



WSAMA Spring 2026 Conference

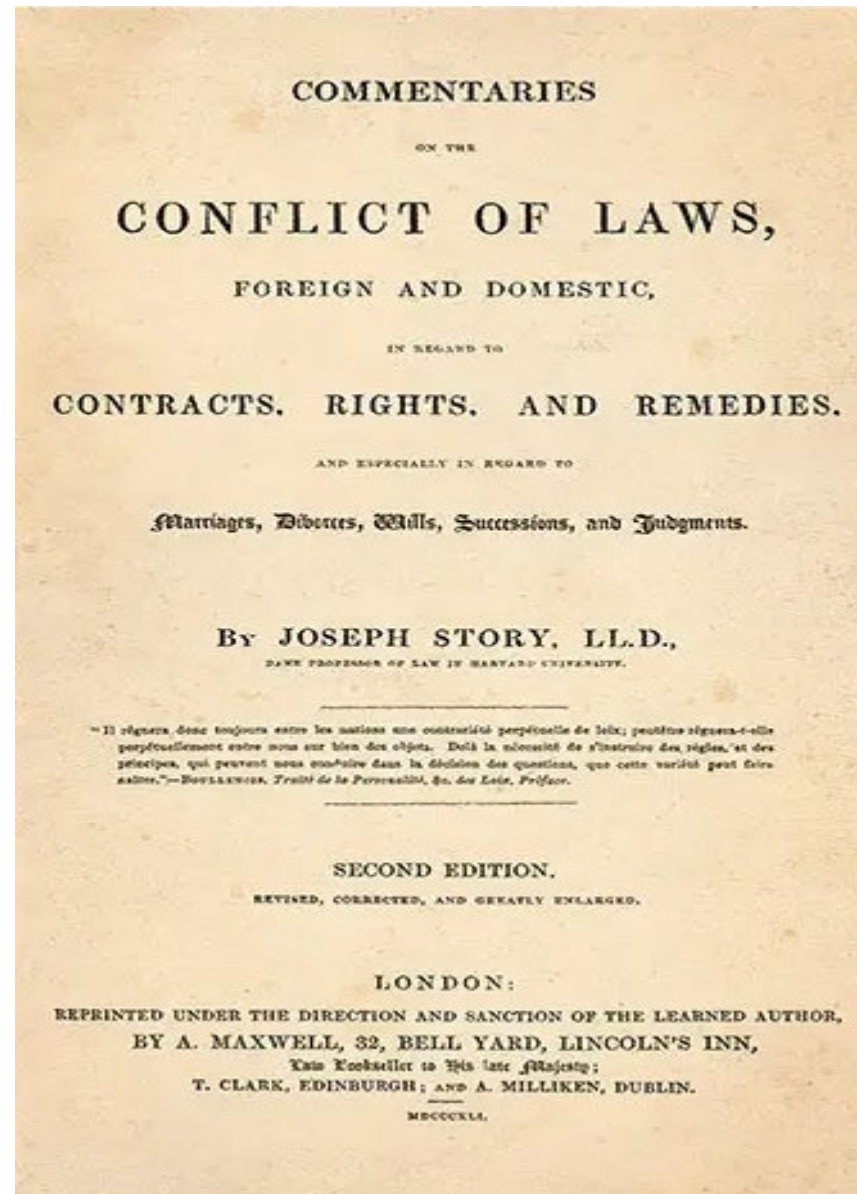
Protecting Privacy in the Public Sphere

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APRIL 22-24, 2026

The Public Sphere v. the Private Realm



Our Complicated Relationship with Privacy

**ARE MEN SO ANXIOUS TO
GET THIS THING THROUGH
THAT THEY CANNOT SEE
THE DIFFERENCE
BETWEEN MEASURES FOR
THE PUBLIC GOOD AND
PRIVATE GAIN? CAN
THEY NOT SEE THE
DIFFERENCE BETWEEN
SCHOOL HOUSES AND
RAILROADS?**



Our Complicated Relationship with Privacy

“The section of the Constitution last quoted in most express terms prohibits a county from giving any money, property, or credit to, or in aid of, any corporation, except for the necessary support of the poor and infirm. If the framers of the Constitution had intended only to prohibit counties from giving money or loaning credit for other than corporate or public purposes, they would doubtless have said so in direct words. That agricultural fairs serve a good purpose is not questioned, but the Constitution makes no distinction between purposes, but directly and unequivocally prohibits all gifts of money, property, or credit to, or in aid of, any corporation....”

