

DODGEVILLE POLICE DEPARTMENT POLICY TITLE  Open Records Release			
ISSUE DATE: February 18, 2015	LAST UPDATE: New	SECTION: Administrative	TEXT NAME Open Records
POLICY SOURCE  David J. Bauer, Chief of Police			TOTAL PAGES  9
AUTHOR:  Chief David J. Bauer		SPECIAL INSTRUCTIONS  Replaces existing directives & memos	

I. PURPOSE

1. Provide guidelines for information release complying with Open Records laws including WI SS. Chapter 19, 48, and 938.
2. Provides for the security of Department Records.

II. POLICY

1. In general, it is our policy for personnel to treat police records as confidential while respective to all open records laws. As police data may be of interest and concern to the public, we will provide timely and accurate data within legal guidelines.

III. DEFINITIONS or CLARIFICATIONS

1. **Reports:** Personnel will defer to the Police Administration information release concerns. As a matter of public information, Command Officers will verify that information for release appears to be correct and that any release will not adversely affect an on-going investigation or cause harm to the persons involved.
2. **Investigations that are Confidential:** Cases that involve juveniles, sexual assault, or that are on-going by nature.
3. **Department Records:** WI SS. 19.32(2). Material on which data is stored, regardless of form or media, created or kept by the Department.
4. **Juvenile Records:** Records of juveniles are kept electronically separate via computer software, access rights and similar programming or storage.
5. **Records Custodian:** The Chief is the overall custodian of Records. For purposes of this order, the designated Records Custodian for police case reports is the Chief or Lieutenant. Such personnel may designate subordinates to perform Records related functions within the scope of their employment.
6. **Records Inspection:** Release or inspection shall be in accordance with applicable laws. Requesters may inspect releasable records without purchasing them. At no time is it permissible for a non-criminal justice person to review an original police record without immediate supervision of a Department employee after authorization by custodian.
7. **Requester:** Any person, identified or anonymous, who requests record inspection or copies.

IV. GENERAL PROCEDURES

1. Juvenile vs. Adult Records: computerized records separate data by access rights and other software programming. Access is only granted to criminal justice personnel.
  - a. Juvenile records are handled according to WI SS. Chapters 48 and 938.
  - b. Juvenile record dissemination is prohibited unless approved by the Chief or Lieutenant or provided for in related statutes.
  - c. Juvenile Records are not open to release except for:
    1. News media representatives as long as all other release criteria are met.
    2. Criminal Justice agencies including victim or witness and fire investigator.
    3. Victims of Juvenile acts resulting in injury or loss or damage.
    4. Victim's insurers ONLY when court restitution was ordered and has not been paid and after one year of the date of the incident.
    5. Parent, legal guardian or legal custodian with proof thereof per Wis Statute 938.396(1)(c). The district attorney shall be consulted if information requested pertains to a subject involved in a CHIPS, delinquency or some other court proceeding.
    6. The Juvenile him or herself if they are 14 or older.
    7. To a holder of a notarized permission statement from the parent, legal guardian or legal custodian.
    8. School administrator of the school the child attends when:
      - a. Records relate to alcohol, drugs, weapons, or;
      - b. Records relating to an act he or she was adjudicated delinquent, or;
      - c. Records relating to a Juvenile apprehended: WI SS 938.34(4h)(a).
  - d. Information can be released as authorized except in cases where there is more than one juvenile involved. Parents, legal custodians, and guardians may only receive reports pertaining to their child. Identifying information on other juveniles will be redacted.
  
2. Photographs or Prints
  - a. Controlled by detention facilities, e.g. the County Jail or Juvenile Detention.
  - b. Personnel may take photos of juveniles. Juvenile photos regarding missing are attached to roll call.
  
