

Records Maintenance and Release

802.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy.

802.2 POLICY

The Roseburg Police Department is committed to providing public access to records in a manner that is consistent with the Oregon Public Records Law.

802.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Chief of Police shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to (ORS 192.318; OAR 166-020-0010 et seq.):

- (a) Managing the records management system for the Department, including the retention, archiving, release, and destruction of department public records (OAR 166-017-0005 et seq.; OAR 166-030-0005 et seq.).
- (b) Maintaining and updating the department records retention schedule, including:
 - 1. Identifying the minimum length of time the Department must keep records.
 - 2. Identifying the department division responsible for the original record.
- (c) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records.
- (d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- (e) Establishing rules regarding the processing of subpoenas for the production of records.
- (f) Ensuring the availability of a current schedule of fees for public records as allowed by law (ORS 192.324(4); ORS 192.324(5)).
- (g) Preparing and making available to the public a written procedure that includes the name of one or more individuals and address of where to send record requests to obtain department records as well as the amounts and the manner of calculating fees for responding to requests for public records (ORS 192.324(7)).

802.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Any department member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

802.4.1 REQUESTS FOR RECORDS

The processing of requests for any record is subject to the following:

- (a) Requests for public records shall be made in writing.
- (b) The Department is not required to create records that do not exist.

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- (c) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released (ORS 192.505).
 - 1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio/video, a copy of the redacted audio/video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
- (d) Responses to written requests for inspection or copies of public records shall be made as soon as practical without unreasonable delay. If necessary, the Custodian of Records or the authorized designee may request additional information or clarification for the purpose of expediting the response to the request. All requests shall be acknowledged and shall include one of the following (ORS 192.440):
 - 1. A statement that the Department does not possess or is not the custodian of the public record.
 - 2. Copies of the requested public records, if no exemption applies under ORS 192.410 through ORS 192.505.
 - 3. A statement that the Department is the custodian of some of the requested records, an estimate of time that the Department requires before the public records may be inspected or that the copies will be provided, and an estimate of the fees required of the requester.
 - 4. A statement that the Department is the custodian of some of the requested records and that an estimate of the time and fees for disclosure of the public records will be provided within a reasonable time.
 - 5. A statement that the Department is uncertain whether the Department possesses the public record and that the Department will search for the record and make an appropriate response as soon as practicable.
 - 6. A statement that state or federal law prohibits the Department from acknowledging whether the record exists or that acknowledging whether the records exists would result in the loss of federal benefits or other sanctions. This statement shall include the state or federal law citation relied upon by the Department.
- (e) If the public record is maintained in a machine readable or electronic form, a copy of the public record shall be provided in the form requested, if available. If the public record is not available in the form requested, the public record shall be made available in the matter it is maintained (ORS 192.440).

802.4.2 DENIALS

If the Custodian of Records determines that a requested record is not subject to disclosure or release, the Custodian of Records shall inform the requester in writing of that fact and state the reason for the denial. When the denial is pursuant to federal or state law, the specific law shall be provided to the requester (ORS 192.329).

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When asserting that a record is exempt, the written statement of denial shall include a statement that the requester may seek review of the determination pursuant to Oregon Law as identified by ORS 192.329.

If the denial is challenged by the requester by petition to the District Attorney, the Department will have the burden to support the denial (ORS 192.415).

802.4.3 JUVENILE RECORDS

Juvenile records are treated differently from records of adults. When an officer submits a report in which the victim or suspect is a juvenile, the officer will check the "Juvenile" box on the first page of the report.

Except as defined in this section, reports involving juveniles are generally confidential and may not be released. Any requests for reports or records involving juveniles not specifically authorized by this policy should be referred to the County Juvenile Department (ORS 419A.255(2); ORS 419A.255(8)).

