. Indicate the reason for the collection/sharing as

a. Required by law, indicating the federal or state program involved (specific legal references are useful but not required). Note: where a number of related programs require an agency to collect or disclose personal identifiable information, they can be grouped together rather than itemize each specific program.

b. Required to fulfill the agency mission or obligation, specifying the mission or obligations requiring the action. Note: A generalized goal of informational transparency is insufficient in itself to satisfy this requirement.

4. Limits on recipients. Explain measures in place to ensure disclosure is limited to only those to those recipients necessary for fulfillment of the disclosure obligation. Appropriate safeguards to consider include, where this is consistent with state or federal law, conditioning receipt of the PII on the agreement to not share the information with third parties.

B. Public Information Services. Broader publication of statements to news media or publication of content incorporating PII on any county website, etc. is subject to the standards of the Trust Policy and must be addressed in the Agency Standard. A broad statement of "in the public interest" or "for transparency" is insufficient by itself, unless it is be linked to a specific agency mission or obligation.

C. Determination of necessity where type of disclosure not expressly covered by Agency Standard. Include a statement advising employees that Department Head approval is required for any type of collection, accessing, or sharing of PII not specifically addressed by the Agency Standard.

1. Outline the procedures for obtaining Department Head approval.

2. Identify the agency official who may make the determination of necessity. A Department Head may delegate this authority to a senior agency official, subject to Department Head review in cases involving PII that can be used to track an individual's location or immigration status.

D. Informing Community Members of their Right to Not Disclose. The public should be advised of circumstances where they do not have to provide information to the employee, but the employee can ask them to provide the information on a voluntary basis. Steps must be identified to ensure that provision of PII not required by law or to fulfill an agency mission. is knowing and voluntary.

E. Agency Contact. The Trust Policy point of contact for each agency or department will be able to address all questions about the Agency Standards.

IV. COMPLIANCE REVIEW

Under the lead of the Chief Equity Officer, the Director of Immigrant Community Affairs will conduct a countywide compliance process review once a year to verify that all county departments and agencies are in compliance with the Trust Policy.

A. All agencies shall timely comply with the requests of the Director of Immigrant Community Affairs for information relating to Trust Policy implementation. The information shall include updates on forms, contracts and grants, training and discipline as detailed above.

B. The results of the review will be published online so that the public has confidence that the Trust Policy is being effectively implemented.