

18.120 PUBLIC RECORDS REQUESTS

Reference:

Procedure 12.225, Vehicular Crash Reporting
 Procedure 12.700, Search Warrants/Consent to Search
 Procedure 12.900, Processing Juvenile Offenders
 Procedure 18.122, Media Requests
 City of Cincinnati Records Policy
 Electronic Mail Retention Guideline – Cincinnati City Records Commission
 State v. Keller, 85 Ohio St. 3d 279
 Kallstrom v. City of Columbus, 136 F. 3d 1055
 State ex rel. Plain Dealer Publishing Company v. Cleveland, 106 Ohio St. 3d 70
 State ex rel. Dispatch Printing Company v. Johnson, 106 Ohio St. 3d 160
 Ohio Revised Code Section 149.43, Availability of Public Records for Inspection and Copying
 Ohio Revised Code Chapter 1306, Uniform Electronic Transactions Act
 Ohio Administrative Code (OAC) 4501:1-12-02, Driver's Privacy Protection
 Health Insurance Portability and Accountability Act (HIPAA)
 H.B. 9 -126th Ohio General Assembly

Definitions:

Record – Includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in Section 1306.01 of the Ohio Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

Infrastructure Record – Any record which discloses the configuration of critical systems, including, but not limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems.

Any record which discloses security codes used by the Department, as well as, records which reveal the infrastructure or structural configuration of any Department building. A simple floor plan limited to showing the spatial relationship of components of the building is not protected from disclosure.

Security Record – A record containing information used for protecting or maintaining the security of the Department against attack, interference, or sabotage.

A record prepared by the Department to prevent, mitigate, or respond to acts of terrorism, including any of the following:

- Vulnerability assessments or response plans intended to prevent, respond to, or mitigate acts of terrorism;
- *Communication codes for deployment plans of law enforcement or emergency response teams;*

- Specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement agencies and public safety agencies; and
- National security records classified under a federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness.

Information:

Police Records (PRS) and the Public Information Officer (PIO) work in cooperation to release information in response to public records requests.

Computer printout information in OHLEG, ALPR, NCIC, LEADS, CLEAR, or RCIC (as defined in the LEADS User Manual) is not released except to criminal justice personnel for criminal justice purposes.

Ohio Supreme Court decisions in the *Plain Dealer* and *Dispatch Printing Company* cases state certain public employees' home addresses and photographs are not considered public records under Ohio law and should not be released pursuant to a Public Records request. Court ordered requests for employees' personal information will be handled as outlined in Section G.

Department-issued and personally owned electronic devices are capable of intentionally or unintentionally creating a record. These records are governed by the public records act. **The use of personal equipment and/or devices to document any function of the public office should be avoided.** When records are created which document the function or business of the office, they must be maintained in compliance with the Department's record retention schedule for electronic media.

Policy:

The Police Chief is ultimately responsible for the maintenance and release of all Department records. The Police Records Supervising Management Analyst is designated as the records custodian for the Department and is granted the authority to maintain and release all Department records on behalf of the Police Chief.

All requests for public records will be forwarded to Police Records. The administrative sergeant in each district/section/unit will serve as the Department liaison with PRS. In the absence of an administrative sergeant, district/section/unit commanders will designate a supervisor as the liaison. The liaison is responsible for collecting records filed at the district and requested by PRS. The liaison is also responsible for redacting the necessary information before forwarding any records, with the exception of video files, which will be redacted by PRS.

PRS will take requests and release documents and records Monday through Friday, 0800 to 1630 hours, excluding holidays. All requests for records must be referred to PRS for processing and release.

Individuals may request records from PRS via telephone or fax, by appearing in person,

via an online request form at <http://cincinnati-oh.gov/noncms/police/records/>, or by emailing a Form 29, Public Records Request, to cpdrecords@cincinnati-oh.gov. A written request is not necessary for release of records under the Public Records Act.

