

Fennimore Police Department Release of Information		
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PURPOSE

The purpose of this document is to establish guidelines for the release of information and records obtained and held by Fennimore Police Officers during the performance of their duties.

POLICY

During the course of their duties, Fennimore Police Department employees may have access to confidential department, personnel, citizen, private business or other information. This knowledge will include records and information normally kept private by citizens, businesses and the department.

Members of the Fennimore Police Department shall treat the official business of the department, department records and other sensitive information as confidential information and shall release such information only to those for whom it is intended or otherwise have legal access.

The Fennimore Police Department recognizes law enforcement activities are matters of interest and concern to the community. It shall be the policy of the department to provide requesters with timely and accurate information regarding department activities while adhering to prescribed guidelines and laws for release of information and records.

DISCUSSION

The Wisconsin Legislature has provided a clear declaration of policy regarding open records.

In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information.

To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied. Wis. Stat. § 19.31.

With this strong public policy statement in mind, access to records will only be denied under the following circumstances:

- There is a clear statutory exception to the open records law.
- There is a limitation under the common law as provided by judicial precedent (case law).
- When public policy interests favoring nondisclosure outweighs the strong public policy interests favoring disclosure (when releasing the records will do more harm to the public than not releasing the records)

DEFINITIONS

- **Information:** refers to the data or circumstances documented in department records or otherwise known to the department as a result of law enforcement duties.
- **Personally Identifiable Information:** means information that can be associated with a particular individual through one or more identifiers or other information or circumstances, Wis. Stat. § 19.62(5).
- **Records:** means 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, that has been created or is being kept by an authority, Wis. Stat. § 19.32(2).
- **Records Series:** means records that are arranged under a manual or automated filing system, or are kept together as a unit, because they relate to a particular subject, result from the same activity or have a particular form, Wis. Stat. § 19.62(7).
- **Sensitive Crimes:** include, but are not limited to: domestic violence, sexual assault, crimes against children, missing persons, prostitution and human trafficking.

PROCEDURE

Records Custodian

The Chief of Police or his/her designee shall serve as custodian of department records and will be responsible for the disclosure of those records pursuant to Wisconsin's Public Records Law.

The Chief of Police or his/her designee shall also serve as the public information officer and shall be responsible for addressing requests for information regarding department policy, practices or activities not already made public. No member of the department shall speak on behalf of the organization while on duty or off duty unless authorized to do so by the Chief of Police.

Access to Department Records

Citizens may request access to department records in accordance with guidelines established in Wis. Stat. § 19.35.

- Records requests must reasonably describe the records requested and be reasonably specific as to time and subject matter.
- The name of any person requesting records anonymously will not be released unless required by law.
- The department has no obligation to create records which do not exist, Wis. Stat. § 19.35(1)(L).

Authorization for access to department records shall come from the Chief of Police or his/her designee.

- Requests for access to records will be accommodated as soon as practicable and without delay. A requester will be notified of any anticipated delays associated with the request.
- If such records contain inaccessible material, the inaccessible material shall be redacted before released, Wis. Stat. § 19.36(6).
- Written records requests denied or redacted will receive a written denial or redaction letter of explanation, Wis. Stat. § 19.35(4)(b).

Non-Public Records

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

- Any record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding, or any such record that is collected or maintained in connection with such

an action or proceeding.

- Any record containing personally identifiable information that, if disclosed, would do any of the following:
 - Endanger an individual's life or safety.
 - Identify a confidential informant, Wis. Stat. § 19.36(8).
 - Endanger the security (including the security of the population or staff) of a detention facility.
- Compromise the rehabilitation of a person in the custody of the department of corrections or detained in a jail or detention facility.
- Any record with the home, school or work address of a participant in the Wisconsin Department of Justice Address Confidentiality Program
- 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 the authority maintaining the records series by use of an individual's name, address or other identifier.

Juvenile Records

Certain law enforcement records related to children or juveniles are confidential and shall not be released unless required or authorized by law.

