

## **Evansville Police Department Policy**

### **Release of Information**

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### **Sec. 6-2-1 Request for Information/Release of Information.**

#### **POLICY**

- (a) The City of Evansville Police Department recognizes that the public has a compelling interest in the inspection of public documents and records and in the release of information dealing with law enforcement activities. Only if there is a countervailing interest of the same or greater magnitude will anyone be denied information or the opportunity to inspect public documents.
- (b) References in this Chapter to "records" shall be as defined in Sec. 19.32(2), Wis. Stats.

*Cross-Reference:* Section 2-2-1, Personnel Investigations -General Policy.

### **Sec. 6-2-2 Release of Information by Permission of the Chief of Police Only.**

#### **POLICY**

Since the Chief of Police bears the full responsibility for the lawful and orderly operation of the Department, any and all information will only be released by the Chief of Police or his/her authorized designee. Furthermore, information relating to cases which may involve potential civil liability for the Department shall be withheld until review and approval has been obtained from the Department legal

counsel. If there is reason to believe a request involves information which concerns potential liability of the Department, the person making the request should be referred to the Chief of Police. It shall be the policy of the Department that absolutely no official document and/or report, handwritten documentation, or verbal information pertaining to juveniles, driving records and criminal histories shall be released by any personnel of this Department to any party without expressed permission of the Chief of Police. The only exception is a request from another law enforcement agency. This policy shall apply to information release requests whether juvenile or adult.

### **Sec. 6-2-3 Availability of Records.**

#### **POLICY:**

The Chief of Police is designated as the legal custodian of all departmental records. Inquiries about the availability of records may be made at police headquarters during regular office hours. When records are legally available for public inspection, copies may be made by photocopy at the City's current rate.

### **Sec. 6-2-4 Records Not to Be Released.**

#### **POLICY:**

The following records shall not be released:

- (a) Any record exempt from disclosure by the Wisconsin public records statute or any other applicable state statute or regulation.
- (b) Any record exempt from disclosure by federal statute or regulation.
- (c) Any record exempt from disclosure by state and/or federal court decisions.
- (d) Any record where, in the opinion of the record custodian, disclosure would result in harm to the public interest that outweighs the legislative policy recognizing the public interest in allowing access.
- (e) If part, but not all, of a record is subject to disclosure, the record custodian will redact that part of the record that is exempt from disclosure and then provide a redacted copy of the requested record.

## **Sec. 6-2-5 Investigatory Records.**

### **PROCEDURES:**

- (a) Police reports, witness statements, and/or any other records pertaining to any investigation (criminal or non-criminal) shall not be open to public inspection under Sec. 19.31 to 19.39, Wis. Stats., before one of the following occurs:
  - (1) The suspect is convicted or acquitted of an offense that is a subject of the investigation.
  - (2) All investigations and prosecutions to which the investigation relates are concluded.
- (b) Prior to providing any records covered by this Subsection, the record custodian shall confirm the existence and/or status of any prosecutions relating to the investigation. If the matter is already closed, with or without prosecution, the record custodian shall treat the request the same as any other, including determination of whether it is permissible and/or appropriate to release copies of the requested records.
- (c) If the requester is a defendant seeking copies of records pertaining to the investigation of the charges against him/her, after entry of a plea, the defendant may request the records from the prosecuting attorney. The Police Department will not release copies of any records pertaining to a pending prosecution.

*Note:* This policy is consistent with *State ex rei. Richards v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991) and *Linzmeier v. D.J. Forcey*, 254 Wis. 2d 306, 646 N.W.2d 811, 2002 WI 84 (2002).

## **Sec. 6-2-6 Inspection Requests-Denial.**

### **POLICY:**

If any of the grounds for denial of a request listed in this policy are present and applicable, the request will be denied.

### **Sec. 6-2-7 Criminal Investigations and Investigative Techniques.**

#### **POLICY:**

The Department will deny access to or release of information if the information would harm an ongoing investigation or the Department's investigative methods.

