

FORT ATKINSON POLICE DEPARTMENT POLICY		TITLE: 112 – Open Records	
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SPECIAL INSTRUCTIONS: Agency Fee Schedule Included			

I. Purpose

The purpose of this policy is to establish guidelines for the handling, dispersing and retention of records of the Fort Atkinson Police Department pursuant to Wis. Stat. Chapters 19, 48, 938, 51, 103, 905 and 995 along with Chapter 1.13 of the City of Fort Atkinson Ordinances.

II. Policy Guidance for Inspection of Public Records and Documents

The public has an abiding interest in law enforcement and in the activities of the department. The news media and members of the public frequently direct inquiries to the department to fulfill police records requests. All public records and documents in the department shall be available for public scrutiny unless special consideration is warranted. The decision to release police records will be determined according to the facts of each case in accordance with the guidance contained herein.

III. Personnel Authorized to Release Public Records

A. The Chief of Police is the legal custodian of all records at the Fort Atkinson Police Department. The Dayshift Lieutenant is designated by the Chief of Police as the Deputy Records Custodian for the agency. The review of requests and approval for release of records will be made through the legal custodian or the deputy custodian.

1. All requests for open records release related to the following will be reviewed and authorized by the Chief of Police:
 - a. Policy and Procedure
 - b. Budget and logistical information
 - c. All comments/requests related to inter-departmental memos, orders, emails and communications
 - d. Internal Affairs, Discipline, Hiring and Termination
 - e. Other miscellaneous operational requests

2. All requests for open records release related to the following will be reviewed and authorized by the Deputy Records Custodian:
 - a. Police Reports
 - b. Investigative or Booking photographs
 - c. Squad, Body, Building Video
 - d. Municipal or Traffic Citations
 - e. Municipal Court Discovery Requests
 - f. In-House Contact History Reports
 - g. Other miscellaneous requests as appropriate
3. The Records Clerk is responsible for processing, preparing and the physical release of all open records after they are reviewed and approved for release. All record releases must be in accordance with open records guidelines and department policy.

IV. Access to Police Records

A. Members of the department, only when authorized for a specific purpose, shall have access to the official records maintained by the department. This regulation prohibits all unofficial use of police records. Tampering with records by members of the department is prohibited.

B. Members of the department shall not divulge the contents of police records to anyone outside the department without permission from their Commanding Officer. No member of the department shall divulge any matters relating to official police business without first receiving authorization.

C. Records, as defined under 19.32(2), Wisconsin Statutes, are retained at the Fort Atkinson Police Department and are available for inspection and copying to any person demanding same between the hours of 8 a.m. and 4 p.m., Monday through Friday, excluding holidays.

D. Under most situations, access to agency records must be requested through the use of the agencies Request for Open Records submittal form.

V. Inspection VS. Non-Inspection of Record

A. Whenever inspection of any public records or documents containing information of the kind listed below is requested by a member of the public, the Chief of Police or his/her designee shall give special consideration to the competing public interests favoring inspection or non-inspection before permitting the release of the requested public records or documents.

1. The term “special consideration” as used herein shall include answering the following question . . .” would inspection of the desired public record or document result in harm to the public interest that would outweigh any benefit to the public that would result from inspection?”

If, in considering the above question and the public policies involved, the releasing officer finds the answer to be “no,” inspection shall be immediately granted.

2. However, if initial consideration of the request reveals a logical public policy reason favoring non-disclosure, the person requesting inspection of the public record or document should be orally advised of the reason why it initially appears that inspection cannot be allowed, and if after being so advised, the person requesting the document still desires to view the same, s/he shall be requested to present a formal written request to the Chief of Police, identifying the specific record or document requested and any additional public policy reasons or considerations that favor inspection of the desired public record or document.

B. If, after consideration of the written request and after further consideration of all public policies involved, the answer to the special consideration question is “no,” inspection shall be granted. However, if after special consideration the answer to the special consideration question is “yes,” and inspection is thus denied, the person requesting inspection shall be advised in writing of precisely how the public will be potentially harmed by the disclosure of the contents of some or all of the said public records or documents. In any event, all remaining portions of any such record or document, the release of which will not be harmful to the public good, shall be released.

VI. Public Records Warranting Special Consideration

A. Requests for inspection of public records or documents containing any of the following categories of information shall warrant special consideration of the competing public policies involved before disclosure by the authorized officer. Some public policies favoring non- disclosure of certain information are:

1. Releasing Pretrial Publicity that may tend to Diminish the Accused’s Right to a Fair Trial.

The compelling public policy favoring right of an accused to a fair trial free of prejudicial pretrial publicity make “special consideration” of certain types of information contained in otherwise public police records mandatory before any of such information may be released to the public.

The types of information listed in paragraphs a. through g. below, if disclosed prior to trial, may tend to prejudice and thereby diminish the accused individual’s right to a fair trial. The types of information withheld prior to trial to accommodate the accused’s right to a fair trial may be available for release after final disposition of the case, unless other cogent reasons outweigh the public right of disclosure. However, certain information may be released prior

to trial, including: the arrested person's name, age, residence, employment, marital status, and similar background as well as the charge; information summarizing the offense or charge, such as listed on the court complaint, will be released, the circumstances immediately surrounding the arrest, including time and place of arrest, resistance, pursuit, and possession or use of weapons.

