



YARMOUTH POLICE DEPARTMENT POLICY AND PROCEDURE

RECORDS MANAGEMENT AND REQUESTS 2019-02

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Accreditation Standards: 72.1.3; 82.1.3

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General Considerations This department regularly receives requests for records created or maintained by this agency. The requests come from members of the public, government entities, and many other sources.

Under Massachusetts Public Records Laws, all municipal records are considered to be public unless they are exempted by statute. The statutes that exempt records and data are found throughout the Massachusetts General Laws and Codes of Massachusetts Regulations. Those tasked with responding to the requests must apply the exclusions, exemptions, and mandates in determining whether or not to release the records in whole or in part.

Link to A guide to the Massachusetts Public Records Law

www.sec.state.ma.us/pre/preidx.htm

Policy Records shall be available for all authorized personnel and entities working in a police function. Request for records through discovery and public records laws will be honored in compliance with the Massachusetts General Laws and C.M.R.'s. Juvenile records, C.O.R.I. and personal data will be protected in compliance with Massachusetts General Law, C.M.R.'s and any other applicable regulations. All records in the custody of the police department shall be retained and/or destroyed in accordance with the standards set by the Office of the Secretary of the Commonwealth. Review policy: **Criminal Offender Record Information.**

Records Officer 82.1.7 The Records Officer is responsible for the records management function under the direction of the Chief's designee (Supervisor). The duties of the Records Officer shall include:[82.1.7]

1. Collection of all reports and related data;
2. Maintenance of incident, accident, arrest and other reports;
3. Retrieval and distribution of records and documents for authorized persons and entities;
4. Compliance with records requests under state law and the Freedom of Information Act;
5. Protection of C.O.R.I., confidential and personal data;
6. Maintaining the archive of records required to be stored permanently;
7. Destruction of records in compliance with protocols provided by the Secretary of the Commonwealth.

Storage and Security
 72.1.3
 82.1.1 a
 82.1.7
 82.3.5

The Records Officer is responsible for the security of paper records stored in the records section of this agency. Paper records are stored in the records room, Records Office or archived in a secure area free from unsupervised access by members of the public and unauthorized personnel. Security of electronic records shall be the responsibility of the Police Department's Technology Administrator. Employees shall be issued their own unique password to access the records system. [82.1.1 a][72.1.3]

The Department's Technology Administrator shall utilize the case sensitive lock out system for any electronic case sensitive report such as sexual assaults. Access to those records shall be limited to the investigating officer, supervisors and sexual assault investigators. The physical record shall be secured in the appropriate locked file. Access to the physical record shall be limited to the records officer, records clerks, court prosecutor, detective sergeant and Deputy Chief of Police or his designee.[82.1.1 a][82.1.7]

Security of records stored by other operational components of this department shall be the responsibility of the commander of that component. [82.3.5] Review policy: **Confidential Informants and Vice, Drugs and Organized Crime**

Access by Employees

The Records Officer shall provide copies of central file paper reports to department employees during his/her working hours. Paper records

82.1.1 b
72.1.3
82.1.7

may not be obtained when the Records Officer is not working. In the event a paper record is necessary, the Deputy Chief of Police or his designee or alternative assigned officer shall be contacted to respond and address said concerns. The Court Prosecutor can provide reports in the absence of the Records Officer. [82.1.1 b][72.1.3]

Electronic records are available to authorized personnel at all times through the department's Information Systems. The exception shall be sexual assault records. They shall be accessible to the investigation officer(s), detective(s) assigned only. (password protected) [82.1.7]

Release of
Records to
Law
Enforcement
Agencies
82.1.1 c

The department shall maintain a list of C.O.R.I. disseminated (C.O.R.I. Log) and the individuals and agencies to whom it has released or communicated C.O.R.I. information. These listings shall be maintained in the C.O.R.I. Log for at least one year after the date of dissemination and shall be made available for inspection by the DCJIS.ⁱ The log shall include:ⁱⁱ

1. The type of C.O.R.I. disseminated;
2. The agency or individual to whom it was disseminated;
3. Individual disseminating the information; and
4. Date that information was disseminated.

