

# RECORDS REQUESTS

GREAT BARRINGTON POLICE DEPARTMENT POLICY & PROCEDURE NO.  <b>4.33</b>	EFFECTIVE DATE: <u>09/03/2008</u>
	REVISION DATE:
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>82.1.1 (c); 82.2.4</b>	REVIEW DATE: <u>04/3/2019</u>

## I. GENERAL CONSIDERATIONS AND GUIDELINES

This department regularly receives requests for records created or maintained by this agency. The requests come in the form of public records requests, discovery, and requests from law enforcement agencies, 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 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.

The purpose of this policy is to provide guidance to those persons who are tasked with balancing the right of the public to know with the confidentiality and privacy rights of others.

## II. POLICY

It is the policy of this department that:

- A.** Records shall be available for all authorized personnel and entities for furtherance of the police function.
- B.** Request for records through discovery and public records laws will be honored in compliance with Massachusetts statutory law and C.M.R.s.

- C. C.O.R.I., juvenile records, and personal data will be protected in compliance with Massachusetts General Law, C.M.R.s and other regulations.
- D. All records in the custody of the police department shall be retained and/or destroyed in accordance with the standards of the Office of the Secretary of the Commonwealth.

### III. DEFINITIONS

- A. *C.O.R.I.*: “Criminal offender record information”: records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. For a more in-depth definition, see the department policy on **C.O.R.I.**
- B. *Public Record*: All books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee or any agency, executive office, department, board, commission, bureau, division or authority established by the General Court to serve a public purpose, unless such materials or data fall within one or more of the exemptions found within M. G. L. c. 4, §7(26).
- C. *Search Time*: The time to locate, pull from the files, copy, and re-shelve or re-file a public record. However, this shall not include the time expended to create the original record.
- D. *Segregation Time*: The time used to delete or expurgate data which is exempt under M.G. L. c. 4, §7(26) from non-exempt material which is contained in a public record.

### IV. PROCEDURES

- A. **Administration: Records Manager**: The Records Manager is responsible for overseeing:
  - 1. Retrieval and distribution of records and documents for authorized persons and entities; and
  - 2. Compliance with records requests under state law and the Freedom of Information Act.
- B. **Dissemination of Records [82.2.4]**
  - 1. DAILY: The records section shall disseminate records and reports on a daily basis as follows:

- a. District Court: Clerk's Office:
  - 1) Charging instruments (application for complaint, criminal citation, etc.);
  - 2) Statement of facts forms;
  - 3) Citations – Arrest, Criminal, Drug Violations;
  - 4) Temporary Restraining Orders; and
  - 5) Jenkin Hearing documents

NOTE: Any reports or other documents that become part of the docket become public records. Reports should not be distributed to the court clerk's office.

- b. District Attorney's Office:
  - 1) Reports accompanying an arrest or criminal charges;
2. TWICE A WEEK: The following reports and documents shall be disseminated twice a week:
  - a. Registry of Motor Vehicle: citations, civil and warnings.
3. MONTHLY:
  - a. Registry of Motor Vehicle: Collision Reports; and
  - b. Town Treasurer: False Alarm Reports; and
  - c. Criminal History Systems Board: Juvenile Lock-up data

### **C. Release of Records [82.1.1(c)]**

1. LAW ENFORCEMENT AGENCIES
  - a. Generally
    - 1) Records may be released to law enforcement agencies authorized to receive C.O.R.I. on a need-to-know basis.
    - 2) 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. The log shall include:<sup>1</sup>
      - a) The type of C.O.R.I. disseminated;
      - b) The agency or individual to whom it was disseminated;
      - c) Individual disseminating the information; and
      - d) Date that information was disseminated.
    - 3) 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 CHSB.<sup>2</sup>

