

**1.10-8**

**DAYTON POLICE DEPARTMENT  
GENERAL ORDER  
PUBLIC ACCESS TO AGENCY RECORDS**



**RICHARD S. BIEHL – DIRECTOR AND CHIEF OF POLICE**

REV. 9/18

**POLICY STATEMENT**

The Dayton Police Department acknowledges that it maintains many documents and records that may be subject to inspection and/or reproduction. In accordance with state law, the Dayton Police Department has established a Schedule of Records Retention and Disposition (RC-2) which lists our records and the period of time that they have to be maintained. These records are maintained for the operation and administration of the Dayton Police Department and to provide a source of information for the public it serves.

It is the primary goal of the Dayton Police Department to serve the citizens in a manner of trust. These records, and the ability to have access to them, are a means to provide trust between the citizens and the Dayton Police Department.

**I. PUBLIC RECORDS**

All records kept by the City of Dayton are public unless they are exempt from disclosure under Ohio law. All public records must be organized and maintained in such a way that they can be made available for inspection and copying. In accordance with the Ohio Revised Code, a record is defined to include the following: A document in any format - paper, electronic (including, but not limited to, business email) - that is created, received by, or comes under the jurisdiction of the City of Dayton that documents the organization, functions, policies, decisions, procedures, operations, or other activities of the City of Dayton, unless exempt from disclosure under Ohio law.

**No original records will be released unless approved by the Chief of Police and signed for by the requester.**

**II. REQUESTS FOR PUBLIC INFORMATION (See also General Order 1.09-1 PUBLIC INFORMATION)**

**A. Public Records Coordinator**

This position is assigned to the Strategic Planning Bureau.

**B. Records Requests**

- The Public Records Coordinator will process and or coordinate the response to all requests for criminal case files (closed cases), personnel files, email requests, etc.
- The Public Records Coordinator will be responsible for Department-wide records retention/destruction
- Professional Standards Bureau will still process all requests for PSB investigations and other administrative investigations.

**C. Mobile Vision Recording Requests**

- The Public Records Coordinator will process and or coordinate the response to all requests from the media and prosecutor's offices. The individual Operations Divisions will be required to retrieve the data and forward DVD copies of the requested video to the Public Records Coordinator for distribution (See General Order 3.02-7 MVR).

**D. Electronic Records**

- Records in the form of email, text messaging, and instant messaging, including those sent and received via a hand-held communications device (iPhone, iPad, Android) are to be treated in the same fashion as records in other formats. Public record content transmitted to or from private accounts or personal devices is subject to disclosure. All employees or representatives of the City of Dayton are required to retain their email records and other electronic records in accordance with applicable records retention schedules.

**E. Copying and Mailing Costs**

- Those seeking public records will be charged for the costs of making copies, not labor. The requester may choose whether to have the record duplicated upon paper, upon the same medium in which the public record is kept, or upon any other medium on which the office determines that the record can reasonably be duplicated as an integral part of the office's normal operations.
- The charge for paper copies is \$0.06 per page. If the requester specifically request information on another medium (CD, OVO, thumb drive, cassette tape), an additional \$1.00 per medium (\$5 per thumb drive), will be added to the cost. A requester may be required to pay in advance for costs involved in providing the copy. If a requester asks that documents be mailed, they may be charged the actual cost of the postage and mailing supplies. Other than the reproduction costs, there is no charge for documents emailed.
- The City of Dayton reserves the right to collect outstanding costs accumulated from previous request(s) before providing responses to new public record requests from the same requester.

