



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 82.1.1

TITLE: RECORDS RELEASE AND SECURITY

EFFECTIVE:

REVISED: Replaces Policy (810)

PURPOSE

The purpose of this Chapter is to establish a reference and procedure for the security and release of department public records in accordance with the **Louisiana Public Records Law** (La. R.S. 44:1).

POLICY STATEMENT

1. This Chapter does not prevent the Department from voluntarily making part or all of specific records available to the requesting person, or the public, unless disclosure is deemed exempt, confidential, private or expressly prohibited by law.
2. The Federal Freedom of Information Act (FOIA) does not apply to state or local records.
3. The release of video recordings involving critical incidents is governed by the department's internal **Public Release of Critical Incidents Policy** maintained by the Deputy Chief of the Public Integrity Bureau and, where in conflict with the provisions of this Chapter, controls.

DEFINITIONS

Body-Worn Camera ("BWC") recording—A digital recording made by equipment worn by a Department member that captures audio/video signals.

Custodian of Records—The Superintendent is the official Custodian of Records and is responsible for the public records of the New Orleans Police Department, regardless of whether the records are in his/her personal custody and control. Duties of the Custodian of Records may be delegated to other members of the New Orleans Police Department.

Data Transformation Services, or DTS—Is a set of objects and utilities to allow the automation of extract, transform and load operations to or from a database. The objects are **DTS** packages and their components, and the utilities are called **DTS** tools.

Public Record—All records used, prepared, possessed or retained for use in the performance of any public function, unless exempted by law.

Record—All books, records, writings, accounts, letters and letter books, maps, drawings,

photographs, cards, tapes, recordings, memorandums, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment.

PUBLIC REQUESTS FOR RECORDS

4. The Custodian of Records is responsible for the custody and control of department public records, including (La. R.S. 44:36):
 - (a) Maintaining procedures for the retention, archiving and destruction of department public records.
 - (b) Maintaining and updating the approved records retention schedule.
 - (c) Requesting and responding to an authorization to destroy records.
 - (d) Establishing rules regarding the inspection and copying of department public records as reasonably necessary for the protection of such records.
 - (e) Periodic consultation with the State Archivist regarding retention and disposition of records and determining whether records are of legal, administrative or historical value (La. R.S. 44:411).
 - i. Records determined to be of no legal, administrative or historical value may be disposed of in compliance with the organization's records retention schedule.
 - ii. A list of those records, together with signed approval from the Louisiana Records Management Section and Acquisitions Archivist, shall be filed and preserved by the Custodian of Records.
 - (f) Maintaining the required pay schedule of fees for public records as allowed by law (La. R.S. 44:32).
 - i. No fee will be charged to merely view public records during normal business hours. A fee may be charged for viewing records outside of normal business hours.
 - ii. The hourly fee for records generated by a manipulation of data in a form not used by this department shall not exceed the average hourly rate of pay for clerical staff manipulating the data and generating the record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.
 - iii. If the public record is a result of computer output, other than word processing, the fee may be based on recovery of the actual incremental cost of providing the electronic services and products, together with a reasonable portion of the cost associated with building and maintaining the information system.
 - iv. The Custodian of Records may waive or reduce fees when it is in the public interest to do so, provided that any such fee reduction or waiver is uniformly applied among persons who are similarly situated, such as indigent persons.
 - (g) Preparing and making available to the public a description of the basic rights of a person who requests public information, the responsibilities of the Department and the procedures and costs of inspecting or obtaining copies.

PROCESSING OF REQUESTS

5. Any member of the public, including the media and elected officials, may access unrestricted records of this department by submitting a written and signed request for each record sought and paying any associated fees.
6. All requests for production of video or audio recordings generated by law enforcement

officer body-worn cameras shall be incident specific and shall include reasonable specificity as to the date, time, location, or persons involved. A request for multiple incidents shall include reasonable specificity as to the date, time, location, or persons involved in each incident requested. The Custodian of Records may deny a request not containing reasonable specificity.