3. Physical Security
  - a. Reporting Personnel.
    1. Prior to submission, personnel are responsible for the security and storage of their field notes and other data needed for compiling reports.
    2. Reports may be typed, recorded or entered into computerized authorized formats on approved workstations. Such reports shall not be stored on any hard drive workstation other than the computerized records management system software.
    3. Authorized reporting areas are restricted to the person's designated work space or office or other area as authorized by his or her supervisor. *Once a person compiling reports occupies an area, NO non-criminal justice personnel are allowed into such area, so as to eliminate the possibility of unauthorized person accessing police information. Therefore, the media and general citizenry is restricted from entering occupied report writing areas.*
  - b. Supervisory or Report Reviewing Personnel.
    1. Once the report is routed to the reviewing supervisor, such supervisor is responsible for report security and the security of information contained therein.
    2. Release of information after normal business hours is restricted. Inquiries by phone should be declined or limited to specific releasable information as outlined in WI SS. Chapter 19. Victim, suspect and witness information is

extremely sensitive and very rarely should be released unless to persons such as next of kin. In addition, labeling persons as suspects should be avoided in informational releases.

- c. Police Records
    - 1. Supervisory personnel route completed reports to the Secretary on a regular basis. For patrol operations, this occurs by 7:00am of every business day.
    - 2. Reports routed to Records storage are considered confidential and are processed according to orders regarding their potential release.
    - 3. Access is available via workstations.
    - 4. Originals are NOT to be removed from the Records Storage room unless authorized by the Chief or Lieutenant. Returned reports are to be given to the Secretary for refiling.
  - d. Media – Briefing Personnel.
    - 1. Briefings by police personnel will be conducted in a non-invasive location such as the basement.
    - 2. Briefing personnel to determine compliance with section “E” below must review requests for further information.
    - 3. Non-Criminal Justice Agency personnel may be restricted from personally copying by means, other than making hand written notes of the documents, when the integrity of the document is at risk or the copying would provide information that is not open to inspection. Personal copying must be pre-approved by the records custodian. No fees will be assessed to a person who makes their own copies of documents, unless directed or allowed by state statute.
    - 4. Briefing personnel are not allowed to leave the review area unless either the original reports are taken or removed with them or non Criminal Justice Agency personnel are absent from the locked room.
4. Records Inspection or Records Custodian
- a. Authorization for inspection of records shall be processed through the Chief or Lieutenant.
  - b. Records open to inspection are those identified by applicable federal, state, local and case law including WI SS. Chap. 19. Records may be released or inspected via written request. If records contain non-releasable data, the records to be released will be redacted where necessary prior to release. Actions to approve or deny release will be noted on the Open Records Request form with a copy being given to the requestor and a copy maintained within the Record.
  - c. Notice for the Public: The lobby displays a notice containing a description of the police legal custodian from whom and the methods whereby, the public may obtain information and access to records, make requests for records, or obtain copies of records and the costs.
  - d. Requests for records will be made to the Chief or Lieutenant via an employee. Such request will be submitted in person, by fax, US mail or email and will use the required Open Records request form. When inspecting records, the person doing such may be restricted from personally copying by means, other than making hand written notes of the documents, when the integrity of the document is at risk or the copying would provide information that is not open to inspection. Personal copying must be pre-approved by the records custodian. No fees will be assessed to a person who makes their own copies of documents, unless directed or allowed by state statute.
  - e. Responses to written requests will be made as soon as possible but generally within ten business days. Written request denials will inform the requestor for the denial reason and that the denial is subject to review on application to the DA’s office or to the WI Attorney General, WI SS. 19.37(4)(b). The wording in the response letter (Appendix B) shall be used when appropriate.

