



CITY OF MADISON POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE



Records Inspection and Release

Eff. Date 11/29/2021

Purpose

The Madison Police Department (MPD) recognizes that employees of this agency will need to access different records within our agency for a variety of reasons and that records created and/or maintained by this agency are subject to release as outlined in the Wisconsin Public Records Laws. This standard operating procedure (SOP) outlines when it is appropriate for employees to access MPD records and the procedures for processing public requests for access to MPD records. This procedure also recognizes that citizens accessing our records through our public records request process is an essential element of establishing trust within our community and confidence in this agency.

Procedure for Requesting a Record

The MPD will accept an oral, electronic, or written request from a member of the public who desires to inspect MPD records. All public requests and releases of records must be coordinated through the Public Records Unit. This unit will maintain a log of all records released, identifying the requestor (if known), the date the request was made, and the date the request was processed. The MPD begins with the presumption that our records are open to inspection and copying, recognizing that there are some exceptions. We understand that requestors do not have to identify themselves or provide a reason for their request. If no responsive record exists, a record does not have to be created to fulfill a request.

The public may submit their request for records during regular business hours between 8 a.m. - 4 p.m., Monday through Friday, holidays excluded, at the Records Section in person, electronically, by mail, or by phone. Requests made by mail should be mailed to: Madison Police Department, Public Records Unit, 211 S. Carroll St, Room GR-10, Madison, WI 53703 or by email to PDrecords@cityofmadison.com.

All records requests will be handled as soon as practicable and without delay in the order in which they are received.

All requests involving "sensitive" issues (personnel file contents, Professional Standards & Internal Affairs (PS&IA) documents/investigations, high profile investigations) require notification to the Office of the Chief of Police and will be handled by the designated Records Custodian.

All media requests require notification to the Public Information Officer (PIO) and to the Chief's Office and will be handled by the designated Records Custodian.

A copy of all data releases to the public by any MPD employee will be routed through PD Records.

Requests for MPD records from other law enforcement agencies should be routed to pdrecords@cityofmadison.com unless a release is necessary for urgent public safety. Sharing records deemed urgent between the MPD and fellow law enforcement agencies is permissible for "law enforcement investigative purposes", as long as the Public Records Unit is notified via email at pdrecords@cityofmadison.com with the necessary information for the records release log. Detectives and Detective Lieutenants may share reports with other law enforcement for investigative purposes and shall copy pdrecords@cityofmadison.com when they released such records. MPD members releasing records to fellow law enforcement agencies shall consult with the Dane County District Attorney's Office regarding release when such release carries potential for impacting open cases.

PERSONS WHO MAY CONSIDER REQUESTS FOR PUBLIC INSPECTION

The following officers of the MPD will consider requests for the inspection of public records and documents in the custody of the MPD: Chief of Police, Assistant Chiefs of Police, trained Records

Custodians, Public Information Officers, PS&IA Commander, and records staff assigned to the Records Unit.

Budget requests and logistical information will be released only by the Chief of Police or his/her designee.

All comments referring to inter-departmental memos, orders, and communications will originate from the Chief of Police.

Plans, personnel matters, and prepared releases concerning specific news items will be released only by permission of the Chief of Police.

Personnel photographs will be released only by permission of the Chief of Police.

Investigative photographs from an active or ongoing investigation will be released by the Commanding Officer of the investigating district/section.

ACCESS TO POLICE RECORDS

Access to records maintained by the MPD shall only be authorized for official business needs. This regulation prohibits all unofficial and/or personal use of police records. This includes accessing or retrieving any personally identifiable information of another employee (to include date of birth, home address, home/cell phone numbers, social security numbers, and driver's license numbers). Tampering with records by members of the MPD is prohibited.

Members of the MPD shall not divulge the contents of police records to anyone outside the MPD without permission from their Commanding Officer or from a Records Custodian. The only exception to this is that it is permissible to share information with other law enforcement agencies and other governmental or service agencies as necessary to ensure public safety (e.g., Dane County Human Service, Journey Mental Health). No member of the MPD shall otherwise divulge any matters relating to official police business without first receiving authorization. The MPD Records Unit shall be notified by any MPD employee of any release of records made to another agency under this provision. Such notification should be sent via email to PDrecords@cityofmadison.com.

SUBPOENAS

Subpoenas solely for police reports or other investigative files should be directed to MPD Records. Subpoenas for personnel or disciplinary records should be directed to PS&IA.

