



# DIRECTIVES

## Oak Creek Police Department

**Effective Date:**

November 1, 2019

**Reviewed Date:**

August 9, 2024

**Sign-Off Date:**

August 26, 2024

**Title:**

### PUBLIC RECORDS POLICY

**Directive Number:**

10-200

**Critical Policy**

Yes  No

**Open Record**

Yes  No

**Total Pages:**

7

**Applicability:**

All Employees

\*State Statute §19.31-19.39 – Wisconsin Public Records Law

#### I. PURPOSE AND POLICY

The purpose of this directive is to establish a policy outlining guidelines to be followed regarding public records requests in accordance with the Wisconsin Public Records Law.

It shall be the policy of the Oak Creek Police Department that all records are maintained and disseminated in accordance with the guidelines established by Oak Creek Police Department Policies and Procedures and Wisconsin law in consideration of the confidentiality, privacy and security of citizens.

The Oak Creek Police Department recognizes that, since the business the Department is associated with may be a matter of community concern and interest, it shall be the policy of the Department to provide interested citizens and the news media with timely and accurate information regarding Department activities while following the prescribed guidelines for the release of information.

#### II. AUTHORITY AND RESPONSIBILITY

The Oak Creek Police Department records custodian is the Chief of Police. The Chief of Police has delegated the Public Records Supervisor as records custodian. Under the direction of the Public Records Supervisor, the Open Records Clerk is responsible for handling all Oak Creek Police Department records requests.

#### III. DEFINITIONS

- A. *Balancing Test* - If there is no statutory or common law exception, the balancing test must be applied to determine whether a record should be released, (i.e., whether the public interest in nondisclosure outweighs the presumption that the records are subject to disclosure).
- B. *Denial* - A written request that is denied in whole or in part shall be responded to with a written explanation that informs the requestor of the reason(s) for any redactions or denial and of the right to have the determination reviewed under a mandamus action under WI §19.37(1) or by application to the Wisconsin Attorney General or Milwaukee County District Attorney as authorized under WI §19.35(4)(b). If a verbal request is denied in whole or in part, it may be denied verbally without explanation unless the requestor makes a demand for written statement of the reason for denial within five (5) business days of the verbal denial WI §19.35(4)(b).
- C. *Log* - All public records requests shall be entered into a log. The time needed to fulfill those requests shall be entered into the log for charging purposes.

### III. DEFINITIONS – *Continued*

- D. *Record* - In the context of the public records law, a record includes “any material on which written, drawn, printed, spoken, visual, 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” (the Oak Creek Police Department) and “includes, but is not limited to: handwritten, typed pages, printed pages, maps, charts, photographs, films, recordings, tapes, optical disks and any other medium on which electronically-generated or stored data is recorded or preserved.” WI §19.32(2).
- E. *Redaction* - Information which is to be withheld shall have that information separated and/or blackened out. WI §19.36(6).
- F. *Request* - A verbal or written notification made to the Oak Creek Police Department for public records maintained by the Oak Creek Police Department.
- G. *Timing* - Requests will be completed, or the requestor will be notified of any denial in whole or in part, as soon as practicable and without delay.

### IV. PUBLIC RECORDS AND REQUESTS

Wisconsin Public Records Law recognizes the strong presumption in favor of the right of the public to inspect records in the custody of a public authority. [WI §19.31 and §19.35(1)(a)]. The current version of the Wisconsin Department of Justice Public Records Law Compliance Outline and/or the Office of the City Attorney shall be consulted with questions regarding public records requests. The Oak Creek Police Department has posted a “Public Records Notice” to advise persons requesting public records how they may obtain access to or copies of the Oak Creek Police Department’s public records. [WI §19.34(1)].

