

# 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.

## **804.2 POLICY**

The Missoula Police Department is committed to providing public access to records in a manner that is consistent with the Montana Constitution and public records laws. In accordance with MCA Title 44, Chapter 5 Criminal Justice Information, the Missoula Police Department shall not disseminate confidential criminal justice information unless the person or agency requesting the information meets all criteria for release of information as listed in statute. Information contained in association to case file information that is designated as public criminal justice information may be disseminated without restriction to the person or agency requesting such information.

## **804.3 CUSTODIAN OF RECORDS**

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 preservation, retention, archiving, release and destruction of department public records (§ 2-6-1012, MCA; § 2-6-1013, MCA).
- (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) Identifying records that are essential, as defined by § 2-6-1002, MCA, and ensure such records are efficiently and effectively secured (§ 2-6-1014, MCA).
- (f) Establishing rules regarding the processing of subpoenas for the production of records.
- (g) Ensuring the availability of a current schedule of fees for public records as allowed by law (§ 2-6-1006, MCA; § 2-6-1008, MCA).

## **804.4 PROCESSING REQUESTS FOR PUBLIC RECORDS**

Any department member who receives a request for records shall route the request to the Custodian of Records or the authorized designee. Montana Code Annotated and Montana State Constitution make certain information public and failing to release that information is punishable

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by state law. The Missoula City or County Attorney must be consulted prior to release of any report involving pending persecution to determine if the release would impair the prosecution or civil proceeding in cases involving City or County of Missoula interests, real, or implied.

#### 804.4.1 REQUESTS FOR RECORDS

The processing of requests for records is subject to the following (§ 2-6-1006, MCA):

- (a) Requests for public information shall be responded to in a timely manner to the requester by:
  - 1. Making the public information maintained by the Department available for inspection and copying.
  - 2. Providing the requester with a time estimate to fulfill the request if the public information cannot be readily identified and gathered, and an estimate of any applicable fees.
- (b) The Department is not required to create records that do not exist.
- (c) The Department is not required to alter or customize public information to provide it in a form specified to the need of the requester.
  - 1. If the Department agrees to customize a records request, the costs of the customization may be included in fees charged.
- (d) 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.
  - 1. A copy of the redacted release should be maintained for proof of what was actually released and as a place to document the reasons for the redaction.

#### 804.4.2 INSPECTION AND COPYING OF INCIDENT, ARREST, OR ACCIDENT REPORTS

- (a) Case Reports: Offense, Incident, and Arrest
  - 1. Requests from Citizens or Involved party
    - (a) Involved Party- Any victim, suspect, witness, business, and/or additional person having a vested interest in the incident or accident. Involved parties are entitled to public information and any information they have stated to or provided a responding officer. If they are requesting additional confidential criminal justice information, they will be referred to the City Attorneys' Office for review of their request. The City Attorney's Office will provide guidance on what information can be released to an involved party.
    - (b) Third Party- Any person, association, organization or representative acting on behalf of an involved party or represents a financial interest in person or property, with written authorization or consent of involved party. Third parties with consent are entitled to public information and any information the involved party stated to or provided a responding officer.
    - (c) Public- Public information is available to any person, at large, making a request for information regarding a reported incident. Public information

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will be available at the police department. The release of public information is limited to the following:

- Incident case number
- Initial complaint description
- Time of initial complaint received, dispatched, and resolved
- General location of incident - with the exception of possible victim identity

2. Requests from other criminal justice agencies- All requests for reports must be in writing received on the agency's letterhead or via use of CJIN/NLETS telex. The request should indicate the name, address, and contact information of the requestor and must state their involvement.

(b) Traffic accidents/Crash Reports

1. All accident reports and supplemental information filed as required by law are confidential and not open to general public inspection, except as provided in state statute (§ 61-7-114(2)(e) MCA) defining the following parties as entitled to information, inspection, and copying:
  - (a) A person named in the report or involved in the accident.
  - (b) The representative of the person referred to in subsection (2)(a), designated in writing, or the insurance carrier of that person.
  - (c) A party to a civil action arising from the accident.
  - (d) The executor, the administrator, or the attorney representing the executor or administrator if the person is deceased.

(c) Criminal History Record Information

1. The Missoula Police Department disseminates only our agency's criminal history record information. (This includes contacts originated by the Missoula County Sheriff's Office shown within our shared records management system.) It must be clearly expressed to citizens wanting their own criminal record that we can check and respond on our records only. Whenever possible, it is best to refer the citizen to the Montana department of Justice to obtain their complete criminal history record. The MTDOJ will report any convicted misdemeanors and felonies reported throughout the state of Montana. Our record check will reveal Missoula Police Department originated convictions only.
2. All requests for criminal history record checks must be received in writing, and will include the following:
  - (a) Date of request
  - (b) Reason for request (law enforcement, employment, visa)
  - (c) Last, First, Middle, maiden names and known alias of subject
  - (d) Subject's date of birth and/or social security number (at least one)
  - (e) Agency identification, including return phone number and mailing address.

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#### **804.5 RELEASE RESTRICTIONS**

Examples of release restrictions include:

- (a) Any personal identifying information including an individual's photograph; Social Security and driver identification numbers; name, date of birth, address and telephone number; and medical or disability information that is contained in any driver's license record, motor vehicle record or any department record, including traffic accident reports, is 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; § 61-11-506, MCA).
- (b) Confidential information that is constitutionally protected because an individual privacy interest clearly exceeds the merits of public disclosure (§ 2-6-1002, MCA).
- (c) Information relating to an individual, public safety or the security of public facilities, including jails, if release of the information jeopardizes the safety of personnel, the public or inmates (§ 2-6-1003, MCA).
- (d) Confidential criminal justice information, except as allowed by law (§ 44-5-103, MCA; § 44-5-303, MCA).
- (e) Criminal history record information, except as allowed by law (§ 44-5-103, MCA; § 44-5-302, MCA).
- (f) Required traffic accident reports and supplemental reports except as allowed by law (§ 61-7-114, MCA).
- (g) Victim information as provided in § 44-5-311, MCA.
- (h) Certain juvenile-related information (§ 41-5-216, MCA).
- (i) Certain Child abuse information and reports (§ 41-3-205, MCA).
- (j) Certain Adult abuse information and reports (§ 52-3-813, MCA).
- (k) Limited sex crime information and reports (§ 44-5-311(3), MCA).
- (l) Any other information that may be appropriately denied by Montana law.

#### **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.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the County Attorney, City Attorney 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.

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#### **804.7 EXPUNGEMENT/SEALED RECORDS**

Expungement or sealed record orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall expunge or seal such records as ordered by the court. Records may include, but are not limited to, a record of arrest, investigation, detention or conviction. Once a record is expunged, members shall respond to any inquiry as though the record did not exist. A sealed record is confidential and access is not permitted unless allowed by law or court order.