- Records associated with Wis. Stat. Ch. 48 investigations or proceedings regarding juvenile welfare are confidential except as provided in Wis. Stat. §§ 48.293 and 48.396(1)-(1d), (5) and (6).
- Records associated with Wis. Stat. Ch. 938 investigations or proceedings regarding juvenile delinquency or accountability for violations of law are confidential except as provided in Wis. Stat. §§ 938.293 and 938.396(1), (1j) and (10)
- Exceptions listed under Wis. Stat. § 938.396(1)(c) are adopted as policy. Juvenile records covered by these exceptions may be released by the department.

Other law enforcement records regarding or mentioning children are not subject to the confidentiality provisions of Wis. Stat. §§ 48.396 or 938.396. These records might involve children who witness crimes, are the victims of crimes that do not lead to Chapters 48 or 938 proceedings, or are mentioned in law enforcement reports for other reasons: for example, a child who happens to witness a bank robbery or be the victim of a hit and run automobile accident. (Wisconsin Public Records Law Compliance Guide, March 2018, p.43)

Access to records not related to Wis. Stat. Ch. 48 or 938 proceedings should be resolved by application of general public records rules.

Crime Victims

The Wisconsin Constitution guarantees certain rights to all victims, including the right to privacy, Section 9m(2)(b). These Constitutional protections along with state law provide a clear public policy expectation that victims of crimes will be treated with fairness, dignity, courtesy, sensitivity and respect for his or her privacy by public officials, employees or agencies, Wis. Stat. §§ 950.04(1v)(ag) and (1v)(dr).

The Constitutional provisions of Marsy's Law and the statutory provisions in Wisconsin Statutes Chapter 950 do not create an absolute denial of access to information about victims contained in records. Rather, in the absence of other exemptions or laws barring the release of such records and information, records custodians and authorities must continue to apply the public records law balancing test. (Wisconsin Attorney General, Office of Open Government Advisory: Marsy's Law and Public Records, May 13, 2021)

Other Examples of Protected Records

- Personal identifying information defined by the Driver Privacy Protection Act, 18 USC § 2721; 18 USC § 2722. MV4000 accident reports are exempt from this restriction, Wis. Stat. § 346.70(4)(f).
- Search warrants which have not been executed, Wis. Stat. § 968.21.
- Certain employee personnel records, Wis. Stat. § 19.36(10).
- Patient health care records, Wis. Stat. § 146.82.
- Financial identifying information including credit card numbers, debit card numbers, checking account numbers, or draft account numbers, unless specifically required by law, Wis. Stat. § 19.36(13).

Notification Requirements

Wis. Stat. § 19.356(2)(a) requires a record subject received notification before the release of certain records:

- A record containing information relating to an employee that is created or kept by the department and is the result of an investigation into a disciplinary matter involving the employee or possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the department.
- A record obtained by the authority through a subpoena or search warrant.
- A record prepared by an employer other than the department, if that record contains

information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information.

Destruction of Records

No record may 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, Wis. Stat. § 19.35(5).

If the department receives written notice that an action relating to a record has been commenced, the record may not be destroyed until after the order of the court in relation to such record 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).

Officer Responsibilities

No information concerning the internal operations of the Fennimore Police Department, including but not limited to the release of records, may be released without the permission of the Chief of Police or his/her designee.

- Unless otherwise authorized, requests for records or department information will be referred to the Chief of Police or his/her designee.
- All records will be stored at the Fennimore Police Department or on department computers or department authorized cloud storage.
- Officers will not store records on personal devices or personal cloud storage. Records generated on personal devices will be downloaded to department storage as soon as practicable.
- Officers will not copy or remove records from the department unless needed for court or otherwise given permission by the Chief of Police or his/her designee.

The Fennimore Police Department recognizes the right of its employees, as citizens in a democratic society, to speak out on issues of public concern. When those issues are related to the Fennimore Police Department, the employee's expression must be balanced against the interests of the Fennimore Police Department and the function it serves in the community.

DISCLAIMER

This policy is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy may form the basis for departmental administrative action, but it is not intended for use in courts of civil or criminal jurisdiction

/s/ Christopher J. French

11/05/2022

Christopher J. French
Chief of Police

Date