

Immigration Violations

423.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Fremont Police Department related to their duties and responsibilities associated with immigration law, arrests, detentions/detainers, and Requests for Notifications.

423.2 POLICY

It is the policy of the Fremont Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public, in compliance with 8 USCA § 1373, The Truth Act, The Values Act, The Trust Act, and The City of Fremont Compassionate Sanctuary City Policy. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

423.3 DEFINITIONS

- (a) DHS Form I-200 (Warrant arrest of Alien): the Department of Homeland Security (DHS) form that directs any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of Title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations.
- (b) DHS Form I-205 (Warrant of Removal/Deportation): the DHS form that directs any immigration officer of the United States Department of Homeland Security to remove/deport the specified inmate.
- (c) DHS Form I-247A (Immigration Detainer-Notice of Action): the DHS form that requests the receiving law enforcement agency to:
 - 1. Notify ICE, as early as practical, of the release date of an inmate prior to his/her release;
 - 2. Maintain custody of an inmate for a period not to exceed 48 hours beyond his/her scheduled release;
 - 3. Relay the detainer request to any other law enforcement agency to which the inmate is transferred; or
 - 4. Notify ICE in the event of the inmate's death, hospitalization, or transfer to another institution.
- (d) ICE: The U.S. Department of Homeland Security's Immigration and Customs Enforcement Agency (ICE) has the primary responsibility to investigate and enforce federal immigration laws.
- (e) ICE Access under the Truth Act: "ICE Access" means for the purposes of civil immigration enforcement, when the local law enforcement agency takes any of the following actions:

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1. Arresting, stopping, detaining, or otherwise taking control of an individual for purposes of civil immigration enforcement;
 2. Responding to an ICE hold, notification, or transfer request;
 3. Providing notification to ICE in advance of the public that an individual is being or will be released at a certain date and time through data sharing or otherwise;
 4. Providing ICE non-publicly available information regarding release dates, home addresses, or work addresses, whether through computer databases, jail logs or otherwise;
 5. Allowing ICE to interview an individual; or
 6. Providing ICE information regarding dates and times of probation or parole check-ins.
- (f) Joint Law Enforcement Task Force: At least one California law enforcement agency collaborating, engaging, or partnering with at least one federal law enforcement agency in investigating federal or state crimes.
- (g) Judicial Probable Cause determination: The Values Act: defines “Judicial probable cause determination” to mean a determination made by a federal judge or federal magistrate judge that probable cause exists that an individual has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take into custody an individual.
- (h) Judicial Warrant: The Values Act defines “Judicial warrant” to mean a warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.
- (i) Personal Information: “Personal information” means any information that is maintained by the City that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, work address and medical or employment history. It includes statements made by or attributed to, the individual.
- (j) Transfer of Custody: The custody exchange of an inmate within the secure area of the facility not accessible to the public, from the Fremont Police Department’s custody to the custody of another law enforcement agency.
- (k) Trust Act (Gov. Code §§ 7282 *et seq.*): Provides that a person may not be held in custody solely on the basis of a request for notification and/or detainer if he or she is otherwise eligible to be released from custody. “Eligible for release from custody” means that the individual may be released from custody because one of the following conditions has occurred:
1. All criminal charges against the individual have been dropped or dismissed;
 2. The individual has been acquitted of all criminal charges;
 3. The individual has served all the time required for their sentence;
 4. The individual has posted a bond; or

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5. The individual is otherwise eligible for release under state or local law.
- (l) Truth Act (Gov. Code §§ 7283 *et seq.*): Requires law enforcement to provide certain information to individuals when ICE wants to interview or detain that individual.
- (m) Values Act (Gov. Code §§ 7284 *et seq.*): Bars specific immigration enforcement activities and sets specific threshold criteria for responding to ICE requests.

423.4 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and not in any way that would violate the United States or California constitutions.