Written or electronic requests for records and documents occurring outside of PRS normal business hours will be referred the next business day. When on-site records requests are made in person at a district/section/unit outside of PRS's normal business hours, request the individual complete a Form 29.

The requestor is not required to put their request in writing, or to identify themselves or say why they are requesting the record. If the individual completes the Form 29, fax it to PRS for review on the next business day.

All subpoenas for records will be handled by PRS. Districts/sections/units receiving subpoena requests will forward the request to PRS, who will ensure delivery of subpoenaed records **only** to the Prosecutor or Court where the subpoena originated. Records requests via subpoena will **not** be delivered to defense attorneys associated with the criminal/civil case.

If the records released were the result of a civil case involving Department member PRS will make the appropriate notifications to the Law Department and send a copy of the request, including a summary of the records provided, to the Planning Unit for filing. Discovery and records requests by the City Solicitor and Prosecutor's Office should be referred to the Planning Unit.

The Cincinnati Police Department will readily cooperate with any request for release of information or to view information maintained by the Department in accordance with State or Federal law.

On-site requests for the viewing of records will be forwarded to PRS. The viewing of records will take place promptly. PRS personnel will contact the Solicitor's Office whenever there is a question whether to release a record.

Procedure:

A. Requests for Release of Records and Reports

1. Forward all written or electronic requests for records to PRS.
 - a. PRS will follow their Standard Operating Procedure (SOP) for the completion of record requests.
2. PRS will release records and reports pursuant to ORC 149.43 within a reasonable time. As soon as the requested records are available, PRS will immediately notify the requester to respond for pick-up and payment.
 - a. PRS will investigate requests for records that may not be subject to release, and will consult the Solicitor's Office if there are questions regarding release of requested information.
 - 1) If records being requested contain personal information that may be protected under 14th Amendment rights to privacy and bodily integrity, PRS will initiate the process outlined in Section F.

3. PRS will contact districts/sections/units holding requested public records and obtain a copy of those records permitted to be released.
 - a. The affected district/section/unit will:
 - 1) Make the requested number of copies of the record.
 - 2) Redact all information as required by Sections E.1 and F.1 and make the redaction plainly visible. Check the appropriate box on page 2 of the Form 29 indicating information was redacted.
 - a) If any records are not released due to a legal exemption, check the appropriate box on page 2 of the Form 29, indicating the applicable legal authority for withholding each record. This must be done for each record not released.
 - 3) Send the requested number of copies of the record to PRS.
 - 4) If the records stipulated are pursuant to a subpoena, two copies of a Form 30, Authentication of Records, must be completed, notarized and submitted with two copies of the requested records.
 - 5) If necessary, prepare a Form 17 documenting why the records are missing or incomplete.
 - b. PRS will notify the requesting party.
4. PRS will edit information that would endanger the life or safety of law enforcement personnel or is confidential as defined by law and as required by Section F.1.
5. PRS will collect the established fees before releasing public records. PRS may charge actual costs for requests that must be copied off-site.
 - a. PRS will bill for any public records released under the authority of the PIO.

B. On-Site Requests for the Release of Public Records

1. Individuals who respond to a district/section/unit, other than PRS, during normal business hours and request the release of records will be referred to PRS. The individual may respond online, in person, by telephone, fax, or email.
 - a. If the individual insists their request be processed at the district/section/unit, personnel will accommodate those requests and ask the requestor to complete a Form 29. Upon completion, fax the Form 29 to PRS for review.
 - b. Advise the requestor they are not required to fill out the Form 29, but completion assists in locating the requested records.