**III. EXEMPTED AND/OR RESTRICTED INFORMATION**

- A. Ohio Revised Code sections 149.40 and 149.43 (Ohio Public Records Law) mandate that most police records are to be made available to the general public. Some of the information maintained by the Dayton Police Department is exempt from release and is legally protected from disclosure by Federal and State laws. When faced with a record that contains certain exempt information, that information will be redacted and the remainder of the report will be disclosed. Listed below are some of the most commonly used exemptions to the public record definition as it pertains to the Dayton Police Department:
1. Social Security numbers will be redacted from ALL records prior to release in accordance with the Federal Privacy Act, 5.U.S.C. 552-A.
  2. Records that have been sealed pursuant to statutorily authorized court order.
  3. Child abuse reports.
  4. Criminal background information and other law enforcement information on the LEADS/CCH/NCIC computer database.
  5. Medical records that pertain to a patient's medical history, diagnosis, prognosis, or medical condition and were generated and maintained in the process of medical treatment.
  6. Trial preparation records.
  7. Confidential law enforcement investigatory records which pertain to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature and that, if released, would create a high probability of disclosing any of the following:
    - the identity of an uncharged suspect
    - the identity of a confidential source
    - specific confidential investigatory techniques or procedures
    - specific investigatory work product
    - information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.
  8. Peace officer's home address during the pendency of a criminal case in which the officer is a witness or arresting officer in accordance with Ohio Revised Code § 2921.24
  9. Peace Officer, Firefighter or Emergency Medical Technician's Residential and Familiar Information, which includes the following:

- Residential address, except the State and/or political subdivision (journalist exception pursuant to statutory conditions)
  - Residential telephone number
  - Social Security number
  - Bank account numbers
  - Debit/charge/credit card numbers
  - Emergency telephone number
  - Any medical information
  - Information compiled by an employee assistance program
  - Beneficiaries names
  - Voluntary payroll deductions
  - the name, address, employer name and address, Social Security number, residential telephone number, bank account number, debit/charge/credit card numbers, or emergency telephone number for the Peace Officer, Firefighter or Emergency Medical Technician's spouse, former spouse, and children (This exception does not apply if the family member is employed by a public office and their title does not meet the definition of a peace officer)
10. Infrastructure and security records that disclose the configuration of a public office's critical systems used for protecting or maintaining the security of a public office against attack, interference, sabotage or terrorism.

#### IV. AVAILABILITY

Public records are to be available for inspection during regular business hours, with the exception of published holidays. Public records must be made available for inspection promptly. Copies of public records must be made available within a reasonable period of time. "Prompt" and "reasonable" take into account the volume of records requested; the proximity of the location where the records are stored; and the necessity for any legal review and redaction of the records requested. It is the goal of the City of Dayton that all requests for public records should be acknowledged in writing or, if possible, satisfied within 10 business days following the City's receipt of the request.

Each request should be evaluated for an estimated length of time required to gather the records. Routine requests for records should be satisfied immediately, if feasible to do so. If a request is deemed significantly beyond "routine," an acknowledgement must be forwarded to the requester indicating the estimated number of business days it will take to satisfy the request and an estimate of the costs involved.

##### A. Public Information Request Ticketing System

1. Anytime a Public Information Request (PIR) is received by any source to any employee of the Dayton Police Department, they will send an E-mail to [dphelp@daytonohio.gov](mailto:dphelp@daytonohio.gov) indicating the following:
  - Name of requestor
  - Date requested
  - Information requested
  - Requestor contact information
2. The Public Records Coordinator will review the request and route to the appropriate personnel for service. Public Information Requests that are able to be filled immediately upon request can be completed; however, the person receiving and/or completing the request must send an e-mail to the ticketing system. Requests received from other City departments will be routed to the Public Records Coordinator for review and completion/assignment.
3. This process will be for the E-mail to generate a ticket for the Public Records Coordinator so that all requests can be documented and tracked to completion.

**B. Handling Requests:**

1. Although no specific language is required to make a request for public records, the requester must at least identify the records requested with sufficient clarity to allow the City to identify, retrieve, and review the records. If it is not clear what records are being sought, the records custodian must contact the requester for clarification, and should assist the requester in revising the request by informing the requester of the manner in which the office keeps its public records.
2. The requester does not have to submit a records request in writing, and does not have to provide his or her identity or the intended use of the requested public record. It is the City of Dayton's policy that this information is not generally to be requested. However, the law does permit the records custodian to ask for a written request, the requestor's identity, and/or the intended use of the information requested, but only (1) if a written request or disclosure of identity or intended use would benefit the requestor by enhancing the ability to identify, locate, or deliver the public records that have been requested; and (2) after informing the requestor that a written request is not required and that the requester may decline to reveal the requestor's identity or intended use.
3. In processing the request, the City does not have an obligation to create new records or perform new analysis of existing information. An electronic record is deemed to exist so long as a computer is already programmed to produce the record through simple sorting, filtering, or querying. Although not required by law, the City of Dayton may accommodate the requestor by generating new records when it makes sense and is practical under the circumstances.
4. In processing a request for inspection of a public record, a City employee must accompany the requester during inspection to make certain original records are not taken or altered. A copy of the most recent edition of the Ohio Sunshine Laws manual is available via the Attorney General's website ([www.ohioattorneygeneral.gov](http://www.ohioattorneygeneral.gov)) for the purpose of keeping employees of the office and the public educated as to the office's obligations under the Ohio Public Records Act, Open Meetings Act, records retention laws, and Personal Information Systems Act.