Records may be released to law enforcement affiliated agencies authorized to receive C.O.R.I. on a need-to-know basis. All police departments are authorized to receive C.O.R.I. Some other law enforcement affiliated agencies authorized to receive C.O.R.I. are the: [82.1.1 c]

1. Alcoholic Beverages Control Commission;
2. Department of Corrections;
3. Fire Marshall's Office;
4. Massachusetts Chiefs of Police Association;
5. Military - Law Enforcement and Intelligence Only;
6. MSPCA, Law Enforcement Division;
7. Office of the Medical Examiner;
8. Sheriff's Departments.
9. NESPIN;

10. Parole Board; Probation
11. Registry of Motor Vehicles; and
12. Sex Offender Registry Board

The following records may not be released without authorization of the records supervisor:

1. Open criminal cases;
2. Open accident investigation reports;
3. Active investigations; and
4. Victim, witness, or suspect statements.

The following reports may not be released without authorization of the Chief or Deputy Chief of Police or his designee:

1. Internal Affairs Records;
2. Personnel Records;
3. Medical Records;
4. Emergency Response Plans; and
5. Facility or Event Security Plans.

Records containing C.O.R.I. may not be distributed to agencies not authorized to receive C.O.R.I. as listed on the CJIS authorization list, as amended from time to time. This includes other government entities within this town. C.O.R.I. information must be segregated if any other part of the record may be released.

Military recruiters are not authorized to receive C.O.R.I. However, individuals may provide recruiters with authorization to receive a copy of their local criminal history.

Review policy: **Criminal Offender Record Information**

Release of
Records to
Court
82.1.1 c

Records released to the Superior or District Court shall be the responsibility of the Records Clerk or Court Prosecutor. These documents include, but are not limited to, the following: [82.1.1c]

1. Criminal Complaints;

2. The Statement of Facts Form;
3. Citations;(criminal)
4. Temporary Restraining or Harassment Orders

Discovery of Evidence Requests
82.1.1 c

Employees should not confuse requests for records through court discovery proceedings with public records requests. For attorneys, defendants, or others requesting materials under the public records law or Freedom of Information Act, see the public records section of this policy. Records of cases or investigations being investigated, prosecuted or previously adjudicated may be exempt from release as public records under M.G.L. c. 4, §26(f). [82.1.1 c]

The department's Court Prosecutor may fulfill discovery requests from the District Attorney's Office. Requests for reports and materials for criminal cases by defense counsel should be requested through discovery. The requestor should be referred to the District Attorney's Office. Such records include, but are not limited to:ⁱⁱⁱ

1. Reports;
2. Statements;
3. Photos;
4. Videos, including booking videos;
5. E9-1-1 recordings;
6. Business line phone recordings; and
7. Radio transmissions.

Civil Cases
82.1.1 c

Requests pertaining to civil cases not accompanied by a subpoena should be considered a public records request. Requests for reports and materials for civil cases should be referred to the District Attorney's Office when: [82.1.1 c]

1. The criminal case is still active;
2. The incident involved a death; or
3. The incident was adjudicated in Superior Court.

Public record Requests

All records under the custodianship of the government are public records unless exempted by statute. Public records, to include the

82.1.1 c

daily log and arrest log, shall be available for view by members of the public. Copies may be made for a fee as regulated by MGL 66 s 10. No fee will be charged for the inspection of records unless search time is involved.

The Records Clerk shall be responsible for processing all public records requests and answering them within ten business days. They may be requested in the following manner: [82.1.1 c]

1. Oral requests (In Person)
2. Written requests
3. Postal Mail
4. Email
5. Fax

The request must include an adequate description of the record so that the correct record(s) may be located.^{iv} The requestor shall not be required to provide proof of identity or to disclose the reason for the request.

Employees may not provide a person with a copy of that person's B.O.P. or Ill record printed through the department's L.E.A.P.S or live scan computer systems.

The exception is if the requested document is exempted as a security document pursuant to M.G.L. c. 4, §7(26) (n).^v Such records include security procedures, school building plans, emergency preparedness, and disaster response plans. No records of this nature shall be released without permission of the Chief.

Individuals may review and copy records, including C.O.R.I., which relate to themselves.^{vi} Individuals may give written authorization to a third party to review and copy records, including C.O.R.I.^{vii} Such reviews may be conducted during the Records Clerk's business hours.