Consider the foregoing public policy reasons relating to pretrial publicity when weighing the consequence of releasing the following types of information prior to final disposition of the case. (Included in parentheses are additional possible public policy reasons for retaining particular subject matter or types of information which are not related to the public policy associated with "pretrial publicity" which may be separately considered.)

- a. Statements as to character or reputation or criminal or arrest records of an accused person or prospective witness which, if made public, may tend to prejudice, and thereby diminish the accused individual's right to a fair trial. (Possible additional reason not related to the "pretrial publicity" area of public concern: public disclosure may unduly damage reputations.)
- b. Admissions, confessions, or contents of a statement of alibi attributable to an accused person which, if made public, may tend to prejudice and thereby diminish the accused individual's right to a fair trial.
- c. The performance or results of any examination or laboratory tests or the accused's refusal or failure to submit to an examination or laboratory test which, if made public, may tend to prejudice, and thereby diminish the accused individual's right to a fair trial.
- d. Statements concerning the credibility or anticipated testimony of prospective witnesses which, if made public, may tend to prejudice and thereby diminish the accused individual's right to a fair trial. (Possible Additional Reasons Not Related to the "Pretrial Publicity" Area of Public Concern are: possible witness harm or harassment and/or possible interference with ongoing criminal investigation)
- e. The possibility of a plea of guilty to the offense charged or a lesser offense, or other possible dispositions of the case which, if made public, may tend to prejudice, and thereby diminish the accused individual's right to a fair trial.
- f. Opinions concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at the trial which, if made public, may tend to prejudice, and thereby diminish the accused individual's right to a fair trial. (Possible additional reasons not related to the "pretrial publicity" area of public concern are: possible interference with ongoing criminal investigation and/or public disclosure may unduly damage reputation.)

g. Opinions expressed by investigating officers which, if made public, may tend to prejudice, and thereby diminish the accused individual's right to a fair trial. (Possible Additional Reasons Not Related to the "Pretrial Publicity" Area of Public Concern are: Possible interference with ongoing criminal investigation and/or Public disclosure may unduly damage reputation).

2. Information Relating to Police Investigation and Crime Prevention Techniques.

The public interest is best protected if the criminal element included within the general public is not forewarned of police investigative procedures and crime prevention methods. Thus, "special consideration" should be given before public disclosure of any record or document relating to police investigative procedures or crime prevention methods.

3. Consider Adverse Effect once Litigation has been commenced.

Consider the possible harm to the public good that may result from the release of police information that may diminish the chance of a successful prosecution. Discuss such possible harm with the District Attorney's Office. The public is entitled to be protected against violations of law and to have the law vigorously enforced. Special consideration to the possible harmful effect to the public's right to be protected against crime shall be given to all requests for information, the release of which may be harmful to the public welfare. Only limited discovery of police information and witnesses is permitted by law prior to trial. Information contained in police public records and documents concerning pending proceedings of which the City or State is a party shall only be released upon court order or in compliance with the law of criminal and civil discovery, after consultation with the attorney representing the City or the State in the proceeding.

4. Release of Information that may hamper Continuing Police Investigations.

Any information concerning or able to be used in a continuing investigation of a police matter shall receive "special consideration." Not only is there a possibility of prejudice to the potential defendant's right to a fair trial but also a possibility that premature release of this type of information may hamper police in the swift conclusion of their investigation or other disposition of the case

5. Identity of Informants, Complainants, Witnesses and Victims.

Only with the cooperation and support of the public are police able to perform their function in modern society. Police must continually rely upon the reports and subsequent testimony of concerned citizens to identify and abate criminal activity. Most persons who provide information relating to real or suspected unlawful activity to the police do so with an expectation of confidentiality, unless their testimony is necessary at trial. "Special consideration" shall be given to any information concerning the identity of informers, complainants and witnesses to protect their safety, and to encourage citizen participation in law enforcement. The names of victims of criminal acts may be released, except where the

identification of the person will endanger the individual's safety, hamper further investigation, or is contrary to law.

6. Identity of Persons under Suspicion.

Any revelation of the identity of a person suspected of unlawful activity before arrest or other commencement of lawful proceedings may subject a completely innocent person to public scorn and embarrassment. Additional harm to the public good may result if a suspect or accomplices flee to avoid apprehension. Disclosure may also endanger the suspect's safety. "Special consideration" shall be given to the release of any suspect's identity before arrest or other commencement of lawful proceedings.

7. Retain the Confidentiality of Personnel Records.

It is the policy of this department that personnel records are not open to inspection pursuant to Wisconsin open records laws. Said records often contain materials concerning financial, medical, social, personal history data, past work evaluation or current job evaluations that are secured upon a pledge of confidence. Any breach of this expectation of confidence would hamper efforts of the department to collect all the information necessary to properly evaluate its personnel.

