



Craig S. Gerhart  
County Executive

## COUNTY OF PRINCE WILLIAM

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June 15, 2007

**TO: BOARD OF COUNTY SUPERVISORS**

**FROM: CHARLIE T. DEANE**  
**Chief of Police**

**THRU: CRAIG GERHART**  
**County Executive**

**RE: RESPONSE TO DIRECTIVE NO. 1802, GENERAL ORDER 26.05**

During the June 5, 2007, Board meeting, Supervisor Stirrup asked that we provide him a copy of Police Department General Order 26.05. A copy is attached to this Memorandum.

**I. Why this document has not been released to the public.**

As you know, this General Order has been the subject of a recent Freedom of Information Act request, submitted May 7, 2007. The County Attorney's Office advised me, as it has in the past with respect to similar requests for copies of General Orders, that this General Order is exempt from the mandatory disclosure provisions of the Freedom of Information Act under §2.2-3706(D). Therefore, I had the discretion, as I do with all requests for public disclosure of the General Orders, to withhold the document from release.

I believe it is inappropriate to publicly release General Orders. Some General Orders contain such detailed information about Police procedures and tactics that public release could directly endanger the safety of officers and innocent citizens. The County Attorney has advised that our policies and practices with respect to public release of the General Orders must be consistent in order to be defensible, and that the most effective way to ensure legal protection against release for any particular General Order protected under the Freedom of Information Act is not to voluntarily waive that protection for any of them. For these reasons, it has been my policy not to voluntarily release the General Orders. With the advice of the County Attorney's Office, and in accordance that long-standing policy, I withheld General Order 26.05 from public disclosure in response to the May 7, Freedom of Information Act request.

## **II. I intend to release this document in response to a new FOIA request.**

I need to advise you that I think it is best at this point, given the current public debate and the circumstances surrounding this particular General Order, to release it in response to a new Freedom of Information Act request the County Attorney received on June 12. While this will entail some risk to our ability to protect other General Orders against public disclosure, I believe that the best decision would be to disclose this two-year old policy now for the following reasons:

- I have publicly discussed this policy and its contents on two prior occasions – one of them a presentation before the Board on December 19, 2006. Another copy of that presentation is attached for your ease of reference. Therefore, release of the actual policy does not provide significant new information about Police procedures.
- Significant misinformation about when and why this policy was adopted and what it contains is circulating in the community.
- Under these circumstances, not releasing the policy can cause some to be suspicious that the Department has something to hide.
- Prior to these requests for public release of the policy, I anticipated changing it (the policy has not been changed since it was implemented two years ago). The policy should address the new Immigration and Customs Enforcement (“ICE”) authority that is being acquired at the jail, so that we use that new resource to the maximum benefit and structure our work so that we can best support the effort at the jail. Specifically, the revisions that we are planning to make to this policy will:
  - Address how ICE screening will be managed in the jail, once we have those details
  - Provide clear direction to officers on their authority to deal with ICE warrant “hits” that exist on individuals that are under police arrest
  - Provide clearer and more flexible guidelines regarding when to call ICE about criminal suspects, or during criminal or traffic arrests
  - Continue to make clear that immigration inquiries are not authorized merely because the officer is dealing with a crime victim or witness, or during routine contacts when there is not a specific justification for an inquiry provided elsewhere in the policy.

## **III. Reaffirming the Department’s position.**

Prince William County is not now and has never been a “sanctuary” for illegal immigration.

- Local law enforcement has very limited legal authority to address illegal immigration; however, as Police Chief and a Jail Board member I have

advocated for ICE authority for jail officers to allow the screening of suspected illegal aliens who are incarcerated.

- Before we could hope for that resource, and during this period before it is fully implemented, the Police Department's policy regarding suspected illegals has been to call ICE based on the priority of seriousness of local charges against people we detain.
- Officers have **always** been expected to **check the wanted status of all traffic violators and criminal suspects, as well as those physically arrested**. If "hits" are obtained from the National Crime Information Center (NCIC) regarding criminal immigration charges, the person has been held and ICE has been notified.
- Outside of the situations described above, officers are not authorized to conduct immigration status inquiries unless 1) a supervisor approves it or 2) the officer has reason to believe the person has committed a crime.

As this community continues to engage in debate about local law enforcement's role in immigration enforcement, it is important to keep the following considerations in mind:

- Local Police resources and mission – Police resources are limited, and they must continue to be focused on crime control and public safety. Resources must be allocated on a priority basis.
- Potential chilling effect on crime reporting and victim/witness cooperation – Crime reporting and witness cooperation are key to the solution of crimes and ultimate safety of the community. When witnesses do not cooperate the effectiveness of the criminal justice system erodes. It is worth remembering that forty percent (40%) of the robberies and two murders that occurred in Prince William County last year involved immigrant victims. Most of these offenses were committed by people who were not immigrants. While we suspect the reporting rate in the immigrant community is already low, there is little doubt it would be significantly lower if every victim or witness feared interrogation about his or her immigrant status.
- Limited Jail space – Our Jail is operating above capacity and limited jail space will continue to be an issue. The detention of aliens solely on federal immigration charges could have a significant impact on Jail population and, therefore, the security of the facility. The agreement between the Jail and ICE regarding the speedy removal of immigration detainees is a vital element of the pending MOU. Until the logistics of prisoner transport are worked out, prudence suggests that we wait before expanding local detention efforts beyond what we already have in place.

If you would like additional information, please contact me.

Attachments: as noted

**PRINCE WILLIAM COUNTY POLICE DEPARTMENT  
MANUAL OF GENERAL ORDERS**

**General Order: 26.05**

**Effective: 05/17/05**

**Number of Pages: 1**

**JURISDICTION AND ARREST PROCEDURES: UNDOCUMENTED  
IMMIGRANTS**

The enforcement of the nation's immigration laws is the primary responsibility of the US Immigrations and Custom Enforcement (US-ICE). The Prince William County Police Department will not carry out immigration-related investigations nor routinely make inquiries to the immigration status of persons encountered during police operations. This policy does not prohibit the Department from assisting US-ICE officials when requested, or from notifying those officials in certain situations listed in this policy. Officers have no statutory authority to arrest undocumented immigrants for violation of Federal immigration laws.

- A. The ability to file an incident report, participate in police-community activities, or otherwise benefit from police services are not restricted to a person's citizenship or immigration status.
- B. Members will not question any person about their citizenship or immigration status, unless that person is reasonably believed to be involved in one or more of the activities identified in section D.
- C. Members will not request passports, visas, "green cards," or travel documents in lieu of, or in addition to, driver's licenses and similar standard forms of identification. Such documents will only be requested when standard forms of identification are unavailable, or when the officer is proceeding under section D.
- D. Notification to the US-ICE will only be made when the undocumented immigrant is:

Reasonably suspected of participating in criminal street gang activity, organized crime, terrorist or subversive activities.

Arrested for using a firearm during the commission of a crime

Arrested for, or has been convicted of any felony

Arrested for fraudulent activities aimed at assisting undocumented immigrants to enter the United States

Previously convicted of a felony in the US, has been deported or left the US, and is arrested pursuant to Virginia Code Section 19.2-81.6

Entered into NCIC as wanted and subject to an arrest for a **PREEXISTING** US-ICE detainer for a violent crime or any circumstance listed in Section D.

- E. Exceptions to Section D, with respect to notification of US-ICE, may be approved by the District Commander or higher authority.