Records Maintenance and Release

803.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of Office records. Protected information is separately covered in the Protected Information Policy.

803.2 POLICY

The Erie County Sheriff's Office is committed to providing public access to records in a manner that is consistent with the Ohio Public Records Act (ORC § 149.43).

803.3 CUSTODIAN OF RECORDS

The Sheriff shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to (ORC § 149.43):

(a) Managing the records management system for the Office, including the retention, archiving, release, and destruction of Office public records.

(b) Maintaining and updating the Office records retention schedule, including:

1. Identifying the minimum length of time the Office must keep records.
2. Identifying the Office division responsible for the original record.
3. Making a copy of the current retention schedule readily available to the public.

(c) Establishing rules regarding the inspection and copying of Office public records as reasonably necessary for the protection of such records.

1. The Custodian of Records may limit the number of records requested by a person that the Office will physically deliver via mail or by another delivery service to 10 records per month unless the requester certifies in writing that they do not intend to use or forward the requested records, or information contained in the records, for commercial purposes.
2. Records in digital format that are publicly available on the internet may be limited as set forth in ORC § 149.43.

(d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.

(e) Establishing rules regarding the processing of subpoenas for the production of records.

(f) Ensuring the availability of a current schedule of fees for public records as allowed by law.

1. Fees shall not be charged for preparing a video record for inspection or production when the requester is a victim, or legal counsel or insurer of the victim and where the requirements for waiver of fees are met as described in ORC § 149.43(B)(11).

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(g) Preparing a notice that incorporates this policy and ensuring that it is displayed in conspicuous places in all locations where Office records are available to the public.

(h) Maintaining current information on the Office website that relates to public records release.

(i) Ensuring that records are organized and maintained in such a manner as to make them available for inspection or copying.

(j) Selecting appropriate public records, if any, to publish on the Office website.

(k) Establishing records destruction procedures.

803.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

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

803.4.1 REQUESTS FOR RECORDS

The processing of requests for any record is subject to the following (ORC § 149.43):

(a) The Office is not required to create records that do not exist.

(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.

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 Office-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. The requester shall be notified of any redaction in the public record if the redaction is not plainly visible.

(c) If a request is ambiguous or overly broad, or if the Custodian of Records cannot reasonably identify what public records are being requested, the request may be denied.

(a) The Custodian of Records must contact the requester for clarification and should assist the requestor in revising the request. The requestor shall be informed by the Custodian of Records of the manner in which records are maintained by the Office and how the records are accessed in the ordinary course of business.

(d) A person requesting records may be asked to make a request for records in writing to expedite processing of the request and may be asked for his/her identity. Prior to such a request, the person shall be told that:

1. There is no requirement to provide a written request.
2. There is no requirement to provide his/her identity.
3. There is no requirement to disclose the intended use of the records.

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4. The purpose of the written request or disclosure of the person's identity or intended use would benefit the person making the request by enhancing the ability of the Custodian of Records to identify, locate or deliver the records requested.

(e) Those seeking public records will not be charged a fee, except as otherwise noted in this policy.

(f) If a request is denied, either in whole or in part, the Custodian of Records shall provide the requester with an explanation setting forth the reason(s) for the denial, including the legal authority relied upon in making the determination. If the initial request was in writing, the explanation shall also be provided in writing.

(g) Nothing in this policy prohibits the custodian of records or any other employee from seeking clarification from legal counsel concerning a public records request prior to the release of the record(s) sought.

803.5 VIDEO RECORDS REIMBURSEMENT

The Erie County Sheriff's Office (ECSO) records and maintains law enforcement video records in the administration and furtherance of legitimate law enforcement activities involving ECSO employees. These video records include, but are not necessarily limited to: body worn camera footage, cruiser dash camera footage, mobile or stationary video surveillance footage, drone footage, or other video footage that is recorded, or obtained during the course of investigation, and maintained by ECSO. Video records maintained by ECSO, and determined to be public records, will be released upon written request. ECSO shall charge an individual or entity that requests ECSO law enforcement video records for the actual cost associated with the preparation of a video record for inspection or production, as follows:

(a) The actual cost to ECSO of preparing each law enforcement video record for inspection or production shall include gathering, reviewing, blurring or otherwise obscuring, redacting, uploading, and producing the requested video record(s), and also includes the storage medium on which the record is produced, ECSO staff time, and other relevant overhead costs necessary to comply with the request.

