Signature on file	*January 22, 2021*
Roger Millar, PE, FASCE, FAICP	Date
Secretary of Transportation	

Release of Crash Data

I. Introduction

A. Purpose

This Secretary's Executive Order directs Washington State Department of Transportation (WSDOT) employees to follow the rules and procedures shown below when handling requests for crash data.

B. Background

1. Federal Law

Federal law 23 United States Code (USC) § 148 and § 409 prohibits the discovery or admission into evidence in a federal or state court proceeding of reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential crash sites, hazardous roadway conditions, or railway-highway crossings. The law further prohibits these reports, surveys, schedules, lists, or data from being considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

2. United States Supreme Court Decision

In Pierce County v. Guillen, the United States Supreme Court determined that the purpose of this federal law is to protect states and local governments from having damage lawsuits filed against them based on data that they are required to collect to obtain safety improvement funds from the federal government.

3. Federal Highway Administration

According to program memorandum HSA-1, issued by the Associate Administrator for Safety, Federal Highway Administration, on March 28, 2003: "Section 409 is a grant condition that the State agrees to when it participates in the Hazard Elimination Program, and it must therefore abide by this condition."

4. Public Records Act – RCW 42.56

Revised Code of Washington (RCW) 42.56.070(8) – "This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to *give, sell or provide access to lists of individuals requested for commercial purposes . . . .*"
(Emphasis added.)

C. Supersession

This Secretary's Executive Order supersedes and replaces Policy Statement P 2021.01 *Release of Crash Data*, dated April 16, 2018. All references to the superseded P 2021.01 now reference E 1118.00.

D. What Has Changed

Policy Statement P 2021.01 has been converted to a Secretary's Executive Order. The changes are as follows:

- In Sections II and III, this Secretary's Executive Order modifies the language to apply the policy to all crash data requests, including requests from within WSDOT.
- In Subsection III.B, this Secretary's Executive Order modifies the language about methods to obtain crash data. It adds language about the method for WSDOT trusted partners and revises the language about the method for public disclosure requests.
- In Subsections III.D.1 and III.D.3, this Secretary's Executive Order adds and updates language to reflect current public disclosure request procedures.
- In Subsection III.D.4, this Secretary's Executive Order removes the paragraph about providing jurisdictions with a copy of crash data that was provided to a requestor. It rearranges the remaining text accordingly.
- In Section VI, this Secretary's Executive Order adds language about leadership review and approval by the Secretary of Transportation.

II. Secretary's Executive Order

It is the policy of the Washington State Department of Transportation (WSDOT) to make crash data available to anyone who requests the data through the appropriate and applicable methods outlined below with the requestor's acceptance and acknowledgement of the data constraints per the state and federal laws governing access to the data.

Included with this policy are references to federal and state laws governing access to the data, information about the different request methods, a link to the request form, and language for cover letters. These are to be used by all WSDOT employees who provide crash data to data requestors both within and outside of WSDOT so that this policy is carried out in a consistent manner.

III. Information to Carry Out This Secretary's Executive Order

A. Definitions and Scope

1. *Crash data* are public records with restrictions about how they are provided to trusted partners and the general public. In this Secretary's Executive Order, the term "crash data" means WSDOT electronic records containing data from Police Traffic Collision Reports, supporting documents, and/or other data systems. Crash records reside in WSDOT electronic databases.

2. Effective January 1, 2014, a distinction is made between a collision (enforcement) record and a crash (safety/engineering) record.

- A *Collision Data Record* contains only data submitted by the law enforcement officer on the Police Traffic Collision Report (PTCR). An involved party can request a report image of that data from the Washington State Patrol (WSP). Collision data is the data stored in the Law Enforcement Database that is used by law enforcement for emphasis patrols.

- A *Crash Data Record*, stored in WSDOT's crash databases, is protected by federal law 23 USC § 148 and § 409 and is used primarily by safety engineers and analysts. Crash data is available through WSDOT's public disclosure process. A Crash Data Record is created from the collision data submitted by law enforcement on the PTCR and the data linked or derived by the crash analyst using WSDOT tools.

3. Effective January 1, 2014, WSP will use PTCR data from their Law Enforcement Database to fulfill their data reporting requirements. The only data provided to WSP by WSDOT will be collision report numbers and collision dates prior to 2014 unless otherwise specified through an Interagency Data Sharing Agreement.

B. Methods to Obtain Crash Data

Depending upon the data requestor and the requestor's purpose for requesting crash data, there are differing methods to obtain crash data:

- *WSDOT Crash Data Portal* – This portal provides access to the general public to high-level summarized crash data by jurisdiction, year, and topic, such as drunk or distracted driving. The reports also contain summaries of the emphasis areas outlined in the Washington State Strategic Highway Safety Plan known as Target Zero.

- *WSDOT Trusted Partners* – This process is available for trusted WSDOT partners who require crash data in formats that cannot be obtained from the Crash Data Portal. A trusted partner is defined as a WSDOT employee, WSDOT consultant, or WSDOT partner, such as city and county planners or engineers, law enforcement, Metropolitan Planning Organizations, or other Washington state agencies. The requestor must complete the WSDOT Request for Crash Data Form 780-032.

- *WSDOT Public Disclosure Request Center* – If the requestor is a private citizen, attorney, member of the media, university employee, student, tribal member, or non-WSDOT consultant, the requestor must log into the WSDOT Public Disclosure Request Center to complete their request.

- *Formalized Crash Data Sharing Agreement* – Data customers who request crash data for research or specific business projects can enter into a Crash Data Sharing Agreement with the Crash Data and Reporting Branch. These agreements specify the requirements for data usage, secured access, storage, third party release, and certification of destruction once the project is completed. Any requestor who makes a crash data request that includes personal identifiers for research or integration with other datasets must enter into a formalized crash data sharing agreement.

