

Records Maintenance and Release

804.1 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.

804.2 POLICY

The Elkton Police Department is committed to providing access to public records in a manner that is consistent with the Maryland Public Information Act (PIA) (Md. Code GP § 4-101 et seq.).

804.3 CUSTODIAN OF RECORDS

The Chief of Police shall designate a Custodian of Records for each unit responsible for record retention. The responsibilities of the Custodian of Records include but are not limited to (Md. Code GP § 4-201 et seq.):

- (a) Managing the records management system for the Department, including the retention, archiving, release, and destruction of department public records.
- (b) Maintaining and updating the department records retention schedule including (Md. Code SG § 10-610; Md. Code SG § 10-615; COMAR 14.18.02.04):
 1. Identifying the minimum length of time the Department must keep records.
 2. Identifying the department bureau 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 procedures for correcting an error in records (Md. Code GP § 4-502).
- (f) Establishing rules regarding the processing of subpoenas for the production of records.
- (g) Ensuring a current schedule of fees for public records as allowed by law is available.
- (h) Preparing and making available to the public a description of the basic rights of a person who requests public information, the responsibilities of the Department, and the procedures, including the cost of inspecting or obtaining copies.
- (i) Ensuring that the Department only maintains information about a person that is (Md. Code GP § 4-102):
 1. Authorized or required by law.
 2. Relevant to the accomplishment of a legitimate purpose.
- (j) Adopting rules defining sociological information held by the Elkton Police Department and restricted release of the information (Md. Code GP § 4-330).

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- (k) Ensuring updated contact information for the Records Supervisor is maintained on the department's website and submitted annually to the Maryland Office of the Attorney General as required by Md. Code GP § 4-503.
- (l) Establishing database access requirements consistent with state and federal laws related to immigration enforcement (8 USC § 1373; Md. Code PS § 3-529).
- (m) Adopting rules for the appropriate proactive disclosure of public records that are available for inspection under the Maryland PIA (Md. Code GP § 4-104).
- (n) Posting in a prominent public location an explanation of the procedures for filing a request to obtain records relating to officer misconduct as defined by Md. Code PS § 3-101 (Md. Code PS § 3-515).

804.4 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.

804.4.1 REQUESTS FOR RECORDS

The processing of requests for any public record is subject to the following (Md. Code GP § 4-203):

- (a) Absent a valid reason for denial, the Custodian of Records shall grant access to the requested records promptly or within the reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the request.
- (b) If the Custodian of Records reasonably believes that it will take more than 10 working days to produce the requested records, written or electronic notice shall be provided to the applicant within 10 working days indicating the amount of time needed to produce the records, the reason for the delay, and the estimated fees that may be charged for the production.
- (c) The Department is not required to create records that do not exist.
- (d) 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.
 - 1. A copy of the redacted release should be maintained in the case file, or in an electronic file, as proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or 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.
- (e) A Custodian of Records may not ignore a request to inspect public records on the grounds that the request was made for the purpose of harassment.
- (f) If a request for records is denied, the Custodian of Records must notify the applicant within 10 working days in writing of the following (Md. Code GP § 4-203):
 - 1. The reasons for the denial.
 - 2. The legal authority for the denial.

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3. A brief description of the undisclosed record that will allow the applicant to evaluate the applicability of the legal authority for the denial. The description provided shall not disclose any protected information from the record.
 4. The remedies available to the applicant for review of the denial (Md. Code GP § 4-362).
- (g) The time limits set forth above in this section may be extended for an additional 30 days with the agreement of the applicant (Md. Code GP § 4-203).
- (h) The time limits set forth above in this section may be extended in the event of a dispute under Md. Code GP § 4-1A-01 et seq. or Md. Code GP § 4-1B-01 et seq.

Whenever the Custodian of Records reasonably believes that inspection would cause substantial injury to the public interest, the Custodian of Records may deny inspection temporarily, but within 10 working days after the denial, the Custodian of Records shall petition a court to issue an order permitting the continued denial of inspection (Md. Code GP § 4-358). If the Custodian of Records reasonably believes that inspection of part of a public record would be contrary to the public interest, the Custodian may deny inspection of that part of the record, but shall provide an explanation of why denial is necessary and why redaction would not address the reason for the denial (Md. Code GP § 4-203; Md. Code GP § 4-343).

804.4.2 DISPUTES

Anytime a written complaint regarding a dispute is received from the State Public Information Act Compliance Board (Board), the Custodian of Records shall notify the Support Services Bureau Commander. A written response containing the required information shall be filed with the Board within 30 days after receipt of the complaint (Md. Code GP § 4-1A-06). The Custodian of Records shall cooperate with the Board and participate in any processes outlined by law (Md. Code GP § 4-1A-05 et seq.). Legal counsel should be consulted with regard to all such challenges unless waived by the Support Services Bureau Commander.