Redaction
82.1.1 c

Certain information must be redacted or deleted from public records prior to distribution. Redaction should be done with darkened marker on paper documents. The redacted paper should then be photo copied to ensure that the redaction remains unreadable through the marker. If it is not practical to make a photocopy, then a black permanent marker should be used. The following personal information shall be redacted:^{viii} [82.1.1 c]

1. Social Security numbers;
2. Telephone numbers; and
3. Day and month of the birth date;
4. Driver's License numbers;
5. Witness street address

The following victim information shall be redacted:^{ix}

1. Victims of rape or sexual assault reports, victim identification, and victim statements;^x
2. Home addresses and telephone numbers, places of employment or education of victims of adjudicated crimes;^{xi} and
3. Home addresses and telephone numbers, places of employment or education of victims of domestic violence.^{xii}

The following investigatory materials shall be redacted:^{xiii}

1. Information relating to an on-going investigation that could potentially alert suspects to activities of investigating officials;
2. Confidential investigative techniques, the disclosure of which would prejudice future law enforcement efforts may be withheld indefinitely;
3. Witness identification and statements;
4. All references to and information of confidential informants; and
5. Undercover officers' names.

Note-The records request must be processed as any other public records request; however, personal data and C.O.R.I. related solely to the requestor should not be redacted. Individuals without criminal records may receive a letter stating that the individual has no criminal record in the municipality's files. The letter must be signed by the Records Clerk or Chief of Police and may be notarized if requested.^{xiv}

Record Exemptions
82.1.1 c

The following is a list of documents that are excluded from the public records law and may not be disclosed. [82.1.1c]

1. Rape or sexual assault reports, victim identification, and victim statements.^{xv}
2. Internal personnel rules and practices.^{xvi}
3. Personnel Files:^{xvii} Personnel files are distinguished from internal affairs records. Requests for personnel files should be reviewed by the Chief of Police and Town Counsel.^{xviii} Personnel files include records on discipline, promotion, demotion, termination, and medical files.^{xix}
4. Documents relating to policy development.^{xx}
5. Investigatory material the disclosure of which would prejudice effective law enforcement.^{xxi}
6. Active investigations
7. Open criminal cases
8. Applications for and other identifying data relating to Licenses to Carry Firearms.^{xxii}
9. Testing materials and answer keys if materials are intended to be used again.^{xxiii}
10. Policies, procedures, security measures and assessments for emergency preparedness.^{xxiv}
11. Identification of hazardous materials and MSDS "Material Safety Data Sheet" of hazardous substances reported to municipalities by businesses pursuant to M. G. L. c. 111F, §16^{xxv}
12. Conflict of interest, requests for opinions.^{xxvi}
13. Home addresses and telephone numbers of Police, Fire and Emergency Medical personnel.^{xxvii}
14. Home addresses and telephone numbers, places of employment or education of victims of domestic violence.^{xxviii}

15. Juvenile delinquency case records: juvenile probation may release certain information pursuant to allegations of certain crimes.^{xxxix}

Request
Denial
82.1.1 c

There shall be a presumption that the record sought is public. The burden of proof is on the records custodian denying the release of the record.^{xxx} Responses to requests for public records must be made within ten business days and a denial must be made in writing and set forth the reasons specifically identifying the exemption upon which the denial is based.^{xxxi} A failure to respond is considered a denial by the Secretary of the Commonwealth.^{xxxii}

The denial letter must include an advisement of the requestor's remedies under 950 CMR 32.00, which include:^{xxxiii} Appeal to the office of the Secretary of State, Public Records Division. The appeal must be made within ninety days and must be in writing and must include a copy of the letter by which the request was made and a copy of the denial response.^{xxxiv}

It is within the discretion of the Supervisor who oversees records to accept or deny an appeal. The appeal may be denied if:^{xxxv}

1. The records are the subject of a dispute in active litigation, administrative hearings, or mediation;
2. The request is designed or intended to harass, intimidate or assist in the commission of a crime; or
3. The request is made solely for a commercial purpose.