- *Interagency Data Sharing Agreement* – Any government agency within the State of Washington that is entitled to crash data that cannot be provided by the Washington State Patrol can enter into a data sharing agreement with WSDOT. This agreement will outline the permissible use and restrictions, including third party release of the data.

C. Responsibilities

1. Assistant Secretary, Multimodal Development and Delivery

Sets the policy for release of crash records.

2. Multimodal Planning Director

Assigns management responsibility to the Transportation Data, GIS (Geographic Information Systems), and Modeling Office.

3. Transportation Data, GIS, and Modeling Office General Manager

Reviews and approves the rules and procedures used to carry out this Secretary's Executive Order.

4. Crash Data and Reporting Branch Manager, Transportation Data, GIS and Modeling Office

Processes suggestions to update these procedures, analyzing any proposed changes to these procedures and obtaining necessary approvals to implement changes.

5. Director of Risk Management and Legal Services

Denies requests for crash data, processing all denials to requestors for the department.

6. Each Manager and Supervisor

a. Refers requests for crash data to the Crash Data and Reporting Branch,

OR

b. Is required to follow these rules and procedures when providing crash data inside and outside WSDOT.

D. Rules and Procedures

These rules and procedures apply to all crash data requests from inside and outside WSDOT.

1. Use the Request for Crash Data form or WSDOT Public Disclosure Request Center

a. **Each requestor is required to complete the Request for Crash Data form or use the WSDOT Public Disclosure Request Center, when applicable.**

Check that the form or public disclosure request contains sufficient information. Ask the requestor for the information needed to provide the requestor with the crash data.

b. **Confirm that the requestor checks the box.**

When reviewing the request, confirm the requestor has checked the box that indicates the requestor will comply with the 23 USC § 148 and § 409 restrictions on the use of the data.

Exception: When the requestor represents a government agency, the check box is not required.

2. **Log all Crash Data Requests**

Any WSDOT office that provides crash data is required to keep a log that includes:
- Requestor's name
- Date of request
- Nature of the requested crash data
- Status of the request

3. **Reasons for not providing the requested data**

a. **Insufficient information.**

If there is insufficient information on the request, contact the requesting party for clarification. If clarification is not obtained, inform the requestor that it is not possible to fulfill the request.

b. **Crash data is not available.**

When the requested crash data is not available in WSDOT's crash database, refer the requestor to the local jurisdiction(s) that may have the crash data that the requestor is seeking.

c. **Requestor will not check the box.**

Send the request to the Crash Data and Reporting Branch Manager for processing if either of the following conditions exists:
- The requesting party (other than a government agency) submits a Request for Crash Data or public disclosure request, but refuses to check the box that indicates that the requestor will comply with the 23 USC § 148 and § 409 restrictions on the use of the data.

    OR
- The requesting party (other than a government agency) refuses to affirm, either verbally or in writing, that the requestor is not requesting the collision data for use in any current, pending, or anticipated litigation against state, tribal, or local government involving a collision at the location(s) mentioned in the data.

If either of the above conditions exists, forward all information about the request to:

Crash Data and Reporting Branch Manager
Transportation Data, GIS, and Modeling Office
crashanalysis@wsdot.wa.gov
360-570-2497

The Crash Data and Reporting Branch will review the request and prepare the written denial letter and send it to the Director of Risk Management and Legal Services for approval and signature.

4. **Approved requests for crash data: include a cover letter**

When all conditions are met to fulfill the crash data request, inform the requestor how long it will take to provide the requestor with the crash data.

Include a cover letter that details the restrictions on the use of the crash data provided by the department as defined by federal law. The cover letter needs to contain the following language:

Federal law 23 United States Code (USC) Sections 148 and 409 governs use of the data you requested. Under these laws, data maintained for purposes of evaluating potential highway safety enhancements:

> . . . *shall not be subject to discovery* or admitted into evidence in a federal or state court proceeding *or considered for other purposes in any action for damages* arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data. (Emphasis added.)

The Washington State Department of Transportation (WSDOT) is releasing this data to you with the understanding that you will not use this data contrary to the restrictions in 23 USC Sections 148 and 409, which means you will not use this data in discovery or as evidence at trial in any action for damages against the WSDOT, the State of Washington, or any other jurisdiction involved in the locations mentioned in the data. If you should attempt to use this data in an action for damages against WSDOT, the State of Washington, or any other jurisdiction involved in the locations mentioned in the data, these entities expressly reserve the right, under 23 USC Sections 148 and 409, to object to the use of the data, including any opinions drawn from the data.

IV. Contact for More Information

For questions or concerns about this Secretary's Executive Order, contact the Crash Data and Reporting Branch Manager by phone at 360-570-2497.

V. References

- 23 USC § 148 *Highway safety improvement program*
- 23 USC § 409 *Discovery and admission as evidence of certain reports and surveys*
- RCW 42.56 *Public Records Act*
- Request for Crash Data Form 780-032

VI. Review and Update Requirements

When changes are necessary to update this document, inform the Director of the Multimodal Planning Division.

The Director of the Multimodal Planning Division reviews this document periodically and proposes updates for leadership review and approval by the Secretary of Transportation.

Americans with Disabilities Act (ADA) Information

This material can be made available in an alternate format by emailing the Office of Equal Opportunity at wsdotada@wsdot.wa.gov or by calling toll free, 855-362-4ADA(4232). Persons who are deaf or hard of hearing may make a request by calling the Washington State Relay at 711.