***Johns v. Wadsworth*, 80 Wash. 352, 354, 141 P. 892 (1914)**

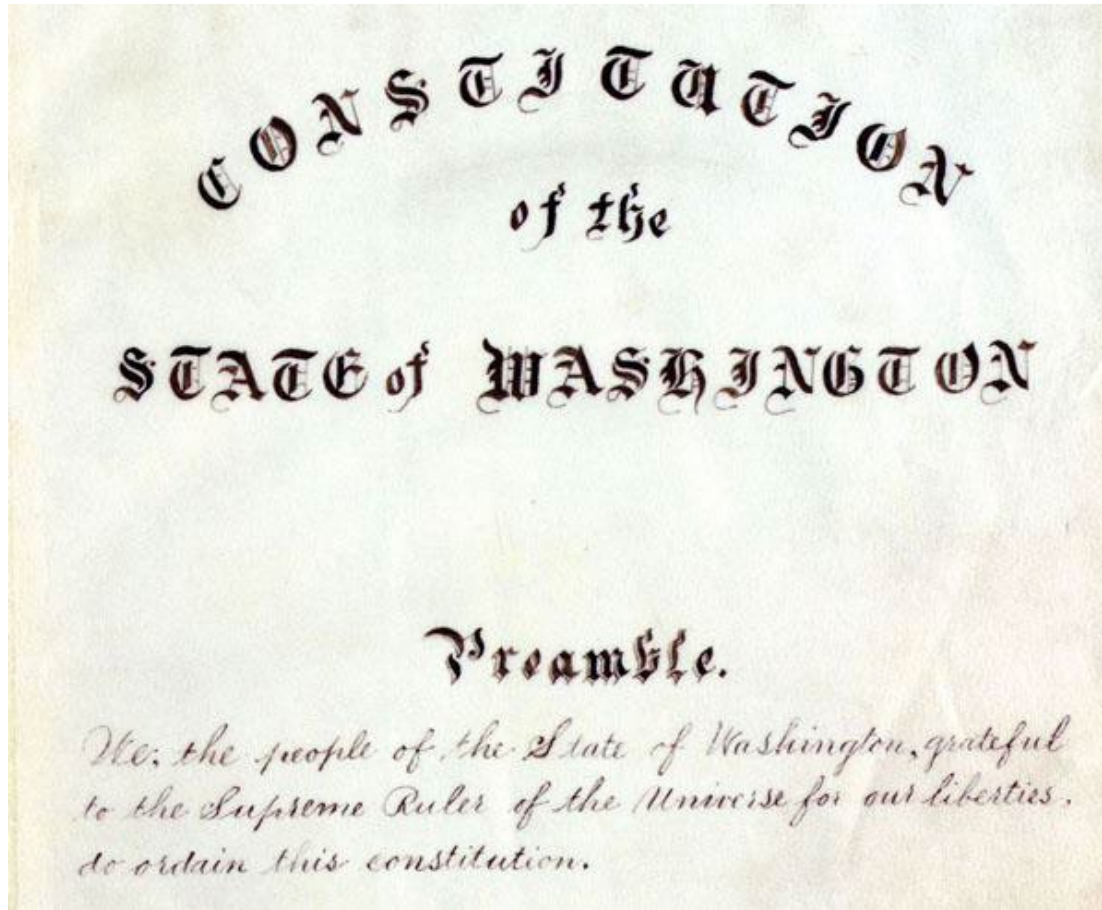
Our Complicated Relationship with Privacy

“No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Const. art. I § 7

— Broader than Fourth Amendment

— Of relevance here:

“[W]hat is voluntarily exposed to the general public and observable without the use of enhancement devices from an unprotected area is not considered part of a person's private affairs.” *State v. Jackson*, 150 Wn.2d 251, 260, 76 P.3d 217 (2003) (internal quotations and citations omitted).



Our Complicated Relationship with Privacy

The People Have the Right to Know . . .

Our whole concept of democracy is based on an informed and involved citizenry. Trust and confidence in governmental institutions is at an all time low. High on the list of causes of this citizen distrust are secrecy in government and the influence of private money on governmental decision making. Initiative 276 brings all of this out into the open for citizens and voters to judge for themselves.

Where Campaign Money Comes From and Where it Goes!!

Initiative 276 requires public disclosure of where campaign money comes from, who gets it and how much. All candidates and political committees are required to make regular, detailed reports of contributions and expenditures. Small contributions need not be reported by name. And, spending in any election campaign is limited to whichever is larger: ten cents per registered voter; \$5,000; or a sum equal to the total salary for the term of the office sought.

Which Lobbyists Spend How Much For What Purposes!!

Initiative 276 allows the public to know which special interests are spending how much to influence decisions made by the legislature and various state agencies. Professional lobbyists must register and report year-round (not just during legislative sessions) their terms of employment, legislation to which employment relates, itemized expenditures made, and

financial transactions with legislators and public employees. Expenditures of state funds for lobbying are prohibited.

Where Conflicts of Interest Exist!!

Initiative 276 permits the voting public to judge for itself where potential conflicts of interest may lie. All elected officials and candidates are required to disclose directorships and offices held and substantial financial or ownership interests in any business, and in real estate investments.

How Governmental Decisions Are Really Made!!

Initiative 276 makes all public records and documents in state and local agencies available for public inspection and copying. Certain records are exempted to protect individual privacy and to safeguard essential governmental functions.