(b) The actual cost to ECSO of preparing each law enforcement video record for inspection or production, in accordance with Ohio law, has been determined to be $75 per hour.

(c) This actual cost shall be assessed to the requester for each hour taken to prepare each law enforcement video record for inspection or production, not to exceed $750 in total.

(d) The requester shall pay the estimated actual cost by money order or certified cashier's check made payable to the Erie County Sheriff's Office.

(e) When ECSO receives a request for a law enforcement video record, ECSO shall provide the requester with the estimated actual costs of fulfilling the request for law enforcement video records, in writing, within six (6) business days of receipt of the public-records request.

1. Said written cost estimate may be sent via email or regular mail, depending upon the manner in which the original request was received.

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2. If the original request was not received via email or regular mail, ECSO shall contact the requester in another way (phone, in-person, etc.) to advise them of the estimated actual cost.

(f) ECSO shall not be obligated to prepare a law enforcement video record for inspection or production until the estimated actual cost is paid in full by the requester.

(g) If the actual cost to prepare the requested law enforcement video records for inspection or production exceeds the estimated cost provided to the requester, ECSO shall charge the requester for the difference between the estimated cost and the actual cost. Upon determining that the cost of the inspection or production of the requested video record(s), ECSO will notify the requester, in writing, that the actual costs will exceed the estimated costs prior to fulfilling the request. The requester will then be required to submit the additional adjusted cost, in the same fashion, as required above, before the request is filled. Any additional costs in excess of the original estimate will not exceed 20% of the original cost estimate.

(h) If the actual cost to inspect and produce the requested law enforcement video records is determined to be less than the amount paid in advance by the requester, the excess in costs shall by reimbursed to the requestor by ECSO within a reasonable time period.

(i) ECSO shall not charge for the actual cost for the preparation of law enforcement video records for inspection or production in the following circumstances:

1. A request for law enforcement video records involving alleged criminal or traffic violations that has been previously reported to a law enforcement and requested on behalf of the victim through any municipal, state, or federal prosecutor and/ or an attorney representing the victim;
2. A request for law enforcement video records made by a party or attorney as part of a criminal case, being done so as part of discovery consistent with the Rules of Criminal or Civil Procedure;
3. A request for law enforcement video records made by any federal, state, or local law enforcement agency;
4. A law enforcement video record that is initially made publicly available by ECSO which may include, but is not limited to, law enforcement video records that are of great public interest.

803.6 INFORMATION REQUESTS FROM OTHER LAW ENFORCEMENT AGENCIES

Inquiries by other law enforcement agencies regarding copies of inmate records (mug shots, fingerprint cards, etc.) or any other record from the Erie County Jail will be complied with as soon as possible. If the request is beyond the capabilities of the on-duty Corrections Officers to comply with, the request will be forwarded to the Custodian of Records and/or the Jail Administrator for compliance.

803.7 RELEASE RESTRICTIONS

Examples of release restrictions include:

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(a) Any 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 license record, motor vehicle record, or any Office record, including traffic collision reports, is restricted except as authorized by the Office, 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; ORC § 4501.27; ORC § 149.45).

(b) Victim information that may be protected by statutes, including (ORC § 2930.04):

1. Photographs or images of victims as prohibited by ORC § 149.43 (ORC § 2907.11).
2. Identifying information of victims as provided in ORC § 2930.04 and ORC § 2930.07.
3. Victim's Rights Request Forms.

(c) Juvenile-related information that may be protected by statutes (ORC § 149.435).

(d) Confidential investigatory records of the Office that pertain to a law enforcement matter of criminal, quasi-criminal, civil, or administrative nature if release would create a high probability of disclosure of any of the following (ORC § 149.43):

1. Identity of a suspect not yet charged with an offense to which the record pertains
2. Identity of an information source or witness to whom confidentiality has been reasonably assured. This also includes information provided by an information source or witness if the release would tend to disclose the person's identity.
3. Confidential investigatory techniques, procedures, or specific investigatory work product as defined in ORC § 149.43.
4. Information that would endanger the life or physical safety of a member, crime victim, witness, or confidential information source

(e) Certain types of reports involving but not limited to child abuse and molestation (ORC § 2151.421) and adult abuse (ORC § 5101.61).