### V. LIMITATIONS UPON ACCESS TO POLICE DEPARTMENT RECORDS

- A. *Ongoing Investigation* – A request for records that are a part of an ongoing criminal investigation are exempt from disclosure. [*Newspapers, Inc. v. Breier*, 89 WI 2d 417, 438, 279 N.W.2d 179 (1979) and *Journal/Sentinel v. Agerup*, 145 Wis. 2d 818, 820, 429 N.W.2d 772 (Ct. App. 1988)]
- B. *Criminal History* – Certain law enforcement records may not be disclosed if required by federal law. [WI §19.36(2) and 905.09] Requestors seeking criminal history records shall be directed to the Wisconsin Crime Information Bureau (CIB).
- C. *Informants* – A record that contains information which identifies an informant shall have that identifying information redacted or may result in limited access to that record or certain information contained in that record. [WI §19.35(1)(am)2.b., 19.35(1)(em) and 19.36(8)]
- D. *Firearms* – Records containing information obtained from the Wisconsin Department of Justice regarding a license to carry a concealed weapon shall not be disclosed except for purposes of prosecuting an offense for which the license is relevant. [WI §175.60(12) and WI §175.60(12g)(b)1]

## VI. DEPARTMENT OF TRANSPORTATION RECORDS

In conformance with applicable case law and the Federal Driver Privacy Protection Act, 18 U.S.C. §2721-2725 (“DPPA”), certain personal identifying information which was obtained or may have been obtained through the TIME System or via the Wisconsin Department of Transportation Division of Motor Vehicles, which may be found in traffic accident reports (MV4000e), Incident Reports and other Oak Creek Police Department Records, shall be prohibited and/or redacted from release in any record unless there is an exception. [U.S. Constitution, Article VI, Section Two; 18 U.S.C. 2721 et seq.; WI §19.35(1)(a) and 19.36(1)]

### A. “Personal information” includes:

1. Name;
2. Address (excluding the zip code);
3. Telephone number;
4. Driver identification number;
5. Individual’s photograph;
6. Social Security number;
7. Disability or medical information.

### B. “Personal Information” does not include:

1. Driver’s status;
2. Driving violations;
3. Five-digit zip code;
4. Information regarding motor vehicle accidents.

### C. Exceptions:

1. By any government agency or entity acting on its behalf, including any court or law enforcement agency, in carrying out its functions;
2. In connection with motor vehicle or driver safety and theft, motor vehicle emissions, product altercations, recalls or advisories;
3. Research activities, including survey research; and removal of non-owner records from motor vehicle manufacturer records;
4. Use in normal course of business to verify accuracy of personal information submitted to the business and if such information is not correct, to obtain correct information only for the purposes of preventing fraud;
5. Use in connection with any court proceeding including service of process, investigation in anticipation of litigation, and execution of judgments and orders;

VI. DEPARTMENT OF TRANSPORTATION RECORDS – *Continued*

6. Use in research activities and in producing statistical reports as long as the personal information is not published, redisclosed, or used to contact individuals;
7. Use by an insurer or insurance support organization in connection with claims investigation, antifraud activities, rating or underwriting;
8. Use in providing notice to owners of towed or impounded vehicles;
9. Use by a licensed private investigative agency or security service for any of these stated exceptions;
10. Use by an employer to verify information relating to the holder of a commercial driver's license;
11. Use in connection with operation of private toll transportation facilities;
12. Any use in response to requests for individual motor vehicle records if the State has obtained the express consent of that person;
13. Bulk distribution for surveys, marketing or solicitation if the State has obtained the express consent of that person;
14. Use by any requester if that requester has obtained the written consent of that person;
15. Any other use related to operation of a motor vehicle or public safety if such use is specifically authorized by laws of the State of Wisconsin.

VII. PERSONNEL INFORMATION

- A. Employee Records – The Oak Creek Police Department, as an employer, shall not disclose the following information related to an employee:
  1. Home address, home electronic mail address, home telephone number or Social Security number, unless the employee so authorizes. [WI §19.36(10)(a)]
  2. Information relating to an ongoing investigation of a possible criminal offense or employment misconduct. [WI §19.36(10)(b)]
  3. Employee examination information, except for the examination score, unless otherwise prohibited. [WI §19.36(10)(c)]
  4. Routine performance evaluations, records used for staff planning, records used for future salary adjustments, wages, bonus plans, promotions, assignments, letters of reference, and employee ratings. [WI §19.36(10)(d)]
- B. Employee Notification – Where the balancing test allows for the disclosure of the following records, the employee must be given written notice personally or via certified mail within three days of that decision to disclose:
  1. Records of an employee relating to a disciplinary investigation or possible employment related violation;