5. General Release of Information
  - a. The media has no more rights to information than does the general public other than which is granted specifically by law such as the right to see juvenile information BUT the media is not to otherwise use or release the juvenile's identity.
  - b. Release of information is restricted to:
    1. WI SS. 19.35 limitations on release. Some records MUST remain confidential if they may harm the public interest, hinder or compromise police goals or activities, contain personally identifiable data that, if disclosed, could endanger a person, identify a confidential informant, endanger population or staff at a secure facility, or infringe on victim or suspect rights.
      - a. Information on confidential or anonymous complainants.
      - b. Open Investigations that may lead to: enforcement action, administrative or arbitration or court proceedings, evidence in pending cases as defined in Wis Statutes 19.35(1).
      - c. Expunged records.
      - d. Contractor records, where the Dodgeville Police Department assisted another agency while acting as a contractor or under mutual aid or agreement as defined in 19.36(3).
      - e. Medical or psychological records, Chapter 51 records or any record covered under the HIPAA Privacy Rule.
      - f. Employment Information.(except when a written release is received from the subject of the request)
      - g. Computer programs, security information, search warrants in pending cases, informants, investigative training or techniques.
      - h. Any record specifically restricted by state, federal or case law.
      - i. DOT, CIB, NCIC, TIME, e-Time related information or records identified under the Driver's Protection Privacy Act (Appendix A), is not a Dodgeville Police Record and can not be released as a public record. Persons may request a copy of this information using the Limited Vehicle Driver Information Request Form. This form can be accessed on the Police Shared site under DPD Policies / Forms / Open Records.
    2. Information that can be released by all personnel without prior authorization includes traffic citation information, property damage or theft reports without a named suspect to insurance providers and accident crash reports with the following exceptions:
      - a. Accident fatality until the next of kin is notified.
      - b. Witness statements or other documents if there are pending investigations or charges.
      - c. Identifying information of a person under age 17 if charged with a crime or alcohol offense, unless redacted.
      - d. Children if under age 16 and referred, charged or issued a citation or any other enforcement action.
      - e. The name or identifying information of a suspect in the commission of a crime.
      - f. Such exceptions do not apply if the subject of the 'exception' provides a signed release of records authorizing the Department to release any and all accident related records pertaining to the person signing the form.
    3. Information can be partially released if:
      - a. Non-releasable parts are redacted before copying.
      - b. Records acquired via subpoena or court action need not be redacted.

- c. A record is not available at the time of the request but may be available at a later date; the requestor may receive portions that are releasable and complete, and be notified that it is up to the requestor to make a later, subsequent request.
  - c. Requests by Criminal Justice Agencies. Pursuant to a request, the following records may be released to a criminal justice agency such as law enforcement, probation and parole, victim or witness coordinators, corrections, health and human services, juvenile resources, city or district attorneys or the corporation counsel:
    - 1. Incident reports, including pending reports.
    - 2. Arrest records, reports and photos.
    - 3. Inmate records, reports, photos, fingerprint cards.
    - 4. Medical records.
  - d. Inmates have NO rights to records unless the request is specifically about them or children for whom they are the legal guardians.
- 6. Release of Original Records
  - a. Original records will be released only in response to a subpoena and/or under the direction of the Chief or Lieutenant. The released record will have a Department representative, designated by the Chief or Lieutenant accompany such document to court or other destination unless otherwise authorized by the Chief or Lieutenant.
  - b. Temporary release of original reports to media representatives shall be avoided whenever possible in favor of producing a call log and/or copies of requested reports.
- 7. Notice
  - a. When required by law, the custodian of the records must give notice to a person named in documents that a request has been made and that the request will be granted to include the release of identifying information.
  - b. The record will not be released for a period of ten (10) days from the time of notice, giving the person named an opportunity to obtain a court injunction prohibiting the release of the record or any portion of the record.
  - c. The requestor will be informed in writing of pending notice to a person named in the record and informed of potential pending actions concerning the release of public information.
  - d. If after notice has been given and the ten (10) day period has expired and there are no pending civil actions or no court injunction prohibiting the release of open public records the record shall then be released to the requestor.

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David J. Bauer  
Chief of Police

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Date

Approved by Common Council - February 18, 2015

## APPENDIX A

### Background on Agreed-Upon Form for Releasing DPPA Related Information\*

The following information explains how the League of Wisconsin Municipalities and media groups arrived at an agreed-upon form for requesting the disclosure of personal information protected by the federal Driver's Privacy Protection Act (DPPA).

The DPPA is a federal law that protects the privacy of personal information assembled by DMVs. Congress passed the law in 1997 after concerns with mass marketing and crimes connected to the release of personal information by state Departments of Motor Vehicles. The federal law provides that "a state department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity" "personal information" or "highly restricted personal information" including: an individual's photograph, social security number, driver identification number, name, address, telephone number, and medical or disability information.

This federal law contains a broad prohibition which applies to municipalities whose law enforcement departments have access to such DMV information.