423.4.1 CRIMINAL VIOLATIONS

An officer shall not detain any individual for any length of time or arrest an individual for any criminal violation of federal immigration laws, except for the following circumstances:

An officer may detain and/or investigate an individual based on a criminal violation of immigration law for a reasonable period of time if all of the following apply:

- (a) The officer lawfully contacted and detained an individual for reasons unrelated to the individual's immigration status;
- (b) The officer has a reasonable suspicion that the individual has committed a criminal violation of 8 USC § 1326(a) (unlawful reentry) that may be subject to enhancement under 8 USC § 1326(b) (criminal penalties for unlawful reentry); and
- (c) The purpose of the detention is for the officer to contact federal immigration officials to verify whether the United States Attorney General has granted the individual permission for reentry and whether the criminal violations are subject to enhancement under 8 USC § 1326(b) (criminal penalties for unlawful reentry), (Government Code § 7284.6).

No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

An officer may arrest an individual based on a criminal violation of immigration law if all of the following apply:

- (a) The officer lawfully contacted and detained an individual for reasons unrelated to the individual's immigration status;
- (b) The officer has facts that establish probable cause to believe that the individual has violated 8 USC § 1326(a) (unlawful reentry) that may be subject to enhancement under 8 USC § 1326(b) (criminal penalties for unlawful reentry); and
- (c) The officer has facts that establish probable cause to believe that the individual has a prior conviction for specified aggravated felonies. (Gov. Code § 7284.6).

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- (d) An officer may arrest an individual if there is a Judicial Warrant for that individual.
- (e) A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor pertaining to the operation of a motor vehicle shall not be detained beyond two hours for the purpose of establishing his/her true identity. At the expiration of two hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved.

An officer can determine whether an individual has a Judicial Warrant by calling the telephone number at the bottom of an NCIC hit. An officer should notify a supervisor as soon as practicable whenever an individual is arrested for a criminal violation of federal immigration laws. When notified that the officer has arrested an individual for a violation of 8 U.S.C. § 1326, the supervisor should determine whether it is appropriate to transfer the person to federal authorities or transfer the person to jail.

423.4.2 CIVIL VIOLATIONS

An officer shall not detain or arrest any individual for any length of time for a civil violation of federal immigration laws or a related civil warrant (Gov. Code § 7284.6).

423.5 FEDERAL REQUESTS FOR ASSISTANCE

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration officials for assistance from this department should be directed to a supervisor. The supervisor is responsible for determining whether the requested assistance would be permitted under the California Values Act (Government Code § 7284.2 et seq.).

423.5.1 COOPERATION WITH FEDERAL IMMIGRATION AUTHORITIES

The Fremont Police Department will not use agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including any of the following:

- (a) Make or intentionally participate in arrests based on civil immigration warrants (Gov. Code section 7284.6 (a)(1)(E)).
- (b) Assist immigration authorities in border patrol activities described in Section 1357(a) (3) of Title 8 of the United States Code (Gov. Code Section 7284.6 (a)(1)(F)).
- (c) Perform the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal (Gov. Code Section 7284.6 (a)(1)(G)).
- (d) Place officers under the supervision of federal agencies or employ peace officers deputized as special federal officers or special federal officers for purposes of immigration enforcement. All officers remain subject to California law governing conduct of peace officers and the policies of the Fremont Police Department (Gov. Code Section 7284.6 (a)(2)).
- (e) Provide office space exclusively dedicated for immigration authorities to use within a city law enforcement facility (Gov. Code Section 7284.6 (a)(5)).

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- (f) Contract with the federal government for use of Fremont Police Department law enforcement agency facilities to house individuals as federal detainees, except pursuant to Chapter 17.8 (commencing with section 7310) (Gov. Code Section 7284.6 (a)(6).
- (g) Rely on an officer's suspicion about any person's immigration status as a basis to initiate contact, detain, or arrest that person unless such status is reasonably relevant to the investigation of a crime under California law, such as, but not limited to, trafficking, smuggling, harboring, and terrorism.
- (h) Inquire about a person's immigration status during the arrest procedure (Gov. Code Section 7284.6(a)(1)(A)), unless such status is reasonably relevant to the investigation of a crime under California law, such as, but not limited to, trafficking, smuggling, harboring, and terrorism. Staff will not participate in ICE organized sweeps to locate and detain undocumented residents. This does not preclude staff from assisting ICE during critical incidents or emergency requests for assistance. Each level of assistance will be evaluated by the on-scene supervisor to ensure the Fremont Police Department's level of participation remains consistent with this order and California law while protecting human life and property.
- (i) Use immigration authorities as interpreters for law enforcement matters relating to individuals in agency or department custody.

