



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

265 – OPEN RECORDS

GENERAL ORDER: 2017-33
ISSUED: May 30, 2017

EFFECTIVE: May 30, 2017

REVIEWED/APPROVED BY:
Assistant Chief Carianne Yerkes
DATE: May 9, 2017

ACTION: Amends General Order 2015-21 (May 7, 2015)

WILEAG STANDARD(S): 10.1.1, 10.2.1

265.00 PURPOSE

This Milwaukee Police Department open records policy outlines the proper procedures to be followed with respect to the handling of any and all public record requests made under the Wisconsin Public Record Law (Wis. Stat. § 19.31-39).

265.05 POLICY (WILEAG 10.1.1)

It shall be the policy of the Milwaukee Police Department that all records and reports are maintained in an orderly manner and that the department takes privacy and security precautions to ensure protection of all records and confidentiality of citizens.

265.10 PROCEDURES (WILEAG 10.1.1)

A. SEPARATION OF ADULT AND JUVENILE ARREST RECORDS

To prevent unauthorized access and release, adult arrest records shall be designated with the letter "P" and juvenile arrest records shall be designated with the letter "J" in the department's Corrections Management System (CMS).
(WILEAG 10.1.1.1)

B. COLLECTION, RETENTION, STORAGE AND RELEASE OF JUVENILE IDENTIFICATION RECORDS

1. Juvenile identification records shall be collected and maintained in the department's CMS. Police records, including memorandum books, shall not be open to inspection or their contents disclosed except under Wis. Stat. § 938.396(1b)(1g)(1m)(1r)(1t) or Wis. Stat. § 938.293 (juvenile discovery). This subsection does not apply to other law enforcement or social welfare agencies or any district attorney's or U.S. Attorney's office.
2. Identifying fingerprints and photographs of juveniles are collected for all criminal offenses and municipal violations as mandated by Wis. Stat. § 165.83. Photographs shall be stored electronically on a secure network and only reproduced for legitimate law enforcement purposes.
3. Dissemination of juvenile records is restricted to authorized personnel for legitimate purposes.
(WILEAG 10.1.1.2)

C. LIMITATION OF ACCESS TO AGENCY FILES

To ensure integrity and proper safeguarding of records, appropriate security measures shall be maintained as well as screening and training of members directly involved in the department's automated reporting system, corrections management system, and records management system. Members shall utilize their unique PeopleSoft number and password to access the department's automated reporting system, corrections management system, and records management system.

(WILEAG 10.1.1.3)

265.15 RECORDS OPEN TO THE PUBLIC (WILEAG 10.2.1)

A. There is strong statutory presumption in favor of the right of the public to inspect records in the custody of a public authority. Wis. Stat. § 19.35(1)(a).

1. The definition of what constitutes a public "record" is extremely broad, encompassing almost any memorialization of information (Wis. Stat. § 19.32(s2)).
2. Electronic records are subject to the public records law, the same as "hard copy" records. These would include, but are not limited to:
 - a. All records stored on MPD databases and computers.
 - b. Records stored for the department by a private contractor.
 - c. All department email.
 - d. Any department records generated or stored on members personal computers, personal storage media or any other personal equipment used for department business.
 - e. Department records generated or stored on any 'social media' e.g., Twitter, Facebook, instant messaging, text messaging, or other electronic media.
 - f. Any audio or video recorded by the department.
3. The current version of the Wisconsin Department of Justice Public Records Law Compliance Outline and/or the assistant city attorney will be consulted regarding questions on handling public records requests.
4. The Milwaukee Police Department has posted a "Public Records Notice" at all districts and the Police Administration Building. The public notice is posted so that citizens can be directed in the proper way to obtain a public record (Wis. Stat. § 19.34(1)).

265.20 RESPONSIBILITY FOR PROCESSING PUBLIC RECORDS REQUEST

Open Records is responsible for managing all public records requests. The Internal Affairs Division (IAD) is responsible for handling public records requests for all records kept at IAD.