8. Consider Other Appropriate Non-Listed Reasons for "Special Consideration."

The above enumeration of information categories which should receive "special consideration" is not intended to be exhaustive. Because of the unique nature of each fact situation, the releasing officer must in each case make an individualized judgment concerning the information requested. In weighing the competing public policy interests the releasing officer may find that, in view of a particular fact situation, certain information not herein enumerated may warrant "special consideration." In that event, the releasing officer shall follow the procedure set forth herein for that information specifically enumerated as warranting "special consideration."

VII. Public Records or Documents Which May Not Be Released

A. Certain records and documents are made confidential and precluded from public inspection by statute or common law. In the following instances inspection may not be granted to the public:

1. Juvenile Records

Requests for inspection of children's police records may not be granted except to representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child involved. (Wis. Stats. Sec. 48.26), however, this section will not be invoked if the offense is a traffic violation of Chapters 340 to 349, Wisc. Stats., or a County or municipal ordinance enacted under Sec. 349.06, Wis. Stats.

2. Attorney-Client

Certain information contained in public records and documents in the department is protected by the attorney-client privilege or by the Attorney's work product rule, and may be protected from release. Each request for information which may be protected by the attorney-client privilege shall be discussed with the attorney responsible for the particular case involved.

3. Wisconsin Statute 19.36(2) Records closed by Federal Law

4. Wisconsin Statute 19.85 Open meetings law exemptions

5. Wisconsin Statute 103.13 Personnel Records

6. Wisconsin Statute 995.50 Right to Privacy

7. Wisconsin Statute 905.09 Police investigations

8. Wisconsin Statute 905.10 Informant Identity

9. Balancing Test - State ex rel Youmans V. Owens

10. Records of other Agencies, Departments or entities

11. Contractor Records, where the Fort Atkinson Police Department assisted another agency while acting as a contractor or under mutual aid or agreement as defined in 19.36(3).

12. Medical or psychological records, Chapter 51 records or any record covered under HIPPA Privacy Rule.

IIX. Dissemination of Records

A. The Records Clerk who manages records will prepare and disseminate records as required by law and record release within the original report indicating copies were sent, to whom, and by whom authorized (except for the City Attorney's Office and the District Attorney's Office). Recording release within the case will facilitate expungement of records upon court order.

B. Requests by citizens for a copy or inspection of public records/documents in the custody of the department will be processed according to State Statutes and department policy. All requests will be processed in a reasonable time frame which is defined as approximately Ten (10) Days. Denied requests will inform the requestor for the reason of denial and that the denial is subject to review on application to the Jefferson County DA's office or to the WI Attorney General, WI Stats 19.13.

C. The News Media will receive general information (e.g., arrested person's name, age, residence, charge, and circumstances immediately surrounding arrest) from the Chief of Police or his/her designee.

D. Under Wisconsin Statutes related to Defendant Discovery Rights, defendants in criminal prosecutions have the right to examine certain documents connected with their

prosecution. Those documents held in the custody of this department that qualify under these guidelines will not be released to the defendant or his attorney. The law provides for the District Attorney's office to provide such discovery. Should a defendant or his attorney appear at the Police Department and demand inspection of such documents, they should be directed to the District Attorney's office.

IX. Notice 19.356, Wis Stats

- 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 after the ten (10) day period has expired and there are no pending civil actions or no court injunction prohibiting the release of open public record, the record shall then be released to the requestor.

XI. Retention of Records

- A. Retention of department records shall conform to Chapter 19.21 of the Wisconsin Statutes and Chapter 1.13 of Fort Atkinson City Ordinances.

This policy and procedure is to be used in conjunction with all relevant existing Fort Atkinson Police Department policies, procedures, rules and regulations in such a manner as to further the pursuit of the department mission, vision, and goals.

Adrian Bump
Chief of Police

Date

Fort Atkinson Police Department

Open Records & Services Fee Schedule

The Chief of Police is the Legal Custodian for all department records. Through written request citizens may obtain information, access to records, make requests for records and obtain copies of records subject to the below costs and fees.

Open Records

Photocopies/Printed Paper.....	\$0.25 each
Photographs (Developed/Printed).....	\$1.00 each
Compact Disc (AV or Data).....	\$20.00 each
DVD Disc.....	\$20.00 each
Thumb Drive.....	\$30.00
Postage/Processing.....	\$0.50 for Standard Letter
	\$2.00 for CD/DVD/Thumb Drives

Service Fees

Bike Licenses.....	\$5.00
PBT Service.....	\$5.00
Finger Printing Resident	\$10.00
Non-Resident.....	\$15.00
CVR Registration.....	\$19.50 (Agency Revenue: \$11.50)
Renewal.....	\$9.00 (Agency Revenue: \$3.50)
Bond Processing.....	\$20.00 each separate agency (Outside Agency Warrant)

**THERE WILL BE A \$25
FEE FOR CHECKS
RETURNED DUE TO
INSUFFICIENT FUNDS**