#### **PROCEDURES:**

Access to or release of information may be granted as soon as it would no longer be harmful to the ongoing investigation or person and if it is not prohibited by another provision of this policy.

### **Sec. 6-2-8 Privacy Considerations and Release of Information.**

#### **POLICY:**

Information based on rumor or hearsay which would harm the reputation of any person or group in the community will not be released.

#### **PROCEDURES:**

The identity of complainants, informants or victims will not be released where it will hamper investigations, endanger a person's safety or is contrary to law.

#### **COMMENTARY:**

This policy and associated procedures balance the individual's right to privacy and continued enjoyment of his or her reputation with the obligation of the Department to disclose.

### **Sec. 6-2-9 Illegal Purpose.**

#### **POLICY:**

If Department personnel have reasonable cause to believe that the access to or release of information sought will be used for illegal purposes; access to or release of information will be denied.

### **Sec. 6-2-10 Responsibility of Officers to Supply Information.**

#### **POLICY**

An officer should appropriately answer questions put to him or her or refer the person to the proper individual or agency for such answers.

**Sec. 6-2-11 Harassment.**

**POLICY:**

If it is reasonably clear that the party requesting access is using the request as a means of harassing the Department or individual, his/her request shall be denied. If access is denied, the party shall be informed of the reason for the denial, but it will not be necessary to do so in writing.

**Sec.6-2-12 Telephone Requests for Information.**

**POLICY:**

Criminal or investigative information shall only be released to another law enforcement agency over the telephone when that agency is recognized by the Department member receiving the call.

**PROCEDURES:**

In such cases, the person making the request will be asked to do so in person by coming to the Department during normal working hours.

**Sec. 6-2-13 Administrative Restrictions on the Release of Information**

**POLICY:**

Administrative convenience may require temporary restrictions on access to information.

**PROCEDURES**

- (a) In such cases, the individual requesting information will be informed when the information may be obtained. The delay in such a case may not be so great as to effectively preclude the use of the information in question.
- (b) Except for emergency matters and pending litigation, requests for information will be handled at the Department's earliest convenience on a first-come, first-served basis.

## Sec. 6-2-14 Miscellaneous Provisions.

### POLICY

- (a) Definitions. The following definitions shall be applicable in this Section:
  - (1) "Record" is as defined in Sec. 19.32(2), Wis. Stats
  - (2) "Records Custodian" is as defined in Sees. 19.21(1) and 19.33(4), Wis. Stats. [Note: See *Town of La Grange v. Auchinleck*, 216 Wis. 2d 84, 573 N.W.2d 232 (Ct. App. 1997)].
- (b) Records Accessibility. Generally, the Evansville Police Department will accept release of information requests between the hours of 7:00 a.m.- 3:00 p.m, (Monday-Friday). The attached "Request for Records" form should be filled out (not mandatory) by the requestor or an employee taking the request, in an effort to assist the Department in locating a record in a prompt and efficient manner. [See Sec. 19.34(2)(a), Wis. Stats.].
- (c) Request To Be Reasonably Specific. The requestor must be reasonably specific in the request. [See Sec. 19.35(1)(h), Wis. Stats. and *Schopper v. Gehring*, 210 Wis. 2nd 208, 212-13, 565 N.W.2d 187 (Ct. App. 1997).
- (d) New Record Creation. The Evansville Police Department will not create a new record. [See Sec. 19.35(1)(L), Wis. Stats.].
- (e) Press Releases. At the Police Chiefs discretion, a press release may be created and disseminated prior to the completion of an Investigation/prosecution.
- (f) Personnel Investigations. Personnel investigations are addressed in Title 2, Chapter 2 of this Manual, and will not be released. [See Sections 2-2-1 through 2-2-11 and 6-1-1 through 6-1-6].
- (g) Associated/Applicable Fees.
  - (1) *Copy Fees.* Copies of documents/transcription fees will be charged at the rate of \$0.25 per page. [See Sec. 19.35(3)(a), Wis. Stats.].
  - (2) *Copies of Photographs/Tapes, Etc.* Fees for photographs, tapes, etc. will be charged. [See Sec. 19.35(3)(b), Wis. Stats.].