In the event that the Custodian of Records becomes aware that an applicant has made a complaint to the Office of the Public Access Ombudsman, the Custodian of Records shall notify the Support Services Bureau Commander. Legal counsel should be consulted with regard to all such complaints unless waived by the Support Services Bureau Commander (Md. Code GP § 4-1B-04; Md. Code GP § 4-301).

If the Custodian of Records believes that an applicant's request or pattern of requests is frivolous or has been made in bad faith or with the purpose to annoy, the Custodian of Records should notify the Support Services Bureau Commander, who, in consultation with legal counsel, should determine whether a complaint should be made with the Ombudsman or Board as allowed by law (Md. Code GP § 4-1A-01 et seq.; Md. Code GP § 4-1B-01 et seq.).

804.5 RELEASE RESTRICTIONS

Examples of release restrictions include:

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- (a) Any personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, personal email address, and telephone number; and medical or disability information that is contained in any driver's license record, motor vehicle record, or any department record, including traffic accident 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) Records of ongoing investigations (Md. Code GP § 4-351).
- (c) Traffic and criminal records may not be released to persons reasonably known to be soliciting or marketing legal services (Md. Code GP § 4-315).
- (d) Arrest warrants and associated charging documents may not be released until the warrant has been served or 90 days has elapsed since the warrant was issued (Md. Code GP § 4-316).
- (e) Traffic control signal monitoring and speed monitoring system records (Md. Code GP § 4-321).
- (f) Personnel records, including retirement records, medical records, and personal employee information, including an employee's home address, email address, or telephone number (Md. Code GP § 4-306; Md. Code GP § 4-311; Md. Code GP § 4-312; Md. Code GP § 4-331).
- (g) Surveillance images (Md. Code GP § 4-322).
- (h) Information systems, alarm or security systems, and emergency policies, procedures, and plans (Md. Code GP § 4-314.1; Md. Code GP § 4-338; Md. Code GP § 4-339; Md. Code GP § 4-352).
- (i) Any record that the Custodian of Records reasonably believes would cause substantial injury to the public interest may be temporarily denied (Md. Code GP § 4-358).
- (j) Records relating to juveniles (Md. Code CJ § 3-8A-27).
- (k) Criminal history records (Md. Code CP § 10-219).
- (l) Information protected by the Address Confidentiality Program (Md. Code SG § 7-310).
- (m) Reports of suspected cruelty received from a veterinarian, including the identity of the veterinarian who filed the report (COMAR 15.14.15.04).
- (n) Portions of 9-1-1 communications records that depict a victim (Md. Code GP § 4-356).
- (o) Certain records sought for the purpose of enforcing federal immigration laws (Md. Code GP § 4-320; Md. Code GP § 4-320.1; Md. Code PS § 3-529).

804.6 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 State's Attorney, Town 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.

804.7 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.

804.8 SECURITY BREACHES

Members who become aware that any Elkton Police Department system containing personal information may have been breached should notify the Records Supervisor as soon as practicable.

The Records Supervisor shall ensure the required notice is provided to the Office of the Attorney General, the Department of Information Technology, and the persons whose personal information is reasonably believed to have been breached pursuant to the requirements set forth in Md. Code SG § 10-1305. Notice shall be in the form and manner specified in Md. Code SG § 10-1305.

Notice shall be given as soon as reasonably practicable after discovery of the possible breach consistent with the legitimate needs of the Elkton Police Department and any measures to determine the scope of the breach, the identity of those affected, and to restore the integrity of the breached system. Notice may be delayed if notification will impede a criminal investigation or jeopardize homeland or national security (Md. Code SG § 10-1305).

For purposes of the notice requirement, personal information includes a person's first name, first initial and last name, personal mark, or unique biometric or genetic print or image in combination with any one or more of the following (Md. Code SG § 10-1301):

- (a) Social Security number and Individual Taxpayer Identification Number
- (b) Driver's license number, Maryland identification card number or other similar identification number, including a passport number
- (c) Full account number, credit or debit card number, or any required security code, access code, or password that would permit access to an individual's financial account

If the breach reasonably appears to have been made to protected information covered in the Protected Information Policy, the Records Supervisor should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

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804.9 EXPUNGEMENT

Expungement orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall expunge 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 expunged, members shall respond to any inquiry as though the record did not exist (Md. Code CP § 10-101 et seq.).

Unless an order is stayed pending an appeal, the Custodian of Records served with an order of expungement of a juvenile record under Md. Code CJ § 3-8A-27.1 shall notify the court, the petitioner, and all parties in writing within 60 days after entry of the order that the Department has complied with the order.

804.10 TRAINING

All members authorized to manage, release or facilitate public access to department records shall complete a training program that includes identification of material appropriate for public access and the department systems and procedures guiding such release and access.