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- 4) All police departments are authorized to receive C.O.R.I.
  - 5) Some other law enforcement agencies authorized to receive C.O.R.I. are the following:
    - a) Alcoholic Beverages Control Commission;
    - b) Department of Corrections;
    - c) Fire Marshall's Office;
    - d) Massachusetts Chiefs of Police Association;
    - e) Military - Law Enforcement and Intelligence Only;
    - f) MSPCA, Law Enforcement Division;
    - g) Office of the Medical Examiner; and
    - h) Sheriff's Departments.
  - 6) The following records may be released to an authorized law enforcement agency upon request:
    - a) Closed criminal cases of a non-confidential nature;
    - b) Incident reports which did not result in criminal charges;
    - c) Accident reports not resulting in criminal charges;
    - d) Booking photos;
    - e) Booking fingerprints; and
    - f) Master Record demographic information and incident history.
  - 7) The following records may not be released without authorization of the Chief of Police:
    - a) Open criminal cases;
    - b) Open accident investigation reports;
    - c) Current investigations; and
    - d) Victim, witness, or suspect statements.
  - 8) The following reports may not be released without authorization of the Chief of Police:
    - a) Internal Affairs Records;
    - b) Personnel Records;
    - c) Medical Records;
    - d) Emergency Response Plans; and
    - e) Facility or Event Security Plans.

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2. NON-LAW ENFORCEMENT AGENCIES: Non-law enforcement agencies which are authorized to receive C.O.R.I. may receive records with the approval of the Chief of Police. Some authorized agencies are:
    - a) Defense Security Services;
    - b) Department of State, Diplomatic Security;
    - c) Department of Children and Families Services (within ten (10) days of an investigation);
    - d) Department of Youth Services;
    - e) Massachusetts Chiefs of Police Association;
    - f) Massachusetts Emergency Management Agency;
    - g) NESPIN;
    - h) Office of the Medical Examiner;
    - i) Parole Board;
    - j) Registry of Motor Vehicles; and
    - k) Sex Offender Registry Board.
  3. 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.
  4. 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. See **Review of an Individual's Records** in this policy.

#### **D. Discovery**

1. Employees should not confuse requests for records through court discovery proceedings with public records requests.
2. For attorneys, defendants, or others requesting materials under the public records law or Freedom of Information Act, see **Public Records** in this policy.
3. 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).
4. RECORDS REQUESTS
  - a. Criminal Cases
    - 1) Discovery requests from the District Attorney's Office shall be fulfilled by the Chief of Police.

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- 2) 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:<sup>3</sup>
    - a) Reports;
    - b) Statements;
    - c) Photos;
    - d) Videos, including booking videos;
    - e) E9-1-1 recordings;
    - f) Business line phone recordings; and
    - g) Radio transmissions.
  - b. Civil Cases
    - 1) Requests not accompanied by a subpoena should be considered a public records request.
      - a) Criminal Case Open: Requests for reports and materials for civil cases, where the criminal case is still active, shall be referred to the District Attorney's Office.
      - b) Criminal Case Closed: Requests for reports and materials for civil cases where the criminal case is closed may be honored. If the incident involved a death or was adjudicated in Superior Court, the request should be referred to the District Attorney's Office.
      - c) No Criminal Case: Requests for reports and materials for civil cases where no criminal case exists may be honored. If the incident involves a death, the request should be referred to the District Attorney's Office.

#### A. **Public Records**

1. GENERALLY: All records under the custodianship of government are public records unless exempted by statutory exception. The burden of proof for a record exemption is on the record custodian.<sup>4</sup>
2. PUBLIC ACCESS TO RECORDS
  - a. Public records shall be available for view and copying by members of the public at reasonable times and without unreasonable delay. One copy must be furnished upon payment of a reasonable fee.<sup>5</sup>
  - b. No fee may be charged for inspection of records unless search time is involved.<sup>6</sup>
  - c. The Daily Log shall be available to the public at all times.<sup>7</sup>