(f) Records pertaining to the residential or family information of peace officers and dispatchers (ORC § 149.43).

(g) Personally identifiable information of a program participant of the Ohio Secretary of State's address confidentiality program (ORC § 149.43).

(h) Restricted portions of recordings made by a dashcam or a member's body-worn camera as provided in ORC § 149.43(A)(1). Certain recordings may be disclosed with the consent of the subject of the recording or the subject's representative pursuant to the requirements of ORC §149.43 (H)(1).

(i) Images and data captured by an automated license plate recognition system maintained in a law enforcement database (ORC §149.43).

(j) Any other information that may be appropriately denied by ORC §149.43(A)(1).

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803.7.1 ENHANCED RECORDS ACCESS BY JOURNALISTS

(a) Journalists, as defined in ORC § 149.43, are entitled to enhanced access to certain records not available to the general public provided:

  (a) The request is in writing.

  (b) Journalists identify themselves by name, title, and employer's name and address.

  (c) Journalists establish and sign a request that the information sought is in the public interest.

(b) Records available to journalists but not the general public include:

  1. Personal residential addresses of a deputy or dispatcher of this Office (ORC § 149.43).

  2. The business name and address of a spouse, former spouse, or child of a deputy of this Office, only if employed by a public office (ORC § 149.43).

  3. Past, current, and future work schedules of a deputy or dispatcher of this Office (ORC § 149.43).

  4. Coroner records pursuant to ORC § 313.10.

  5. The name, county of residence, and date of birth of a person for whom the sheriff issued, suspended, or revoked a permit for a concealed weapon (ORC § 2923.129).

  6. The names, addresses, and telephone numbers of workers' compensation claimants subject to the requirements and restrictions in ORC § 4123.88(D).

  7. Limited information about minors involved in a school vehicle accident (ORC § 149.43).

  8. A redaction request form submitted to this Office pursuant to ORC § 149.45 (ORC § 149.43).

803.8 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.

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

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

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803.9 RELEASED RECORDS TO BE MARKED

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the Office name and to whom the record was released.

Each audio/video recording released should include the Office name and to whom the record was released.

803.10 SECURITY BREACHES

Members who become aware that any Erie County Sheriff's Office system containing personal information may have been breached should notify the Administrative Assistant as soon as practicable. The Administrative Assistant 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 (ORC § 1347.12).

Notice shall be given in the most expedient time possible but not later than 45 days following its discovery or notice of the breach consistent with any measures necessary to determine the scope of the breach, including which residents' personal information was accessed and acquired and to restore the reasonable integrity of the data system. Notice may be delayed if notification will impede a criminal investigation or jeopardize homeland or national security but notice shall be made once it is determined that disclosure or notification will not compromise the investigation or jeopardize homeland or national security (ORC § 1347.12).

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 (ORC § 1347.12):

(a) Social Security number

(b) Driver's license number or Ohio identification card number

(c) Full account number, credit or debit card number, in combination with and linked to any required security code, access code, or password that would permit access to an individual's financial account

If the breach reasonably appears to have been made to protected information covered in the Protected Information Policy, the Administrative Assistant should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

803.11 SEALED RECORDS OR EXPUNGEMENT

Expungement orders or an order to seal records received by the Office shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall expunge or seal such records as ordered by the court. Records may include but are not limited to a record of arrest, investigation, detention, or conviction. Once expunged or sealed, members shall respond to any inquiry as though the record did not exist.

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803.12 TRAINING

The Custodian of Records and any member who may be responsible for access or release of public records shall attend training approved by the Ohio Attorney General, such as that provided by the Ohio Association of Chiefs of Police (OACP).

The Custodian of Records and all Office members shall acknowledge and sign that they have read and received a copy of this policy (ORC § 149.43).

803.13 EFFECTIVE DATE

January 1, 2022

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