

**POLICY
1110**

**EFFECTIVE
DATE
1-25-19**

**Eugene
Police Department**



Release of Public Records

1110.1 PURPOSE AND SCOPE

The purpose of this policy is to establish uniform procedures for the release of Eugene Police Department records to persons or entities outside the City in accordance with applicable law. This policy does not apply to information being provided to another law enforcement agency in accordance with applicable laws, administrative rules, and department policies. This policy will be interpreted in a manner consistent with any applicable City policies. For information on release of information to the news media, refer also to *Procedure 11.18 – News Media*.

1110.2 PROCESSING PUBLIC RECORDS REQUESTS

- (a) Every person has a right to inspect any public record of a public body in this state. Oregon Public Records Law (ORS Chapter 192) provides that records created by a public agency are subject to inspection and release unless exceptions are established by statute. Certain public records relating to law enforcement are exempted as indicated in this policy. The Eugene Police Department will disclose police records unless the record is exempt from public disclosure under the public records law or otherwise confidential pursuant to state or federal law.
- (b) The City will respond to written public records requests for police reports and other law-enforcement related documents as soon as practicable and without unreasonable delay.
- (c) The PIO or designee will respond to requests for records from media representatives. The Records Manager or designee will respond to requests from all others.
- (d) Upon receipt of a public records request, the City will acknowledge receipt of the public records request and either request additional information or clarification from the requester or provide the requester with one of the following responses:
- *Copies of all requested public records are enclosed.*
 - *The requested records are exempt from disclosure pursuant to [cite applicable statute].*
 - *Some of the requested records are exempt from disclosure pursuant to [cite applicable statute]; the non-exempt records are enclosed.*
 - *The City does not possess or is not the custodian of the requested record(s).*
 - *The City is uncertain whether we possess the requested record(s). We will search for the record and make an appropriate response as soon as practicable.*

- *The City is the custodian of at least some of the requested public records. We estimate that it will require [estimated time] before the public records may be inspected or copies of the records will be provided. We estimate that the fee for making the records available is \$_____, that you must pay as a condition of receiving the records.*
- *The City is the custodian of at least some of the requested public records. We will provide an estimate of the time and fees for disclosure of the public records within a reasonable time.*
- *State or federal law prohibits the City from acknowledging whether the requested record(s) exist(s). [Citation to relevant state/federal law.]*
- *The City is unable to acknowledge whether the requested record(s) exist(s) because that acknowledgement would result in [the loss of federal benefits/other sanction]. [Citation to relevant state/federal law.]*

(e) If any public record contains material that is not exempt under ORS 192.345 and 192.355, as well as material that is exempt from disclosure, the City will separate the exempt and nonexempt material and make the nonexempt material available for examination.

1110.3 POLICE REPORTS/INVESTIGATORY MATERIALS

1110.3.1 OPEN CRIMINAL INVESTIGATIONS/PENDING PROSECUTIONS

(a) The City will release documents that include information compiled in investigations connected with pending or contemplated prosecutions only if the City determines that the public interest in a particular case necessitates releasing the document(s) and the City determines that releasing the document(s) will not interfere with law enforcement proceedings. Prior to releasing such document(s), the City will contact the appropriate prosecutor's office to discuss whether the release will interfere with prosecutorial proceedings.

(b) Unless there is a clear need to delay disclosure in the course of a particular investigation or unless another statutory provision prohibits disclosure, a document containing the following information will be released:

- The arrested person's name, age, residence, employment, marital status, and similar biographical information;
- The offense with which the arrested person is charged;
- The conditions of release pursuant to ORS 135.230 to 135.290;
- The identity of and biographical information concerning both complaining party and victim;
- The identity of the investigating and arresting agency and the length of the investigation;
- The circumstances of arrest, including time, place, resistance, pursuit, and weapons used; and
- Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

1110.3.2 CLOSED CRIMINAL INVESTIGATIONS/COMPLETED PROSECUTIONS

When a criminal investigation is complete and there is no pending or contemplated prosecution, the City will release investigatory material (possibly with redactions), unless the City is otherwise prohibited from releasing the records, or disclosure would:

- Deprive a person of a right to a fair trial;
- Constitute an unwarranted invasion of privacy;
- Disclose the identity of a confidential source or confidential information furnished only by the confidential source;
- Disclose investigative techniques and procedures; or
- Endanger the life or physical safety of law enforcement personnel.