d. The Arrest Log shall be available to the public at all times.<sup>8</sup>

### 3. REVIEW OF AN INDIVIDUAL'S RECORDS

#### a. Police Department Records

- 1) Individuals may review and copy records, including C.O.R.I., which relate to themselves.<sup>9</sup>
- 2) Individuals may give written authorization to a third party to review and copy records, including C.O.R.I.<sup>10</sup>
- 3) Such inspections may be conducted during normal business hours.<sup>11</sup>
- 4) First Person Access:
  - a) The individual must provide the request in writing.
  - b) The individual must provide positive proof of his/her identity to the satisfaction of the person processing the request. Such ID may include:
    - i. Requestor known to the person processing the request;
    - ii. Government I.D. with photograph; or
    - iii. Fingerprints.
- 5) Third Person Access:
  - a) The individual must provide the request in writing.
  - b) The individual must provide positive proof of his/her identity to the satisfaction of the person processing the request.
  - c) The request for inspection of C.O.R.I. may be refused where:<sup>12</sup>
    - i. The agency suspects the authorization is coerced; or
    - ii. The agency suspects the authorization is given for an unlawful purpose.
  - d) In the event that access is refused as indicated above, the person to whom the C.O.R.I. pertains must be advised of the refusal and his/her right to petition the C.H.S.B for review of the refusal.
- 6) The Chief of Police shall review the requested materials to ensure that the requesting individual is actually the person whose record is sought, and ensure that confidential information that may hinder an on-going investigation is not released.

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- a) Criminal and other history information included in the master record may be released.
  - b) Information relating to active criminal prosecutions and investigations must not be provided.<sup>13</sup>
  - 7) 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.
  - 8) 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 Chief of Police and may be notarized if requested.<sup>14</sup>
- b. Other Agencies' Records
- 1) Criminal Records Maintained by Other Municipalities: Requestors must be referred to the municipality that holds the record.
  - 2) State B.O.P/C.O.R.I.
    - a) A person may obtain his/her own Massachusetts Board of Probation and C.O.R.I. records directly from the Criminal History Systems Board.
    - b) Requestors should be instructed to complete and submit Personal Massachusetts Criminal Records Request Forms directly to the C.H.S.B. Forms can be found in the Communications Center's CORI Log or CHSB web site (<http://www.mass.gov>).
    - c) Police employees may **not** provide a person with a copy of his/her own B.O.P printed through the department's L.E.A.P.S. work station.
    - d) An individual who requests a copy of his/her criminal record maintained by another state must be referred to the state that maintains the record.
  - 3) FBI Records: A person may obtain his/her own FBI records by contacting the FBI. Information about the process is available on the FBI Web Site: (<http://www.fbi.gov/hq/cjisd/fprequest.htm>).
- NOTE: Police employees may not provide a person with a copy if his/her III record printed through the department's L.E.A.P.S or live scan computer systems.
4. REQUESTS FOR PUBLIC RECORDS: Public records may be requested in the following manner:
    - a. Oral requests may be taken in person or over the telephone.
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- b. Written requests may be received by mail, FAX or e-mail.
  - c. The request must include an adequate description of the record so that the correct record(s) may be located.<sup>15</sup>
  - d. The requestor shall not be required to provide proof of identity or to disclose the reason for the request.
  - e. The exception is if the requested document is exempted as a security document exempted pursuant to M.G.L. c. 4, §7(26)(n).<sup>16</sup> 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 of Police.

## 5. COSTS FOR RECORDS

- a. Persons requesting public records must pay the actual cost for preparing the requested documents. The fee for searching and preparing records shall be the lowest hourly rate of pay for any employee qualified to search and prepare the documents. The following fees apply:
  - 1) Search fee: Clerk's rate of pay; and
  - 2) Segregation fee: Clerk's rate of pay.
- b. Other fees are set forth by statute:<sup>17</sup>
  - a) The cost per copy for a public record is \$.05 (five cents) per page whether the document is photo copied or computer generated.
  - b) The cost of postage may be charged.
  - c) Some records are "not susceptible to ordinary means of reproduction" (computer records or oversized documents, e.g.), the department may charge the actual cost incurred in making copies.
- c. Reports, No Charge for Victims: Some records must be provided at no cost to victims, i.e., police reports documenting domestic violence.<sup>18</sup>

## 6. PROCESSING THE REQUEST

- a. Requests for public records must be complied as soon as practical and within ten days. Such response does not represent the actual delivery of records, but an answer as to whether the records will be disclosed and a good faith estimate of the cost.<sup>19</sup>
- b. The Chief of Police shall be responsible for processing the request.