Appeals in which there has been no communication from the requestor for six (6) months may be closed at the discretion of the Supervisor.^{xxxvi} The appeal, if accepted, will be investigated in a reasonable time and a written decision stating the reason for that decision will be issued.^{xxxvii}

Records
Retention
82.1.3

Records shall be retained, at a minimum, for the time specified in the records disposal schedules promulgated by the Secretary of the Commonwealth, as amended from time to time.^{xxxviii} Disposal schedules apply to information, not the media containing the information. If records maintained on electronic media are printed out in an eye-readable format, the original electronic records may be immediately destroyed. If the electronic record is the sole source of the information, it must be treated in the same manner as its hard copy counterparts for the purposes of disposal, and must be maintained in accordance with the disposal schedule. [82.1.3]

Authorization
for Destruction
and Method

Most records held by police departments require authorization of the Supervisor of Public Records, Office of the Secretary of the Commonwealth, for disposal. Instructions and sample letters requesting destruction are available from the Secretary of the Commonwealth. After being retained for the minimum duration specified in the destruction schedule, records may be destroyed if they do not require specific authorization for destruction. Such records are denoted with an asterisk "*" on the destruction schedule. No records that are subject to any current or pending litigation, public records request, or which have not been retained for at least the minimum retention duration may be destroyed. Original records cannot be destroyed without the written permission of the Supervisor of Public Records. No records created prior to 1870 may be destroyed.

Records containing confidential information or information that would be segregated, excluded, or redacted from release as a public record shall be destroyed in such a manner as to make the record unreadable and unrecoverable. Security of the records must be maintained until they are actually destroyed.

Access link to Commonwealth of Massachusetts Municipal Records Retention Manual www.sec.state.ma.us/arc/arcrmu/rmuidx.htm

Crime Data
Reporting
82.1.4

The Administrative Secretary to the Chief of Police shall be responsible for the collection and submitting of National Incident Based Reporting System (NIBRS), on a monthly basis, to the Massachusetts State Police. This will be accomplished through data retrieved from the IMC records system. Officers' shall submit reports to their shift supervisors in a timely manner for review, correction and approval. IMC critical errors discovered by the administrative assistant shall be forwarded to the shift supervisor for immediate attention and correction. In the event the shift supervisor is unable to clear a critical error, they shall seek out the administrative assistant for guidance.

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- i 803 CMR 3.10.
- ii M.G.L. c. 6, §172.
- iii M.G.L. c. 4, §7(26)(f).
- iv 9.06 C.M.R. 32.05(4).
- v 950CMR 32.05(5): “Except when the requested records concern information which may be exempt from disclosure pursuant to G. L. c. 4 s. 7(26)(n)[records relating to security measures, emergency preparedness, threat assessments], a custodian may not require the disclosure of the reason for which a requester seeks access to a copy of a public record. A custodian shall not require proof of the requestor’s identity prior to complying with request of copies of public documents.”
- vi 803 C.M.R. 6.02; M.G.L. c. 6, §175.
- vii 803 CMR 6.06.
- viii M.G.L. c. 4, §7(26)(c).
- ix M.G.L. c. 66, §10(f).
- x M.G.L. c. 41, §97D.
- xi M.G.L. c. 66, §10(d).
- xii M.G.L. c. 66, §10(d).
- xiii M.G.L. c. 4, §7(26)(f).
- xiv 8.03 CMR 6.05(2).
- xv M.G.L. c. 41, §97D.
- xvi M.G.L. c. 4, §7(26)(b).
- xvii M.G.L. c. 4, §(26)(C).
- xviii Worcester Telegram & Gazette Corp. vs. Worcester Chief of Police, 58 Mass. App. Ct. 1 (2003).
- xix M.G.L. c. 4, §7(26)(C).
- xx M.G.L. c. 4, §7(26)(d).
- xxi M.G.L. c. 4, §7(26)(f).
- xxii M.G.L. c. 66, §10(d); M.G.L. c. 4, §7(26)(j).
- xxiii M.G.L. c. 4, §7(26)(l).
- xxiv M.G.L. c. 4, §7(26)(n).
- xxv M.G.L. c. 111F, §21.
- xxvi M.G.L. c. 268A, §22.
- xxvii M.G.L. c. 66, §10(d).
- xxviii M.G.L. c. 66, §10(d).
- xxix M.G.L. c. 119, §60A.
- xxx 9.06 C.M.R. 32.08(4).
- xxxi 9.06 C.M.R. 32.08(1).
- xxxii 9.06 C.M.R. 32.08(1).
- xxxiii 9.06 C.M.R. 32.08(1).
- xxxiv 9.06 C.M.R. 32.08(2).
- xxxv 9.06 C.M.R. 32.08(2).
- xxxvi 9.06 C.M.R. 32.08(2).
- xxxvii 9.06 C.M.R. 32.08(3).
- xxxviii Disposal Schedules for Municipal Government, Office of the Secretary of the Commonwealth, Public Records Division.