

## 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 (805).

#### 804.1.1 DEFINITIONS

Definitions related to this policy include (N.D.C.C. § 44-04-17.1):

**Closed record** - All or part of an exempt record that the Department has determined should not be open to the public.

**Confidential record** - A record that is declared confidential or is prohibited by law from being open to the public.

**Exempt record** – A record that is not confidential, nor is required by law to be open to the public. These records may be open to the public at the discretion of the Department .

**Open record** - A record which must be released per NDCC (39-08-10.1, 44-04-18.7(5), and 44-04-18.7.

**Record** - Recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded or reproduced. These records are in the possession of a public entity and either contain information relating to public business or are intended to be used in connection with public business. This does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. It also does not include records possessed by a court of this state.

### 804.2 POLICY

The Fargo Police Department is committed to providing public access to records in a manner which is consistent with the North Dakota Open Records Law (N.D.C.C. § 44-04-18 et seq.).

### 804.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Records Unit Office Manager is designated by the Chief of Police as the Department's Custodian of Records. The Records Unit Office Manager should consult with the City Attorney and the Professional Standards Division commander for guidance in order to perform his/her responsibilities, which include, but are not limited to:

- (a) Managing the records management system for the Department, including the retention, archiving, release and destruction of department public records and overseeing the Records Unit as the entity responsible for these original records.
- (b) Periodic consultation with appropriate government agencies regarding retention and disposition of records, and determining whether records are of legal, administrative or historical value.

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- (c) Maintaining and updating the department records retention schedule including Identifying the minimum length of time the Department must keep records (see Appendix 1).
- (d) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records and making the rules available to the public.
- (e) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying and ensuring security and safeguards are in place to protect these records from unauthorized disclosure.
- (f) Establishing rules regarding the processing of subpoenas for the production of records.
- (g) Ensuring a current schedule of fees for public records as allowed by law is available.

The requesting party shall be required to pay in advance the actual cost of postage and any established fee up to 25 cents per impression of a paper copy for each record sought. A reasonable fee will be set by the Department for making the copy of a record that is not a paper copy (N.D.C.C. § 44-04-18(2)).

The Department shall impose a fee not exceeding \$25 per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. The Department shall also impose a fee not exceeding \$25 per hour, per request, excluding the initial hour, for excising confidential or closed material from the records, including electronic records (N.D.C.C. § 44-04-18(2)).

An electronic copy of a record must be provided upon request at no cost, other than costs for retrieval, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the Department may charge no more than the actual cost incurred for the extensive use of information technology resources incurred (N.D.C.C. § 44-04-18(3)).

The Department shall only release and charge for non-reportable accidents. All state-reportable accidents, which are those accidents involving an injury, fatality, or at least \$4000 in total damage for all vehicles involved, must be obtained from the North Dakota Department of Transportation.

The Department fee for non-reportable accidents is as follows:

- A \$2 fee for partial accident reports not containing a diagram or officer narrative. A redacted version is available to persons who aren't a party to the accident.
- A \$5 fee for partial accident reports containing only the diagram and officer narrative.
- A \$7 fee for the entire accident report.

The Department shall only release this information to the following persons:

- The legal representative or insurer of an individual involved in defending or investigating a prior or subsequent claim, or accident involving a party to the accident.
- The insurance provider and/or insurance agent of any party to the accident.

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- A party's legal representative.
- A party to the accident.

[See attachment: FPD Policy 804 - Appendix 1.pdf](#)

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

Any department member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

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

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

- (a) The Department is not required to create records that do not exist (N.D.C.C. § 44-04-18(4)).
- (b) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released (N.D.C.C. § 44-04-18.10).
  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 system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
  2. An employee may disclose or comment on the substance of an open record as allowed by policy. Any agreement prohibiting the disclosure or comment is void and against public policy.
- (c) Except as otherwise provided by law, all public records will be accessible for inspection during reasonable office hours (N.D.C.C. § 44-04-18(1)).
- (d) Upon request made in person or in writing for a copy of a public record subject to release, the Department shall furnish the requesting party in person or by mail one copy of the public records requested (N.D.C.C. § 44-04-18(2)).
  1. Reasonable public access to electronic public records shall be maintained and provided by the Department while ensuring that exempt or confidential records are not disclosed except as otherwise permitted by law (N.D.C.C. § 44-04-18(3)).
  2. The Department is not required to provide an electronically stored record in a different structure, format or organization provided the information can reasonably be accessed (N.D.C.C. § 44-04-18(4)).
  3. Access to an electronically stored record or copies of records must be provided at the requesting party's option in either a printed document or through any other available medium. A computer file is not an available medium if redaction of any closed or confidential information contained in that file is not possible (N.D.C.C. § 44-04-18(4)).