1110.3.3 CRIMINAL INVESTIGATION RECORDS THAT CANNOT BE RELEASED

(a) Investigatory materials that fall within the Child Abuse Reporting statutes. (ORS 419B.035)

(b) Investigatory materials related to juvenile offenders where the juvenile was not tried as an adult. Requesters of these records will be referred to the Lane County Juvenile Court. (ORS 419A.255)

(c) Police reports or investigatory materials containing the home address, personal telephone number, or e-mail address of any individual who has previously submitted a written request of nondisclosure in accordance with rules established by the Attorney General. (ORS 192.368(1))

(d) Unless a court order compels disclosure, records less than 75 years old that were sealed in compliance with statute or by court order. (ORS 192.398(2))

(e) Documents containing protected health information as that term is defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). (45 CFR § 160.103)

(f) Any investigatory material the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon or Federal law. (ORS 192.355(8,9))

1110.3.4 OTHER CRIMINAL INVESTIGATION RECORDS EXEMPTIONS

(a) Unless the requester shows by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy, records less than 75 years old that contain information about the physical or mental health or psychiatric care or treatment of a living individual. (ORS 192.398(1))

(b) Unless the public interest by clear and convincing evidence requires disclosure in a particular instance, information of a personal nature such as but not limited to that kept in a personal, medical, or similar file, if public disclosure would constitute an unreasonable invasion of privacy. (ORS 192.355(2,9))

(c) Information submitted to the City in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the City has obliged itself in good faith not to disclose the information, and the public interest would suffer by the disclosure. (ORS 192.355(4))

1110.4 PUBLIC SAFETY PERSONNEL RECORDS

(a) Unless the employee consents in writing, the City is prohibited from releasing records containing information about an employee of the City while the employee is assigned duties the City considers undercover investigative duties and for a period of six months after the conclusion of those duties. (ORS 181A.825(2))

(b) Unless the employee consents in writing, the City is prohibited from releasing a photograph of a public safety employee, as defined in ORS 181A.830, including a video in which the public safety employee can be identified. (ORS 181A.830(2))

(c) Unless an exception enumerated in ORS 181A.830(4) applies, the City is prohibited from releasing records pertaining to a personnel investigation of a public safety employee, as defined in ORS 181A.830(1,6), if the investigation does not result in discipline of the employee. (ORS 181.830(3))

(d) If an investigation of a public safety employee, as defined in ORS 181A.830, results from a complaint, the City may disclose to the complainant the disposition of the complainant and, to the extent the public body considers it necessary to explain the City's action on the complaint, a written summary of information obtained in the investigation. (ORS 181.830(5))

(e) Unless the public interest requires disclosure in the particular instance, materials or documents supporting a completed disciplinary action in which discipline was imposed are exempt from disclosure (ORS 192.345(12)). If a disciplinary action is not yet complete, the City can postpone action on the request until the matter is finally resolved.

(f) The City must notify the affected public safety employee if a request is received for:

- A photo or video recording of the employee;
- Information about the employee that is exempt from disclosure under ORS 192.345 or 192.355(2,3); or
- Information referred to in § 1110.4(c) above. (ORS 181A.830(6))

(g) The address, Social Security number, date of birth, and telephone number of an employee or volunteer are exempt from disclosure. (ORS 192.355(3))

1110.5 OTHER POLICE RECORDS

(a) Unless the public interest requires disclosure in the particular instance, records of the City pertaining to litigation in which the City is a party, if the complaint has been filed or if litigation is reasonably likely to occur, are exempt from disclosure. (ORS 192.345(1))

(b) Unless the public interest requires disclosure in the particular instance, the City's operational plans in connection with an anticipated threat to individual or public safety for

deployment and use of personnel and equipment, prepared or used by a City, if disclosure would endanger an individual's life or physical safety or jeopardize a law enforcement activity, are exempt from disclosure. (ORS 192.345(18))

(c) Unless the public interest requires disclosure in a particular instance, records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect an individual, building or other property, information processing, communication, or telecommunication systems are exempt from disclosure. (ORS 192.345(23))

(d) When the City can show that the public interest in encouraging frank communication between officials and employees of the City clearly outweighs the public interest in disclosure, communications within the City, or between the City and another public body that are of an advisory nature and preliminary to any final agency determination of policy or action are exempt from disclosure. (ORS 192.355 (1))

(e) If the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable, exempt public records originally compiled or prepared by a public body other than the City remain exempt or confidential (ORS 192.355(10)). If the City is not the custodian of the public records originally compiled or prepared by the other public body, the City will refer the requester to the custodian of the records.