- (3) *Location Costs.* Fees will be charged. [See Sec. 19.35(3)(c), Wis. Stats]
  - (4) *Mailing and Shipping Fees.* Fees will be charged. [See Sec. 19.35(3)(d), Wis. Stats.].
  - (5) *Waiver/Reduced Rate.* Waivers or reduced rates may be authorized at the Police Chiefs discretion on a case-by-case basis. [See Sec. 19.35(3)(e), Wis. Stats.].
  - (6) *Prepayment.* The Department may require prepayment for any request that will result in anticipated charges of Five Dollars (\$5.00) or more. [See Sec. 19.35(3)(f), Wis. Stats. and *Hill v. Zimmerman*, 196 Wis. 2d 419, 538 N.W.2d 608 (Ct. App. 1995).
  - (7) *Adjustment of Fees.* All fees hereunder may be adjusted from time to time.
- (h) Federal Drivers' Privacy Protection Act Restrictions/redactions:
- (1) The Federal Drivers' Privacy Protection Act (DPPA), 18 U.S.C. sections 2721-2725, prohibits motor vehicle departments from disclosing personal information about any individual derived from motor vehicle records. 18 U.S.C. section 2721(a). The DPPA also prohibits the resale or re-disclosure of personal information by persons or businesses authorized access to personal information to other persons not authorized access to personal information for a purpose not permitted by the DPPA. 18 U.S.C. section 2721(c). Therefore, release of information may result in redactions, as required under this Act.
- (i) Exceptions.
- (1) *MV4000 State Accident Report.* There is an absolute right of access to a MV4000 State Accident Report per Sec. 436.70(4)(f), Wis. Stats. [See *State ex rel. Young v. Shaw*, 165 Wis. 2d 276, 477 N.W.2d 340 (Ct. App.1991)].

**Note: Effective March 1, 2007:**

The Evansville Police Department completes and forwards all original MV4000 Accident Reports to the State of Wisconsin Traffic Accident Section. The custodian of records of the State of Wisconsin Traffic

Accident Section is the custodian of records of these MV 4000 Accident Reports.

Therefore, in conformance with the Drivers Privacy Protection Act (DPPA)( 18 U.S.C. sections 2721-2725), Title 28 Section 20 C.F.R. (Code of Federal Regulations), s. 938.396(1) (a), Wis. Stats., & Wisconsin TIME System policy, all open record requests for any MV4000 Accident Report should be made direct to the Wisconsin Traffic Accident Section, P.O. Box 7919, Madison WI 53707-7919; or by calling 608-266-8753.

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- (2) *Confidential Exchange of Information Between a Law Enforcement Agency and Officials of the School Attended by the Juvenile.* A public school official who obtains information under this Subsection and Sec. 938.396(1)(b)2, Wis. Stats., shall keep the information confidential as required under Sec. 118.125, Wis. Stats., and a private school official who obtains information under this subdivision shall keep the information confidential in the same manner as is required of a public school official under Sec. 118.125, Wis. Stats.
- (3) *The Confidential Exchange of Information Between a Law Enforcement Agency and Another Law Enforcement Agency.* A law enforcement agency that obtains information under this subdivision shall keep the information confidential. [See Sees. 48.396(1), 938.396(1)(a) and 938.396(1)(b)3, Wis. Stats.].
- (4) *The Confidential Exchange of Information Between a Law Enforcement Agency and a Social Welfare Agency.* A social welfare agency that obtains information under this subdivision shall keep the information confidential. [See Sees, 48.78, 938.78 and 938.396(1)(b)4, Wis. Stats.].
- (5) *Initial Charging Documents.* Subject to the exceptions in the Wisconsin Open Records Law in Ch. 19, Wis. Stats., and the Drivers Privacy Protection Act (DPPA, the initial charging document (front of citation) may be released upon request.

- (6) *Other Situations.* Records may be released pursuant to any other exceptions permitted by law. [Note: When provisions of this Policy Manual are in conflict, this Section shall control with release of information].