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4. The Department is not required to provide a copy of a record that is available on the Department's website or on the internet. The Custodian of Records shall notify the requesting party the record is available online and direct him/her to the applicable website. If the requesting party does not have reasonable access to the internet, paper copies shall be provided upon payment of the applicable fees (N.D.C.C. § 44-04-18(4)).
  5. The Department may allow a requesting party to use a personal device to duplicate records, and if so, shall establish reasonable procedures to protect the integrity of the records (N.D.C.C. § 44-04-18(12)).
- (e) Records of the Department that are exempt or confidential may be disclosed to any public entity or federal agency for the purpose of law enforcement or collection of debts owed to a public entity, unless otherwise prohibited by law, provided that the records are not used for other purposes and the closed or confidential nature of the records is otherwise maintained. Such disclosure of confidential records to another public entity continue to be confidential in the possession of the receiving entity, except as otherwise provided by law (N.D.C.C. § 44-04-18.10).
  - (f) Any request by a party to a criminal or civil action, adjudicative proceeding, or arbitration in which the Department is a party, or by an agent of the party, will be honored subject to applicable discovery rules. The Department may deny a request if the request seeks records that are privileged under applicable discovery rules (N.D.C.C. § 44-04-18(6)).
  - (g) At the request of a victim, one copy of each report or record relevant to his/her case should be provided unless it is confidential or a court determines that disclosure would substantially interfere with an investigation (N.D. Const. art. I, § 25).
  - (h) The Department may require written clarification of a request to determine what records are being requested, but may not ask the motive or reason for requesting the records or for the identity of the requesting party (N.D.C.C. § 44-04-18(2)).

#### 804.4.2 CASE STATUS REPORTS

The following case status reports refer specifically to Fargo Police Department reports and also determine if the record is releasable:

- **CLOSED** - A report which has completed all processes. This report is **RELEASABLE**.
- **CONFIDENTIAL** - An internal report only. This report is **NOT RELEASABLE**.
- **INACTIVE** - A report which has no suspects or other information that can be investigated. This report is **RELEASABLE**.
- **NO PUBLIC RELEASE** - An internal report only. This report is **NOT RELEASABLE**.
- **OPEN** - A new report which has not been reviewed yet. This report is **NOT RELEASABLE**.
- **PENDING** - A report which is pending investigative results. This report is **NOT RELEASABLE**.

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- **REFERRED TO OTHER AGENCY** - A report which is pending with an outside agency such as the Courts or Social Services. This report is NOT RELEASABLE.
- **REOPENED** - A previously inactive report that has been reopened for investigation or charges. This report is NOT RELEASABLE.
- **UNFOUNDED** - A report in which the allegations have been disproved. This report is RELEASABLE.

#### 804.4.3 DENIALS

The denial of a request for records is subject to the following:

If access to any public record is denied, the requesting party may request a written statement of the grounds for the denial. The Custodian of Records shall respond in writing, citing the law, regulation or authority under which access is denied or a statement that the record does not exist (N.D.C.C. § 44-04-18(7)).

If repeated requests for records become disruptive to the essential function of the Department, inspection and/or copies of records may be refused. In such event, the Custodian of Records shall provide the requesting party with written reasons supporting the refusal (N.D.C.C. § 44-04-18(13)).

#### 804.5 RELEASE RESTRICTIONS

Examples of release restrictions include:

- (a) 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 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).
- (b) Confidential information such as any telephone number and the home address of any employee; records or other information that would reveal the identity or endanger the life or physical well-being of an undercover officer; or any record containing the work schedule of employees (N.D.C.C. § 44-04-18.3).
- (c) Personnel records, medical records, and similar records which would involve personal privacy (N.D.C.C. § 44-04-18.1).
  1. This includes information regarding the type of leave taken by an employee and leave that has been applied for but not yet taken (N.D.C.C. § 44-04-18.1).
  2. Information related to the fitness, character, behavior, or other qualifications of an applicant for a position as a law enforcement officer, including the identities of any individuals interviewed regarding such information.
- (d) Certain 9-1-1 records (N.D.C.C. § 44-04-18.21; N.D.C.C. § 57-40.6-07).
- (e) Any record containing an address, telephone number, or any identifying information that, if released, could reasonably be used to locate or identify a victim or alleged

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victim of domestic violence, sex offenses under Chapters 12.1-20 or 12.1-27.2, or human trafficking under Chapter 12.1-41 of North Dakota's Criminal Code (N.D.C.C. § 44-04-18.20).