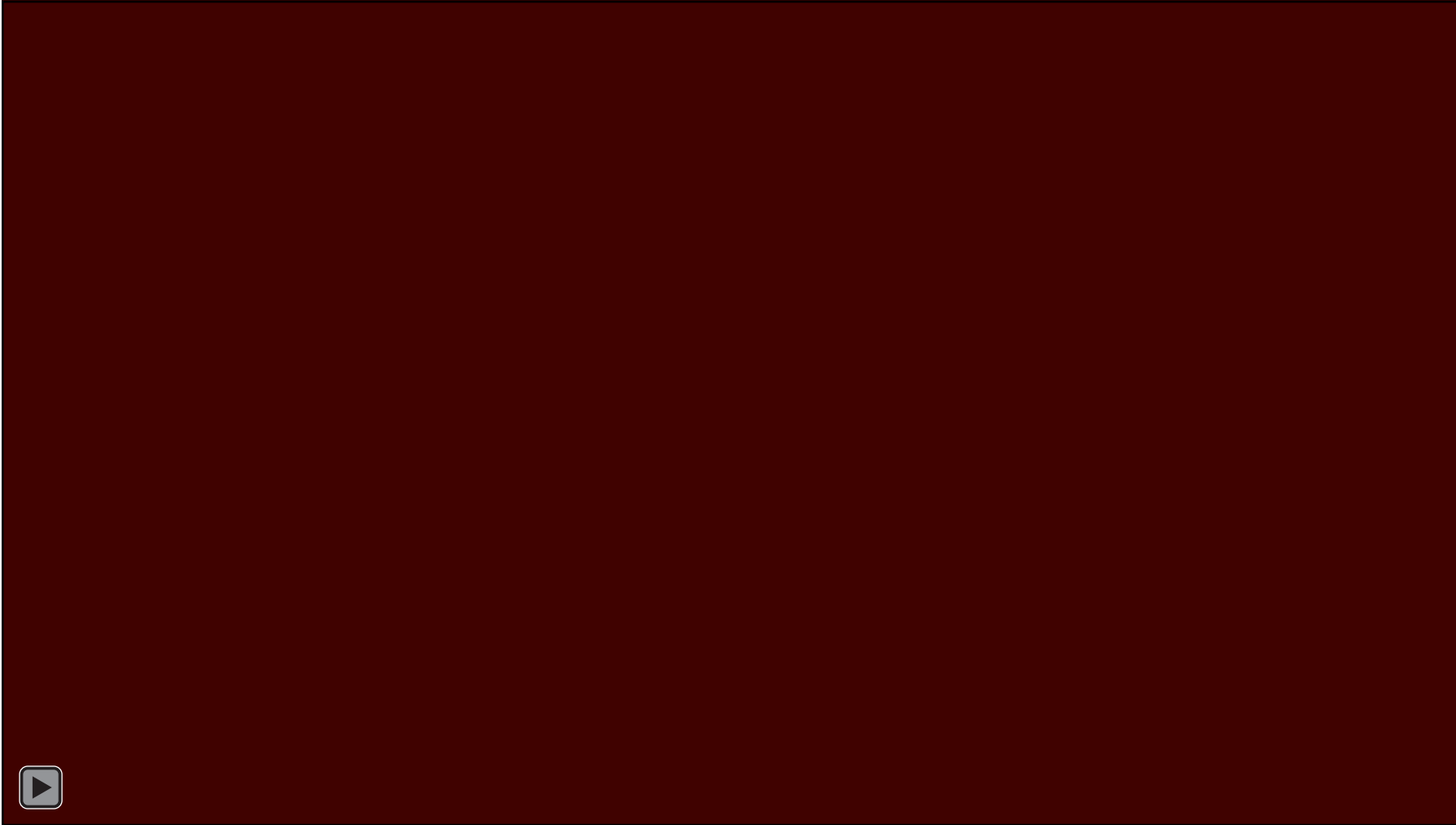
The People Have The Right To Know!! Vote For Initiative 276!!

Committee appointed to compose statement FOR Initiative 276:

BENNETT FEIGENBAUM, Coalition for Open Government, Sponsor; NAT WASHINGTON, State Senator, Ephrata; ART BROWN, State Representative, Seattle.

Advisory Committee: JOCELYN MARCHISIO, President, League of Women Voters of Washington; MARIANNE NORTON, American Association of University Women; JOAN

What does privacy mean in today's world



The Scales of Privacy

What policy and political interests have you seen at play when elected officials consider using technology as a tool to achieve their priorities?