A. The MPD records custodian is the Chief of Police.

B. The Chief's delegated records custodians are:

1. The assistant chiefs of police.
2. The chief of staff.
3. The Human Resources administrator.
4. The Internal Affairs Division commanding officer.
5. The police information systems director.
6. The Open Records supervisor.
7. The Civil Investigations Section supervisor.

265.25 REQUEST FOR RECORDS FROM PUBLIC

- A. All requests for Milwaukee Police Department records must be made at/through Open Records. Once the request is properly documented at Open Records, it will be forwarded to the appropriate division as necessary.
- B. The public may submit requests for copies of, or access to, records during regular office hours between 7:30 a.m. and 3:30 p.m., Monday, Wednesday, and Friday (Open Records is closed on Tuesdays and Thursdays), holidays excluded, at the Open Records counter located at 2333 N. 49th Street 2nd Floor. Requests may also be submitted by letter mailed to: Milwaukee Police Department, Open Records, P.O. Box 531, Milwaukee, WI 53201 or by email at mpdopenrecords@milwaukee.gov.

265.30 ACCESS TO RECORDS BY DEPARTMENT PERSONNEL (WILEAG 10.1.2)

Access to reports from Open Records and Records Management Division shall be available to operations personnel at all times.

265.35 PROCEDURES FOR HANDLING PUBLIC REQUESTS FOR RECORDS

- A. Record requests can be made verbally or in writing. Requests will be handled as soon as practicable and without delay in the order in which they are received. Basic requests taken over the counter will be handled immediately, if possible.
1. All public record requests will be logged at Open Records.
 2. Requests made in writing, by letter or e-mail will be timed-stamped as soon as possible and logged at Open Records. Verbal requests are taken in person only. Written requests will have detailed documentation on the Open Records case management form.
 3. Requests involving "sensitive" issues, e.g., employment/privacy consideration, Internal Affairs Division confidentiality, high profile police investigation/action, or executive personnel involvement require notification to the Open Records supervisor. Open Records staff should document the notification on the Open Records case management form.
 4. All media requests require notification to the Open Records supervisor, who will

make notifications to the manager of Public Relations.

5. Requests involving disciplinary or personnel records will be routed to the IAD Civil Investigations Section supervisor, after being received and recorded at Open Records.
6. Basic requests of documents, photos, audio or video recording that involve Internal Affairs Division confidentiality, high profile police investigation/action or executive personnel involvement will be handled in an expeditious manner.
7. Data requests require notification to the appropriate assistant chief or inspector. The appropriate assistant chief or inspector will be responsible for the gathering and vetting of the appropriate statistical data. This data will be returned to Open Records in a timely manner for redaction and dissemination. Time to locate this data will be tracked and reported to Open Records. Questions regarding the release or redaction of this information will be directed to the Open Records commanding officer or supervisor. A receipt letter will be sent for written requests for this type of data.
8. Records will be reviewed and appropriate redactions made before giving any document to the requester. If the request was made in writing, by letter, or by email, and redactions are necessary, Open Records shall provide a written explanation that must include all statutory, common law, or public policy reasons for the redactions. The written response must also inform the requester of his or her right to court review of the denial under *mandamus* action. Open Records will contact the city attorney for advice as necessary. Open Records is not required by law to give an explanation for redactions to the requester if the request was made verbally.
9. If a request is made verbally, it can be denied without a verbal explanation at the time of the request. A request for the reasons denying the verbal request must be made in writing, by the requester, within 5 business days of the oral denial. If an authority denies a written request, in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request. Wis. Stat. § 19.35(4)(d).
10. A receipt letter may be sent to the requester informing them that their request has been received, is being processed and will be produced as soon as practicable if the request cannot be processed immediately or requires the following:
 - a. Legal opinion by a city attorney.
 - b. Location/redaction of documents that will be time-consuming.
 - c. Research into request that will cause delay.