**C. Records Information Bureau:**

1. Record's personnel will prepare and make available for inspection all public records during regular business hours, Monday through Friday, 8:00 A.M. until 4:30 P.M., except holidays, at the public counter located on the first floor of the Safety Building. Upon request, the custodian or their designee shall make copies available at the established cost, within a reasonable amount of time. An established cost will be charged according to a reasonable fee schedule in compliance with state legal standards, established by the Records Bureau Supervisor and approved by the Chief of Police.
2. The Dayton Police Department reserves the right to process public record requests in the manner that is most efficient to the citizens that they serve and thus, it is not mandatory that record requests be processed in the order that they are received.
3. Only persons who have been authorized by the Records Bureau Supervisor to enter the Record Bureau unescorted are permitted to do so. All other police personnel will conduct business with the Records Bureau at the counter located outside the first floor elevator.

**D. Traffic Accident Information:**

Traffic accident information is available to the general public by telephone or in person at the Records Bureau. Individuals should be referred to the Records Bureau during the aforementioned hours, 5 business days after the accident occurred, to obtain the information in these reports.

**E. Release of Incident Reports and Detective Investigatory Product Reports:**

1. The release of Incident Reports is authorized by this order. These reports are not part of a criminal investigation and thus, do not meet the definition of a confidential law enforcement investigatory record.

2. Detective Investigatory Product Reports will not be released to anyone, except to Dayton police officers, prosecutors or Law Department personnel, without authorization of the Records Bureau Supervisor or the Public Records Coordinator. The release of Detective Investigatory Product Reports will be preceded by a review by the appropriate investigation bureau personnel to ensure that no confidential information is contained in the report. (Refer to section III.A.1-10)

Once the criminal, quasi-criminal, civil or administrative case has concluded and no appeals have been filed, then the Detective Investigatory Product Reports become public record and subject to release.

F. Release of Information from Ohio Law Enforcement Automated Data System (LEADS)

1. The LEADS printout is for use by **law enforcement only**. The printout is not available for review by individuals under any circumstances. All information printed for law enforcement purposes will be stamped with the following information:

DATE: \_\_\_/\_\_\_/\_\_\_  
SUPPLIED BY: \_\_\_\_\_  
REQUESTED BY: \_\_\_\_\_  
AGENCY: \_\_\_\_\_

2. Requests for L.E.A.D.S. printouts for individuals wanting their own driving records will be referred to:

████████████████████  
████████████████  
████████████████████

G. Mailed Requests for Public Records

1. Upon receiving a mail request not legally precluded from disclosure for a public record, the custodian for that record shall forward a copy of the record through the United States mail, within a reasonable period of time. A reasonable cost associated with the postage or other supplies used in the mailing will be assessed.
2. The Dayton Police Department's policy and procedure governing the preparation and distribution of material through the mail is limited to ten record requests per person per month. If a citizen requests additional material through the mail in that period of time, he/she must certify in writing that they do not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.
3. Our department will promptly process all requests for public records received through the mail in accordance with the following procedures:
  - a. All public record requests by mail will require prepayment from the requestor. If required, a prepayment request form shall be completed which indicates the number of pages and the total fees. The total fees will include all mailing and supply charges associated with the public records request (i.e., postage, cost of envelopes, etc.). The prepayment statement will be mailed to the requestor.
  - b. The public records will only be prepared and mailed to the requestor upon receipt of the prepayment.
  - c. Persons who fail to pay the prepayment amount will not receive their requested public records.
4. If our department receives a request for a record, which it does not maintain, the requestor shall be notified by either telephone or mail that their request can not be processed. The requestor shall also be advised that the department is not obligated to create the record to meet their request.