- (f) Any record regarding a delinquent child or that is a compilation of a minor's name, address, telephone number, or any combination thereof (N.D.C.C. § 27-20.2-23; N.D.C.C. § 27-20.4-25; N.D.C.C. § 44-04-18.13).
- (g) The name and any other information that would identify any victim or witness to a crime as allowed by law (N.D.C.C. § 12.1-34-03; N.D.C.C. § 12.1-34-02).
  - 1. In the event a request is made for any confidential or privileged information about the victim or any information that could be used to locate or harass a victim or the victim's family, the Custodian of Records shall promptly notify the crime victim liaison (N.D. Const. art. I, § 25).
- (h) The identity, pictures, and images of any victim of human trafficking or of the victim's family members unless the information is required to be released by a court order; the information is necessary for investigation or prosecution of the offense; or the information is necessary to ensure provision of services or benefits for the victim or victim's family (N.D.C.C. § 12.1-41-10).
- (i) Crime scene images of a victim of a homicide or sex crime or any image of a minor victim of any crime is an exempt record (N.D.C.C. § 44-04-18.7(8)).
- (j) Interviews and statements of child victims or child witnesses obtained during an investigation of a violent or sexual crime (N.D.C.C. § 12.1-35-03).
- (k) Any image taken in a private place by a member's body camera or similar device (N.D.C.C. § 44-04-18.7).
- (l) Information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known (N.D.C.C. § 44-04-18.3).
- (m) Active criminal intelligence information and active criminal investigative information, and personal information of any person contained in an active or inactive file (N.D.C.C. § 44-04-18.7).
  - 1. Active investigatory work product (N.D.C.C. § 44-04-19.1(3)).
  - 2. A computerized index of names included in criminal files, whether active or inactive (N.D.C.C. § 44-04-18.7(7)).
  - 3. However, the Department shall maintain a list of all files containing active criminal intelligence and investigative information that have been in existence for more than one year. The list is subject to proper disclosure (N.D.C.C. § 44-04-18.7(1)).
- (n) Intelligence information, law enforcement techniques, or security procedures (N.D.C.C. § 44-04-24; N.D.C.C. § 44-04-25).
- (o) Computer software programs and passwords (N.D.C.C. § 44-04-18.5; N.D.C.C. § 44-04-27).

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- (p) Attorney work product that was created exclusively for civil or criminal litigation or in anticipation of potential litigation involving this department (N.D.C.C. § 44-04-19.1).
- (q) Records related to an active internal investigation of a complaint against the Department or a member for misconduct. Restriction is limited until the investigation is complete or 75 days have passed from the date of the complaint, whichever occurs first (N.D.C.C. § 44-04-18.1(6)).
- (r) Other records where:
  - 1. Such inspection would be contrary to any state statute.
  - 2. Such inspection would be contrary to any federal statute or regulation.
  - 3. Such inspection is prohibited by rules or procedures promulgated by the North Dakota Supreme Court or by the order of any court.

#### **804.5.1 FEDERAL TASK FORCE BODY-WORN CAMERA RESTRICTIONS**

Department members may participate as federal task force officers pursuant to an approved Memorandum of Understanding (MOU) between the Department and certain federal law enforcement agencies. Body-worn camera (BWC) video obtained by a task force officer (TFO) during the course of a federal law enforcement led operation, shall not be released publicly or disseminated outside the Department without first providing written notice to the federal agency involved. Records Unit personnel shall ensure they consult with the Criminal Investigations Division commander for any such requests.

#### **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 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 (N.D.C.C. § 44-04-18.11).

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the appropriate state or federal prosecutors office, City Attorney or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to the City Attorney as legal counsel for the Department so that a timely response can be prepared.

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

Each page of any hard copy 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. This does not apply to electronic records which are released.