- (a) If a youth is taken into custody under circumstances where he/she could be arrested without a warrant if an adult, or pursuant to an order of the Juvenile Court, the following information shall be disclosed with City Attorney or District Attorney approval unless, and only for so long as, there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim (ORS 419A.255(7)):
 - 1. The youth's name and date of birth and whether the youth is employed or in school.
 - 2. The youth offense for which the youth was taken into custody.
 - 3. The name and age of the adult complaining party and the adult victim, unless the disclosure of such information is otherwise prohibited or restricted.
 - 4. The identity of the investigating and arresting agency.
 - 5. The time and place that the youth was taken into custody and whether there was resistance, pursuit or a weapon used in taking the youth into custody.
- (b) Any additional information is kept confidential unless requested by one of the following (ORS 419A.255; ORS 419A.257):
 - 1. Other public agencies for use in investigating or prosecuting cases in which the juvenile in question is somehow involved.
 - 2. Department of Human Services, Child Welfare Division, Oregon Youth Authority or the local Juvenile Department.
- (c) Child abuse cases may only be made available to a law enforcement agency, local or state prosecutors, a child welfare agency or other entities as designated by law (ORS 419B.035).

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- (d) Court appointed special advocates (i.e., CASA volunteer or employee) will be permitted to inspect and copy any records held by this department relating to the child or ward involved in a case and members of this department may consult with the court appointed special advocate regarding the case. Consent of the child, ward or parents to the sharing of such information is not required (2012 Oregon Laws c107, §105).

802.4.4 REQUESTS FOR RECORDS

The processing of requests for any record is subject to the following (ORS 192.324; ORS 192.329):

- (a) Requests for public records shall be made in writing.
- (b) The Department is not required to create records that do not exist.
- (c) Within five business days of receiving a written request to inspect or receive a copy of a public record, the Custodian of Records or authorized designee shall acknowledge receipt of the request or complete the response to the request.
- (d) A written acknowledgement shall advise the requester of one of the following:
 - 1. The Department is the custodian of the requested record.
 - 2. The Department is not the custodian of the requested record.
 - 3. The Department is uncertain whether the Department is the custodian of the requested record.
- (e) As soon as reasonably practicable but not later than 10 business days after acknowledgement of receipt of the request, the Custodian of Records shall:
 - 1. Complete the response to the records request or;
 - 2. Provide a written statement that the request is being processed and a reasonable estimated date by which the response should be completed based on the information currently available.
- (f) A request for records is considered complete when:
 - 1. Access or copies of the requested public records are provided to the requester or an explanation is provided to the requester where the records are publicly available.
 - 2. A written statement is sent to the requester that an exemption exists and that access is denied.
 - (a) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted, and the unrestricted material released (ORS 192.338).
 - 1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio/video, a copy of the redacted audio/video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.

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3. A written statement is sent to the requester that the Department is not the custodian of records for the record requested.
 4. A written statement that state or federal law prohibits the Department from acknowledging whether the record exists or would result in the loss of federal benefits or other sanctions. This statement shall include the state or federal law citation relied upon by the Department.
- (g) If a fee is permitted under ORS 192.324(4) and the requester has been informed, the request is suspended until the requester has paid the fee or the Department has waived the fee. If the fee is not paid within 60 days of informing the requester of the fee or of the denial of the request for a fee waiver, the request shall be closed.
- (h) If necessary, the Custodian of Records or the authorized designee may request additional information or clarification for the purpose of expediting the response to the request. The response to the request is suspended until the requester provides the requested information, clarification, or affirmatively declines to provide the information or clarification. If the requester fails to respond within 60 days, the request shall be closed.
- (i) If the public record is maintained in a machine readable or electronic form, a copy of the public record shall be provided in the form requested, if available. If the public record is not available in the form requested, the public record shall be made available in the form in which it is maintained.

802.5 RELEASE RESTRICTIONS

Examples of release restrictions include:

- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any department record, including traffic collision reports, is restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).
- (b) Personal identifying information of members including Social Security number, date of birth, telephone number, home address, email address, driver license number, employer-issued identification card number, emergency contact information, medical information, or information of a personal nature that would constitute an unreasonable invasion of privacy (ORS 192.345; ORS 192.355).
 1. A showing of clear and convincing evidence that public interest requires disclosure may overcome the restriction.
- (c) Member identification badge or card as provided in ORS 192.371.
- (d) Information regarding a member working undercover and for the period of six months after the conclusion of those duties unless the member consents in writing or disclosure is required by law (ORS 181A.672).