VII. PERSONNEL INFORMATION – *Continued*

2. Records obtained through a subpoena or search warrant;
3. Records from a previous employer that reference the employee unless the employee gives permission. [WI §19.356(2)]

VIII. JUVENILE RECORDS

- A. The Oak Creek Police Department will not release any juvenile information/record to any requester (citizen or organization) requesting copies of records containing juvenile information. All juvenile identifying information shall be redacted so as not to reveal the identity of the juvenile. [WI § 19.36(6) and 48.396]. Exceptions include:
  1. Juveniles 14 years old and over may obtain their own records without their juvenile information redacted. Proof of identification is required using photo identification (i.e., driver's license, student identification, state identification, etc.). [WI §938.396(1)(c)1]
  2. A juvenile's parent or legal guardian may obtain a copy of the juvenile's record without the juvenile's identifying information being redacted. [WI §938.396(1)(c)1]
  3. A law enforcement agency, Children's Court, criminal court, Child Welfare Agencies, the school the juvenile attends, or other agencies designated by Wisconsin State Statute may obtain un-redacted records. [WI §938.396(1)(b)2, §938.396(1)(b)3, §938.396(1)(b)4 and §938.396(1)(b)5]
  4. A news media organization representative may obtain a copy of the juvenile's record without the juvenile's identifying information being redacted but may not reveal the identity of the juvenile. [WI §938.396(1)(c)1]
  5. An insurer of a victim shall be allowed to receive/review records that include juvenile names based on the fact that they are not allowed to release said information, as long as they are in compliance with the DPPA and WI § 938.396(1)(c)7.
  6. Motor Vehicle Accident reports and their typed supplemental reports containing juvenile information may be released when compliant with DPPA.
- B. The Oak Creek Police Department will not release any record containing juvenile information to any agency conducting background investigations for employment unless specified above. These records will not be released to an agency even with a signed release from the juvenile contained in the record.
- C. The Oak Creek Police Department will not release any record containing juvenile information to a military recruiter, even with a signed release from the recruit. Further, the Department will not check any box on a form or otherwise that acknowledges whether a juvenile record exists with this Department.
- D. The Oak Creek Police Department will not release any juvenile information/record to an agency performing background checks except as outlined in this directive.
- E. If a juvenile record exists and is requested by anyone other than the juvenile contained in the record, the juvenile name and any other identifying information shall be redacted so as not to reveal the identity of the juvenile. These redactions shall include any other family information contained in a record that would indicate the identity of the juvenile.

VIII. JUVENILE RECORDS – *Continued*

- F. For any record requests involving juveniles for whom a record exists with the Oak Creek Police Department, a notice stating “The Oak Creek Police Department does not release Juvenile Information” will be stamped on the record request and signed by the clerk or supervisor who completed the record check. [WI §938.396(1) and §48.396(1)]
- G. Reports involving open cases referred to the Children’s Court Center shall not be released by the Oak Creek Police Department. Requesters will be directed to the Children’s Court Center.

IX. MEDICAL INFORMATION

- A. The Oak Creek Police Department will not release a record containing medical information. All records containing medical information shall have the medical information redacted. Mental health statements of emergency detention shall not be released, unless the subject of the report consents to the release of the record. [WI §51.30(4)]
- B. Exceptions:
  - 1. OWI blood draw results;
  - 2. Preliminary Breath Test (PBT) results;
  - 3. Intoximeter results;
  - 4. WI Crime Lab report results;
  - 5. Injuries sustained during accidents/incidents.

X. MEDIA REQUESTS FOR RECORDS

- A. The Chief of Police or the Chief’s designee, is the Oak Creek Police Department’s media liaison.
- B. Information to the news media will be released via review of daily logs, formal press releases or personal interviews.
  - 1. Media representatives will have access to daily logs in compliance with DPPA once they show proper identification.
  - 2. A formal press release will be drafted for events significant in nature. These press releases will be made public via the Oak Creek Police Department’s social media sites. These press releases will remain public records and archived as required by law.
  - 3. The Chief or Chief’s designated Department personnel may draft a press release. The information released should follow Department guidelines. The press release should be completed in a timely manner. The Chief shall be advised that the press release has been posted.
  - 4. Any requests by the media for personal interviews should be directed to the Chief of Police or the Chief’s designee.
  - 5. Only the Chief or the Chief’s designated personnel shall release information over the telephone to the news media. No other information shall be released except that approved by the Chief.