B. REQUESTS FOR VIDEO AND AUDIO

1. Open Records will reproduce any video or audio that is accessible by Open Records computers.

2. If a request requires a VHS tape, DVD, or CD of evidence video generated outside the department, the Forensics Section will obtain and reproduce the video. Once the video is reproduced, it will be sent to Open Records for dissemination to the requester.
3. Open Records will obtain department generated evidence video or audio directly from the Property Control Section.
4. Reproduced video or audio for requests will consist of the entire relevant video of an incident. Any required redactions will be made by means readily apparent to the viewer or listener.

C. SENSITIVE REQUESTS

1. Records requests that are considered "sensitive" include but are not limited to:
 - a. Sexual assault.
 - b. Child abuse.
 - c. Child neglect.
 - d. Suicide.
 - e. Photos/videos depicting images that would be considered graphic, horrific and/or could "shock the senses."
 - f. An ongoing criminal investigation.
2. Decisions on release of "sensitive" records must be made on a case-by-case basis, subject to statutory, common law, and public policy considerations. Open Records will be responsible for conducting the required balancing test. Release of records that are considered "sensitive" may require a *Waiver and Release of Claims* form to be signed by the victim or next of kin. The form must be witnessed and signed by a notary public prior to release of the record. Open Records will contact the city attorney for legal advice as necessary and notify the appropriate assistant chief or inspector of sensitive requests.
3. All information related to the disposition of the record release will be documented on the Open Records case management form.

D. CRIMINAL INVESTIGATION RECORDS

1. Records involving a criminal investigation conducted or managed by the respective Investigations Division include, but are not limited to:
 - a. Homicide.
 - b. Shooting.
 - c. Robbery.
 - d. Critical incident.
 - e. Suicide.
 - f. Pursuits involving injury.
 - g. Fatal fire.

2. Release of records will require approval by the assistant chief or inspector of the respective Investigations Division or his/her designee. Contact can be made either by email or phone.
3. Information related to the decision and disposition of the record release will be documented on the Open Records case management form.

E. MEDIA REQUESTS

1. The Open Records supervisor or commanding officer will notify the manager of Public Relations and appropriate assistant chief or inspector of all media requests. A follow-up email shall be sent to the manager of Public Relations for any verbal notification. Open Records staff will document the notification and/or manager of Public Relations instruction along with the original request document. The request will be time stamped immediately upon arrival.
2. Redactions will be made by Open Records in accordance with the law. Open Records will contact the city attorney for legal advice as necessary. Prior to release of the requested records, the manager of Public Relations will again be notified via email or phone alerting him/her of the impending release.
3. Information related to the decision and disposition of the record release, including any reasons for nondisclosure, will be documented on the Open Records case management form.

F. REQUEST INVOLVING COMMAND STAFF MEMBERS

1. Request for records concerning the command staff requires notification to the Open Records supervisor or the commanding officer. Notification should include an attachment with the original request. The Open Records supervisor or commanding officer will make the appropriate notifications to the Office of the Chief. Open Records staff should document the notification on the Open Records case management form.
2. Open Records should mail a receipt to the requester as soon as practicable. The appropriate assistant chief or inspector and/or his/her designee will oversee the release of the record.
3. Prior to release of the requested records a secondary notification will be made to the appropriate assistant chief or inspector and/or his/her designee informing of the impending release.

G. REQUESTS FOR EMPLOYEE RECORDS/DEPARTMENT MEMBER INFORMATION RECORD (PM5 HARD CARD) REQUEST

1. Records request for Milwaukee Police Department member(s) information record require notification to the Open Records supervisor and the police information systems director. Open Records staff should document the notification on the

Open Records case management form.

2. If the release is approved, the information record(s) shall be ordered by contacting the Human Resources Division personnel manager and/or designee. Open Records will consult with IAD regarding release of the record and make all appropriate redactions. Notification pursuant to Wis. Stat. § 19.356 must be provided to the member prior to release of member information records with demerit(s) listed. When the information record is ready for release, it will be hand carried to Open Records. Interdepartmental mail is not to be used. See department member notification requirements below.

