

## 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 Plymouth Township Police Department is committed to providing access to records in a manner that is consistent with the Pennsylvania Right-to-Know Law (RTKL) (65 P.S. § 67.101 et seq.), Recordings by Law Enforcement (Act 22 Section 67A), Accident Reports by Police (75 Pa.C.S. Section 3751) and CHRIA (18 Pa.C.S. Section 9101 et seq.).

### 804.3 OPEN-RECORDS OFFICER

The Chief of Police shall designate a Department liaison to work with the Township's Open-Records Officer. The responsibilities of the liaison, in conjunction with the Township's Open-Records Officer include, but are not limited to (65 P.S. § 67.502):

- (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 (65 P.S. § 67.507):
  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 (65 P.S. § 67.1307).
- (g) Ensuring the availability of forms to be used for public records requests (65 P.S. § 67.505).
- (h) Directing requests for public records to other appropriate persons within the Department or persons in another agency, tracking the progress of the Department in responding to requests and issuing interim and final responses under the RTKL.
- (i) Preparing and posting at the Department and on the department website, if available, a description of the regulations, policies and procedures of the Department in reference to RTK, contact information for the Open-Records Officer, contact information for the applicable appeals officer and a form that may be used to file a request for records (65 P.S. § 67.504).

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#### **804.4 PROCESSING REQUESTS FOR PUBLIC RECORDS**

Any department member who receives a request for any record shall route the request to the Records Manager, the Open-Records Liaison or the authorized designee (65 P.S. § 67.703). This restriction does not apply to proper requests for information made by another criminal justice agency with supervisor approval and properly documented in the dissemination log of the RMS system.

##### **804.4.1 REQUESTS FOR RECORDS**

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

- (a) Public record requests should be in writing (65 P.S. § 67.703).
  - 1. The written request should identify or describe the records sought with sufficient specificity to ascertain which records are being requested.
- (b) The date of receipt and the date when a response is required shall be noted on a written request (65 P.S. § 67.502).
- (c) Record requests shall be responded to within five business days from the date of receipt. If a response is not sent within five business days, the request shall be deemed denied. Extensions of time to respond shall be handled as follows (65 P.S. § 67.901; 65 P.S. § 67.902):
  - 1. If it is determined additional time is needed to respond to the request due to a factor described in 65 P.S. § 67.902, the Open-Records Officer shall send a written notice to the requester within five business days of receipt of the request and include a statement that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided, and an estimate of applicable fees owed when the records become available.
  - 2. If the date a response is expected to be provided is in excess of 30 calendar days, following the five business days of receipt of request, the request is deemed denied, unless the requester has agreed in writing to an extension to the date specified in the notice.
  - 3. If the requester agrees to an extension, the request shall be deemed denied on the day following the date specified in the notice if the Department has not provided a response by that date.
- (d) The Department is not required to create records that do not exist or to compile, maintain, format, or organize a record in a manner in which the Department does not currently do so (65 P.S. § 67.705).
- (e) When a record contains material with release restrictions and material that is not subject to release, the restricted material shall be redacted and the unrestricted material released (65 P.S. § 67.706).
  - 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 or video, a copy of the redacted audio/video release should be maintained in the department-approved media storage

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system and a notation should be made in the case file to document the release and the reasons for the redacted portions.

- (f) A record provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists (65 P.S. § 67.701).
- (g) Records may be made available through any publicly accessible electronic means. If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the department notification, request to have the record converted to paper. The Department shall provide access in printed form within five days of the receipt of the written request for conversion to paper (65 P.S. § 67.704).
- (h) Upon request from the requester, a certified copy of the record may be provided with payment of the applicable fees (65 P.S. § 67.904).
- (i) If the requester requests a record provided to the Department by a third party, the third party shall be notified as required by 65 P.S. § 67.707.
- (j) The Open-Records Officer shall maintain an electronic or paper copy of the written request, including all documents submitted with the request, until the request has been fulfilled. If the request is denied, the request shall be maintained for 30 days or if an appeal is filed, until a final determination is issued or the appeal is deemed denied (65 P.S. § 67.502).
- (k) If the Department response to a requester states that copies of the requested records are available at the Department and the requester fails to retrieve the records within 60 days of the response, the Department may dispose of any copies that have not been retrieved and retain any fees paid to date (65 P.S. § 67.905).

#### 804.4.2 DENIALS

The denial of a request for records, whether in whole or in part, shall be in writing and include the following (65 P.S. § 67.903):

- (a) A description of the record requested
- (b) The specific reasons for the denial, including a citation of supporting legal authority
- (c) The name, title, business address, business telephone number and signature of the Open-Records Officer
- (d) Date of the response
- (e) The procedure to appeal the denial
  - 1. If a record is being denied as it relates to a criminal investigation under 65 P.S. § 67.708(b)(16), the requester shall be directed to file an appeal to the local District Attorney's Office (65 P.S. § 67.503).

Access to a public record may not be denied to a requester due to the intended use of the public record unless provided by law (65 P.S. § 67.302).

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A record request may be denied if the requester has made repeated requests for the same record and the repeated requests have placed an unreasonable burden on the Department. The denial shall not restrict the ability of the requester to request a different record (65 P.S. § 67.506).

The Township Open Records Officer is responsible for issuing all final denials.