The Scales of Privacy

Washington State Standard 

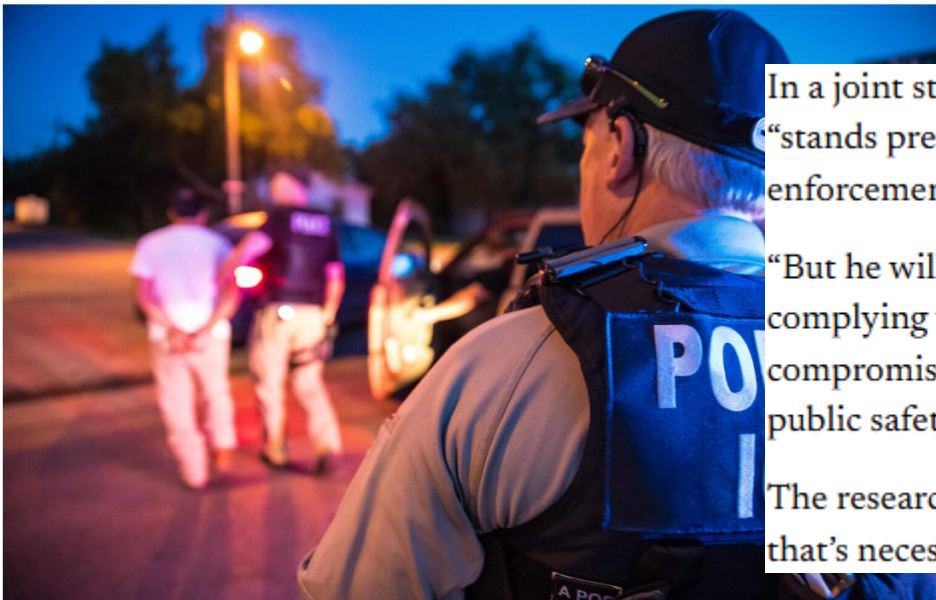
POLITICS ENVIRONMENT HOUSING EDUCATION HEALTH CARE POLICE & COURTS ECONOMY

IMMIGRATION

ICE searched WA driver's license data into November, report finds

The revelations follow backlash against the practice and a pledge from the state to cut off access.

BY: JAKE GOLDSTEIN-STREET - JANUARY 8, 2026 2:00 PM



In a joint statement, the licensing department and Washington State Patrol said Gov. Bob Ferguson “stands prepared to take further action” in the face of the Trump administration’s escalating immigration enforcement tactics.

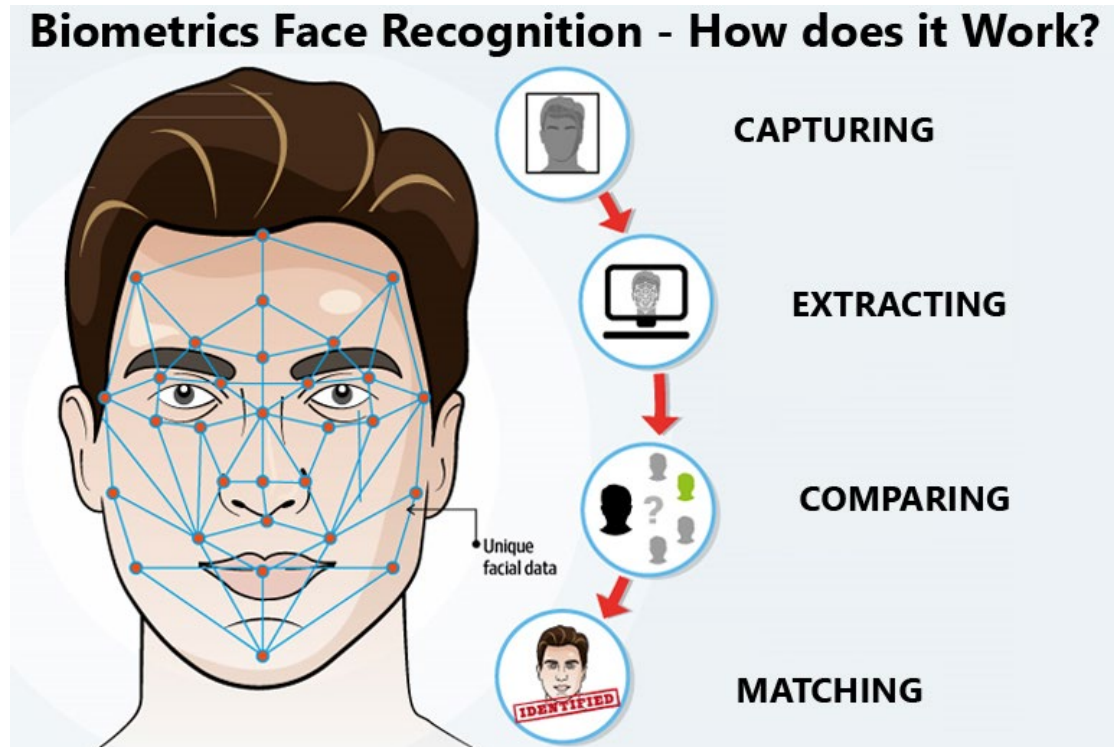
“But he will do so with reason and care,” the agencies said. “Governor Ferguson is committed to complying with applicable laws and finding the right balance in protecting individuals’ data without compromising legitimate law-enforcement investigations of criminal acts that are necessary to preserve public safety.”

The researchers say U.S. Customs and Border Protection still has access to the data, but the state argues that’s necessary for the agency’s work at the Canadian border and airports.