Note: If the media makes the request, notification to the manager of Public Relations will be required in addition to the above.

H. REQUEST FOR DEPARTMENT MEMBER EMAIL, TEXT MESSAGING, OTHER SOCIAL MEDIA

1. Public record requests for Milwaukee Police Department members' email require notification to the Open Records supervisor, police information systems director and commanding officer. A copy of the request should be emailed with the notification. Open Records staff should document the notification on the Open Records case management form.
2. If the media makes the request, notification to the manager of Public Relations will be required.
3. Open Records shall notify the director or the commanding officer of the Office of Police Information Systems Services (OPIS) to produce a copy of the requested emails.
4. Prior to release of the requested information, a secondary notification shall be made to the appropriate assistant chief or inspector and/or designee notifying of the impending release.
5. If the request involves the command staff or a subordinate requesting their supervisor's emails, the copies of the emails shall be forwarded to the city attorney for legal advice as necessary.

265.40 DEPARTMENT MEMBER NOTIFICATION REQUIREMENTS

A. MEMBERS INFORMATION

The Milwaukee Police Department, as an employer, is prohibited from disclosing employee records relating to the employee's:

1. Home address, home electronic mail address, social security number and home telephone number unless the employee so authorizes.

2. Information relating to an on-going investigation of possible employment-related misconduct, or potential criminal or civil law violation.
3. Employee examination information, except for the final score, unless otherwise prohibited.
4. Information relating to one or more specific employees that is used by the authority for staff management planning, including performance evaluations and other judgments concerning future salary adjustments or other wage treatments, bonuses, promotions, job assignments, and letters of recommendation. This exception is limited to routine performance evaluations.
5. Within 3 business days of making the decision to disclose the record, the department must provide notice to the employee or public official, either by personal service or by certified mail, of the disclosure decision. The notice must briefly describe the requested record and include a description of the rights of the record subject. Open Records should contact the city attorney for assistance (Wis. Stat. § 19.356(2)(a)).
6. If it has been determined that records relating to a “public official” should be disclosed, the Chief is entitled to notification before release, and is entitled to augment the record if he or she chooses, but does not have a right to go to court to try to block the disclosure of the record.

265.45 REDACTION REQUIREMENTS

- A. All redactions shall be in accordance with statutory, common law and public policy reasons under the balancing test. The balancing test must be conducted by the record custodian, or designee. Contact the city attorney through Open Records for legal advice as necessary.
- B. LOCATION AND COPY COSTS
 1. Fees imposed for copies and labor shall be actual costs, except where a specific fee is established:
 - a. .25 cents per copied page.
 - b. Mailing/shipping charges.
 - c. Audiotape or videotape copies.
 - d. Photographic copies.
 - e. Transcription of records.
 - f. Certification of records when requested.
 - g. Computer programming costs.
 - h. Other actual and direct costs allowed by statute and court decisions.
 2. Location Fee: a separate fee may be imposed for staff time used to locate and/or assemble records, or to create a computer program/query if the cost is \$50 or more. To determine the fee when reimbursement for staff time is allowed, multiply

the hourly cost of the affected staff member by the time used to locate and assemble records. The department must document staff time in case of a legal challenge. The location fee shall be determined separately from the other fees listed herein.

3. The department may require prepayment if the total costs are more than \$5. For large public records requests, Open Records shall establish a reasonable estimate of the total compliance costs and require prepayment. Contact the city attorney for legal advice as necessary.

C. BALANCE TEST

1. If there is no statutory or common law exception, the department must perform a balancing test to determine if there is any public interest in nondisclosure that outweighs the presumption that the records are subject to disclosure.
2. If the balance tips in favor of disclosure the department must give written notice to the member prior to disclosing:
 - a. Information relating to a closed investigation into a disciplinary matter involving the employee.
 - b. Records obtained through a subpoena or search warrant.
 - c. Records from a previous employer that reference the employee.



EDWARD A. FLYNN
CHIEF OF POLICE