The Fremont Police Department may respond to a request from immigration authorities for information about a specific person's criminal history, including criminal arrests, convictions, or similar criminal history information accessed through the California Law Enforcement Telecommunications System (CLETS) Database, where otherwise permitted by state law (Gov. Code § 7284.6(b)(2)).

423.5.2 INFORMATION SHARING

The Fremont Police Department may provide a person's release date to or respond to requests for notification for a person's release date or other information from federal immigration authorities if any of the following apply:

- (a) The information is available to the public;
- (b) The individual has been arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c);
- (c) The individual has been arrested and had a judicial probable cause determination for a felony punishable by time in a state penitentiary;
- (d) The individual has been convicted of an offense as identified in Government Code § 7282.5(a);
- (e) The individual is a current registrant on the California Sex and Arson Registry; or
- (f) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony Judicial Warrant.

If the individual is in custody, see section 428.7 of this policy.

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The Fremont Police Department may only provide personal information to federal immigration authorities if the information is available to the public (Gov. Code § 7284.6(a)(1)(D)).

No employees of this department will prohibit, or in any way restrict, any other employees from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; Gov. Code § 7284.6):

- (a) Sending information to, or requesting or receiving such information from federal immigration officials;
- (b) Maintaining such information in department records;
- (c) Exchanging such information with any other federal, state, or local government entity.

Nothing in this policy restricts sharing information that is permissible under the California Values Act.

423.5.3 FREMONT POLICE DEPARTMENT PARTICIPATION IN JOINT LAW ENFORCEMENT TASK FORCES

- (a) In situations when the Fremont Police Department participates in a joint law enforcement task force, employees of the task force may conduct enforcement or investigative duties, including the sharing of confidential information with other law enforcement agencies, for the purposes of task force investigations. The primary purpose of any joint law enforcement task force involving the Fremont Police Department shall not be immigration enforcement. The enforcement or investigative duties shall primarily be related to violations of state law or federal law unrelated to immigration enforcement.
- (b) The Fremont Police Department, or a mutually agreed upon participating California law enforcement agency, shall submit an annual report to DOJ outlining the purpose of the task force, specific agencies involved, the total number of arrests made during the evaluation period, and the number of people arrested for immigration enforcement purposes.

423.6 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)).

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)).

Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigative Bureau supervisor assigned to oversee the handling of any related case. The Investigative Bureau supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.

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- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner.
 - 1. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
 - 2. Form I-918 Supplement B certification shall be completed if the victim qualifies under Penal Code § 679.10 (multiple serious offenses). The certification shall be completed and not refused for the specified reasons in Penal Code § 679.10(k)(3).
 - 3. Form I-914 Supplement B declaration shall be completed if the victim qualifies under Penal Code § 236.5 or Penal Code § 679.11 (human trafficking). The declaration shall be completed and not refused for completion for the specified reasons in Penal Code § 679.11(j)(3).
 - 4. Forward the completed Form I-918 Supplement B certification or completed Form I-914 declaration B to the victim, family member, or authorized representative (as defined in Penal Code § 679.10 and Penal Code § 679.11) without requiring the victim to provide government-issued identification (Penal Code § 679.10; Penal Code § 679.11)
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.
 - 1. If Form I-918 Supplement B is not certified, a written explanation of denial shall be provided to the victim or authorized representative. The written denial shall include specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate (Penal Code § 679.10).
- (e) Inform the victim liaison of any requests and their status.

423.6.1 TIME FRAMES FOR COMPLETION

Officers and their supervisors who are assigned to investigate a case of human trafficking as defined by Penal Code § 236.1 shall complete the above process and the documents needed for indicating the individual is a victim for the T visa application within 15 business days of the first encounter with the victim, regardless of whether it is requested by the victim (Penal Code § 236.5).

