

Records Maintenance and Release

804.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy.

804.1.1 DEFINITIONS

Definitions related to this policy include:

Legal custodian of records - The person designated by the Department as the legal custodian of records to fulfill all duties required by law, if no designation is made the legal custodian of records shall be the Chief of Police (Wis. Stat. § 19.21; Wis. Stat. § 19.33).

Public records - Records that are not classified, restricted, confidential or private, and may be released by law, upon request.

Record - Any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created by or is being kept by an authority (Wis. Stat. § 19.32).

Record subject - An individual about whom personally identifiable information is contained in a record (Wis. Stat. § 19.32).

804.2 POLICY

The Marquette University Police Department is committed to providing public access to records in a manner that is consistent with the Wisconsin Public Records Law (Wis. Stat. § 19.31 through Wis. Stat. § 19.39).

804.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Chief of Police shall designate a Custodian of Records. The responsibilities of the Custodian of Records include, but are not limited to:

- (a) Managing the records management system for the Department, including the retention, archiving, release and destruction of department public records.
- (b) Maintaining and updating the department records retention schedule including:
 1. Identifying the minimum length of time the Department must keep records.
 2. Identifying the department division responsible for the original record.
- (c) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records.
- (d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- (e) Establishing rules regarding the processing of subpoenas for the production of records.

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- (f) Ensuring a current schedule of fees for public records as allowed by law is available.
- (g) Ensuring the prominent display of information regarding the department's public records policy, including the procedure to request information, the established times and places to make requests or obtain copies of records, and the costs (Wis. Stat. § 19.34).
- (h) Ensuring juvenile records are distinguished from adult records and stored separately.
- (i) Establishing procedures for the destruction of both adult and juvenile records, when appropriate and in accordance with established retention schedules.

804.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Any department member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

804.4.1 REQUESTS FOR RECORDS

The processing of requests for any record is subject to the following:

- (a) The Department is not required to create records that do not exist (Wis. Stat. § 19.35(1)(L)).
- (b) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released (Wis. Stat. § 19.36(6)).
 - 1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
- (c) The Custodian of Records shall determine if the requested record is available and, if so, whether the record is exempt from disclosure. Either the requested record or the reason for nondisclosure will be provided as soon as practicable and without delay (Wis. Stat. § 19.35(4)).
- (d) If the request cannot be completed within 10 days from the initial date of request and unless unusual circumstances preclude doing so, the requestor shall be notified in writing of the delay.

804.4.2 RECORDS INVOLVING THE REQUESTER

If a request is received from an individual or a person authorized by the individual who identifies him/herself and states that the purpose of the request is to inspect or copy a record containing personally identifiable information, the request shall be granted or denied access in accordance with Wis. Stat. § 19.35(4)(c).

All requests from criminal defendants and his/her authorized representatives, including attorneys, shall be referred to the District Attorney, General Counsel or the courts.

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804.4.3 NOTICE REQUIREMENTS IN LIMITED CIRCUMSTANCES

If a record subject to Wis. Stat. § 19.356(2) or any portion thereof, is released, the Department shall notify the affected individual before access is granted and within three days after making the decision to grant access (Wis. Stat. § 19.356(2)(a)).

Within five days after receipt of notice by the Department, an individual may provide written notification of his/her intent to seek a court order restraining the Department from providing access to the requested record (Wis. Stat. § 19.356(3)).

Within 10 days after receipt of a notice by the Department, an individual may commence an action seeking a court order to restrain the Department from providing access to the requested record (Wis. Stat. § 19.356(4)).

The Department shall not provide access to the requested record within 12 days of sending a notice to an individual pertaining to that record. In addition, if the individual commences a court action, the Department shall not provide access to the requested record during pendency of the action. The Department shall not provide access to the requested record until any appeal is decided, until the period for appealing or petitioning for review expires, until a petition for review is denied, or until the Department receives written notice from the individual that an appeal or petition for review will not be filed, whichever occurs first (Wis. Stat. § 19.356(5)).

804.4.4 DENIALS

The denial of a request for records is subject to the following:

If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request. The denial shall inform the requester that the written request for the record release determination is subject to review by a court or upon application to the Attorney General or a District Attorney (Wis. Stat. § 19.35(4)(b)).