7. Requests shall be forwarded to the Custodian of Records for processing. Records can be requested for any reason which does not need to be disclosed by the requesting party. (La. R.S. 44:31).
8. The processing of requests is subject to the following:
 - (a) The Custodian of Records shall determine whether the requested record is available and/or subject to any exemption from disclosure (La. R.S. 44:4.1).
 - (b) When the record is not provided within three working days, a written response will be provided to the requesting party (La. R.S. 44:32D).
 - i. The written response should identify the reason the record is not being released, including reference to any legal exemption from inspection or copying.
 - ii. The fact that portions of records are exempt from disclosure should not preclude portions that are not exempt from being released. If portions of a record are redacted, those portions should be identified as redacted or the person requesting the record should be notified of the redaction (La. R.S. 44:32B).
 - (c) Should the custodian wish to withhold records, he/she shall first consult with the City Attorney's Office. The department is not required to create records which do not otherwise exist. However, existing records may be copied in such a manner as to provide the requesting party with unrestricted portions of any public record.
 - (d) If any public record is not in the custody or control of the Department the Custodian of Records shall promptly certify in writing to the requestor the reason for the absence of the record, and to the best of the Custodian's knowledge the current location of the record, who currently has custody of the record and the manner, method and time at which it was taken from the department's custody or control if applicable (La. R.S. 44:34).
 - (e) When a public record is available, the requesting party may be required to pay in advance any established fee for each record sought (La. R.S. 44:32C(1)(a)).

RECORD RELEASE RESTRICTIONS

9. Absent a valid court order or other statutory authority, records or unrestricted portions of records of this department may be made public subject to the following restrictions:
 - (a) **Video Violating Individuals' Reasonable Expectation of Privacy**—Video or audio recordings generated by body-worn cameras of non-critical incidents shall not be subject to disclosure when the disclosure would violate the reasonable expectation of privacy of an individual (such as when a person is in a public restroom or in his or her home) unless that individual (or his/her legal guardian) is the person requesting the footage. (La R.S. 44:3 A (8)).
 - (b) **Active Investigations**—Except for an initial report of the arrest of a person, records, reports or portions of any case that is not closed should not be released until the case becomes inactive or closed (La. R.S. 44:3A).
 - (c) **Confidential Informants**—Records containing the identity or that could reveal the identity of a confidential source of information shall not be released (La. R.S. 44:3).
 - (d) **Sensitive Information**—Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, criminal intelligence information

pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information shall not be released (La. R.S. 44:3A(3)).

- (e) **Arrest Records**—Arrest records are closed and exempt from disclosure until final judgment, except for booking information, or as allowed by law (La. R.S. 44:3A(4)(a)).
- (f) **Juvenile Offenders**—Records concerning juvenile information may not be disclosed. This includes records concerning status offenders and matters before the juvenile court (La. R.S. 44:6; Ch. C. 412).
- (g) **Accident Reports**—These are available only to the parties involved, their attorneys or insurers and news organizations (La. R.S. 32:398K). When provided to the media, the Department should consult with legal counsel regarding the redaction of personal information to protect privacy.
- (h) **Sexual Offense Victim Information**—The name and any other information that would identify certain crime victims shall be kept confidential (La. R.S. 44:3).
- (i) **Requests from Criminal Defendants**—Requests from criminal defendants and their authorized representatives, including attorneys, shall be referred to the District Attorney, City Attorney or the courts.
- (j) **Personnel Records**—Personnel records, medical records and similar records that would involve personal privacy shall not be made public (La. R.S. 44:11).
 - i. The home address, photograph or any otherwise confidential information of any officer under investigation shall not be released to the news media, press or any other public information agency without the express written consent of the officer (La. R.S. 40:2532).
- (k) **Work Product**—Any record that was created exclusively in anticipation of potential litigation involving this department shall not be subject to public disclosure.
- (l) **Other Records**—Any other record not addressed in this policy shall not be subject to inspection where:
 - i. Such inspection would be contrary to any state statute (La. R.S. 44:4.1).
 - ii. Such inspection would be contrary to any federal statute or regulation.
 - iii. Such inspection is prohibited by rules promulgated by the Louisiana Supreme Court or by the order of any court.

PERSONAL IDENTIFYING INFORMATION (PII)

- 10. Members shall not access, use or disclose personal identifying information, including an individual's photograph, Social Security number, driver identification number, name, address, telephone number and the individual's medical or disability information, which is contained in any driver license record, motor vehicle record or any department record 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). Personal identifying information shall be redacted from the documents.

SUBPOENA DUCES TECUM

- 11. Any subpoena duces tecum or discovery request should be promptly delivered to the affected Bureau/Division/ District/Section/Unit commander for review and delivered to the Records and Identification Section. 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.

12. All questions regarding compliance with any subpoena duces tecum should be promptly referred to the City Attorney's Office so that a timely response can be prepared.

PRIVACY AND SECURITY OF RECORDS

13. To the extent reasonably practicable, confidential records such as juvenile records or other sensitive records should be separated from public records and secured in such a manner as to reasonably protect them from unauthorized disclosure.

EXPUNGED RECORDS

14. All records ordered by a court to be expunged shall be destroyed, except as provided by law. If destruction of the record is not feasible because of the permanent nature of the record books, such record entries shall be blacked out. Entries of a record ordered expunged shall be removed from all electronic files (La. R.S. 44:9).

