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Legal Alerts

Washington Court of Appeals Holds Jail Records Exemption Extends to Jail Recordings and Related Records Even if Created or Held by Another Agency

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Under Washington state law, "the records of a person confined in jail shall be held in confidence" and made available only to criminal justice agencies as provided by law. RCW 70.48.100(2). In *Zabala v. Okanogan County*, the requester submitted five Public Records Act requests to the Okanogan County Sheriff's Office and the Okanogan County Prosecuting Attorney's Office. In combination, the requests sought any and all records, created in the last three years, related to monitored or recorded phone calls of inmates in the Chelan, Douglas, or Okanogan County jails, including voicemail, e-mail, audio, notes, reports, transcripts, arguments, pleadings, motions, briefs, memos, and letters. The agencies denied the requests as not being for identifiable records and because any responsive records were exempt from public disclosure.

The Washington Court of Appeals held that, while RCW 9.73.095(3) (covering recordings created by the Department of Corrections) did not apply, RCW 70.48.100 was an "other statute" under the Public Records Act that exempted the requested records in their entirety. Specifically, the court held that the exemption "extends to all recordings and documents related to the recordings even when in possession of the Okanogan County prosecuting attorney." And, since the exemption "does not disappear when an agency other than the jail creates the records concerning the inmate, the exemption further extends to records created by the Okanogan County prosecuting attorney concerning the jail inmate, which would include all records surrounding the telephone recordings." The court noted that the prosecuting attorney likely played some of the inmate telephone recordings or filed related records with the court clerk and that the public has a right to access court records (citing Washington Constitution art. I § 10, and *Dreiling v. Jain*, 151 Wn.2d 900, 908, 93 P.3d 861 (2004)). However, the requester had not sought access to court clerk records in this case. Because the Court of Appeals upheld dismissal of the case based on application of the exemption, it did not reach the county's argument that the requester had not sufficiently identified the records requested.

If you have any questions, contact a member of our Public Records & Open Government team.

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