XI. LOCATION AND COPY COSTS

- A. Location Costs – The cost of locating responsive records may be charged if it exceeds \$50.00 and will be calculated at the hourly pay rate (including fringe benefits) of the person(s) locating records multiplied by the actual time expended to locate those records.
- B. Copy Costs – Fees imposed for location and copying costs shall be the actual, necessary, and direct costs, except where a specific fee is established. (See Appendix I – Public Records Request Fee Schedule) [WI §19.35(3)(a)]
- C. Redaction Costs – Fees may be imposed to a requester for actual, necessary and direct costs of redacting recorded audio or video content. [WI §19.35(3)(h)]
- D. Requests which exceed a total cost of more than \$5.00 may require prepayment. [WI §19.35(3)(f)]

XII. DISCLAIMER

The Public Records Policy developed by the Oak Creek Police Department 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 the Public Records Policy can only be the basis of a complaint by the Oak Creek Police Department, and then only in a non-judicial administrative setting.

REFERENCE:

Wisconsin State Statutes §19.31 -19.39, Wisconsin Public Records Law  
Crime Victims' Rights Policy – 3-200



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David R. Stecker  
Chief of Police

DRS/tp

Policies/Public Records Policy

**Oak Creek Police Department  
Public Records Request Fee Schedule**

*“An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established of authorized to be established by law.” and “An authority that is a law enforcement agency may impose a fee upon a requester for the actual, necessary, and direct cost of redacting, whether by pixelization or other means, recorded audio or video content to the extent redaction is necessary to comply with applicable constitutional, statutory, or common law” [Wisconsin State Statutes §19.35(3)(a) and §19.35(3)(h) ]*

<b>Hard Copies</b>	<u>Includes any paper records provided by:</u> <ul style="list-style-type: none"> <li>- Copying a paper record</li> <li>- Printing an electronic record</li> </ul>	\$0.10 per page (Black & White) \$0.15 per page (Color) In rare instances, specialized skills, equipment, or technology, may result in additional copy costs.
<b>Electronic Copies</b>	<b><u>Includes any electronic records provided by:</u></b> Email, PDF, DVD, CD, OneDrive/SharePoint (file sharing) or any other electronic format	
	<u><b>Paper to Digital:</b></u> Includes scanning physical records to digital format  <u><b>Digital to Physical:</b></u> Includes copying digital records to a physical format	CD/DVD (each):                 \$0.40 OneDrive/SharePoint: - Minimum (less than 1GB)   \$1.00 - 1GB but less than 5GB       \$5.00 - 5GB or more                     \$10.00
<b>Accident Reports</b>	Any MV4000e report, not to include any additional supplement reports (either physical or digital formats)	Flat fee of \$1.00 (each)
<b>Location Fees</b>	May only be imposed if the cost of location is \$50.00 or more. Includes searching for and identifying responsive records, but does not include any applicable redaction fees.	Will be calculated at the hourly pay rate (including fringe benefits) of the person(s) locating records multiplied by the actual time expended to locate those records.
<b>Redaction Fees</b>	May be imposed upon a requester for the actual, necessary, and direct cost of redacting, whether by pixelization or other means, recorded audio or video content to the extent redaction is necessary to comply with applicable constitutional, statutory, or common law.	Will be calculated at the hourly pay rate (including fringe benefits) of the person(s) redacting records multiplied by the actual time expended to redact those records.
<b>Shipping</b>	Flat fees for shipping of any physical reports, documents, or physical formats that will not ship in a regular standard United States Postal Service envelope for regular 1 <sup>st</sup> class shipping.	Medium Envelope:     \$1.50 Large Envelope:       \$3.00 Regular USPS Mailer: \$5.00 Large USPS Mailer:   \$10.00