Officers and their supervisors shall complete the above process and the documents needed certifying victim cooperation for a U visa or T visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 30 days of a request from the victim, victim's family, or authorized representative related to one of their assigned cases. If the victim is in removal proceedings, the certification shall be processed within seven days of the first business day following the day the request was received.

423.6.2 REPORTING TO LEGISLATURE

The Investigative Bureau supervisor or the authorized designee should ensure that certification requests are reported to the Legislature in January of each year and include the number of

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certifications signed and the number denied. The report shall comply with Government Code § 9795 (Penal Code § 679.10; Penal Code § 679.11).

423.6.3 POLICE REPORTS

Upon request, an officer or supervisor should provide a victim or authorized representative with a copy of the report filed by the victim within seven days of the request (Penal Code § 679.10).

423.7 DETENTION FACILITY CONSIDERATIONS

423.7.1 IMMIGRATION DETAINERS AND REQUESTS FOR NOTIFICATION

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (DHS Form I-247, Immigration Detainer-Notice of Action), (Gov. Code § 7284.6). The Fremont Police Department shall not unlawfully extend the detention of an inmate so that ICE may detain the individual.

When receiving a DHS Form I-247 (Immigration Detainer-Notice of Action) for an individual that may be released with a promise to appear or is going to post bail, Fremont Police Detention staff will conduct a review of the subject inmate's criminal history via local and state law enforcement databases (CRIMS, CII, etc.) to determine if the inmate meets the criteria established in Gov. Code Section 7282.5 as set forth below. Jail Personnel or Officers may initiate contact with ICE prior to the release of an individual who is the subject of a DHS Form I-247 only if the individual meets one of the following conditions (Gov. Code § 7282.5; Gov. Code § 7284.6):

- (a) The individual's release date or other information is available to the public;
- (b) The individual has been convicted or arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c);
- (c) The individual has been convicted or arrested and had a judicial probable cause determination for a felony punishable by time in a state penitentiary;
- (d) The individual has been convicted of an offense as identified in Government Code § 7282.5(a);
- (e) The individual is a current registrant on the California Sex and Arson Registry;
- (f) The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony Judicial Warrant; or
- (g) The individual has been convicted within the past 5 years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony ("wobbler") for, any of the offense categories listed in Gov. Code Section 7282.5(a)(3). The examples of specific crimes listed under the categories set forth in section 7282.5(a)(3) is extensive and include some straight misdemeanor crimes (i.e. 242 P.C.) amongst the wobbler offenses. Officers shall verify a crime is, in fact, a wobbler offense prior to responding to an ICE notification request form. A straight misdemeanor conviction should not be considered qualifying criteria under section 7282.5(a)(3).

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The Fremont Police Department shall not respond to an ICE request for information for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or previously crimes punishable as either misdemeanors or felonies prior to the passage of the Safe Neighborhoods and Schools Act of 2014, Proposition 47 (Gov. Code § 7284.6(a)(1)(C), Gov. Code § 7282.5(a)(6).).

If the criteria have been met to provide ICE with notification, Fremont Police Detention Staff will complete the bottom portion of the DHS Form I-247A including the release date if one is known, and return the form to ICE. Fremont Police Detention staff will proceed with the inmate notification process in accordance with The Truth Act.

If the criteria has not been met, Fremont Police Detention Staff will not complete the bottom portion of the DHS Form I-247A and will not respond to ICE. Fremont Police Detention Staff will proceed with the proper notification process in accordance with The Truth Act. If the Fremont Police Department staff has any questions and/or concerns, the on-duty Watch Commander/Sergeant should be contacted before acting upon such a request.

If ICE requests information about an individual which is publicly available information, the Fremont Police Department may share this information with ICE as required under the California Public Records Act.