#### **804.5 RELEASE RESTRICTIONS**

Examples of release restrictions include (65 P.S. § 67.708):

- (a) Any 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's license record, motor vehicle record, or any department record, including traffic crash 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; 75 Pa.C.S. §3751).
- (b) Member or other individual medical records or information.
- (c) Personal identification information, including all or part of a Social Security number; driver's license number; personal financial information; home, cellular, or personal telephone numbers; personal email address; member number; or other confidential identification number.
- (d) Information or records that contain a spouse's name, the member's marital status, or beneficiary or dependent information.
- (e) Home addresses of officers.
- (f) Records or other materials that contain identifying information relating to a member performing an undercover or covert law enforcement activity.
- (g) Certain personnel records and information, including letters of reference or recommendation pertaining to the character or qualifications of an identifiable member; member performance ratings or reviews; written criticisms of a member; grievance material, including documents related to discrimination or sexual harassment; and information regarding discipline, demotion, or discharge contained in a personnel file.
- (h) Records pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings.
- (i) Drafts of resolutions, regulations, statements of policy, management directives, ordinances, or amendments prepared by or for the Department.
- (j) Records relating to or resulting in a criminal investigation, including investigative materials, notes, correspondence, videos, and reports, as well as records that identify a confidential source or the identity of a suspect who has not been charged with an offense and to whom confidentiality has been promised.
- (k) Records that include information made confidential by law or court order.
- (l) Victim information, including any information that would jeopardize the safety of the victim.

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- (m) Juvenile information and records unless release is authorized by the exceptions listed in 42 Pa.C.S. § 6308.
- (n) Records that if disclosed would reveal the institution, progress, or result of a criminal investigation, except the filing of criminal charges; deprive a person of the right to a fair trial or an impartial adjudication; impair the ability to locate a defendant or codefendant; hinder the department's ability to secure an arrest, prosecution, or conviction; or endanger the life or physical safety of an individual.
- (o) Records of the Department relating to a noncriminal investigation, including complaints submitted to the Department; investigative materials, notes, correspondence, and reports; and records identifying a confidential source, including those subject to the Whistleblower Law.
- (p) Records or parts of records, except time response logs, pertaining to audio recordings, telephone, or radio transmissions received by emergency dispatch personnel, including 9-1-1 recordings.
- (q) DNA or RNA records.
- (r) Autopsy records, including audiotapes, videotapes, and photographs.
- (s) Certain types of reports and information involving but not limited to child abuse and adult abuse (23 Pa.C.S. § 6340; 35 P.S. § 10210.505; 35 P.S. § 10225.705).
- (t) An emergency vehicle response policy adopted by the Department (75 Pa.C.S. § 6342).
- (u) Information provided by applicants for a license to carry firearms (18 Pa.C.S. § 6111(i)).
- (v) Records where disclosure would result in the loss of federal or state funds.
- (w) Records that would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.
- (x) A record maintained by the Department in connection with the military, homeland security, national defense, law enforcement, or other public safety activity that, if disclosed, would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity, or a record that is designated classified by an appropriate federal or state military authority.
- (y) A record that, if disclosed, would be reasonably likely to endanger the safety or the physical security of a building, public utility, resource, infrastructure, facility, or information storage system.
- (z) A record regarding computer hardware, software, and networks, including administrative or technical records, that, if disclosed, would be reasonably likely to jeopardize computer security.
- (aa) Identifying information of a patient or caregiver under the Medical Marijuana Act (35 P.S. § 10231.302).
- (ab) Records that would indicate firearms or other weapons or ammunition are in department possession as a result of relinquishment (18 Pa.C.S. § 6128).

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#### 804.5.1 DISCRETION

The Open-Records Officer may exercise discretion to make any otherwise exempt record accessible for inspection and copying if all the following apply (65 P.S. § 67.506):

- (a) Disclosure of the record is not prohibited under any of the following:
  - 1. Federal or state law or regulation.
  - 2. Judicial order or decree.
- (b) The record is not protected by a privilege.
- (c) The Chief of Police determines that the public interest favoring access outweighs any interest that may favor restriction of access.

#### 804.5.2 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the public release of audio or video recordings from BWC or ICC systems shall be processed by the Department's Open-Records Liaison in consultation with the Township Open Records Officer as follows (42 Pa.C.S. § 67A03; 42 Pa.C.S. § 67A04):

- (a) Requests shall be made in writing within 60 days of the date that the recording was made and shall describe the incident recorded as well as the date, time, and location of the incident.
- (b) The person making the request shall identify his/her relationship to the incident.

Release of an audio or video recording from a BWC made in a courtroom is prohibited without the express written approval of the president judge of the court (201 Pa. Code Rule 1910) and the Chief of Police or designee.

Recorded statements are investigative records and shall only be disseminated in conjunction with the procedures outlined in the Recorded Statement Directive.

#### **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 Open-Records Liaison 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.

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

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

#### **804.7 RELEASED RECORDS TO BE MARKED**

Any record released pursuant to this policy should be logged in the dissemination tab and indicate the department name, if applicable and to whom the record was released.

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#### **804.8 SECURITY BREACHES**

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

The Records Manager shall ensure the required notice is given to any resident of this state whose unsecured personal information is reasonably believed to have been acquired by an unauthorized person (73 P.S. § 2303). Notice shall be in the form and manner specified in 73 P.S. § 2302.

Notice shall be given as soon as reasonably practicable, consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system (73 P.S. § 2303). Notice may be delayed if notification will impede a criminal or civil investigation (73 P.S. § 2304).

If notification is required to more than 1,000 residents at one time, notice of the timing, distribution and number of notices sent as a result of the breach shall be provided to all consumer-reporting agencies as specified in 73 P.S. § 2305.

For the purposes of the notice requirement, personal information includes an individual's first name or first initial and last name in combination with and linked to any one or more of the following (73 P.S. § 2302):

- (a) Social Security number
- (b) Driver's license number or Pennsylvania identification card number
- (c) Full account number, credit or debit card number, in combination with 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 Manager should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

#### **804.9 EXPUNGEMENT**

Expungement orders received by the Department shall be reviewed for appropriate action by the Records Manager or Open-Records Liaison. The Records Manager shall direct the expungement of 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.