The Law of Privacy

Limited State Restrictions on Municipal Uses

Ch. 43.386 RCW



- Facial recognition by state and local governments regulated
- To use, must have accountability reporting, training, testing, and recordkeeping

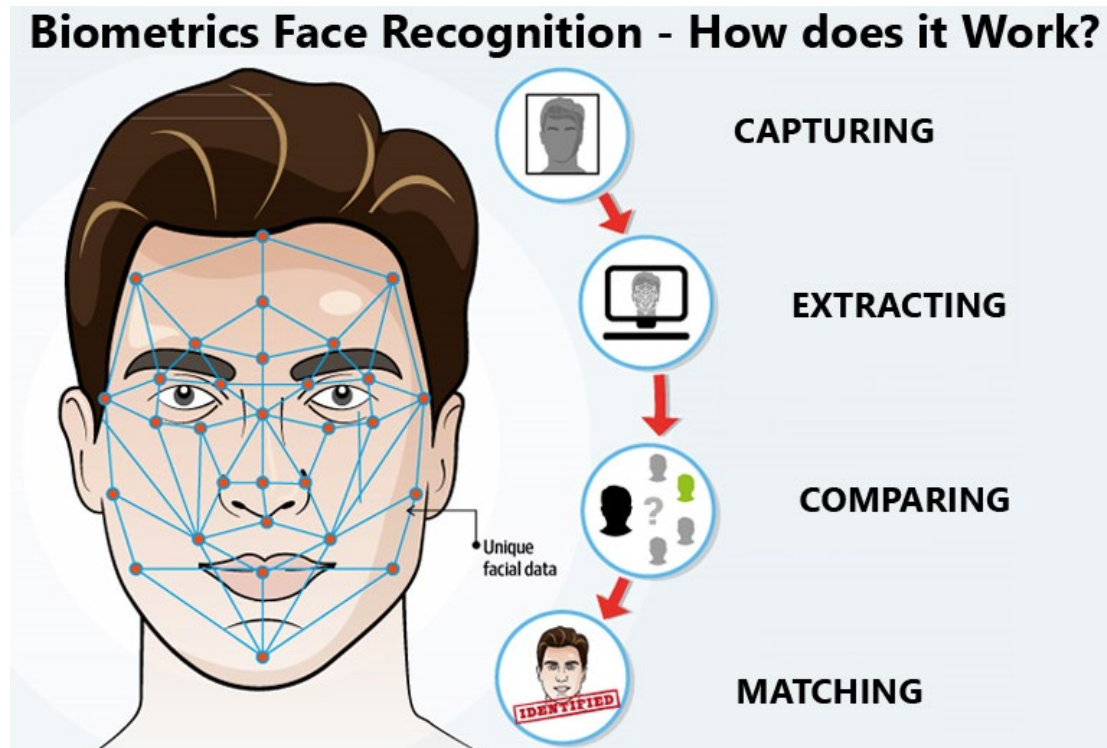
The Law of Privacy

Limited State Restrictions on Municipal Uses

RCW 43.386.080(1)

- Governments may not use “a facial recognition service to engage in ongoing surveillance, conduct real-time or near real-time identification, or start persistent tracking....”

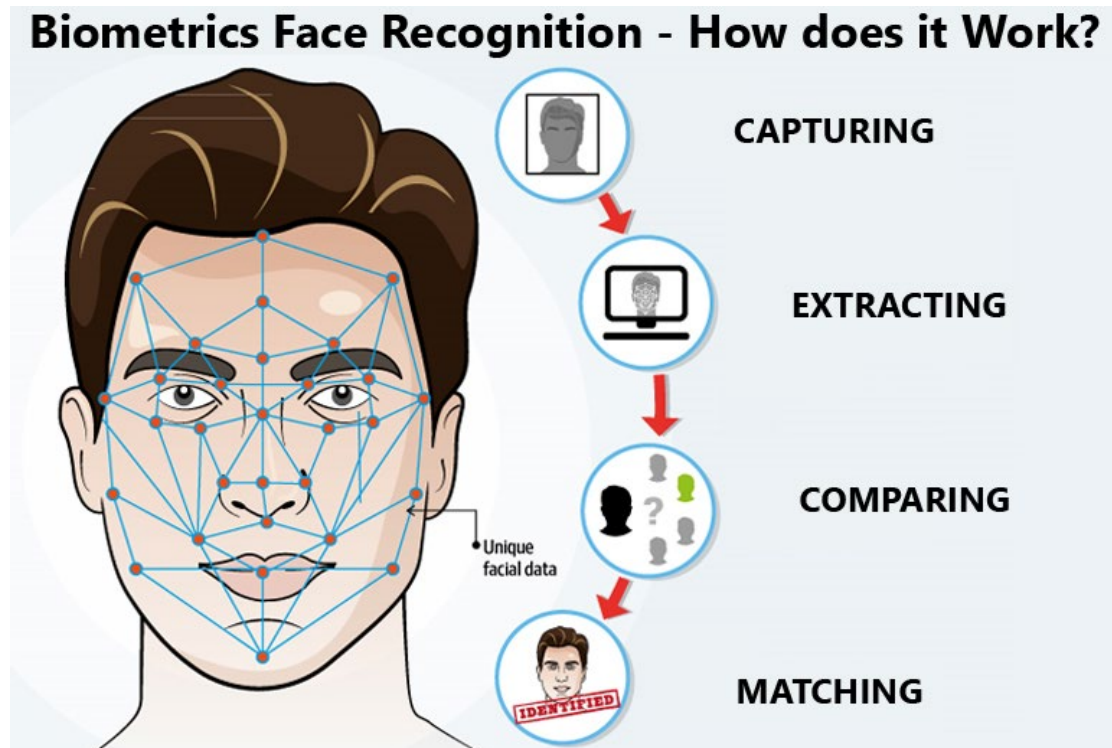
- Exceptions for warrants, exigent circumstances, court orders for missing persons