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## 7. SEGREGATION

- a. The following information shall be redacted or deleted from all records distributed under public records requests:
  - 1) All personal information:<sup>20</sup>
    - a) Social Security numbers;
    - b) Telephone numbers; and
    - c) Month and day of the birth date.
  - 2) Victim's information:<sup>21</sup>
    - a) Victims of rape or sexual assault reports, victim identification, and victim statements;<sup>22</sup>
    - b) Home addresses and telephone numbers, places of employment or education of victims of adjudicated crimes;<sup>23</sup> and
    - c) Home addresses and telephone numbers, places of employment or education of victims of domestic violence.<sup>24</sup>
  - 3) Investigatory materials:<sup>25</sup>
    - a) Information relating to an on-going investigation that could potentially alert suspects to activities of investigating officials;
    - b) Confidential investigative techniques the disclosure of which would prejudice future law enforcement efforts may be withheld indefinitely;
    - c) Witness identification and statements;
    - d) All references to and information of confidential informants; and
    - e) Undercover officers' names.
- b. C.O.R.I. information. For further information, see the department policy on **C.O.R.I.**<sup>26</sup>

## 8. REDACTION:

- a. Text on paper documents must be darkened with marker. Photocopy the redacted document to ensure that the redaction remains unreadable through the mark-out. Provide that copy to the requestor.
- b. Text on word processing may be blacked out using a black highlighter.

9. EXEMPTIONS: The following is a list of documents that are excluded from the public records law and may not be disclosed.

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- a. Rape or sexual assault reports, victim identification, and victim statements.<sup>27</sup>
  - b. Internal personnel rules and practices.<sup>28</sup>
  - c. Personnel Files:<sup>29</sup> Personnel files are distinguished from internal affairs records. Requests for personnel files should be reviewed by town counsel.<sup>30</sup> Personnel files include:
    - 1) Disciplinary Records
    - 2) Promotion
    - 3) Demotion
    - 4) Termination
    - 5) Medical Files<sup>31</sup>
  - d. Documents relating to policy position development.<sup>32</sup>
  - e. Investigatory material the disclosure of which would prejudice effective law enforcement.<sup>33</sup>
    - 1) Active investigations
    - 2) Open or closed criminal cases
      - a) Superior Court matters may be released only with the authorization of the District Attorney's Office.
      - b) Serious misdemeanors may be released only with the authorization of the District Attorney's Office.
      - c) Minor misdemeanors may be released after being segregated, if authorized by town counsel. Applications for and other identifying data relating to Licenses to Carry Firearms.<sup>34</sup>
  - f. Testing materials and answer keys if materials are intended to be used again.<sup>35</sup>
  - g. Policies, procedures, security measures and assessments for emergency preparedness.<sup>36</sup>
  - h. 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<sup>37</sup>
  - i. Conflict of interest, requests for opinions.<sup>38</sup>
  - j. Home addresses and telephone numbers of Police, Fire and Emergency Medical personnel.<sup>39</sup>
  - k. Home addresses and telephone numbers, places of employment or education of victims of domestic violence.<sup>40</sup>
  - l. Juvenile delinquency case records: juvenile probation may release certain information pursuant to allegation of certain crimes.<sup>41</sup>

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## 10. DENIALS

- a. Responses to requests for public records must be made within ten days. The documents themselves need not necessarily be produced during this time period. A failure to respond will be considered a denial by the Secretary of the Commonwealth.<sup>42</sup>
- b. 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.<sup>43</sup>
- c. The response must be in writing and set forth the reasons for the denial, specifically identifying the exemption upon which the denial is based. (See **Exemptions** in this policy.)<sup>44</sup>
- d. The response of denial must include an advisement of the requestor's remedies under 950 CMR 32.00 which include:<sup>45</sup>
  - 1) Appeal to the office of the Secretary of State, Public Records Division. The appeal must be made within ninety (90) 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.<sup>46</sup>
  - 2) It is within the discretion of the Supervisor of Records to accept or deny an appeal. The Supervisor may deny an appeal:<sup>47</sup>
    - a) If the records are the subject of a dispute in active litigation, administrative hearings, or mediation;
    - b) If, in the opinion of the Supervisor, the request is designed or intended to harass, intimidate or assist in the commission of a crime; or
    - c) If, in the opinion of the Supervisor, the request is made solely for a commercial purpose.
  - 3) Appeals in which there has been no communication from the requestor for six (6) months may be closed at the discretion of the Supervisor.<sup>48</sup>
  - 4) The appeal, if accepted, will be investigated in a reasonable time and a written decision stating the reason for that decision will be issued.<sup>49</sup>
  - 5) The Supervisor of Records may hold a hearing or conference or conduct an in-camera inspection of the record.<sup>50</sup>
  - 6) The Supervisor does not take custody of records submitted for in-camera review. Upon making a determination, the records are promptly returned.<sup>51</sup>
  - 7) In the event that, after a determination is made by the Supervisor of Records as to the status of a record in dispute,

the record is not released, the Supervisor may notify the Attorney General or District Attorney of the failure to comply.<sup>52</sup>

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<sup>1</sup> M.G.L. c. 6, §172.

