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REDACTION: What's In and What's Out

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REDACTION—

It's Not Always Black & White

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re·dact
ri'dakt/

- edit (text) for publication.
- censor or obscure (part of a text) for legal or security purposes.

Google.com



prī·va·cy
'prīvəsē/

- the state or condition of being free from being observed or disturbed by other people;
- the state of being free from public attention.

Google.com



se·cu·ri·ty
sə'kyoŕədē/

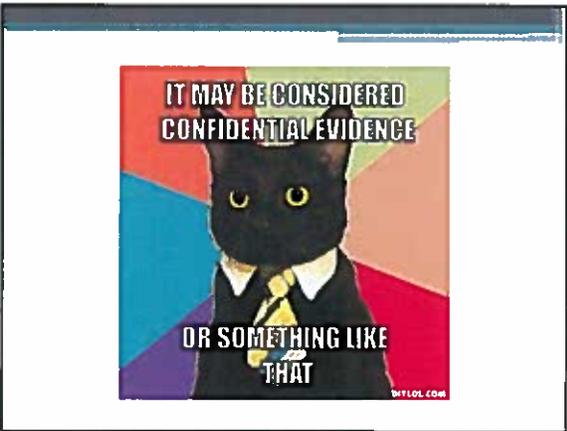
- the state of being free from danger or threat.

Google.com



Confidentiality

- secret or private
- : showing that you are saying something that is secret or private
- : trusted with secret or private information



Why Redact?

Privacy

Security

Confidentiality

Why Redact?

- **Victim Info**
- **Confidential Informant**
- **Trial/Hearing**
- **Other**



Rule 15

a. Initial Disclosure in Felony Cases. Unless otherwise ordered by the court ... at the arraignment, or ...preliminary hearing, whichever occurs first, the prosecutor shall make available to the defendant all reports containing items listed in Rule 15.1(b)(3) and (4) that were in the possession of the attorney filing the charge at the time of the filing.

Ariz. R. Crim. P. 15.1

The Arizona Constitution

- *Section 2.1. (A)* To preserve and protect victims' rights to justice and due process, a victim of crime has a right:
 1. To be treated with fairness, respect, and dignity, and to be **free from intimidation, harassment, or abuse**, throughout the criminal justice process.

Ariz. Const. art. II, § 2.1 (see also Ariz. R. Crim P. 39)

The Statute

§ 13-4434. Victim's right to privacy; exception; definitions

B. A victim's **identifying and locating information** that is obtained, compiled or reported by a law enforcement agency or prosecution agency **shall be redacted** by the originating agency and prosecution agencies from records pertaining to the criminal case involving the victim, including discovery disclosed to the defendant.

A.R.S. § 13-4434

The Statute

§ 13-4434. Victim's right to privacy; exception; definitions

For the purposes of this section:

- 1. "**Identifying information**" includes a victim's date of birth, social security number and official state or government issued driver license or identification number.
- 2. "**Locating information**" includes the victim's address, telephone number, e-mail address and place of employment.

A.R.S. § 13-4434

Rule 15

Claims of Privilege or Protection. All redactions must be identified in documents produced in discovery and the party making a redaction must state its legal basis if it is not clear from the context.

Ariz. R. Crim. P. 15.5 (e)

Rule 39

• *Ariz. R. Crim. P. 39*

b. Victims' Rights. These rules shall be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule in these Rules of Criminal Procedure, a victim shall have and be entitled to assert each of the following rights:

Rule 39

• (b) (10) The right to require the prosecutor to withhold, during discovery and other proceedings, the victim's date of birth, social security number, official state- or government-issued driver license or identification number, home address, telephone number, e-mail address, the address and telephone number of the victim's place of employment, and the name of the victim's employer;

Ariz. R. Crim. P. 39 (b) (10)

Rule 39

...provided, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the defendant. Rule 15.5(e) applies to information withheld pursuant to this rule.

Ariz. R. Crim. P. 39(b)(10)

What Do You Redact?

- Police Reports
- Medical Records
- DCS Records
- Audio Recordings
- Video Recordings
- Other?



Informants



Rule 15.4(b)

Materials not subject to disclosure.

• (2) Informants

Disclosure of the existence ...or the identity of an informant who will not be called to testify shall not be required where disclosure would result in substantial risk to the informant or to the informant's operational effectiveness, provided the failure to disclose will not infringe the constitutional rights of the accused.

Ariz. R. Crim. P. 15.4

Rule 15.4(b)

Is the witness
"material"?



What Do You Redact?

- Police Reports
- Audio Recordings
- Video Recordings
- Other?



How Do You Redact?



Redaction

Remember Rule 15.5?
All redactions must be identified in documents produced in discovery and the party making a redaction must state its legal basis if it is not clear from the context.



Redaction

If redactions are not clear from the context, consider a redaction/privilege log



Trial / Hearing Redaction

- Info generally already disclosed to defense;
- Redaction is done to avoid prejudice to defendant at trial in front of a jury:
 - Prior conviction documents- "sanitize"
 - MVD records
 - "Pen Pac" –DOC records
 - Photos
 - Videos
 - Other?

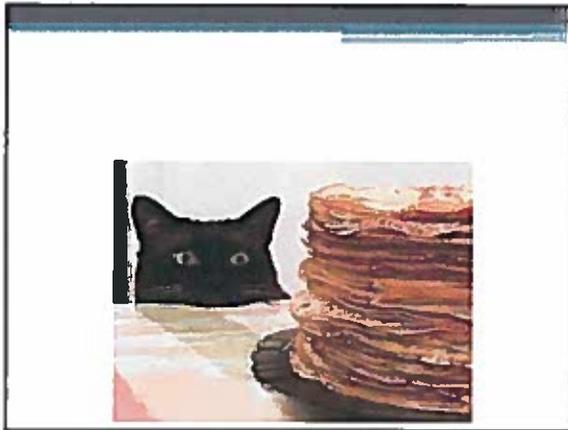
Redaction in General

- Attorneys frequently litigate what should / should not be redacted
- Maintain "clean" copy of the document in case you have to "unredact" later
- When in doubt—ask the attorney what they believe should be redacted

New Challenges



- Police video recordings
- Bystander video
- Medical video
- Store / public recordings
- Multiple vendors
- Storage issues
- Budget issues
- Staff time issues
- What else?



Thanks for all you do!
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