The Law of Privacy

Limited State Restrictions on Municipal Uses

RCW 43.386.080(2)

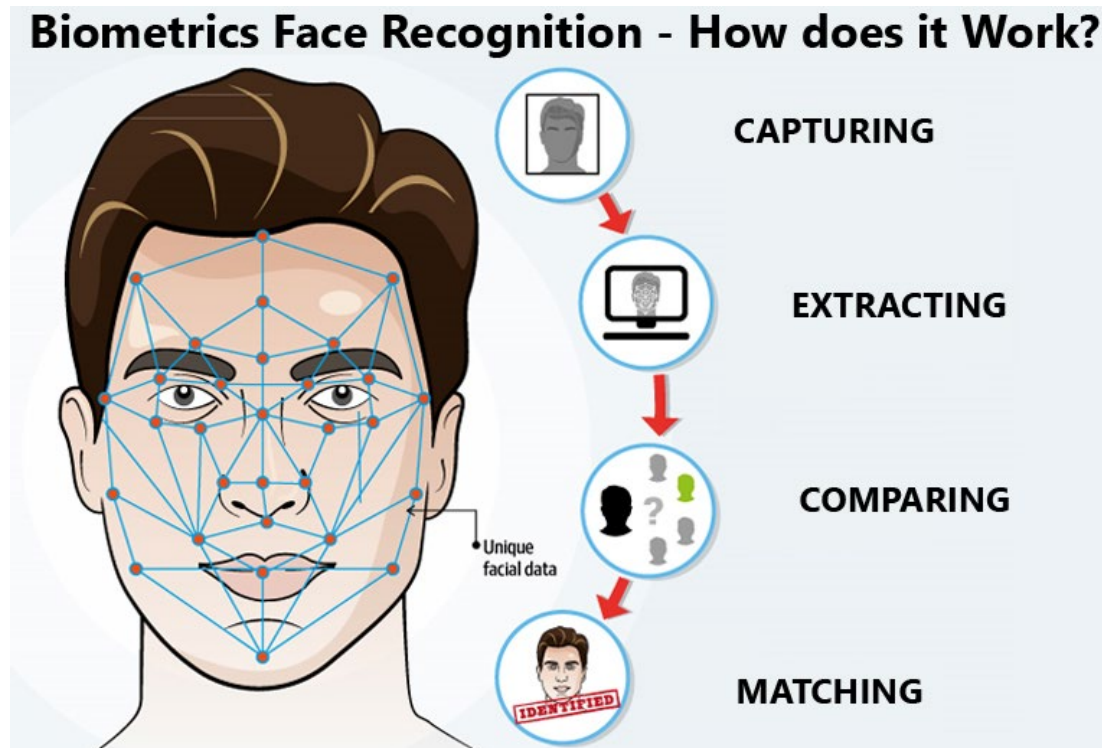


“A state or local government agency may not apply a facial recognition service to any individual based on their religious, political, or social views or activities, participation in a particular noncriminal organization or lawful event, or actual or perceived race, ethnicity, citizenship, place of origin, immigration status, age, disability, gender, gender identity, sexual orientation, or other characteristic protected by law.”

The Law of Privacy

Limited State Restrictions on Municipal Uses

RCW 43.386.080(3)

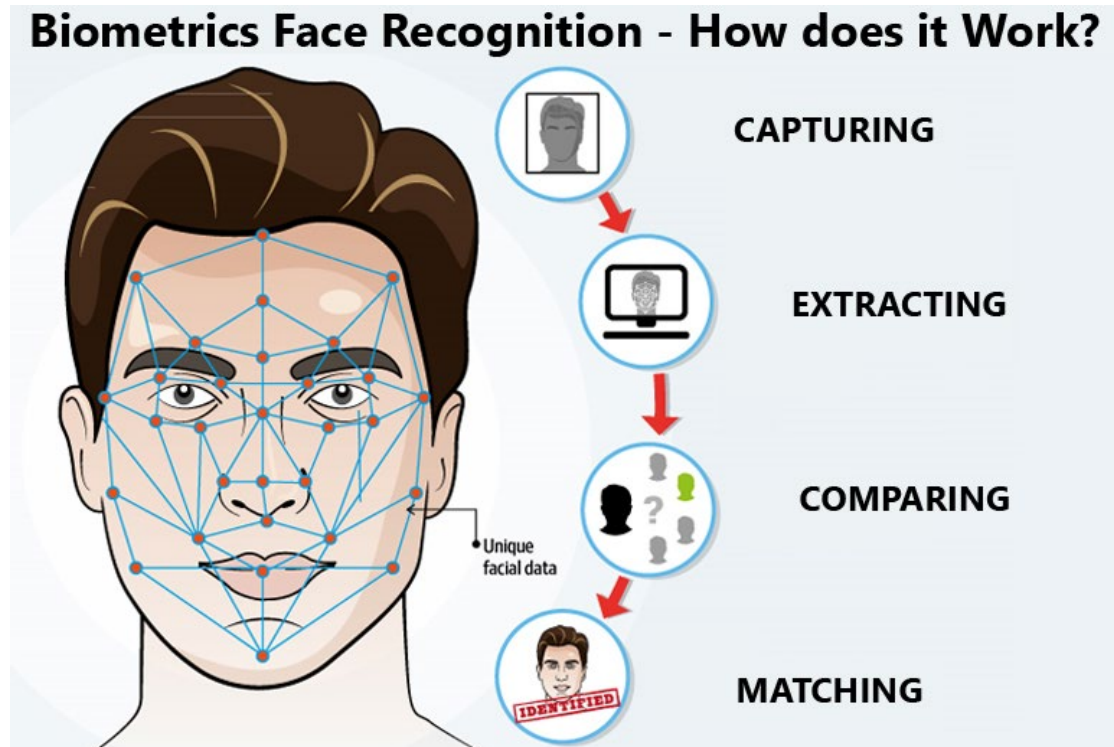


“A state or local government agency may not use a facial recognition service to create a record describing any individual's exercise of rights guaranteed by the First Amendment of the United States Constitution and by Article I, section 5 of the state Constitution.”

The Law of Privacy

Limited State Restrictions on Municipal Uses

RCW 43.386.080



- May not be sole basis for probable cause
- May not use to identify an individual based on a sketch

The Law of Privacy

Limited State Restrictions on Municipal Uses



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“The Flock ALPR system's photograph of the vehicle Simonson was operating in plain view on a public road did not disturb his private affairs under article 1, section 7 of the Washington Constitution. This momentary observation is analogous to a law enforcement officer visually noting a license plate number and conducting a routine check of licensing records, which has long been held permissible without implicating constitutional privacy protection.”

State v. Simonson, No. 40732-2-III, 2026 WL 242157, at *7 (Wash. Ct. App. Jan. 29, 2026)

The Law of Privacy

Limited State Restrictions on Municipal Uses



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NEW LEGISLATION

ESSB 6002: Automated License Plate Readers (ALPRs)

- ALPRs automatically scan license plates from cameras to see if there are matches for various purposes (stolen vehicles, warrants, missing persons, etc.)
- ESSB 6002 is first statewide regulation of ALPRs
- Tries to strike balance between “the need to ensure public safety and an individual’s right to privacy.” § 1

The Law of Privacy

Limited State Restrictions on Municipal Uses



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ESSB 6002: Automated License Plate Readers (ALPRs)

Limits uses of ALPR by government to following purposes (§3(2)):

1. Comparing with DOL, CJIS, kidnapping/missing persons databases
2. State and local databases for vehicles that are stolen, associated with a missing person, registered to an individual with a felony or gross misdemeanor warrant, connected to a felony or gross misdemeanor
3. Parking enforcement
4. Transportation agency for real-time traffic, traffic studies, and enforcing commercial vehicles restrictions as WSP and weigh stations

The Law of Privacy

Limited State Restrictions on Municipal Uses



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ESSB 6002: Automated License Plate Readers (ALPRs)

Prohibited uses (§3(3)):

1. Immigration investigation or enforcement
2. Protected health care services
3. Tracking and monitoring constitutionally protected activities, such as First Amendment activity

Prohibited places (§3(4)):

1. Around and at protected health care facilities
2. At facilities conducting an immigration matter, elementary and secondary schools, places of worship, courts, and food banks

The Law of Privacy

Limited State Restrictions on Municipal Uses



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ESSB 6002: Automated License Plate Readers (ALPRs)

Requirements on local government:

1. Register usage of ALPR with the AGO
2. Adopt policies
3. Must adopt forthcoming AGO Model Policies or state how policies comply with the law by 2027
4. Provide and document training
5. Must delete data within 21 days (with some exceptions)
6. Must not share or allow access to data except with other agencies authorized under the law (not federal government)
7. Must submit an annual report to the legislature and post on website
8. Must maintain an audit trail for the prior two years

The Law of Privacy

Limited State Restrictions on Municipal Uses



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ESSB 6002: Automated License Plate Readers (ALPRs)

1. Positive match of ALPR alone is not reasonable suspicion as grounds for a vehicle stop – office must independently verify
2. Information obtained not in compliance with the law is inadmissible (except for plaintiffs)
3. ALPR data is exempt from PRA except for deidentified data for bona fide research
4. Violation of the law is a violation of the Consumer Protection Act
5. Willful and intentional misuses of ALPR data is a criminal misdemeanor
6. Civil cause of action available, includes attorneys' fees

Rights & Remedies

Public Records

“Originally, open records laws were enacted to increase transparency in government operations. Nowadays, however, public records are predominantly utilized by Big Data companies for collecting and assembling personal data. Laws intended to empower people to shed light on their government are instead shedding light on people.”

Daniel J. Solove, Artificial Intelligence and Privacy, 77 Fla. L. Rev. 1, 32 (2025)

Rights & Remedies

Public Records

“Here, LO argues it had standing under both parts of RCW 42.56.540—because it was “named in the record[s]” and because it was an entity to which “the records specifically pertain[].

The plain language of RCW 42.56.540 requires no more than this; the statute demands no additional qualitative or quantitative characteristics—merely that the person be “named.” We are not persuaded that just because the records also carry the names of other people, including the unhoused individuals, that LO cannot be considered named in the records. Nor are we persuaded that the result should be different simply because the sensitive information contained in the records pertains to the individuals, not LO. Simply put, LO is named in the records and, for the purposes of RCW 42.56.540, that is enough for standing.”

Love Overwhelming v. City of Longview, 32 Wn. App. 2d 346, 353–54, 556 P.3d 692 (2024)

Rights & Remedies

Public Records

“Relying on a Ninth Circuit case that issued after the preliminary injunction, the court observed that “basic ‘biographical data,’ including a person's ‘name, address, identification, place of birth, telephone number, occupation, sex, description, and legal aliases,’ is not highly sensitive personal information, and thus categorically does not ‘implicate the right to privacy.’ ””

— *P. Poe 5 v. Univ. of Washington*, No. 2:24-CV-00170-JHC, 2025 WL 1082039, at *2 (W.D. Wash. Apr. 10, 2025) (citing *P Poe 5 v. Univ. of Washington*, 2024 WL 4971971, at *1 (9th Cir. Dec. 4, 2024) (quoting *Doe v. Bonta*, 101 F.4th 633, 637–38 (9th Cir. 2024))).

Rights & Remedies

Data Breach Requirements



Data Breach Notification under RCW 42.56.590

- Written notice is required for any data breach of personal information
- Must include name/contact information for the agency, types of personal information involved, time frame of exposure, credit reporting agencies' contact information
- Must be made without unreasonable delay, and no more than 30 days

Rights & Remedies

Public Comment

“Freed did not relinquish his First Amendment rights when he became city manager. On the contrary, ‘the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern.’ This right includes the ability to speak about ‘information related to or learned through public employment,’ so long as the speech is not ‘itself ordinarily within the scope of [the] employee's duties.’ Where the right exists, ‘editorial control over speech and speakers on [the public employee's] properties or platforms’ is part and parcel of it. Thus, if Freed acted in his private capacity when he blocked Lindke and deleted his comments, he did not violate Lindke's First Amendment rights—instead, he exercised his own.”

Lindke v. Freed, 601 U.S. 187, 196–97 (2024) (cites omitted)

Rights & Remedies

Recordings

“Washington State's privacy act is considered one of the most restrictive in the nation.” Under the privacy act, it is generally unlawful to record a private conversation without first obtaining consent of all persons engaged in the conversation. RCW 9.73.030(1)(b).

In determining whether a communication between individuals constitutes a “conversation” under the privacy act, courts use the ordinary meaning of the term: “oral exchange, discourse, or discussion.” Recordings of sounds that do not constitute a “conversation” do not implicate the privacy act.”

— *State v. Kamara*, 28 Wn.App.2d 903, 909–10, 539 P.3d 48 (2023)

Rights & Remedies

Warrants

“Historical cell site location information (CSLI) is protected by article I, section 7 of our constitution and the Fourth Amendment to the United States Constitution. *State v. Muhammad*, 194 Wash.2d 577, 580, 451 P.3d 1060 (2019) (Wiggins, J., lead opinion), 628 (Gordon McCloud, J., opinion); *Carpenter v. United States*, — U.S. —, 138 S. Ct. 2206, 2220, 201 L. Ed. 2d 507 (2018). Any search of CSLI violates article I, section 7 absent authority of law and violates the Fourth Amendment when it is unreasonable; both requirements are satisfied by a valid warrant. *State v. Olsen*, 189 Wash.2d 118, 126, 399 P.3d 1141 (2017); *Carpenter*, 138 S. Ct. at 2221.”

— *State v. Denham*, 197 Wn.2d 759, 773, 489 P.3d 1138 (2021) (Whitener, J., dissenting)

Rights & Remedies

Anti-Harassment

“The order properly prohibited Iceberg from engaging in *unlawful* harassment of Distelhorst via communications with his neighbors, co-workers, or online. Iceberg does not meet his burden to show the antiharassment order is overbroad.”

Distelhorst v. Iceberg, No. 87843-3-I, 2026 WL 991110, at *4 (Wash. Ct. App. Apr. 13, 2026)

Rights & Remedies

Anti-Harassment

“[T]he order regulates Iceberg’s conduct. Iceberg remains free to protest, freely associate, and post online as long as he does not contact (including indirectly through third parties), harm, harass, or stalk Distelhorst, or violate the mandated 1000-foot physical buffer around Distelhorst, his residence, or the HASCO office, except as necessary for voucher administration. As in Noah, where we upheld analogous no-contact provisions, here, the antiharassment order is content neutral and narrowly tailored to focus on Distelhorst and a no contact zone around him. Iceberg has not established an unconstitutional prior restraint.”

Distelhorst v. Iceberg, No. 87843-3-I, 2026 WL 991110, at *4 (Wash. Ct. App. Apr. 13, 2026)

The Scales of Privacy



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- Constitutional protections
- Societal expectations of “privacy”
- Legitimate public interests, particularly public safety
- Political environment
- Rapidly and constantly evolving technology
 - AI is an entire new level

Questions?



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