
Records Maintenance and Release

806.1 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.

806.1.1 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).

806.2 POLICY

The Menomonie 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).

806.2.1 PROCESSING OF REQUESTS

Any member of the public, including the media and elected officials may request to inspect records of this department by submitting a request for each record sought and paying any associated fees (Wis. Stat. § 19.35(3)).

The processing of requests is subject to the following:

- (a) The member processing the request 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 non-disclosure will be provided as soon as practicable and without delay (Wis. Stat. § 19.35(4)).
- (b) 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.
- (c) In accordance with Wis. Stat. § 19.35(1)(L), the Department is not required to create records that do not otherwise exist in order to accommodate a public records request (Wis. Stat. § 19.35(1)(L)).

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- (d) Requests by elected officials or other government agencies for records that are not open to public inspection should be referred to the Administrative Services Bureau Commander for a determination as to whether the records will be released.

806.2.2 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).

806.2.3 SEPARATION OF INFORMATION

If a record contains both public and non-public information, the public information that is subject to disclosure shall be provided and the non-public information not subject to disclosure shall be deleted from the record before release (Wis. Stat. § 19.36(6)).

806.2.4 NON-PUBLIC RECORDS

Grounds for denying public access to a record may include but is not limited to (Wis. Stat. § 19.35(1)(am)):

- (a) 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.
- (b) Any record containing personally identifiable information that, if disclosed, could result in:
 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.
 4. 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.
- (c) Except as otherwise provided by law, whenever federal law or regulations require or as a condition to receipt of aids by this state require that any record relating to investigative information obtained for law enforcement purposes be withheld from public access, then that information is exempt from disclosure (Wis. Stat. § 19.36(2)).
- (d) Requests for information that the Department believes is classified, restricted, confidential or private and wishes to withhold from the public and that is not specifically allowed by statute or judicial decision may be sent to the City Attorney for a decision.

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806.2.5 DENIED REQUESTS

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)).

If a record is withheld, the requestor may pursue and bring an action for mandamus either through the court or the district attorney or attorney general to require production of the records sought (Wis. Stat. § 19.37(1)).

806.2.6 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)).

806.3 REPORT RELEASE RESTRICTIONS

Absent a valid court order or other statutory authority, records or unrestricted portions of such records of this department may be made public subject to the following restrictions.

806.3.1 GENERAL CASE AND CRIME REPORTS

Reports containing any of the items listed below will not be released:

- (a) **Victim information** - Victims of crimes who have requested that his/her identifying information be kept confidential, victims who are minors and victims of certain offenses shall not be made public.
- (b) **Confidential information** - Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved or information that would endanger the successful completion of the investigation or a related investigation shall not be made public (Wis. Stat. § 19.36(8)):
 - 1. Analysis and conclusions of investigating officers may also be exempt from disclosure.
 - 2. If it has been noted in any report that an individual wishes to protect his/her right to privacy under the Wisconsin Constitution, such information may not be subject to public disclosure.

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- (c) **Specific crimes** - Certain types of reports involving, but not limited to, the records of children and juveniles who are subjects of investigations or other proceedings pursuant to Wis. Stat. Chapter 48 and Chapter 938 except as provided in Wis. Stat. § 48.396(1), Wis. Stat. § 48.396(1b), Wis. Stat. § 48.396(1d), Wis. Stat. § 48.396(5), Wis. Stat. § 48.396(6), Wis. Stat. § 938.396(1), Wis. Stat. § 938.396(1j) and Wis. Stat. § 938.396(10).
- (d) **General Information** - Absent statutory exemption to the contrary or other lawful reason to deem data from reports confidential, information from unrestricted agency reports shall be made public upon proper request.

806.3.2 ARREST REPORTS

Arrestee information shall be subject to release in the same manner as information contained in other reports as set forth above.

In addition to the restrictions stated above, all requests from criminal defendants and his/her authorized representatives including attorneys shall be referred to the District Attorney, City Attorney or the courts.

Local criminal history information including, but not limited to, arrest history and disposition, fingerprints and booking photos shall only be subject to release to those agencies and individuals as prescribed by law.

806.3.3 TRAFFIC CRASH REPORTS

Traffic crash reports and related supplemental reports shall be subject to release to those persons authorized pursuant to Wis. Stat. § 346.70(4)(f) and subject to any fee required.

806.3.4 PERSONNEL RECORDS

Personnel records, medical records and similar records that would involve personal privacy shall not be made public (Wis. Stat. § 19.36(10)).

If a personnel record, or any portion thereof, containing personal information is released, the Department shall notify the affected member 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, a member 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 a member 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 a member pertaining to that record. In addition, if the member 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

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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 member that an appeal or petition for review will not be filed, whichever occurs first (Wis. Stat. § 19.356(5)).

806.4 SEARCH WARRANT RECORDS

Search warrants are confidential and shall be kept confidential until their execution (Wis. Stat. § 968.21).

806.5 JUVENILE RECORDS

Records of children shall be kept separate from records of adults and shall not be open to inspection or their contents disclosed except as provided by law or by order of the court (Wis. Stat. § 938.396(1); Wis. Stat. § 48.78; Wis. Stat. § 48.396(1); Wis. Stat. § 938.78).

806.6 OTHER RECORDS

Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including, but not limited to provisions of the court or evidentiary rules relating to privilege or to the security of the electronic technology systems used by the Department.

The Department maintains the right to refuse to disclose or release any other record when it would appear that the public's interest in accessing such record is outweighed by the need for nondisclosure.

Any record created exclusively in anticipation of potential litigation involving this department shall not be subject to public disclosure.

806.6.1 PERSONAL IDENTIFYING INFORMATION

Members shall not access, use or disclose personal identifying information, including an individual's photograph, Social Security number, driver identification number, name, address, telephone number and the individual's medical or disability information, which is contained in any driver's license record, motor vehicle record or any department record 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).

806.7 SUBPOENA DUCES TECUM

Any subpoena duces tecum or discovery request should be promptly provided to a supervisor 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.

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