- c. If the officer has enough information, fill out the Form 29 and fax it to PRS.
 2. Individuals who respond to a district/section/unit after normal PRS business hours and petition the release of records will be requested to complete the front page of Form 29. Upon completion, fax the Form 29 to PRS for review.
 - a. If an individual does not want to provide personal information on the Form 29, refer the individual to PRS. The individual may respond online, in person, by telephone, fax, or email the next business day.
 3. When responding to on-site requests for records for incidents that recently occurred, (e.g., OH-1 from an auto accident), Department personnel should advise the requestor it takes seven to ten business days for the document to arrive at PRS.
 - a. Personnel with factual **information** from an offense report, auto accident report, traffic ticket, or other document, excluding Form 311 investigative reports or as otherwise directed, will release the information upon request.
 4. Officers requesting dispatch records (e.g., CAD printout, 911 calls, radio transmissions) for an investigation or court purposes will complete a Form 609P, Emergency Communications Section Records Request, and submit directly to ECS.
 - a. ECS will coordinate any necessary record redactions with PRS.
- C. On-site Requests for the Viewing of Public Records
 1. Department personnel will complete a Form 29 and immediately forward to PRS.
 2. PRS will assign a numbered memorandum to the request and forward to the affected district/section/unit.
 3. Administrative sergeants or designated supervisors will collect the requested records and make the necessary redactions.
 4. The district/section/unit holding the records will contact the requesting individual when records are available for viewing.
 - a. The viewing of records must take place promptly and will be by appointment only.
- D. Requests For and Viewing OVI Records
 1. Department personnel will complete a Form 29 and forward to PRS.
 2. PRS will coordinate the release or viewing of OVI records with Traffic Unit.
 3. PRS will forward all requests concerning open OVI investigations to the City Prosecutor's Office for review.

E. Redacting Information

1. The responsibility to redact information from reports forwarded to PRS pursuant to a public records request remains with the district/section/unit forwarding the report (e.g., Finance Management Section, Homicide Unit, Internal Investigations Unit), **except** for the redaction of video files. PRS is responsible for redacting video files and information on records kept in PRS. The following information **must** be redacted prior to the release:
 - a. Social Security numbers.
 - b. Uncharged suspect information.
 - c. The identity of a confidential source.
 - d. Information that would endanger the safety of law enforcement personnel, crime victims, witnesses or a confidential source.
 - e. Confidential investigative techniques, procedures, notes or work product.
 - 1) The narrative portion of a Form 301S, Incident Supplement, Form 311DV, Domestic Violence Investigation Report, Form 311VS, Victim's Statement or Form 526, Vice Activity Report, may be released when:
 - a) The investigating officer's permission has been obtained to release the information.
 - b) The sensitive information listed above has been redacted.
 - f. Driver's license information in accordance with OAC 4501:1-12-02, Driver's Privacy Protection.
 - g. Medical record Information in accordance with HIPAA and ORC 149.43 (A)(1)(a) and (A)(3).
2. The Department will not release information from reports involving the abuse or neglect of a child in accordance with ORC 2151.421(H)(1) and (H)(2).
3. PRS will coordinate with Traffic Unit for the release of copies for all fatal, unusual or serious injury crash reports.
4. Upon request, release information from a RMS Case Report or RMS Aided Case Report (excluding confidential health information) filed at the district of occurrence.

F. Release of Police Department Employee Records

1. Pursuant to case law, the Police Department is **NOT** permitted to release and will **NOT** release any of the following records of Department employees:
 - a. Home address of sworn personnel
 - b. Home telephone number
 - c. Photographs