<sup>2</sup> 803 CMR 3.10.

<sup>3</sup> M.G.L. c. 4, §7(26)(f).

<sup>4</sup> M.G.L. c. 4, §7.

<sup>5</sup> 950CMR 32.05(1).

<sup>6</sup> 9.06 C.M.R. 36.06(4).

<sup>7</sup> M.G.L. c. 41, §98F.

<sup>8</sup> M.G.L. c. 41, §98F.

<sup>9</sup> 803 C.M.R. 6.02; M.G.L. c. 6, §175.

<sup>10</sup> 803 CMR 6.06.

<sup>11</sup> 8.03 CMR 6.03.

<sup>12</sup> 8.03 CMR 9.06(5).

<sup>13</sup> M.G.L. c. 4, §7(26)(f).

<sup>14</sup> 8.03 CMR 6.05(2).

<sup>15</sup> 9.06 C.M.R. 32.05(4).

<sup>16</sup> 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.”

<sup>17</sup> 9.06 C.M.R. 32.06.

<sup>18</sup> M.G.L. c. 209A, §6.

<sup>19</sup> Massachusetts Rules of Criminal Procedure, Rule 14. Pretrial Discovery.

<sup>20</sup> M.G.L. c. 4, §7(26)(c).

<sup>21</sup> M.G.L. c. 66, §10(f).

<sup>22</sup> M.G.L. c. 41, §97D.

<sup>23</sup> M.G.L. c. 66, §10(d).

<sup>24</sup> M.G.L. c. 66, §10(d).

<sup>25</sup> M.G.L. c. 4, §7(26)(f).

<sup>26</sup> M.G.L. c.6, §167.

<sup>27</sup> M.G.L. c. 41, §97D.

<sup>28</sup> M.G.L. c. 4, §7(26)(b).

<sup>29</sup> M.G.L. c. 4, §(26)(C).

<sup>30</sup> Worcester Telegram & Gazette Corp. vs. Worcester Chief of Police, 58 Mass. App. Ct. 1 (2003).

<sup>31</sup> M.G.L. c. 4, §7(26)(C).

<sup>32</sup> M.G.L. c. 4, §7(26)(d).

<sup>33</sup> M.G.L. c. 4, §7(26)(f).

<sup>34</sup> M.G.L. c. 66, §10(d); M.G.L. c. 4, §7(26)(j).

<sup>35</sup> M.G.L. c. 4, §7(26)(l).

<sup>36</sup> M.G.L. c. 4, §7(26)(n).

<sup>37</sup> M.G.L. c. 111F, §21.

<sup>38</sup> M.G.L. c. 268A, §22.

<sup>39</sup> M.G.L. c. 66, §10(d).

<sup>40</sup> M.G.L. c. 66, §10(d).

<sup>41</sup> M.G.L. c. 119, §60A.

<sup>42</sup> 9.06 C.M.R. 32.08(1).

<sup>43</sup> 9.06 C.M.R. 32.08(4).

<sup>44</sup> 9.06 C.M.R. 32.08(1).

<sup>45</sup> 9.06 C.M.R. 32.08(1).

<sup>46</sup> 9.06 C.M.R. 32.08(2).

<sup>47</sup> 9.06 C.M.R. 32.08(2).

<sup>48</sup> 9.06 C.M.R. 32.08(2).

<sup>49</sup> 9.06 C.M.R. 32.08(3).

<sup>50</sup> 9.06 C.M.R. 32.08(5)(6)(8).

<sup>51</sup> 9.06 C.M.R. 32.08(6).

<sup>52</sup> 9.06 C.M.R. 32.09.

ISSUING AUTHORITY:

Chief William R. Walsh Jr.:

