



Official Audit Report - Issued Oct. 18, 2023

Recordings of privileged phone calls at the  
Douglas County Correctional Facility

# Overview

Since 2004, the Douglas County Correctional Facility, operated by the Douglas County Sheriff's Office, began utilizing ICSolutions, which provides services for people in custody to contact friends, family members, attorneys or any other outgoing contact by phone or video kiosks.

Phone calls are routinely monitored to assess safety and security within the Correctional Facility and those outside including potential witnesses and victims. They are also monitored as an investigative tool for current or previous criminal activity. Also, at times monitoring phone calls can help identify potential violations of no-contact or protection orders issued by the court. With the proper permissions, access to ICSolutions records is given to Douglas County Sheriff's Office employees and other entities that would use this in their work capacity. The Douglas County District Attorney's Office is part of this group.

Upon request, attorney phone numbers can be entered into the ICSolutions site. The standard procedure is to have the attorney make his or her request on a letterhead document. The request should include the number to be free and not to have calls recorded, due to attorney-client privilege in these conversations. Once the request is received, the administrator of ICSolutions enters the phone number into the system. Certain boxes are to be marked to make the number free, privileged and not recorded. When done correctly, call records would not allow privileged phone calls to be opened due to them not being recorded. A record of the call would exist but the "play" function would not.

On Aug. 30, 2023, the Sheriff's Office was made aware of an attorney-client phone call that was recorded and accessible on the ICSolutions site. A Douglas County District Attorney's Office victim-witness coordinator discovered the issue when she was monitoring phone calls. While the staff member listened to the beginning seconds of a phone call, she recognized the voice of the receiving party as an attorney. She stopped monitoring and reported the incident to her superiors. The Sheriff's Office was notified shortly after and corrected the issue relating to that attorney's phone number on the ICSolutions site.

After it was discovered that an attorney number was entered incorrectly, Sheriff's Office staff began a full audit of its use of ICSolutions. In addition to indicating whether a call was recorded or not, the ICSolutions system also allows for administrators to review how much of a recorded call was opened or listened to and at what percentage of the call the person terminated listening.

## Objectives

The audit's purpose was to:

- Confirm all attorney numbers are entered correctly going forward and set to not record their future communications;
- To determine if any other privileged calls were inadvertently recorded;
- Further determine if any recorded privileged calls had been opened or listened to, and if so, to document them and notify relevant parties affected.

## Scope

The audit of ICSolutions DGSO data started Sept. 18. Lt. David Hardy, Administrative Training Officer John Sickels, Capt. LeRonda Roome and multiple ICSolutions customer service representatives assisted with compiling and examining the data.

*For the purposes of explaining the findings in the audit:*

- *Privileged call: a phone call that should not have been recorded due to attorney-client privilege.*
- *Opened call: a recording of a call that a staff member opened in the ICSolutions system to listen to. Some opened calls were closed before listening to any content.*
- *A call that did not connect means there was no answer and therefore no content recorded.*

## Findings

- The audit identified 29 attorney phone numbers that were in the Douglas County Jail ICSolutions account and were incorrectly set to record. The 29 phone numbers were tied to 22 attorneys because some attorneys used more than one phone number to call the jail.
- The error of not selecting the no-record box in ICSolutions occurred sporadically with entering the handful of attorney phone numbers since 2010.
- Of those 22 attorneys, the audit was able to track those numbers and identify 1,520 calls were recorded, with the earliest recording in 2010.
- However, of those 1,520 recordings, seven were found to be opened by DGSO or DA's Office staff.
- Of the calls opened, one occurred in 2020, two were in 2022 and four were in 2023.
- The audit also identified 961 calls from these numbers in the system as recordings, but the calls never connected, so there was no content.
- The ICSolutions system allows for examining the percentage an opened call was accessed to determine how much a person listening to a recording could have heard.
- Of the seven calls opened, five were accessed in a range from 16% to 4% and two were accessed at 0%, either because the call did not connect or the staff member did not have it open long enough to register a percentage.
- The Sheriff's Office has made all measures to notify all 22 attorneys involved that their phone numbers were not properly entered into the system, the number of recordings and if any of those calls were opened by staff.
- Those phone numbers have been changed to not record any future calls. Once those numbers were changed to not record in the system, the Sheriff's Office also lost the ability to open any of those recordings; however, ICSolutions was able to assist with the audit in identifying which of those past calls were recorded and if any were opened.

## Comments

- As of completion of the audit, 10,399 total phone numbers were in the Douglas County Jail account in ICSolutions. Of those numbers 241 were identified as attorneys' numbers set correctly to not record calls, and 29 total phone numbers identified above were incorrectly set to record.
- Of the 7 calls opened, the low percentages that identified the length a staff member opened the recording were consistent with individual statements they stopped listening either before or once they determined an attorney was part of the call and that it was a privileged. In other words, the audit did not identify any malicious intent or prejudice to any party and instead identified deficiencies in how phone numbers for attorneys were entered into the system and setting up the no-record option to preserve privilege.

## **Actions Taken**

- The key findings of this audit that will likely generate most discussion center on the phone numbers tied to 22 attorneys that had phone calls recorded based on the data-entry error into ICSolutions and of those the 7 total phone calls that were opened by DGSO or DA's Office staff.
- The audit revealed of the 1,520 calls recorded, only a small number of those (0.5%) were opened in the system.
- Furthermore, of the 7 calls DGSO and DA's Office staff did open, based on the small percentage of the call listened to, this indicates training and awareness on attorney-client privilege did kick in for staff who unknowingly opened those calls because they terminated listening once they realized the call involved a conversation with an attorney.
- That said, the data-entry error that caused these conversations to be recorded was a mistake, and the Sheriff's Office is committed to enacting measures to fix the problem and institute better safeguards using ICSolutions in the future.
- The Sheriff's Office made all measures to notify all attorneys affected. Staff have set their existing phone numbers to not record future calls, and this setting means the Sheriff's Office lost the ability to access or open those recordings from the past as well.
- The Sheriff's Office is in the process of developing a training manual on new phone number entries into the ICSolutions system, including a reminder to verify with defense attorneys all possible phone numbers they will be using to communicate with clients in custody.
- Formal training for staff has and will continue to stress the importance of protecting privileged communications with attorneys.