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- (e) A photograph of public safety personnel without the written consent of that member (ORS 181A.674).
- (f) Personnel discipline action, including materials or documents supporting the action, unless allowed by law (ORS 181A.674; ORS 192.345(12)).
- (g) Certain victim information, including participants in the Address Confidentiality Program (ORS 192.368; ORS 192.844).
- (h) Certain juvenile records (ORS 419A.257).
- (i) Certain ongoing investigation material for criminal law purposes (ORS 192.345(3)).
- (j) Audio or video records of internal investigation interviews (ORS 192.385).
- (k) Certain types of reports involving but not limited to child abuse (ORS 419B.035) and adult abuse (ORS 124.090; ORS 430.763; ORS 441.671).
- (l) Records relating to pending litigation and to potential litigation that is reasonably likely to occur in which the Department is or will be named as a party (ORS 192.345(1)).
- (m) Certain identifying information of an individual who has applied for, or is a current or former holder of, a concealed handgun license as provided in ORS 192.374.
- (n) Specific operation plans in connection with an anticipated threat to individual or public safety (ORS 192.345(18)).
- (o) Any public records or information the disclosure of which is prohibited by federal law (ORS 192.355).
- (p) Any public records or information the disclosure of which is prohibited or restricted, or made confidential or privileged under Oregon law (ORS 192.355).
- (q) Records less than 75 years old that were sealed in compliance with statute or by court order. Such records may only be disclosed in response to a court order (ORS 192.398).
- (r) Records of a person who has been in the custody of the Department are exempt from disclosure for 25 years after termination of such custody. Disclosure of the fact that a person is in custody is allowed (ORS 192.398).
- (s) Audio or video recordings from an officer's body-worn camera. Such recordings may only be disclosed under the conditions provided by ORS 192.345(40), including facial blurring.
- (t) Personal information of complainants and of officers who are the subject of bias-based policing complaints. "Personal information" means an individual's name, address, date of birth, photograph, fingerprint, biometric data, driver license number, identification card number, or any other unique personal identifier or number (ORS 131.925; ORS 807.750).
- (u) The identity of an individual or an officer from traffic or pedestrian stop data collected by the Department (ORS 131.935).
- (v) Information regarding the immigration status of any victim who is requesting certification for a U or T visa, or any documents submitted for U or T visa certification and any written responses to a certification request except where allowed by law (ORS 147.620).

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- (w) Images of a deceased person or parts of a deceased body that are part of a department investigation if public disclosure would constitute an unreasonable invasion of privacy of the deceased person's family (ORS 192.355).
 - 1. A showing of clear and convincing evidence that public interest requires disclosure may overcome the restriction.
- (x) Captured license plate data from automated license plate recognition systems except as allowed by law (ORS 192.345(44)).

802.5.1 MEDICAL RECORDS, SEALED RECORDS, IN CUSTODY RECORDS AND STUDENT RECORDS

The following records are exempt from disclosure under ORS 192.496:

- (a) Records that contain information about the physical or mental health, or treatment thereof, of a living individual; if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing 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.
- (b) Records less than 75 years old that were sealed in compliance with statute or by court order. Such records may only be disclosed in response to a court order.
- (c) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.

802.5.2 CONDITIONALLY EXEMPT PUBLIC RECORDS

The following public records will not be released unless the public interest requires disclosure (Oregon Revised Statutes 192.501):

- (a) Records pertaining to any litigation to which the Department is, or is likely to be a party except where litigation which has been concluded.
- (b) Any record pertaining to department operations or the use and deployment of personnel and equipment, if disclosure would endanger public safety or jeopardize a law enforcement activity.
- (c) Records or information that would disclose or jeopardize security measures taken by the Department to protect department members, property or operations.