RELEASED RECORDS TO BE STAMPED

15. Each page of any record released pursuant to a public records request or subpoena duces tecum shall be stamped in colored ink with a departmental stamp identifying the individual to whom the record was released.

NUMERICAL FILING SYSTEM

16. Case reports are filed numerically by Public Records Section member; reports are numbered commencing with an alphabet for the coinciding month (A = Jan., B = Feb., C = March, continuing consecutively through December) followed by a sequential number beginning with 00001 starting at midnight on the first day of each month and ending with the last two digits of the current year. As an example, case number A-00001-13 would be the first new case beginning January 1, 2013.

FILE CASES

17. All reports including, but not limited to, initial, supplemental, follow-up, documents of evidence and all reports related to a case shall be recorded, kept and maintained by the Public Records Section.
18. The Public Records Section shall scan and enter attachment sheets and any other report related documents as necessary.
19. General public request and retrieval for Public Records Request shall be accessible only through authorized Public Records Section member.
20. New Orleans Police Department members shall not access, view or distribute or allow anyone else to access, view or distribute any record, file or report, whether hard copy or electronic file format, except in accordance with department policy and with a legitimate law enforcement or business purpose or as otherwise permissible by law.

RECORDS MANAGER TRAINING

21. The Deputy Chief of MSB shall insure the Records Manager receives training in records management, including proper maintenance, retention and disposal of records and the proper release of records under state and federal law.

RELEASE OF RECORDS AND INFORMATION

22. Any person 18 or older may inspect, copy, reproduce, or obtain a reproduction of any public record. Members of the department shall follow **Chief Administrative Officer Policy Memorandum # 92**, (found at: <https://employee.nola.gov/documents/forms/policies-law/policies/no-92-compliance-with-the-public-records-act/>) and the Public Records Act.
23. The Superintendent designated the Deputy Chief of the Management Services Bureau as the designee responsible for the coordination, processing, and distribution of a public document/record request.
24. A department member is prohibited from releasing to the public any public document unless authorized by the Superintendent or his/her designee.
25. A request for documents must be forwarded, via 105 with receipt, to the Bureau Chief. The request must be sent through the chain of command on the same date the request is received.
26. The Deputy Chief of the Management Services Bureau, or his/her designee, shall make the necessary arrangements as required by law to allow for the:
 - (a) Inspection
 - (b) Copying
 - (c) Reproduction of the document(s).
27. Nothing in this Chapter prevents the exchange of information and documents between law enforcement agencies for the purpose of coordinating criminal investigations and other official communications.
28. Commanders are authorized to release appropriate information to recognized and approved neighborhood crime watch and civic organizations for the purpose of fostering community involvement in crime prevention, through his/her chief.

SUBPOENA OF RECORDS AND INFORMATION

29. A Subpoena Duces Tecum issued by a court in civil suits/criminal actions shall be processed as follows:
 - (a) Members receiving a Subpoena Duces Tecum (Order for Production of Records) shall forward a copy of the subpoena to the Deputy Chief of the Management Services Bureau on the date the subpoena was served.
 - (b) Any Subpoena Duces Tecum should be date stamped upon receipt by the Management Services Bureau.
 - (c) The subpoena shall be attached to an Interoffice Correspondence and include the date the subpoena was received, and a brief summary of the document(s) requested. The correspondence shall state if the document(s) requested are in the custody of the individual subpoenaed to produce it.
 - (d) The correspondence shall include a line to be signed by the individual accepting the subpoena and correspondence in the Management Services Bureau office.
30. The City Attorney shall be notified about a subpoena Duces Tecum when the:
 - (a) Subpoena is oppressive or cannot be completed.
 - i. City is or may become a litigant in the lawsuit.
 - ii. Custodian believes the subpoena should be reviewed by the City Attorney.
 - (b) Person served with the subpoena is not sure if the document subpoenaed is a document defined as a public record.

DTS VIEWER POLICY

31. Members requesting access to the Department's DTS Viewer System must submit a 105, along with a completed **NOPD DTS Request Access Form** (Form 181), through his/her Bureau Chief, to the Management Services Bureau Chief. This request must be renewed annually.
32. Members holding a position within the department requiring access to the DTS Viewer System shall complete a NOPD DTS Access Form before access is granted.
33. Once an member having access to the DTS Viewer System is no longer in a position requiring access to the system, he/she shall immediately notify the Commander of the Record Room, via 105 or departmental email. The Commander of the Record Room or his/her designee shall block the member from having access to the system.
34. The unauthorized distribution of reports and or information contained within the DTS Viewer System to any person(s), organization(s), or the media, is **strictly prohibited**.
35. The Record Room is the only unit authorized to complete document requests and collect funds when the document(s) or access to the document(s) is completed.