

Policy – Wauwatosa Police Department

POLICY: Open Records Requests

CHAPTER & SECTION: 1.7.1

DISTRIBUTION: All Department Personnel

AUTHORITY: Chief James H. MacGillis

PREPARED BY: Lt. Katie Gierach and Lt. Joseph Roy

EFFECTIVE DATE: November 17, 2022

REVIEW DATE: November 17, 2024

POLICY #: 22-24

I. INTRODUCTION

The purpose of this policy is to establish guidelines for the release of records from the Wauwatosa Police Department to those who request them. The public policy in Wisconsin is to provide the public the greatest amount of access possible to public records (Wis. Stat. §19.31). The general presumption is that public records are open to the public unless there is a clear statutory or common law exception. If there is no statutory or common law exception, the custodian must “decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure.” *Hempel v. City of Baraboo*, 2005 WI 120, 284 Wis.2d 162, 699 N.W.2d 551. This decision is also commonly referred to as the “balancing test,” and is cited in Wis. Stat. §19.35(1)(a). Notwithstanding the presumption of openness, the public’s right to access public records is not absolute. *Journal/Sentinel v. Aagerup*, 145 Wis.2d 818, 429 N.W.2d 772 (Ct. App. 1988)

This policy rescinds Policy #16-08: Drivers Privacy Protection Act – DPPA.

II. DEFINITIONS

A. Records Custodian: The Chief of Police is the official custodian of the records of the Police Department. The Chief may appoint subordinate command officer(s) to perform the role of “deputy custodian(s).” Other police department members may be appointed by the Chief as designees.

B. Record: Any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority.

1. Must be created or kept in connection with official purpose or function of the agency. Content determines whether a document is a “record,” not medium, format, or location.
2. Not everything a public official or employee creates is a public record.
3. “Record” does *not* include drafts, notes, preliminary documents, and similar materials prepared for the originator’s personal use or by the originator in the name of a person for whom the originator is working.

C. Redaction: The censoring or obscuring of part of a record for legal or security purposes.

D. Requester: Generally, any person who requests inspection or a copy of a record.

E. Record Subject: An individual about whom personally identifiable information is contained in a record.

F. Personally Identifiable Information: Information that can be associated with a particular individual through one or more identifiers or other information or circumstances.

G. Balancing Test: The consideration given to a request in which the records custodian must balance the strong public interest in disclosure of the record against the strong public interest in favoring nondisclosure.

1. Wis. State Statute §19.35(1)(a)
2. The records custodian must consider all relevant factors to determine whether permitting record access would result in harm to the public interest that outweighs the legislative policy recognizing the strong public interest in allowing access.

III. STATUTES / CASE LAW / OTHER AUTHROITIES

The below authorities are those which are applicable to this policy. Note that the list is not absolute to the process of responding to requests for records, and that new case law may emerge that can change how the police department responds to requests.

Wisconsin State Statutes:

§19.21(1)	Custody of Records
§19.33	Legal Custodians
§19.34	Procedural Information
§19.35	Access to Records: fees
§19.36	Limitations upon Access and Withholding
§19.365	Rights of Data Subject to Challenge
§48.396	Confidentiality of Children's Records
§51.30	Mental Health Registration and Treatment Records
§146.82	Confidentiality of Patient Health Care Records
§374.70(4)(f)	Release of Uniform Traffic Accident Reports
§938.396	Confidentiality of Juvenile Records
§950.01	Legislative Intent/Rights of Victims and Witnesses of Crime

Case Law:

Senne v. Village of Palatine, Illinois, 695 F.3d 597 (7th Cir. 2012).

Marachch, et al. v. Spears, et al., U.S. Supreme Ct. Dkt. No. 12-25 (June 17, 2013).

New Richmond News and Steven Dzubay v. City of New Richmond, 2016 WI App 43, 370 Wis.2d 75, 881 N.W.2d 339 (2016).

Other Authorities:

18 U.S.C. §2721, et. seq. Federal Driver's Privacy Protection Act.

18 U.S.C. §2725, et. seq. Federal Driver's Privacy Protection Act – Definitions.

42. U.S.C. §1320d, et. seq. Health Insurance Portability and Accountability Act (HIPAA).

Wisconsin Public Records Law Compliance Guide

Each year, the Wisconsin Department of Justice's (DOJ) Office of Open Government releases a comprehensive document titled: "Wisconsin Public Records Law Compliance Guide." This compliance guide may be accessed, downloaded, or printed free of charge from the DOJ website, by visiting <https://www.doj.state.wi.us>. The compliance guide is a resource for Wauwatosa Police Department employees to use when responding to open records requests.

IV. THE OPEN RECORDS REQUEST

A. The Request

Any employee of the police department may receive a records request from a requester. Upon receiving an open records request, the employee will forward the request to the Records Division.

1. Requests do not have to be in writing.
2. The requester generally does not have to identify himself or herself.
 - (a) Certain records may be of a nature, or contain information that may only be releasable to specified persons. Before disclosing records of such nature, the records custodian should confirm before releasing the records that the requester is someone authorized to obtain the requested records / information.
 - (b) The requester's identity may become relevant in the determination of whether there is a safety concern that outweighs the presumption of disclosure.
3. The requester does not need to state the purpose of the request.
 - (a) The Wisconsin Supreme Court, however, has found that the purpose of the request can be relevant in the balancing test.
4. The request must be reasonably specific as to the subject matter and length of time involved.
5. Public records requests received are themselves "records" for the purposes of public records law.