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802.5.3 OTHER PUBLIC RECORDS EXEMPT FROM DISCLOSURE

The following public records are generally exempt from disclosure and absent a court order or other legal process shall not be released except with the expressed authorization of the Chief of Police or his/her designee (ORS 192.502 et seq.):

- (a) Specific records containing the home address, personal telephone number, or e-mail address of any individual who has previously submitted a written request of non-disclosure in accordance with rules established by the Attorney General.
- (b) 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.
- (c) Personal information of any member of or volunteer of this department including addresses, Social Security numbers, dates of birth and telephone numbers.
- (d) Any public record or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon or Federal law.

802.5.4 PERSONNEL RECORDS

Certain information contained in personnel records is confidential and is also exempt from public disclosure. The following information shall not be released unless the public interest requires disclosure in the particular instance as determined by a court or other legal process (ORS 181.854; ORS 192.501(12); ORS 192.502(2)):

- (a) Medical information contained in medical records and similar uniquely personal information which, if released, would constitute an unreasonable invasion of privacy.
- (b) Records, materials, or documents supporting a personnel investigation that is pending or ongoing or has resulted in discipline of the involved employee.
- (c) Photographs that identify an employee, unless the employee consents in writing.
- (d) Audio or video records of internal investigation interviews (Ch. 485 Oregon Laws 2011).

Any release of such information must be reviewed by department legal counsel and approved by the Chief of Police. Although exempt from public disclosure, such records and information may be subject to discovery in civil or criminal proceedings or as detailed Ch. 485 Oregon Laws 2011. In such a situation, the Roseburg Police Department will oppose disclosure unless the court specifically orders the release.

802.6 SUBPOENAS AND DISCOVERY REQUESTS

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

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Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the Prosecuting Attorney, City Attorney or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

802.6.1 PERSONAL IDENTIFYING INFORMATION

Employees shall not access, use or disclose personal identifying information, including an individual's photograph, Social Security number, driver identification number, name, address, telephone number and the individual's medical or disability information, which is contained in any driver license record, motor vehicle record or any department record except as authorized by the Department and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (ORS 802.181 and 18 USC § 2721).

802.7 RELEASED RECORDS TO BE MARKED

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the department name and to whom the record was released.

Each audio/video recording released should include the department name and to whom the record was released.

802.8 EXPUNGEMENT

Expungement orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall seal such records as ordered by the court. Records may include but are not limited to a record of arrest, investigation, detention, or conviction. Once a record is sealed, members shall respond to any inquiry as though the record did not exist (ORS 137.225; ORS 419A.269).

802.9 SECURITY BREACHES

In the event of an unauthorized acquisition of personal information, the Chief of Police or the authorized designee shall ensure that an investigation into the breach is made and applicable steps pursuant to ORS 646A.602 et seq. are taken.

Required notice shall be made as follows (ORS 646A.604):

- (a) Notice shall be made to any individual whose private or confidential data was or is reasonably believed to have been breached. Notice shall be provided in the most expeditious manner possible, without unreasonable delay, but not later than 45 days after becoming aware of the breach, unless the notice impedes a criminal investigation.
 1. The notice shall be made as set forth in ORS 646A.604 and include a general description of the breach of security; the approximate date of the breach; the type of information that was compromised; the contact information for the person providing the notice; the contact information for national consumer reporting

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agencies; and that any suspected identity theft should be reported to law enforcement, the Attorney General, and the Federal Trade Commission.

- (b) When notice is delayed because it will impede an active criminal investigation, the member in charge of the investigation must document the reason why a delay in notification is necessary to the investigation.
- (c) Provide substitute notice if notification would cost more than \$250,000 or if there were more than 350,000 individuals whose personal information was breached.
- (d) If notification is required to be made to more than 1,000 individuals, the Roseburg Police Department should also notify consumer reporting agencies.
- (e) Provide notice to the Oregon Attorney General if the breach involves the personal information of more than 250 people along with a copy of any notice sent to individuals whose personal information was affected.
- (f) Document when a breach of security is unlikely to cause any harm and does not require notification. In these cases, the documentation shall be maintained for at least five years.