#### **804.8 EXPUNGEMENT**

Expungement orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records will notify the Evidence and Property Manager

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of the order so disposition of any evidence items related to the file can be dealt with before the case records are expunged. The Custodian of Records shall expunge such records as ordered by the court. Records may include, but are not limited to, a record of arrest, investigation, detention or conviction. Once the record is expunged, members shall respond to any inquiry as though the record did not exist.

#### **804.9 SECURITY BREACHES**

Members who become aware that any Fargo Police Department system containing personal information may have been breached shall 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. If the breach involves more than 250 individuals, notice shall also be given by mail or email to the Attorney General (N.D.C.C. § 51-30-02).

Notice shall be given in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of the Fargo Police Department or any measures necessary to determine the scope of the breach and to restore the integrity of the data system. Notice may be delayed if notification will impede a criminal investigation (N.D.C.C. § 51-30-02).

For the purposes of the notice requirement, personal information includes an individual's first name or first initial and last name in combination with any one or more of the following (N.D.C.C. § 51-30-01):

- (a) Social Security number
- (b) Driver's license number or North Dakota identification card number
- (c) Full account number, credit or debit card number, or any required security code, access code, or password that would permit access to an individual's financial account
- (d) Date of birth
- (e) Maiden name of individual's mother
- (f) Medical information or health insurance information
- (g) Employee identification number in combination with any required security code, access code or password
- (h) Digitized or other electronic signature

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).



## **Attachments**

## **FPD Policy 804 - Appendix 1.pdf**

## **RECORDS RETENTION SCHEDULE FOR THE FARGO POLICE DEPT**

The following schedule has been established for the retention and disposal of records which include reports, pictures, citations, digital and prints, video and evidence, etc.

- 1. Traffic Citations** – including DUI Citations which contain the name, driver's license number, and location of offense, type of offense and name of officer(s) involved.
  - a. Retain for 4 years from date of issuance then dispose.
- 2. Criminal/incident cases** – containing arrest reports, dispositions, crime scene photos, narrative, and scanned images.
  - a. Retain for 10 years after report was made unless warrant (DF or open exist).
  - b. Homicide cases would be maintained for 75 years from date of incident. This includes all narrative, scanned images and audio/video recordings.
  - c. Case files for Sex Offenses that require registration under ND Century Code 12.1-32-15, will be maintained for 30 years from date of incident.
- 3. Juvenile files** – containing arrest reports, incident reports, dispositions, photos, and other case related records.
  - a. Retain for 10 years after report was made.
  - b. Upon turning 18, the file of the juvenile will remain in the FPD RMS, unless a court order has been issued to remove the juvenile file.
- 4. Crash Reports** – containing names of those involved, crash number assigned, date and time, description and /or diagram of crash, make and model of cars, injury reports, arrests and /or citations.
  - a. Retain for 2 years from date of crash and then dispose unless the case is a fatal crash.
  - b. In the case of fatal crashes, the report and all attachments would be archived for a minimum of 25 years.
- 5. Education/Training Material** – maintained by the trainer, disposed of when new training DVD or manuals become available.
- 6. Training Records** – these records become part of the permanent file for the employee and contain training certificates, a running total of training hours (also maintained at the state level).
  - a. Retained for 6 years after employee termination.
- 7. Lesson Plans** – plans for training of law enforcement personnel, class lists and time tables, locations of training and names of instructors.
  - a. Retained for 1 year or until updated.
- 8. Case Photographs**
  - a. Disposed of 60 days after all case related dispositions/judgments are received.

- b. Homicide related photos will be held for 75 years from the date of incident, and then destroyed.
- c. Fatal crash photos will be held for 25 years from the date of crash, and then destroyed.
- d. Unattended death photos will be held for 10 years from the date of incident, and then destroyed.
- e. Non-fatal crash photos will be held for 3 years from the date of the crash, and then destroyed.
- f. Uncharged cases photos will be disposed of when written authorization for the disposal is received from the prosecuting attorney or the investigating officer; or the statute of limitations for the listed crime(s) has expired.

**9. Sobriety Check point reports**

- a. Retain for Five years (from date of event) then destroy.

**10. Volunteer files**

- a. Maintain personal information on spread sheet and destroyed upon termination/end of volunteer career

**11. Criminal History Checks and Safe Housing Checks**

- a. Retain for one month and then destroy.

**12. Offender Registration Documentation**

- a. Maintain registration forms, photos, fingerprint cards, risk assessment files, interview forms until term of registration expires or until death of offender.