B. The Response

1. The records custodian must respond to a public records request.
2. The response must be provided "as soon as practicable and without delay".
3. If a request is in writing, a denial or partial denial of access also must be in writing.
4. Reasons for denial must be specific and sufficient.
 - (a) The records custodian need not provide facts supporting the reasons it identifies for denying a public records request, but must provide specific reasons for the denial.

5. If part of the record is disclosable, that part must be disclosed.
6. Responses to public records requests are themselves “records” for the purposes of the public records law.

C. The Analysis

The public records law presumes complete public access to public records, but there are some restrictions and exceptions.

1. Suggested Four-Step Approach

(a) Step One: Is there such a record?

- (i) If yes, proceed to Step Two.
- (ii) If no, analysis stops – no record access.

(b) Step Two: Is the requester entitled to access the record pursuant to statute or court decision?

- (i) If yes, record access is permitted.
- (ii) If no, proceed to Step Three.

(c) Step Three: Is the requester prohibited from accessing the record pursuant to statute or court decision?

- (i) If yes, analysis stops – no record access.
- (ii) If no, proceed to Step Four.

(d) Step Four: Does the balancing test weigh in favor of prohibiting access to the record?

- (i) If yes, analysis stops – no record access.
- (ii) If no, record access is permitted.

2. Special Issues

(a) Criminal History Record Information

- (i) Copies of an individual’s criminal history obtained by the police department from the Wisconsin Crime Information Bureau (CIB) are not disclosable via open records. Any person who requests “criminal history” information will be directed to contact the Wisconsin CIB.

(ii) Driver’s Privacy Protection Act (DPPA)

Under the federal DPPA, “personal information” or “highly restricted personal information” obtained from DMV records may not be disclosed, except when permissible by state law (the “state law exception”), or when permissible “for use by any government agency, including any court or law enforcement agency, in carrying out its functions.”

In *New Richmond News v. City of Richmond*, the Wisconsin Court of Appeals ruled that the “state law exception” of the DPPA permits authorities to release traffic accident reports, and their supplemental reports, unredacted, because Wisconsin law specifically mandates that authorities provide access to accident reports. In contrast, the court ruled that authorities may not release unredacted incident reports containing personal information obtained from DMV records. Finally, the court ruled that information obtained from another source, but verified using DMV records, is not subject to the DPPA.

(iii) Emergency Detention Records

- (a) All cases involving an emergency detention under Wis. Stat. §51.15 will be marked “Not for Public.”
- (b) Emergency detention records shall remain confidential and are privileged to the subject individual. Such records may be released only to the persons designated in Wis. Stat. §51.30(4)(b), absent written consent of the subject individual.

(iv) Law enforcement records of children and juveniles

- (a) Many records related to children and juveniles have special statutory confidentiality protections.
- (b) An individual requesting a law enforcement record of a child or juvenile of whom they are the parent or guardian may be required to provide identification and proof of parental relationship/guardianship prior to the police department disclosing the record.

D. Filling the Request

1. Inspection

- (a) A requester may generally choose to inspect a record and/or obtain a copy of the record.

- (b) A requester must be provided facilities for inspection and copying of requested records comparable to those used by the authority's employees.
- (c) A records custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

2. Copies

If a requester does not specify the format in which he or she wishes to receive copies of the requested records, then the records will be provided in the department's default format for the record type.

3. Fees

- (a) The Wauwatosa Police Department will charge fees for records request responses in accordance with the City of Wauwatosa's fee schedule.
- (b) Any fees charged to a requester may only be for the specific tasks identified by the legislature in the fee provisions of Wis. Stat. § 19.35(3), unless otherwise provided by law.
- (c) The department may require prepayment of any fees if the total amount exceeds \$5.00.

V. REQUESTS FOR POLICE DEPARTMENT EMPLOYEE PERSONNEL RECORDS

1. Any Records Division employee who receives a request for any personnel/employment records of a police department employee shall forward the request to the Administrative Sergeant (IT).
2. The Administrative Sergeant will review the request, then forward the request via the chain of command to the Administrative Captain.
3. The Administrative Captain will facilitate the analysis and response to the request following statutory requirements as outlined in Wis. Stat. § 19.356(2)(a).

VI. REQUEST FOR RECORDS OF LOCAL AND STATE PUBLIC OFFICE HOLDERS

1. Any Records Division employee who receives a request for any records pertaining to a holder of local or state public office shall notify the Administrative Sergeant (IT) of its receipt.

2. The Administrative Sergeant will facilitate the analysis and response to the request following statutory requirements as outlined in Wis. Stat. § 19.356(9).

VII. RECORDS RETENTION

1. The Wauwatosa Police Department adopts the General Records Schedule for Wisconsin Municipal and Related Records, dated August 27th, 2018, which was adopted by the Wauwatosa Common Council in 2019. The schedule is attached to this policy by addendum.
2. The General Records Retention Schedule shall be utilized when purging archived documents.
3. Once per calendar year, the Administrative Lieutenant will direct and supervise the destruction of documents which have fallen outside the scope of their retention period.
4. Proper document disposal procedures shall be utilized in the purging of records to ensure confidentiality and completeness of the process.
5. Document shredding services, which have been vetted and employed by the City, may be utilized for this purpose.
6. Once personnel files fall outside the scope of their retention period, they shall be destroyed. The Administrative Lieutenant, or his/her designee, will create a record recording the name and dates of service of the employee prior to record destruction. That record shall then be forwarded to, and maintained by the Administrative Assistant detailed to the Chief of Police. That record shall be kept in perpetuity.
7. This policy does not supersede records retention policies pertaining to records not covered in the General Records Schedule, including documents relating to criminal investigations.



James H. MacGillis
Chief of Police

[THIS PAGE LEFT BLANK FOR ADMINISTRATIVE REASONS]