If an employee receives a subpoena to appear at a court/judicial proceeding and the subpoena includes a requirement to produce records, the employee should:

- Review the requested documents with his/her commanding officer. The commanding officer will assess the records in question and determine whether any special response to the subpoena is required (such as a protective order or motion to quash the subpoena). If necessary, the City Attorney's Office will be consulted.
- Absent any special circumstances, the employee may bring a copy of the specified records to the court/judicial proceeding and provide them.
- The employee who has been subpoenaed will email a copy of the released documents to PD Records along with a copy of the subpoena.

INSPECTION VS. NON-INSPECTION OF RECORD

Records are presumed to be open for public inspection unless access is controlled by a specific state or federal statute, case law restricts access to the record, or the presumed public benefits of inspection are outweighed by the harm that would be incurred to the public interests by inspection of the record.

When access to a record is being denied in whole, or in part, through redaction of information, the person requesting inspection of the record shall be informed that their request is being denied. This denial can be orally provided if the request was made verbally. All other requests must be responded to in writing. This response will explain the statutory, common law, or public policy reasons for the denial or redactions contained within the document. This written response must also inform the requestor of his or her right to court review of the denial under mandamus action or upon application to the Wisconsin Attorney General or to the Dane County District Attorney. The Public Records Unit is not required by law to give an explanation for redactions to the requestor if the request was made verbally. Written responses for the denial of access to a record must be reviewed by the City Attorney's Office in accordance to Madison General Ordinance (MGO) 3.70(6). The Madison Police Department uses form letter replies, approved by the City Attorney's office, for most simple responses.

When a request cannot be fulfilled within ten (10) business days, the requestor shall be informed that their request has been received, is being processed, and will be produced as soon as practicable. The requestor shall also be provided with the reasons why the request cannot be fulfilled (if the location/redaction of the documents will be time consuming, or research into the request will cause delays), as well as the anticipated amount of time when the request will be complete.

Requests for video and audio records will be forwarded to the Forensic Services Video Technology staff for a copy of these records to be generated. Dissemination of these records will follow the above-stated process.

Requests for employee disciplinary investigations or potential law violation(s) will be processed by the designated Records Custodian. Prior to release, a notice will be provided to the affected employee(s) as required by State Law (Wisconsin State Statute §19.356). The Chief's Office will be notified of all requests of this type.

Prepayment for records shall be required as set forth in MGO 3.70(4)(b)3.e.. This includes requests where location costs exceed \$50.00, where reproduction costs exceed \$5.00, or when the requestor is a prisoner/institutionalized person. Copy costs are determined by the City's Information Technology Director and by the Finance Director.

PUBLIC RECORDS OR DOCUMENTS WHERE RELEASE MAY BE DENIED

Certain records and documents are confidential under Wisconsin law or common law and are precluded from public inspection. In the following instances, inspection may be limited or denied to the public:

1. Juvenile Records

Requests for inspection of children's police records may not be granted except to representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child involved. (WI §48.26 and 938.396).

Wisconsin §938 and 48.396 allow certain persons access to juvenile records without obtaining a court order. While these certain persons are generally referenced below, additional requirements may apply to the various exceptions:

- Legal Guardian or Custodial Parent (or to any person designated in writing by a legal guardian or custodial parent)
- Subject of Report (if over 14 years of age)

- News Media
- Victim-Witness Coordinators
- Victims of the Juvenile Act (but only for the purposes of collecting for their losses)
- Law Enforcement
- Social Service Agency with legal authority
- Schools as allowed under Wisconsin §118.127
- The identity of the requestor must be verified prior to any release of information to ensure they are entitled to receive the record. Acceptable forms of identification include the following:
 - Photo Identification of party requesting record, and
 - A Birth Certificate verifying the relationship with the child, or
 - A Court Order showing legal guardianship

Information will not be released if the case in question is an active or pending investigation or prosecution and the release of that information would jeopardize the investigation/prosecution; or if the release would subject an individual to threats of harm or intimidation. The identity of a reporter of child abuse shall not be released; various provisions of WI §48.981(7) prohibit the disclosure of a reporter's identity, including the extraordinary prohibition that such disclosure shall not even be made to a subject's attorney.

If the requestor requests a police report that contains information on a juvenile and the requestor does not provide proof of entitlement to the information, juvenile information will be redacted in its entirety.

2. Attorney-Client

Certain information contained in public records and documents in the MPD is protected by the attorney-client privilege.

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