

SOUTH PORTLAND POLICE DEPARTMENT

STANDARD OPERATING PROCEDURES

Subject:	Public Information and Records	Policy #	8-82-C
Effective Date:	January 17, 2020	Review:	Annually
Distribution:	All Personnel	# of pages:	5

I. PURPOSE:

To establish guidelines for the release and dissemination of public information and records.

II. POLICY:

It is the policy of this department to provide public access to law enforcement information and records in compliance with the Freedom of Access Law, Criminal History Record Information Act, Intelligence and Investigative Record Information Act, and state statutes regarding Personnel Records for Municipal / County Agencies and E-911 Records. Designated staff, including command and supervisory personnel, should receive training in and are designated as the person(s) to respond to Freedom of Access requests. The release of personal information about any past or present department employees shall be in accordance with SOP #1-5, PROFESSIONAL CONDUCT.

III. DEFINITIONS:

- A. **Public Records:**¹ Any matter or data, in any format, from which information can be obtained, that is in the possession of this department and which has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:
1. Records that have been designated confidential by statute, to include social security numbers;
 2. Records within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;
 3. Materials prepared for and used specifically and exclusively for the purposes of collective bargaining;
 4. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request of a law enforcement officer investigating criminal conduct;
 5. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; and
 6. Records describing security plans, procedures or risk assessments prepared specifically for preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public.
 7. Personal contact information concerning public, including City of South Portland, employees.
- B. **Criminal History Record Information:** Information of record collected or kept by criminal justice agencies that connects a specific, identifiable person, including a juvenile treated as an adult for

¹ Title 1, M.R.S.A., §402(3) & (3-A)

prosecution purposes, with formal involvement in the criminal justice system, either as an accused or as a convicted criminal offender. This includes, but is not limited to, identifiable descriptions, notations or other written evidence of an arrest, summons, detention, complaint, indictment, information or other formal *criminal* charge relating to an identifiable person, to include the identification or description of the person charged and any disposition of the charge. Such records do not include information that is “Intelligence & Investigative Record Information.” The term does not include identification information such as fingerprints, palm prints, footprints, or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system, or records of civil violations, including traffic citations.

- C. **Confidential Criminal History Record Information:**² Criminal history record information that is generally *confidential*, to include the following:
1. Unless the person remains a fugitive from justice, any summons or arrest information without disposition, if an interval of one year has elapsed from the date of the summons / arrest and no active prosecution of the charge is pending.
 2. Information disclosing that the police have elected not to refer a matter to a prosecutor; or that a prosecutor has elected not to commence criminal proceedings; or that a Grand Jury found insufficient evidence to warrant a charge;
 3. Information disclosing that criminal charges have been filed, if more than one year has elapsed since the date of the filing; or that there was a mistrial;
 4. Information disclosing that criminal charges have been dismissed or the person was acquitted, with the exception of a person not criminally responsible by reason of insanity or equivalent;
 5. Information disclosing that criminal proceedings have been dismissed, or postponed for more than one year, because the person is found to be mentally incompetent; and
 6. Information disclosing that a person has been granted a full and free pardon or amnesty.
- D. **Public Criminal History Record Information:** Criminal history record information that is not “Confidential Criminal History Information,” specifically including the name, year of birth, town of residence and occupation of an arrested person, along with the related date, time, location, circumstances and charges related to the arrest.
- E. **Intelligence & Investigative Record Information:**³ Information of record collected, prepared or kept by or at the direction of criminal justice agencies that pertain to activities related to anticipating, preventing, detecting, monitoring or investigating known, suspected or possible crimes. “Intelligence and Investigative Information” does not include information that is criminal history record information, or information or records kept for the administration of juvenile justice.

IV. PROCEDURES:

A. “Right to Know” or “Freedom of Access” Requests:

1. An informational pamphlet answering frequently asked questions about the “Right to Know” or “Freedom of Access” will be made available to the public.