The DPPA limits the release of a driver's personal information for certain enumerated uses such as: legitimate government agency functions; matters of motor vehicle safety, theft, emissions, and product recalls; use in connection with civil, criminal, or administrative proceedings; research activities and statistical reports; insurance activities; notice for towed or impounded vehicles; use by licensed investigators or security service; in response to requests if there is express consent from the individual; and for any other legitimate State use if it relates to motor vehicle or public safety.

The DPPA preempts any conflicting state law that regulates the dissemination of motor vehicle record information.

In 2008 the Wisconsin Attorney General released an Informal Opinion on the intersection of the DPPA and the Wisconsin Public Records Law. In that opinion, the Attorney General concluded for at least two reasons that the DPPA does not prohibit the release of "personal information," including a driver's name, address, and phone number, when that information is incorporated into a motor vehicle accident report or traffic citation.

First, the Attorney General noted that the DPPA's definition of "personal information" expressly states that the term "does not include information on vehicular accidents, driving violations and driver's status"<sup>4</sup> and that it is reasonable to interpret this exclusion from the "personal information" definition to mean that information such as a driver's names, address, and telephone number are not encompassed in the personal information protected by the DPPA when that information is incorporated into a document such as an accident report or traffic citation.

Second, the Attorney General concluded that the DPPA exception authorizing the DMV to disclose personal information "for use by any . . . law enforcement agency in carrying out its functions" also authorizes disclosure of such information from citations or accident reports by the agency in response to a public records request.

Subsequently, decisions from the Seventh Circuit and United States Supreme Court cast doubt about the unfettered release of DPPA-protected information. Although neither case addressed Wisconsin's Open Records Law, both the Seventh Circuit Court of Appeals in *Senne v. Vill. of Palatine*, 695 F.3d 597 (7th Cir. 2012) and the United States Supreme Court decision in *Maracich v. Spears*, 570 U.S. \_\_\_, 133 S.Ct. 2191, 186 L.Ed.2d 275 (2013), issued decisions instructing how narrowly the exemptions should be interpreted. In *Spears*, the Supreme Court held that a law firm may not use department of motor vehicle records to solicit clients or market their services under the permissible use exception for "in connection with" litigation or

“investigation in anticipation of litigation.” *Senne* held that placing a parking ticket on a car’s windshield containing information that was obtained from the Illinois DMV violated the DPPA prohibition on disclosure. The Supreme Court denied certiorari on June 24, 2013. Thus, *Senne* remains the law in the 7th Circuit, which includes Wisconsin. The *Senne* decision led to a remand for further factual development in the district court. In November 2013, the district court found no DPPA violation by the village and dismissed the suit. The case is again on appeal before the Seventh Circuit and a second decision is anticipated this year.

In November 2012, the League cautioned that law enforcement agencies should evaluate all the ways in which they use information obtained from DMV records in order to avoid violating the DPPA.

The Attorney General’s office has, on several occasions, refused to weigh in on the impact of *Senne* or *Spears* on its 2008 opinion despite direct requests to do so from groups of attorneys tasked with advising local governments regarding the public records law.

On March 20, 2014, St. Croix County Circuit Court Judge Howard Cameron concluded that the DPPA did not require the City of New Richmond to redact personal information from police reports and that the City’s redaction of those records violated Wisconsin’s public records law. Judge Cameron concluded that *Senne* was factually and legally distinguishable, and thus inapplicable, because it did not address the application of the DPPA in connection with a valid request made under a state’s public records law. The court further concluded that disclosure was authorized under the DPPA exception under 18 U.S.C. 2721(b)(1), which allows use of the information for uses related to the operation of a motor vehicle or public safety or for use by any government agency, including any court or law enforcement agency, in carrying out its functions. *New Richmond News vs. City of New Richmond*, Case No. 13 CV 163.

However, circuit court decisions are only binding on the parties to the action and have no precedential value for others. Only published decisions from appellate courts have precedential value. At the time, an appeal was still under consideration and many believed the decision did not adequately address *Senne* and *Spears*. Indeed, the City of New Richmond has recently authorized an appeal of the matter.