804.4.5 RECORDS DESTRUCTION

No record shall be destroyed at any time after the receipt of a request for inspection or copying of the record until after the request is granted or until at least 60 days after the date that the request is denied or, if the requester is a committed or incarcerated person, until at least 90 days after the date that the request is denied.

If the Department receives written notice that an action relating to a record has been commenced in court, the record may not be destroyed until after the order of the court is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record, and the order is not appealed, the record may not be destroyed until after the request for inspection or copying is granted (Wis. Stat. § 19.35(5)).

804.5 RELEASE RESTRICTIONS

Examples of release restrictions include:

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- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record or any department record, including traffic crash reports, are restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722; Wis. Stat. § 19.36(10)).
- (b) Any record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstance and that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding. This includes any record that is collected or maintained in connection with such an action or proceeding (Wis. Stat. § 19.35(1)(am)).
- (c) Any record containing personally identifiable information that, if disclosed, could result in (Wis. Stat. § 19.35(1)(am)):
 - 1. Endangering an individual's life or safety.
 - 2. Identifying a confidential informant (Wis. Stat. § 19.36(8)).
 - 3. Endangering security, including that of the staff or population of a detention facility.
- (d) Any record that is part of a records series that is not indexed, arranged or automated in a way that the record can be retrieved by use of an individual's name, address or other identifier (Wis. Stat. § 19.35(1)(am)).
- (e) Any record with the home, school or work address of a participant in the Wisconsin Department of Justice Address Confidentiality Program (Wis. Stat. § 19.35(1)(am)2m).
- (f) Crime victim and witness information (Wis. Stat. § 950.04).
- (g) Juvenile-related information (Wis. Stat. § 938.396; Wis. Stat. § 48.78; Wis. Stat. § 48.396; Wis. Stat. § 938.78).
- (h) Search warrants until they have been executed (Wis. Stat. § 968.21).
- (i) Investigative information obtained for law enforcement purposes, when required by federal law or regulation to be kept confidential, or when confidentiality is required as a condition to receipt of state aids (Wis. Stat. § 19.36(2)).
- (j) Information in employee personnel records (Wis. Stat. § 19.36(10)).
- (k) Patient health care records (Wis. Stat. § 146.82).
- (l) Records where the government's interest in nondisclosure outweighs the public's interest in disclosure.

804.6 SUBPOENAS AND DISCOVERY REQUESTS

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

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Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, General Counsel or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

804.7 RELEASED RECORDS TO BE MARKED

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the department name and to whom the record was released.

Each audio/video recording released should include the department name and to whom the record was released.

804.8 SECURITY BREACHES

Members who become aware that any Marquette University Police Department system containing personal information may have been breached should notify the Office Manager as soon as practicable.

The Office Manager shall ensure the required notice is given to any person whose unsecured personal information is reasonably believed to have been acquired by an unauthorized person. If the breach involves more than 1,000 individuals, notice of the timing, distribution and content of the notices shall also be given to each consumer reporting agency (Wis. Stat. § 134.98).

Notice shall be given within a reasonable time, not to exceed 45 days, after the Marquette University Police Department discovers the breach. Notice may be delayed if notification will impede an investigation or homeland security (Wis. Stat. § 134.98).

For the purposes of the notice requirement, personal information includes an individual's first name or first initial and last name in combination with any one or more of the following (Wis. Stat. § 134.98):

- (a) Social Security number
- (b) Driver's license number or Wisconsin identification card number
- (c) Full account number, credit or debit card number or any required security code, access code or password that would permit access to an individual's financial account
- (d) The individual's DNA profile (as defined by Wis. Stat. § 939.74), or the individual's biometric data, including fingerprint, voice print, retina or iris image or any other unique physical representation

If the breach reasonably appears to have been made to protected information covered in the Protected Information Policy, the Office Manager should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

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804.9 EXPUNGEMENT

Expungement orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall expunge such records as ordered by the court (Wis. Stat. § 973.015; Wis. Stat. § 938.355). Records may include, but are not limited to, a record of arrest, investigation, detention or conviction. Once the record is expunged, members shall respond to any inquiry as though the record did not exist.