#### H. Media Type

A public record will be duplicated on paper or upon any other medium on which the record can reasonably be duplicated. Records will not be duplicated on a medium provided by the requester (e.g. audiotapes, computer disks, etc.). The Department will make reasonable efforts to reproduce records on the media form preferred by the requester.

#### I. Preventing Self-help by Employees

1. The fact that police department records might be subject to disclosure under the Public Records Act, does not mean that our employees are entitled to, or should be allowed to help themselves to these records whenever they want. Once a record exempt from disclosure is, in fact disclosed, that record becomes a public record. As a result, employees are STRICTLY PROHIBITED from helping themselves to a copy of any City records for non-duty related reasons.
2. Employees who want City records for contractual reasons may do so pursuant to a contractual discovery request.

### V. EMPLOYEE PERSONNEL FILES

All police department employee personnel files are maintained by Human Resources. The Public Records Coordinator, Public Information Specialists, or their designees are to provide assistance with the custodial care of these files. It will be their responsibility to process any public records request to review or obtain a copy of any police department member's personnel file. A pre-disclosure notification letter is to be provided to the citizen, advising them of the Constitutional Privacy Rights of the peace officer. (*Kallstrom v. City of Columbus*, 136 F.3d 1055 (6<sup>th</sup> Cir. 1998); *State ex rel. Keller v. Cox* (1999), 85 Ohio St.3d 279, 707 N.E.2d 939). In addition, a pre-disclosure notification letter is to be sent to the peace officer whose personnel file is being requested. This notification to the peace officer will give him/her the opportunity to the following:

- Review all records in question.
- File a legal petition for injunctive relief.
- Submit an objection in writing to establish a high probability that disclosure of the information would endanger his/her life or physical safety.

If no response is received from the peace officer, the requested personnel file will be disclosed to the citizen within ten (10) calendar days.

### VI. REDACTING EXEMPTED RECORDS

If the requester makes an ambiguous or overly broad request for public records, the request may be denied. The denial, however, must provide the requester an opportunity to revise the request by informing the requester of the manner in which records are maintained and accessed by the City of Dayton. Any denial of public records requested must include an explanation, including legal authority. If the initial request was made in writing, the explanation must also be in writing.

If portions of a record are public and portions are exempt, the exempt portions may be redacted and the rest released. When making public records available for public inspection or copying, the office shall notify the requester of any redaction or make the redaction plainly visible. If there are redactions, each redaction must be accompanied by a supporting explanation, including legal authority.

After reviewing the requested record and determining that it contains non-releasable information, the releasing employee shall make a copy of all pages containing the excluded information.

- A. The releasing employee shall then color over the restricted information on the reproduced copy with a black marking pen in a neat manner.

- B. The releasing employee shall then reproduce a copy of this page, which shall be the page that is released to the citizen.
- C. The first reproduction page will then be properly destroyed.

**VII. POLICY EXCEPTIONS – (no charge, no redaction)**

- A. Providing records to legitimate Law Enforcement Agencies for legitimate law enforcement purposes.
- B. Providing records to personnel who have a legal privilege to possess those records (e.g., City attorney).
- C. Providing records upon a contractual discovery request.
- D. Providing records pursuant to a legal subpoena, court order, or a judicial in-camera inspection.

**VIII. PROPER DISPOSAL OF EXEMPTED OR RESTRICTED INFORMATION**

The Fair and Accurate Credit Transactions Act stipulates that departmental personnel are responsible for the proper disposal of records about an individual, whether in a paper, electronic, or other form. The Act requires any person, company, or government agency that possesses or maintains such information to take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal and provides penalties for violating this Act.

- A. All personnel will insure that all exempted or restricted information (i.e. D.I.B.R.S. report, L.E.A.D.S. printouts, etc.) is properly disposed by shredding the documents so that the information cannot be read or reconstructed.
- B. All personnel will insure that all exempted or restricted information on electronic files or media containing such information is destroyed or erased so that the information cannot be read or reconstructed.