- d. Information regarding family members
 - e. Beneficiaries
 - f. Social security number
 - g. Medical information or psychological reports not part of the recruitment process
 - h. Banking or account information
 - i. Information obtained from driver's licenses or NCIC/LEADS/RCIC sources
2. The district/section/unit responsible for forwarding documents containing any of the above information pursuant to a records request is responsible for reviewing and redacting any of the above information prior to sending the documents to PRS.
 3. If any record requested under the Public Records Act contains information that, if released, may violate a person's 14th Amendment right to privacy and/or bodily integrity, PRS will notify the affected person that a records request has been made.
 - a. If the affected person presents a reasonable objection based specifically on the 14th Amendment, the request will be denied or the subject data will be redacted from the record before release. PRS will consult the Solicitor's Office prior to withholding such information.
- G. Process for Notification – Court Ordered Requests Involving Department Employees' Personal Address Information
1. In the event the City of Cincinnati, including its employees, agents or officials, receives a court ordered request for release of Department employees' personal addresses, the following process will be followed:
 - a. If the City receives the request, it will be forwarded to the Police Department for action.
 - b. Upon receipt of a request for Department employees' addresses, the Department will direct district/section/unit commanders to notify all personnel. District/section/unit commanders will be provided with the specific request.
 - c. District/section/unit commanders will ensure all of their personnel are notified the request has been received.

- d. District/section/unit commanders will generate check-off lists, which will include the names of all personnel in their command. The list will have the specific records request attached and personnel will be advised of the request by a supervisor. The date of the notification will be noted on the check-off list. Personnel may express their objection to the release of their personal address on the check-off list.
- e. The check-off notification process will allow up to four days, ensuring personnel on off days are notified. Personnel not notified pursuant to the procedure above will be personally notified by a district/section/unit supervisor. Upon completion, the district/section/unit commander will report to the Police Chief in writing the notifications have occurred.
- f. The Fraternal Order of Police, Queen City Lodge 69, will be provided the request for release of sworn members' personal addresses the same time as the district/section/unit commanders.
- g. PRS will maintain records documenting the notification process. Objections to release of addresses will be forwarded to the City Solicitor and Human Resources Department. Release of addresses by the City pursuant to a public records request will be governed by existing law.
- h. The Police Department will publish the records request in the Department's weekly Staff Notes, as an additional notification to all personnel.

H. Email, Electronic Devices, Radio Transmission Records, and Video Files

1. Email Data

- a. Employee email data greater than two years old is automatically moved from the user's primary mailbox to their archive mailbox.
 - 1) Archiving keeps mailboxes from exceeding their storage quota while allowing users and administrators access to data.
 - 2) A user's archive is for long term storage of messaging data.
 - 3) Users have control over their archives and can move messages into or out of archive files.
 - 4) All archived data is available for discovery in public records requests.
- b. Users who delete email messages that are less than two years old will not see or have access to the deleted messages.
 - 1) The deleted messages are retained within the system and are viewable by administrators only and are available for records requests.
 - 2) Messages that are older than two years remain in the system until the user deletes them from their mailbox.

- a) The deleted messages are no longer available to administrators or for discovery in records requests.
2. Radio Transmissions
 - a. Transmissions between radio users and the ECS are typically recorded and kept according to the Department's retention schedule. Radio to radio transmissions are not recorded.
 3. Cellular/Mobile phone
 - a. Recording calls - Calls relating to the function or business of the Department which are recorded must be uploaded to a hard drive or another medium and kept according to the Department's retention schedule.
 - b. Digital pictures - Pictures taken with a cellular/mobile phone must be downloaded and saved in the corresponding RMS case folder and retained according to the Department's record retention schedule. Personnel are discouraged from using department issued cellular/mobile phones for this purpose.
 - c. Text messages - No logs are available to capture text messages. Do not send text messages to or from a cellular/mobile phone which document the function or business of the department.
 4. Memory cards/Memory sticks/Thumb drives
 - a. These are considered the same as a hard drive for purposes of public records.
 - b. Images from a digital camera memory card should be downloaded to the corresponding RMS case folder or a disk then erased after downloading or before the next use. Do not delete any images prior to being saved, even if they will not be used in court.
 5. Video Files - Body Worn Camera (BWC) and Digital Video Recorder (DVR)
 - a. All requests for BWC/DVR video files must be made prior to the end of the 90 day retention and availability period. After the 90 day retention period recordings not categorized for retention are automatically deleted.
 - b. Video files will be redacted by PRS according to their SOP.