#### Agreed-Upon Form for Release of DPPA-Related Information

On Tuesday, June 3, 2014, in the midst of this debate, the Wisconsin Newspaper Association (WNA) hosted a summit in Madison to address the on-going redaction of local law enforcement records throughout Wisconsin. The summit included representatives from the League, LWMMI, media, and other local government organizations and insurers.

As a result of this summit and subsequent on-going discussions brokered by the League, an agreement was struck to use the attached form in order to aid requesters and municipalities.

The form allows a requester to provide certain information – their identity, the purpose of their request and the DPPA exemption allowing them access – in order to obtain an unredacted record containing DPPA-protected information. Section I of the form contains the requester’s information, Section II seeks information about the request, Section III contains the DPPA’s exemptions to be selected by the requester, and Section IV and V contain penalties and certifications.

As an example of the use of the form, particularly with respect to media requesters, the release of an unredacted record will be contingent upon the record requester completing the form indicating that the use of the information satisfies exception 14 — specifically, that the “use is related to the operation of a motor vehicle or public safety.” Under Section II of the form, the League of Wisconsin Municipalities and the media have offered the following responses as acceptable examples when completing the form’s Section II (i.e., “reason for request of particular items of ‘personal information’ or ‘highly restricted personal information’”) and citing DPPA exception 14:

- 1) For use under the Open Records Law in relation to motor vehicle or public safety; or,

2) For use in news gathering and/or reporting as authorized under the Open Records Law in relation to motor vehicle or public safety.

In sum, the League continues to recommend that municipalities, their custodians and their legal counsel work together to evaluate the interaction of the DPPA and Open Records law. Where a requester does not identify the information needed to release personal or highly restricted personal information, such information may not be released. However, where the requester properly completes the agreed upon form, as with the media requester example described above, the League recommends release of the information in unredacted form unless, as the Attorney General observed in its Informal Opinion, the public records balancing test or statutory prohibitions other than the DPPA may preclude disclosure. The form is intended to facilitate the release of this information where appropriate, such that municipalities and their legal counsel should be cautious in being hypersensitive in evaluating the form. Routine redaction of all personal information from law enforcement agency records, without regard for where the information comes from, is an overbroad response and may violate Wisconsin's public records law. Law enforcement agencies should continue to evaluate all the ways in which they use information obtained from DMV records, work with their municipal attorneys and use this form until there is more clarity from the courts.



APPENDIX B

[Requester]

[Date]

Re: Records request dated

Dear [Requester]

This letter is a partial response to your recent records request.

First, you requested reports pertaining to .....

Contractor's records

The Dodgeville Police Department assisted the [name of agency] with the investigation you referenced. The Department was, in effect, acting as a contractor by virtue of the mutual assistance agreement it has with that agency. Contractor's records are generally available under the open records law through the initiating agency (See Wis. Stat. sec. 19.36(3)). Please contact [agency] regarding your request.

Open investigations

The reports or other documents you have requested are part of an open police investigation. Such records are generally not available until such time as the investigation is closed and the prosecutor has determined how the matter will be disposed of. (See Wis. Stat. sec. 19.35(1)).

DPPA

The reports or other documents you requested are included subject to certain redactions. The Driver's Privacy Protection Act (DPPA) prohibits the disclosure of certain personal information obtained from drivers' licenses or driver records. Any such information has been redacted from the report. As you may be aware, there is a form you can complete to obtain additional personal information from a police report and a copy of that form is enclosed.

Juveniles

Strong public policy reasons expressed in both Wisconsin Statutes Sections 48.391, and 938.396 convey the public's strong interest in protecting identifiable information regarding children and juveniles and prohibit disclosure of certain information pertaining to juveniles. I believe the public's interest in protecting the identities of children to the extent possible applies regardless of whether the child was a suspect, an accused individual, a material witness or a victim. Therefore, information that identifies juveniles has been redacted from the report, document, etc...

Required Language

If you have any questions regarding this letter, then please feel free to contact me. Wisconsin Statutes require that I notify you of your rights under Wisconsin's Public Records Law to seek review of my decision through the Iowa County District Attorney or through a circuit court action for mandamus.

Sincerely,