² 16 M.R.S.A. § 703

³ 16 M.R.S.A. § 803

2. Except as otherwise provided by statute, during reasonable (regular) office hours, every person has the right to inspect and copy any public record in the custody of this department within a reasonable period of time after making a request.
 - a. A person requesting to inspect or copy a public record is not required to put the request in writing; provide identification or otherwise disclose the person's identity, affiliation, or reason for the request.
 - b. Any employee receiving a request for the department's Public Information Log and / or Public Arrest Report, shall provide a copy, as may be readily available, to any person who asks without need for further review and without unreasonable delay. These reports will also be made available and updated weekly on the department's website.
 - c. Except as noted above, a "Freedom of Access" Request form will be made available for the member of the public to document a request that cannot be fulfilled without further research or review. A person requesting the information is NOT required to complete this form. The employee receiving the request can complete the form, to the extent possible, based on any contact information provided and the scope of the request. All requests will then be forwarded to the on-duty Shift Commander.
3. The on-duty Shift Commander will review the request during that tour of duty and will:
 - a. Provide the person making the request access to any clearly public records or criminal history record information, to include:
 1. Basic Public Criminal History Record Information;
 2. Basic call for service data, as contained on the Public Information Log, including date, time, street, and nature of the call;
 3. Any statements actually written by the person requesting the information, unless there is a criminal investigation pending that would be jeopardized by disclosure; and
 4. Crash reports, unless there is a related criminal investigation pending that would be jeopardized by disclosure.
 - OR
 - b. If the requested records are not clearly public information, if they are believed to be confidential (e.g., Confidential Criminal History Record Information, possible Intelligence & Investigative Record Information, possible E-911 data, etc.), or if there is any question or doubt related to the release of the requested records, forward the request, along with all responsive file information before the end of that tour of duty, to the department's Administrative Information Assistant or designee for processing and response.
4. The department's Administrative Information Assistant will review all requests and, consistent with state law and the assistance of Corporation Counsel, as necessary, determine what records, if any, may be lawfully released:
 - a. Information that is not considered to be public shall **not** be released and the Coordinator (or Corporation Counsel, as necessary) shall notify the requestor of the denial, in writing, within five (5) business days of the request.
 - b. If the records are considered public, the Coordinator (or Corporation Counsel, as necessary) will advise the requestor of the department's anticipated response within five (5) business days of the request.
5. Any denial of records from this department should only be made by Corporation Counsel; the Chief or Deputy Chief of Police; the on-duty Shift Commander; or the Administrative Information Assistant or designee.

B. Court Discovery:

1. Any party who wishes to obtain copies of reports on a pending civil or criminal case that are not accessible pursuant to the Freedom of Access Law must file a motion for discovery through the court having jurisdiction over the case.
2. The court officer, or the assigned detective, will receive the request for discovery and provide the necessary copies to the District Attorney's Office.
3. Information subject to discovery includes arrest reports, witness statements, test results, audio and video tapes or recordings, photographs and / or crime scene sketches, mobile data terminal (MDT) computer transactions, and any other documents granted through motions for additional discovery.

C. Juvenile Records / School Safety:⁴

1. Any department employee may share juvenile intelligence and investigative record information with a school superintendent or principal when there is credible evidence indicating an imminent danger to the safety of students or school personnel on school grounds or at a school function. Such a release will be promptly reported to the Chief of Police through the chain of command.
2. School Resource Officers or others designated by the Chief of Police may disseminate juvenile intelligence and investigative record information to the school superintendent or designee, criminal justice agencies, or persons or agencies responsible for the health, welfare behavior or progress of the juvenile as a result of a court order or by agreement with the Department of Corrections or the Department of Health and Human Services; and such juvenile intelligence and investigative record information is disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into a school.

D. E- 911 Information / Confidentiality:⁵

1. The following information received through a call to E-911 is considered confidential:
 - a. The names, addresses, and telephone numbers of persons listed in E-911 databases;
 - b. Names, addresses and telephone numbers that are omitted from a telephone directory list at the request of a customer;
 - c. The name, address, and telephone number of a caller to a public safety answering point;
 - d. The name, address and telephone number of and any medical information about a person receiving emergency medical services through the E-911 system.
2. Confidential E-911 information may not be utilized for commercial purposes, but may be released to any of the following:
 - a. Public or private safety agencies and emergency responders for purposes of processing emergency calls and providing emergency services;
 - b. A law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-911 call;
 - c. A designee of the Emergency Services Communications Bureau (ESCB) for the purpose of system maintenance and quality control;
3. Audio recordings of emergency E-911 calls are confidential and may not be disclosed, except that information within the audio recordings that is not otherwise considered confidential is deemed

⁴ 15 M.R.S.A. Ch. 507

⁵ 25 M.R.S.A. § 2929

public information and must be disclosed in transcript form. Audio recordings of E-911 calls may be released under the following circumstances:

- a. Confidential audio recordings to persons within the E-911 system to the extent necessary to implement and manage the E-911 system;
- b. Confidential audio recordings to a law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-911 call;
- c. Confidential audio recordings to designees of the bureau director for the purpose of system maintenance and quality control;
- d. Confidential audio recordings in accordance with an order issued on a finding of good cause by a court of competent jurisdiction.

E. Personnel Matters:

1. Personnel records pertaining to department employees are for the most part confidential. For example, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action are confidential. However, if disciplinary action is taken, the final written decision relating to that action is public information.
2. Information relating to internal investigations or complaints about any employee shall not be released without legal review and / or the expressed permission of the department's Administration.

F. Administrative:

1. Non-public records, Criminal History Record Information, and Intelligence & Investigative Record Information shall not be inappropriately released outside of this agency by any member of this department.
2. Incident, arrest or case reports, statements of witnesses, as well as names and personally identifying information of complainants, witnesses and victims are generally not considered public. Release of the records, or verbal description of their contents, may constitute a crime or civil violation, and will be grounds for disciplinary action.
3. Fees for research and copying shall be in accordance with state law and existing local fee schedules and practices, as approved by the Deputy Chief of Police.

By Order Of:

Timothy B. Sheehan
Chief of Police