(f) The City will not release any public records or information the disclosure of which is prohibited, restricted, or otherwise made confidential or privileged by federal or Oregon law. (ORS 192.355(8,9))

1110.6 CREATION OF RECORDS/COMPUTER-STORED RECORDS

(a) Unless the City decides that it is in the public interest to do so, the City will not create a record in order to respond to a public records request, nor will the City create a record to explain the reasoning behind its actions or provide other knowledge that City staff might have.

(b) Unless the City decides that it is in the public interest to do so, the City will not create new information using its computer programs or to create a new program to extract the data in its computer system in a manner requested.

(c) The City will retrieve and make available nonexempt computer or electronically stored data and information, when requested, through the computer software or programs in use by the City. That is, when the City uses computer software to retrieve information for its own purposes, the City will use that same software or program to retrieve and make available nonexempt data or information stored by the City in computer or electronic form.

1110.7 RESTRICTIONS ON EMPLOYEES

(a) Except as authorized by this policy or a different department policy, employees will treat department records as confidential and sensitive.

(b) An employee may remove official records or reports from department premises only in accordance with department procedures.

(c) Employees may copy official records only for official purposes and in accordance with established procedures.

(d) An employee may not divulge the identity of a person giving confidential information except as authorized by the Chief of Police or designee, or by court order.

(e) Disposal of paperwork must be done with care. Any highly confidential paperwork (e.g., personnel investigations, individual RMS records, CCH) must be shredded. Any other official information (e.g., line-ups) must be placed in a recycle barrel and not disposed of in trash. The destruction of all records must be done in accordance with state retention law and the City's adopted retention schedule.

(f) Copies of computer records (e.g., RMS or CAD records) may be attached to original police reports being submitted to Records when necessary; however, before such a report is released, the attached computer record(s) will be evaluated to determine whether they are releasable, or exempt from release, under Oregon law.

(g) Care should be taken when adding criminal justice information (e.g., CAD or RMS records) to e-mail messages, as e-mail messages are generally subject to release as public records, and some criminal justice information is exempt from release.

1110.7.1 MOTOR VEHICLE RECORDS

(a) **When obtained directly from the DMV**, personal information (i.e., name, address, telephone number, and driver license, permit, or identification card number) contained on driver licenses, identification cards, and vehicle titles or registrations is confidential and may not be released except as authorized by law (ORS 802.181 and 18 USC § 2721).

(b) If an authorized disclosure is made, a record of the disclosure must be retained for five years and made available to the DMV upon request, unless the release was made to a representative of the news media in accordance with ORS 802.181(6).

(c) Personal information received directly from the DMV may only be used to carry out the governmental functions of the City.

(d) When personal information contained on a motor vehicle record is obtained in another manner (e.g., from a person's driver license that is provided to an officer), the information may be exempt from disclosure, but it is not automatically confidential under ORS 802.181.

(e) Unless it is clear that a driver license, permit or identification card number was obtained directly from subject individual, redact these numbers prior to releasing a record to the public. The identified basis for the redaction should be ORS 802.181 and ORS 192.355(9)(a).

1110.8 FEES

(a) The City will charge for its actual costs to respond to a public records request in accordance with the City's adopted fee schedule. Actual costs include time spent by the City's staff in locating the requested records, reviewing the records in order to delete exempt material, copying records, and time spent by the City's attorney reviewing, redacting, and segregating records at the City's expense.

(b) The City will charge for search time even if the City fails to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure.

(c) If an estimated fee exceeds \$25, the City will first provide a written cost estimate to the requester and receive written confirmation that the requester wants the City to proceed with responding to the request.

(d) If the actual charges are less than the prepayment, the City will promptly refund any overpayment.

Chris Skinner
Chief of Police