



**Policy Number: 800 – Records Maintenance and Release**

**Effective Date: February 15, 2021**

**Revision Date: February 15, 2021**

**Approved By: Brandon Gatlin, Interim Chief of Police**

---

## **800.1 PURPOSE AND SCOPE**

This policy provides guidance on the maintenance and release of Montana State University Billings Police Department (Department) records. Protected information is covered in Department Policy 801 - Protected Information.

## **800.2 POLICY**

The Department is committed to providing public access to records in a manner that is consistent with the Montana Constitution and public records laws.

## **800.3 CUSTODIAN OF RECORDS**

The Chief of Police, or their designee, shall serve as Custodian of Records. The responsibilities of the Custodian of Records include, but are not limited to:

1. Managing the records management system for the Department, including the preservation, retention, archiving, release and destruction of Department public records (§ 2-6-1012, MCA; § 2-6-1013, MCA).
2. Maintaining and updating the Department records retention schedule, including:
  - a. Identifying the minimum length of time the Department must keep records.
3. Establishing rules regarding the inspection and copying of Department public records as reasonably necessary for the protection of such records.
4. Identifying records, or portions of records, that are confidential under state or federal law and not open for inspection or copying.
5. Identifying records that are essential, as defined by § 2-6-1002, MCA, and ensure such records are efficiently and effectively secured (§ 2-6-1014, MCA).
6. Establishing rules regarding the processing of subpoenas for the production of records.
7. Ensuring the availability of a current schedule of fees for public records, as allowed by law (§ 2-6-1006, MCA; § 2-6-1008, MCA).

## **800.4 PROCESSING REQUESTS FOR PUBLIC RECORDS**

Any Department member who receives a request for records shall route the request to the Custodian of Records, or their authorized designee.

### **800.4.1 REQUESTS FOR RECORDS**

The processing of requests for records is subject to the following (§ 2-6-1006, MCA) and the MUS Public Record Request Guidelines:

1. Requests for public information shall be responded to in a timely manner by:
  - a. Making the public information maintained by the Department available for inspection and copying.
  - b. Providing the requester with a time estimate to fulfill the request if the public information cannot be readily identified and gathered; and an estimate of any applicable fees.
2. The Department is not required to create records that do not exist.
3. The Department is not required to alter or customize public information to provide it in a form specified to the need of the requester.
  - a. If the Department agrees to customize a records request, the costs of the customization may be included in fees charged.
4. When a record contains material with release restrictions, or matters of individual privacy, the Department will seek the advice of University legal counsel to determine the materials that may be released, and which must be redacted.
  - a. 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.
5. A written explanation shall be provided to a requester when an information or record request is denied (§ 2-6-1009, MCA).

### **800.5 RELEASE RESTRICTIONS**

Examples of release restrictions include:

1. Any personal identifying information including an individual's photograph; Social Security and driver identification numbers; name, address and telephone number; any 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; § 61-11-506, MCA).
2. Confidential information that is constitutionally protected because an individual privacy interest clearly exceeds the merits of public disclosure (§ 2-6-1002, MCA).
3. Information relating to an individual, public safety, or the security of public facilities, including jails, if release of the information jeopardizes the safety of personnel, the public or inmates (§ 2-6-1003, MCA).
4. Confidential criminal justice information, except as allowed by law (§ 44-5-103, MCA; § 44-5-303, MCA).
5. Criminal history record information, except as allowed by law (§ 44-5-103, MCA; § 44-5-302, MCA).
6. Required traffic accident reports and supplemental reports, except as allowed by law (§ 61-7-114, MCA).

7. Victim information as provided in § 44-5-311, MCA.
8. Certain juvenile related information (§ 41-5-216, MCA).
9. Child abuse information and reports (§ 41-3-205, MCA).
10. Adult abuse information and reports (§ 52-3-813, MCA).
11. Any other information that may be properly denied by Montana law.

## **800.6 SUBPOENAS AND DISCOVERY REQUESTS**

Any Department 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.

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

All questions regarding compliance with any subpoena duces tecum, or discovery requests, shall be referred to University legal counsel so that a timely response can be prepared.

## **800.7 RELEASED RECORDS TO BE MARKED**

Each page of any 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.

## **800.8 EXPUNGEMENT/SEALED RECORDS**

Expungement or sealed record orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall expunge or seal 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, Department members shall respond to any inquiry as though the record did not exist. A sealed record is confidential and access is not permitted unless allowed by law or Court order.