423.7.2 NOTICE TO INDIVIDUALS

Fremont Police Detention Staff must advise the inmate of the ICE request in writing and provide him/her with a copy of the DHS Form I-247A. This notification is provided via agency notification forms, entitled the "Immigration Notification to Inmate (Truth Act Form 2)" and the "Civil Immigration Consent Form (Truth Act Form 1)". The forms will be completed and copies provided to the inmate, explaining the following:

- (a) The Fremont Police "Immigration Notification to Inmate" form, advises the inmate of the ICE request and of whether the Fremont Police Department will comply with the request. The form also contains space for the inmate to provide contact information of the inmate's attorney or designated third party, if applicable.
- (b) The Fremont Police "Civil Immigration Consent" form, advises the inmate of an ICE request for an interview and indicates whether the inmate voluntarily consents or declines the ICE request for an interview. The "Civil Immigration Consent" will be provided to the inmate in advance of any interview between ICE and the individual.
- (c) The "Immigration Notification to Inmate" and "Civil Immigration Consent" forms are available in several languages, in accordance with The Truth Act. The forms are available in English, Spanish, Cantonese, Mandarin, Tagalog, Vietnamese and Korean.
- (d) Once the inmate has been served with the notification forms, the inmate will retain the original copy of the form. A second copy will be attached to a copy of the inmates booking packet and provided to the Jail Manager. The Jail Manager will retain hard copies of Truth Act Notifications and an electronic file will be kept on the "T" drive.

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Whenever the Fremont Police Department receives any ICE requests on an inmate within custody or provides ICE with Notification that an individual is being, or will be released on a certain date, the same notification shall be provided in writing to the individual and his or her attorney or to one additional person who the individual may designate (Government Code § 7283.1). The Fremont Police form titled, "Immigration Notification to Attorney (Form 3)" will be used to make written notification to the attorney of record and the third party designee of the inmates choosing. The form will be completed and mailed to each party as designated on the form.

423.7.3 ICE INTERVIEWS

Before any interview regarding civil immigration violation takes place between ICE and an individual in custody, the Fremont Police Department shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary and that he or she may decline to be interviewed or may choose to be interviewed with only his or her attorney present. The consent form must be available in the languages specified in Government Code § 7283.1.

423.7.4 TRANSFERS TO IMMIGRATION AUTHORITIES

The Fremont Police Department shall not transfer an individual to immigration authorities unless one of the following circumstances exist:

- (a) The transfer is authorized by a judicial warrant or judicial probable cause determination;
- (b) The individual has been convicted of an offense as identified in Government Code § 7282.5(a); or
- (c) The individual is a current registrant on the California Sex and Arson Registry.
- (d) The individual is identified by the ICE as the subject of an outstanding federal felony arrest warrant.

423.9 IMMIGRATION INQUIRIES PROHIBITED

Officers shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

423.9.1 HUMAN TRAFFICKING T-VISA

See section 428.5

423.9.2 SUPERVISOR RESPONSIBILITIES

When notified that an officer has detained a person and established probable cause to believe the person has committed a criminal immigration offense, the supervisor should:

- (a) Confirm that the detained person's immigration status was properly verified.
- (b) Ensure that the detained person is taken into custody when appropriate. Take any additional steps necessary that may include, but are not limited to:
 - 1. Transfer to federal authorities.

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2. Lawful arrest for a criminal offense or warrant.

423.9.3 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

Members shall not obtain, access, use, or otherwise disclose noncriminal history information maintained by the DMV for immigration enforcement (Vehicle Code § 1808.48).

423.9.4 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)

Members shall not use information transmitted through CLETS for immigration enforcement purposes except for criminal history information and only when consistent with the California Values Act (Government Code § 15160).

Members shall not use the system to investigate immigration violations of 8 USC § 1325 (improper entry) if that violation is the only criminal history in an individual's record (Government Code § 15160).

423.8 COMMUNITY INFORMATION

The Fremont Police Detention Facility manager will be responsible for maintaining proper records of ICE notifications and/or anyone who ICE has had access to within the Fremont Police Detention Facility. These records will be subject to the State of California Public Records Act.

Beginning January 1, 2018, if the Fremont Police Department has provided ICE access to an individual during the last year, the City Council shall hold at least one community forum during the following year that is open to the public, in an accessible location, and with at least 30 days' notice to provide information to the public about ICE's access to individuals and to receive and consider public comment.

As part of this forum, the Fremont Police Department may provide the City Council with data it maintains regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided and whether the ICE access was provided through a notification request or through other means. Data may be provided in the form of statistics or, if statistics are not maintained, individual records, provided that personally identifiable information shall be redacted.